STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 63 February 18, 1935

1. REFERENDUM - INVALIDITY WITH RESPECT TO MATTERS NOT SPECIFIED BY STATUTE FOR SUBMISSION TO THE ELECTORATE - HAS ADVISORY AND NOT MANDATORY EFFECT

January 26, 1935

Mr. Harold J. Landshof,
Borough Clerk,
Rutherford, New Jersey.

Dear Sir:

This will acknowledge your certification of January 11, 1935 that at the general election held in the Borough of Rutherford on November 6, 1934 there was submitted the question "Should the Mayor and Council issue licenses for the consumption on the licensed premises of any and all alcoholic beverages?" and that 2609 voted in favor of the question and 2824 voted against the question.

There is no provision in the Alcoholic Beverage Control Act for referenda on any questions other than those expressly stated in Sections 41, 42, 43 and 44. Further, yours which submitted to the electorate the question quoted above, appears to have been worded with the intention of submitting for determination the question authorized by Section 42, to wit: "Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises by the glass or other open receptacle pursuant to the 'Act concerning alcoholic beverages' be permitted in this municipality?" Upon superficial inspection it may appear that your question and the statutory question are, in legal effect, the same. But this is not the case.

The statutory question, if voted in the negative, would prohibit, effective December 6, 1934, the sale of all alcoholic beverages for consumption on the licensed premises by plenary or seasonal retail consumption licensees duly licensed prior to November 6, 1934. All club licenses issued prior to November 6, 1934 would, on December 6, 1934, become completely void and inoperative. And immediately upon said vote it would be unlawful to issue any new plenary or seasonal retail consumption or club licenses. On the other hand, the question you have submitted, if voted in the negative, would prevent merely the issuance after November 6, 1934, of any new licenses for the consumption on the licensed premises of any alcoholic beverages. The three club licenses, which according to our records are the only licenses permitting the sale of alcoholic beverages for consumption on the premises, now or prior to November 6, 1934, outstanding in the Borough of Rutherford, would not be affected thereby. According to the question you have submitted, they are now, as before the referendum, in full force and effect. Hence, it cannot be said that the question you have submitted by referendum would have the same legal effect as the statutory question or that your question in substance complies substantially there with and, consequently, it has no sanction under the Control Act.

The power of the Legislature to delegate to the electorate the regulation of alcoholic beverages has long been recognized. See Hoboken vs. Goodman, 68 N.J.L. 217, 220 (Sup.Ct. 1902). But such delegation must be by statutory provision; in the absence thereof, the matter is not the subject of referendum. Cf. State vs. Court of Common Pleas of Morris County, 36 N.J.L. 72 (Sup. Ct. 1872); Paul

1872); Paul vs. Gloucester, 50 N.J.L. 585 (E. & A. 1888); Noonan vs. County of Hudson, 52 N.J.L. 398 (E. & A. 1890). In the absence of any general enabling statute pertaining to your Borough, as to which you should be advised by your Borough Counsel, the vote on the question submitted to your electorate, while it may be considered advisory, would seem to have no binding effect.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

2. LICENSEES - GIFT OF SAMPLES - EXTENT PERMISSIBLE

January 29, 1935

Rosecrest Distillers,
Paterson, N. J.

Gentlemen:

I have your inquiry whether or not "a Licensed N. J. Retailer is allowed to dispense small thimble sized samples of wine to prospective purchasers at his own store."

The answer depends on what kind of a retail license he holds. If a consumption license, he may; if a distribution license, he may not. Here are the reasons:

The Control Act provides that "the gratuitous delivery or gift of any alcoholic beverage by any licensee" shall constitute a sale. See Bulletin #55, Item #10. Consequently, samples may be given away to a consumer only where the retailer may sell to such consumer. Since retail consumption licensees may sell wine for consumption on the premises in any quantity, they may distribute the described samples where they are intended to be consumed on the premises.

Retail distribution licensees may not sell for consumption on the premises. Consequently, the distribution of samples by such licensees for consumption on the premises is prohibited. See Bulletin #19, Item #9.

Neither type of licensee may distribute the described samples for consumption off the premises. Such distribution would be in violation of the rules governing the size of containers, which prohibit the sale of wine in quantities less than 6 ounces. See Bulletin #55, Item #11.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

3. BOOTLEG LIQUOR - WARNING

"Fear bordering on panic spread through Gloversville, N. Y. tonight as deaths from alcohol poisoning increased."

"The 'creeping death' claimed its thirty-third victim today as the terror of poison liquor grew."

