COMMISSIONER BURNETT

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street Newark, N. J.

BULLETIN NUMBER 84 July 31, 1935.

1. LICENSES - AUTOMATIC SUSPENSION UPON CONVICTION - CONSIDERATIONS APPLICABLE

July 20, 1935

Mr. William G. Wellhofer, President,
New Jersey Licensed Beverage Ass'n,
Atlantic City, N. J.

Dear Mr. Wellhofer:

I have yours of the 15th regarding mandatory automatic suspensions and I think there is a great deal in what you say. It does seem to me, on reflection, that Section 2 of Senate 289 (chapter 254 of the Laws of 1935) is too stringent so far as minor violations are concerned.

So far as major violations are concerned, as for instance, the sale or possession of illegal liquor, I believe that the Statute is a big advance. It was that type of case we had in mind in drafting this legislation. On the other hand, it is true that where there is but a minor or technical violation, the natural human tendency of juries is to acquit because of the over-severity of the punishment. For example, the employment of a non-resident without authority; sales by a limited distribution licensee of quantities less than those permitted by the license.

Of course, I cannot change what the Legislature has declared to be the Law. Since the Legislature has adjourned, nothing can be done about changing the Law unless a Special Session is called but I am today making a memorandum to submit it to the Legislature when the first opportunity arises for an amendment which will serve better than the present Law does. Since it is not legally feasible to draw a Statutory distinction between major and minor violations, I think the better plan would be to define the matters as to which automatic suspension would apply.

In the meanwhile the situation is not as bad as it might be because of the following considerations:

1. So far as major violations are concerned, we all agree that it will be of great value. For instance, when a man is convicted of selling bootleg liquor, the license will be suspended automatically and he will not have the privilege of continuing to sell until the Municipal Council meets and his trial is conducted and a decision reached and served upon him - all of which has in the past given such a wanton wrong-doer an unfair break over the licensee.

2. As regards minor violations, the operative words of the Statute are: "Upon conviction of a violation of any of the provisions of the Act". We see at once that the suspension is confined to violations of the Act itself and not to rules and regulations. Again the word "conviction" clearly points to a trial in the Criminal Courts. It does not mean "commission". Hence: If a licensee commits a violation of the Act, that of itself is not sufficient to effect an automatic suspension. It must be more than "commission"; it must be "conviction". Hence: This section in no wise applies to proceedings before local governing

Boards or Special Municipal Boards of the Alcoholic Beverage Control. It refers only to Criminal Court proceedings.

3. Again so far as minor violations are concerned: The Statute provides that the suspension shall continue for the balance of the term of the license "unless the Commissioner in his discretion and for a good cause shall otherwise order". I take it, therefore, that I have the power to lift or commute a suspension in proper cases. I deem that it would be a wise and proper exercise of that power to do so in all cases that are really minor violations so that the punishment will be more in accordance with the nature of the offense.

To illustrate: Assume that a licensee was actually convicted before a Judge and jury in a Criminal Court of employing an alien. Assume further that the licensee was really a bona fide licensee and did not really know that the person was an alien and that he had not been defiant and that his conduct as a licensee had been good. In such a case if this licensee were given a ten days' suspension it would vindicate the law and would be more befitting than to suspend his license, say today until next June 30. I purpose with careful discretion and common fairness to exercise that power. That, I believe, will take the sting out of the Statute in all cases of merely technical or minor violations.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

2. BOTTLES - BREAKING EMPTY BOTTLES - FEDERAL REGULATIONS

July 22, 1935

Mr. Lou V. Shipper,
Sea Girt, N. J.

Dear Sir:

There is no provision in the State Act or any State regulation compelling licensees to break empty liquor bottles.

As to local regulations on that point, if any, consult the municipal Clerk of the particular municipality in which the question arises.

We are informed by the District Supervisor of the Treasury Department, Internal Revenue Service, that Federal Regulation #13, approved July 13th, 1934, provides in Article #7, Paragraph #2:

> "The possession of used liquor bottles by any person other than the person who empties the contents thereof is prohibited. This shall not prevent the owner or occupant of any premises upon which such bottles may lawfully be emptied from assembling the same in reasonable quantities upon such premises for the purpose of destruction."