"All apparently had been drinking poison alcohol and died in

intense agony. All were blind when found."

"Calls came in from several sections of the city. The symptoms were the same: intense pains in back and stomach, dizziness, numbness, blindness and coma." AP

THIS MAY HAPPEN IN NEW JERSEY

Purchasers of bootleg liquor may at any time pay with their lives for the privilege of saving a few cents in the purchase of a drink. Illicit alcohol is being made and sold in New Jersey. In the last thirty days, this Department has seized thirty-four illicit stills with a total capacity of 20,000 gallons per day. If consumers could see the foul and insanitary conditions under which this illicit alcohol is manufactured, they would understand the terrible risk they run in purchasing untaxed liquor.

Recently three "cracking" plants have been captured in New Jersey with a total capacity of 7,000 gallons per day. At these plants alcohol is made for bootleg beverages by attempt to remove the poisonous ingredients from cheap denatured alcohol by "washing" or "cleaning" it with chloroform, ether and caustic soda. The poisons, however, can never be cleaned out 100% by any process. The physical symptoms may not manifest themselves at once if the cleaning has been fairly well done, but this poison is accumulative in the human system and may, by prolonged use, bring on blindness, paralysis and death.

This Department, in conjunction with the valued cooperation of Commander Pennington and his Federal Alcohol Tax Unit, is making every effort to discover and destroy every still and cracking plant in New Jersey. Send us in strict confidence specific information of any illicit beverage activities you observe. You help thereby to combat this menace to the health and lives of our people.

DON'T BUY ANY BOOTLEG LIQUOR.

D. FREDERICK BURNETT,
Commissioner

Dated: January 30, 1935

4. REFERENDUM - SUNDAY SALES - APPLIES TO CLUB LICENSES AS WELL AS OTHER LICENSES

February 2, 1935

Dear Mr. Burnett: Re: Gloucester Township

The municipality has issued several club licenses pursuant to the Statute and regulations. At the last general election there was a referendum on the question of Sunday sales and the referendum decided that there were to be no sales in the municipality on Sunday.

One of the holders of a club license has asked whether in view of the referendum they may make sales to members on Sunday.

Kindly advise me the ruling of your Department.

Very truly yours,
GEORGE D. ROTHERMEL

February 15, 1935

George D. Rothermel, Esq.,
Camden, N. J.

Dear Sir:-

The referendum held in the Township of Gloucester on November sixth last, pursuant to Section 44, was voted in the negative and therefore prohibited all sales of alcoholic beverages on Sundays. The statute makes no exceptions. The referendum therefore prohibits Sunday sales by clubs as well as other licensees.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

5. MUNICIPAL ORDINANCES - DIFFERENCE BETWEEN ORDINANCE CLOSING LICENSED PREMISES AT MIDNIGHT ON SATURDAY AND AN ORDINANCE OR REFERENDUM FORBIDDING SALE OF ALCOHOLIC BEVERAGES ON SUNDAYS

January 31, 1935

Gentlemen:

I maintain a restaurant in the township of Teaneck, Bergen County, N. J. and have obtained a liquor license. I have no bar or draught beer, merely serving drinks with meals.

The officials have advised me that I will have to close my restaurant at the closing time stated in the ordinance for all saloons.

May I keep open after the time set, serving meals only - no liquor.

Very truly yours,
(Mrs.) Jos. Valerio
The Evergreen Inn.

February 15, 1935

Mrs. Joseph Valerio,
The Evergreen Inn,
Teaneck, N. J.

Dear Madam:

The resolution adopted by the Township Council of the Township of Teaneck on June 26, 1934, amended July 3, 1934, Section (a), declared:

"No alcoholic beverages shall be sold in the Township of Teaneck between the hours of 3 a.m. and 12 M. on Sundays, and between the hours of 2 a.m. and 6 a.m. on weekdays."

Unless subsequent resolution or ordinance has altered or amended this regulation, it requires only that the sale of alcoholic beverages cease at 3 a.m. on Sunday and 2 a.m. on weekdays. It does not require that licensed premises be closed at the hours stated. Nor does it prohibit, after the hours above stated, the conduct of businesses other than the sale of alcoholic beverages.