The Supervisor writes:

> "Although this paragraph of the regulations does not specifically provide that the owner of a bottle must break the same, we have encouraged this interpretation, and at public places have

required the breaking of all such bottles since the possessor of a large number of liquor bottles would have difficulty in showing that he was the owner thereof."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Mortimer J. Shapiro,
Attorney.

3. APPELLATE DECISIONS - HUTCHINSON VS. WYCKOFF.

ROBERT L. HUTCHINSON,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WYCKOFF, (BERGEN COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Thomas S. Doughty, Esq., Attorney for Appellant.
G. Ralph Hendrickson, Esq., Attorney for Respondent.
Herbert A. McElroy, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

In June, 1934, respondent adopted a resolution limiting their consumption licenses to three and issued the allotted number. In June, 1935, application was filed by appellant for a plenary retail consumption license and thereafter the application was denied. An appeal from this denial was taken and duly came on for hearing.

Appellant has complied with all of the formal requirements pertaining to his application. His character and fitness and the suitability of the premises sought to be licensed are not questioned. Respondent contends, however, that the application was properly denied in view of its limitation of three and its issuance of the allotted number. Appellant contends (1) that the premises sought to be licensed consist of a hotel, to which the limitation cannot be made applicable; and (2) that the limitation is unreasonable in its application to appellant since the premises sought to be licensed are 2-4/10 miles distant from the nearest consumption place of business.

(1) The evidence fails to establish that the premises sought to be licensed constitute a bona fide hotel within the contemplation of the Commissioner's decision in Maurer vs. Sussex, Bulletin #79, Item #10. Appellant testified that the premises contained eight (8) rooms; that on the date of the hearing, July 15th, 1935, no guests were registered there; and that aside from a single guest on July 8th, 1935, the last guests visited the premises in May, 1935. In Apgar vs. Tewksbury, Bulletin #66, Item #2, the Commissioner said:

"Appellant contends that he is entitled to a license as he intends to run an hotel at the premises sought to be licensed; that he expects to get transient business as the house is on the highway between Lebanon and Highbridge. While it has been

> decided because of the public function an hotel serves, that ordinarily it would not be fair to refuse a license to an hotel unless good cause is shown (A. B. C. Holding Co. vs. Newton, Bulletin #58, Item #1) nevertheless the testimony discloses that the premises in question contain only eleven rooms, have no improvements and are rented at only $20.00 a month and that extensive repairs would be necessary before they could be of service to the public. This is not the usual concept of an hotel. In these appeals, there are no magic words to be conjured. The mere invocation of the term 'hotel' by an appellant is no more dispositive than the mere assertion by a respondent that a license would be 'socially undesirable'. Everything depends on the facts."

The policy underlying the Maurer decision requires that it be confined to premises recognized by the surrounding populace as an established hotel within the usual meaning of that term. Roadside restaurants, such as the premises sought to be licensed, where lodgings are available to tourists, are clearly beyond its contemplation.

(2) The evidence likewise fails to establish that the limitation is unreasonable as applied to appellant. The Township population is approximately 3,000 persons. In addition to three consumption licenses, a distribution license has been issued for premises near those sought to be licensed by appellant. Reliance is placed by appellant entirely upon the fact that the premises sought to be licensed are located at a point within the Township where there is concentration of population and upon the additional fact that the nearest licensed consumption place of business is 2-4/10 miles distant. These facts are hardly sufficient to sustain appellant's contention. Cf. Ryman vs. Branchburg, Bulletin #37, Item #18.

Admittedly, there is a strong dry sentiment in the community as evidenced by the defeat of a proposed ordinance increasing to four (4) the limitation applicable to consumption licenses. Although it appears that the premises sought to be licensed are located within an area zoned for business purposes, there is no other evidence establishing the character of the surrounding community. The record is barren of any evidence with respect to the public demand in the vicinity. Whether the community needs an additional license is very largely a matter for the exercise of sound discretion by the local governing body. Its decision may be reversed if public convenience and necessity so dictate. Cf. Colonna vs. Montclair, Bulletin #39, Item #9. In the instant case, however, appellant has failed to sustain the burden of proof.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 24, 1935.