Enclosed are Bulletin 58, Item 1 which explains the difference in effect between regulations closing licensed premises or, on the other hand, forbidding the sale of alcoholic beverages, and

Bulletin 56, Item 12 which covers the consumption of alcoholic beverages on the licensed premises after the stipulated time when sales thereof must cease.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

6. MUNICIPALITIES - AUTHORITY TO APPOINT INSPECTORS TO ENFORCE LIQUOR LAW - POWER OF SUCH INSPECTORS

January 26, 1955

C. A. Heil, Jr., City Clerk,
Wildwood, N. J.

Dear Sir:-

Acknowledgment is made of your letter advising that the governing body of Wildwood has appointed two inspectors to enforce the regulations promulgated by the Judge of the Court of Common Pleas of Cape May County as issuing authority for said county and inquiring as to the authority of said inspectors.

Section 6 of the Control Act, as originally enacted, authorized municipal board to appoint inspectors and investigators, but this authority was eliminated by an amendment contained in P. L. 1934, c. 85. See Bulletin 21, Item 4.

Proper enforcement requires constant supervision of licensed premises and the desire of your governing body to achieve such result, as evidenced by the appointment of special inspectors for that purpose, is commendable and greatly appreciated by the Commissioner. However, in view of the absence of any enabling provision in the Control Act, the authority for the governing body's action must rest upon the Home Rule Act (P. L. 1917, c. 152, p. 319) or other pertinent municipal statutes. If the inspectors have been appointed as police officers, then, under the Control Act, they would be vested with all of the powers and duties thereunder which pertain to officers in general. (See section 1 (p).) If, however, they have not been appointed as police officers, then the extent of their powers and duties will depend on the provisions of the statute under which they were appointed and general principles of municipal law, as to which you should be advised by your municipal counsel.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

7. PRINTING OF NOTICE OF INTENTION - LEGAL NEWSPAPERS - PUBLICATION AND CIRCULATION

January 18, 1955

Dear Sir:-

Many thanks for your favor of January fifteenth enclosing a copy of the letter of the Facts of Bayonne Publishing Company, Inc. (Bulletin 35, Item 2).

My previous letter was predicated upon the possibility that you would be submitting some new legislation this year dealing with your department. Your letter is not quite clear as to whether or not you have any such thought in mind.

I am very glad, however, to submit herewith my reason for the changes in the present law to overcome what I think is an objection to your interpretation of the clause effecting newspapers in the matter of publication of Notice of Intention. When I say "your opinion", please understand me, that in view of prior decisions of our courts, I readily agree that your interpretation could not be otherwise. Because of this strictly legal interpretation, a hardship is being worked to many worthwhile newspapers, and over and above that, the public are not receiving the benefit of what was the intent of the law.

When I advance an opinion as to what was the "intent of the law", please do not misunderstand that I am arrogating to myself the prerogatives of the Legislature. You will recollect that when the act was originally drafted, that I submitted to you the suggestion that the public were entitled to have notice of the proposed establishment of a place for the sale of alcoholic beverages. That, New York state had adopted, or was proposing to adopt, a provision that there should be a publication of this intention in the newspapers so that any citizen might have the opportunity to object if he thought such location would be injurious to his property, and the police or licensing authorities would have the opportunity to be advised as to whether or not the applicant was a fit person. That you agreed with the idea, presumably is self evident, from the fact that you embodied this provision in the Alcoholic Beverage Control Bill. In the changes which the Legislature made before the bill was finally passed, the present phraseology concerning newspapers was used. Unfortunately, I was not aware of the fact that the term "published" was employed instead of the word "printed" until the very last moment. I made a trip to Trenton in an endeavor to persuade the Senate to substitute the word "printed" for "published", but was unsuccessful. So much for my relations with this legislation.

After the enactment of the law, I think it was in connection with the Orange Courier, that you originally advanced the opinion that the publication of the advertisement must be in a newspaper published in the municipality wherein the premises were located for which a license was being sought. Your intention, as I see it, was thoroughly proper, in the belief that the Orange Courier was a strictly local paper in which the Orange residents, naturally would look for matters particularly effecting their municipality. Presumably, later, after consideration of our court decisions, you were obliged to reverse this position. The fact remains, nevertheless, that to clearly carry out the most effective publicity, in all fairness, your original decision should govern. With all due deference to the merit of our large newspapers, and particularly the Newark publications, an injustice is being worked both to the public and to a large number of splendid small newspapers in smaller municipalities, if they are ignored in a matter which is particularly local to their community. In the past, the old New York World and the Hearst publications have established offices in this state. Whether that has occurred in the case of Philadelphia papers, I am not aware. Under a strict interpretation of the law as it reads at present, such newspapers could qualify under the words "published and circulated" for the publication of "Notice of Intention." This

may seem an absurd construction, but it applies with equal force to the larger papers in the state as against the smaller newspapers.

In my judgment, this difficulty may be remedied by substituting the word "printed" for "published", both with reference to newspapers published in a municipality, or in the case of there being none such, published within the county.

If you agree with my views, and have in mind additional legislation this year, which could be included in your proposal, naturally, I would prefer that this course should be followed. However, if you are not contemplating any proposed legislation, and would be good enough to advise me next week, this will still afford the opportunity to introduce a bill endeavoring to rectify the mistake as I see it. Naturally, in the rush of other legislative matters, it will be a good deal more difficult to obtain such remedial legislation, as a separate bill, than it would if it were part of the legislative program of your department.

My interest in this matter is predicated upon a dual basis. First, as an orginator of this plan in this state, and secondly, as Chairman of the Legislative Committee of the New Jersey Press Association, a desire to protect each newspaper in its own particular bailiwick.

Thanking you for such consideration as you may give this somewhat lengthy plea, I remain

Yours respectfully,
WALTER M. DEAR

February 5, 1935

Walter M. Dear, Treasurer,
The Evening Journal Association,
Jersey City, N. J.

Dear Sir:

The Commissioner has carefully considered the suggestions contained in your letter of January 18th.

The courts have defined the word "published" to mean the place where the paper was first issued to the public. Under this definition the New York and Philadelphia papers could not qualify under section 22 and notices of intention with respect to licensed premises located within New Jersey but outside of Newark could not generally be published in Newark papers. Your fears that notices of intention could be published in such newspapers instead of local newspapers where the premises are located seem, therefore, to be without foundation.

Indeed, the adoption of your suggestion that the word "printed" be substituted for the word "published" might lead to the evil sought to be avoided. The only newspapers published in many small municipalities are printed elsewhere. Under section 22, as presently constituted, notices of intention for premises located within the municipalities where they are respectively published must be inserted in such newspapers. This would not be true if the suggested change were effected.

I shall be pleased to receive your further thoughts on the subject. In the meantime, no recommendation in connection

with the matter is being made by the Commissioner.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

8. LICENSEES - MAINTENANCE OF ORDER ON LICENSED PREMISES - POWER TO TAKE LAW INTO OWN HANDS

February 15, 1935

E. B. Backer, Proprietor,
Baker Inn,
Washington, N. J.

Dear Sir:

I have your letter inquiring the law "pertaining to the licensee's rights in maintaining order in his own place of business and just how far he can go in keeping order himself and if in all cases it is necessary to call the police in case of any disturbances or can he attend to these cases with his own paid help."

It is your responsibility as a licensee to maintain order and decency at all times. To do so, you may use reasonable force, including the assistance of your hired help. You may delegate to your employees the power to keep order in your absence.

But, so saying, remember that yours is not a power to punish or do anything else except what is reasonably necessary to maintain order and only then to that extent. Use your power with discretion and old-fashioned horse sense. Be kindly, albeit grimly firm. I don't want "bouncers" or the "bum's rush" or "gutter dormatories" in New Jersey.

The moment the situation appears to be getting out of control, or if you are in doubt as to your ability to cope with the disturbance, call the police. It is always more prudent to call upon the duly constituted enforcement authorities than attempt to take the law in your own hands.

Show your customers by your acts as well as your words that you mean business, and you will have but little trouble.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

9. APPELLATE DECISIONS - BRAUNSTEIN VS. BRIDGETON

JACOB BRAUNSTEIN, )
Appellant
-vs- )
ON APPEAL
CITY COUNCIL OF THE CITY ) CONCLUSIONS
OF BRIDGETON,
Respondent )
- - - - - - - - - - - - - - - - -

Carl Kisselman, Esq., Attorney for Appellant
Samuel Iradell, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the revocation of a plenary retail consumption license.

Respondent contends that the license was properly revoked because the licensee violated section 48 of the Control Act in that he sold illicit alcoholic beverages on the licensed premises; that the licensee violated section 78 of the Control Act in that he bottled alcoholic beverages for sale; that the licensee violated the State rules and regulations in that he sold a one-half pint of distilled spirits, to wit, whiskey for off premises consumption. (Bulletin #36, Item #5.)

Appellant admits that he violated section 78 of the Control Act and also the rules governing standards of fill, but contends that he did so out of ignorance and not with a wilful disregard of the Act and the regulations. He denies, however, that the alcoholic beverages involved in the sale were illicit in origin.

Testimony was adduced at the hearing showing that on December 18, 1934, Curtis Horner, a special officer connected with the Police Department of the City of Bridgeton, entered the licensed premises of appellant at 84 Cohansey Street, Bridgeton, and requested appellant to sell him one-half pint of whiskey made by appellant himself. Appellant told him that he had none available, but that if he returned in a few hours he could get it then. Horner returned later as advised and at that time purchased one-half pint of whiskey for thirty cents (30¢), in a bottle admittedly containing no tax stamp, which whiskey was subsequently delivered to the Police Commissioner of Bridgeton with a report of the transaction. On the basis of this incident, a search warrant was issued for the premises located at 84 Cohansey Street, Bridgeton, and when executed eight (8) pints of unstamped liquor were found in a room in the rear of the licensed premises, and in the same building.

Subsequently, a search warrant was issued for the home of appellant at 72 Cohansey Street, Bridgeton, and when executed there was discovered eight (8) 15-gallon barrels; one of them about one-fourth full; two of them about one-half full; one about two-thirds full and four filled, together with seventy-two (72) pints, making a total of approximately one hundred (100) gallons of alcoholic beverages. Appellant admitted these alcoholic beverages were illicit in origin.

Appellant testified that he did not sell the one-half pint of whiskey to Horner, but that he gave it to him as a gift after he had refilled the one-half pint bottle from whiskey drawn out of a properly stamped pint container of legitimate whiskey. He further testified that the eight (8) pints found in the room in the rear of the licensed premises were not his; that said room did not constitute a part of the licensed premises and although he had access thereto, many other persons had similar access. He explained the presence of the one hundred (100) gallons of admittedly illicit beverages in his home as having been purchased for his own consumption at various times during the period of prohibition.

Ignorance of section 78, which makes it a misdemeanor for

a retail licensee to bottle alcoholic beverages for sale or resale, is not an excuse. Licensees are not to make any assumptions. They have no right to assume that they may do everything they please unless they actually know that it is expressly forbidden. On the contrary, they are bound to make sure that whatever they do is permissible. If appellant had but looked at the law, he would have found staring him in the face an express prohibition against bottling. If, too lazy to examine the law, he had made inquiry from the Commissioner, he would have been promptly informed that he could not bottle. He suffered no such reticence in addressing the Commissioner on his previous appeals from the refusal of respondent to grant him a license. Rather than lift his finger to ascertain what he could do and what he could not, he took a chance and was caught. On this ground alone, the revocation was eminently proper.

I also find that the evidence reasonably sustains respondent's determination that appellant violated section 48 of the Act in that he possessed with intent to sell and that he did sell alcoholic beverages contrary to the provisions of the Control Act.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: February 16, 1935.

10. CLUB LICENSES - GUESTS - PAY GUESTS ARE NOT BONA FIDE GUESTS WITHIN THE MEANING OF THE STATUTE

February 15, 1935

Dear Sir:

The Borough Council of the Borough of Ramsey received under date of February 13th an application for a club license.

It develops through inquiry that if the license is granted, the licensee plans an Annual Ball. Tickets for this affair are by invitation from a subscription list, and a price is paid for the tickets. I wish a ruling from your department if such persons attending the Annual Ball are to be classified as Bona-Fide guests.

Yours sincerely,
RAYMOND E. ROCKEFELLER
Borough Clerk

February 16, 1935

Dear Mr. Rockefeller:

I have yours of the 15th.

Herewith Bulletin 50, item 6 of which deals with your question. See particularly question and answer #2.

While it is difficult to create a definition of "bona fide guest" which will include every person who should be, and exclude all those who should not be so regarded, I am of clear opinion that where tickets are sold to the public generally for a dance or other social function so that anybody who is orderly and sober and presents the ticket is admitted, that such persons

are not within the meaning of the term. An invitation to attend a ball if the invitee pays his own way is not my concept of the way to invite a guest. Such invitee hardly feels any astounding debt of gratitude for an invitation to pay his own money or any great sense of hospitality extended on condition that he who dances pays the piper. Just who is the host in these paid affairs? Without a host, there cannot be a guest--at least a bona fide guest. In a loose sense, such invitees may be said to be guests of the club, but this is not enough. They must be guests of the members. The statute so provides. A member who as host invites a person to attend as his guest doesn't allow his guest to pay for the hospitality. A "pay guest" is not a "bona fide guest".

If a club wishes to sell alcoholic beverages to non-members who attend such functions, a special permit for the occasion must be obtained as set forth in Bulletin 50, item 6.

Very truly yours,

Frederick Burnett

Commissioner