4. APPELLATE DECISIONS - RIEGELHAUPT VS. NEWARK.

NAT RIEGELHAUPT,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF NEWARK,)
Respondent.)

ON APPEAL
CONCLUSIONS ON APPLICATION FOR EXTENSION OF LICENSE PENDING APPEAL

Maurice Schapira, Esq., Attorney for Appellant.
Raymond Schroeder, Esq., Attorney for Respondent.
John Clancy, Esq., Attorney for Dr. Robert R. Sellers, Objector.

Notice and petition of appeal, together with petition for ad interim relief were duly filed on July 11th, 1935. The petition for ad interim relief alleged that appellant's application was denied by the Municipal Board of Alcoholic Beverage Control of Newark after a hearing at which objections were made that the licensed business had been conducted in an improper manner. The petition further alleged that these objections were unfounded, that the police investigation resulted in a recommendation that the license be granted and prayed for an order to show cause, together with an ad interim extension of the license pending the return of the order to show cause. On the basis of this petition and pursuant to Chapter 257 of the Laws of 1935, the Commissioner directed the Municipal Board of Alcoholic Beverage Control of the City of Newark to show cause on Wednesday, July 17, 1935, why the license should not be extended pending appeal and extended the license pending the return of the order to show cause.

The matter duly came on for hearing and testimony was introduced on behalf of the appellant, respondent and objectors. The testimony on behalf of the appellant was to the effect that the licensed business had been conducted properly, that no complaints had been received during the period of the license by the licensee and that the police investigation had resulted in a recommendation that the license be issued. A petition in support of appellant's application for a license was also introduced.

On behalf of the respondent and by consent of counsel, a transcript of the testimony taken at the hearing before the Municipal Board of Alcoholic Beverage Control of Newark was received in evidence. In addition thereto a petition objecting to the issuance of the license, a report dated July 16, 1935 from the Deputy Chief of Police of Newark, and oral testimony on behalf of the respondent by Dr. Robert R. Sellers and Annie T. Hough were received in evidence. The documentary evidence on behalf of respondent disclosed that the appellant has been convicted on three occasions. The last conviction was in March, 1935, for fornication and sentence thereon was suspended. The report from the Deputy Chief of Police states that complaint had been received regarding the manner in which appellant's place of business was conducted and Dr. Sellers testified as follows before the Municipal Board:

> "I have seen brawls on the street there at night, the cops take them away. We have seen men kicked out of this saloon by this man standing aside of me, drunk, so much so that they could hardly walk. I saw one reel out of there last night and slap a boy who was going by with papers, on his back."

At the hearing on the return of the order to show cause, Dr. Seller testified that until June there had been numerous disturbances, brawls and unnecessary noises at the licensed premises and that in general the licensed business had been conducted improperly. Mrs. Hough testified to the same effect.

Section 19 of the Control Act, as amended by P.L. 1935, c. 257, provides that "if it shall appear upon the return of the order to show cause that the action of the respondent issuing authority is prima facie erroneous and that irreparable injury to the appellant would otherwise result, the Commissioner may, subject to such conditions as he may impose, order that the term of the license be extended pending a final determination of the appeal." Upon the present record, it cannot be said that respondent's finding that appellant had improperly conducted his business and the consequent denial of his application, are prima facie erroneous. Accordingly, appellant's application for an extension of the license pending appeal must be denied.

It is, therefore, on this 17th day of July, 1935,

ORDERED that appellant's application for extension of the license for premises located at #26 Chestnut Street, Newark, be and the same hereby is denied; and it is further

ORDERED that the ad interim extension contained in the order to show cause dated July 11, 1935, be and the same hereby is terminated; and it is further

ORDERED that in the event a renewal license is hereafter issued by respondent to appellant, the entire license fee accompanying appellant's application, except the prorated portion thereof for the period prior to the issuance of the license during which appellant had no authority to sell alcoholic beverages at the licensed premises, shall be retained by respondent, but in the event respondent's action appealed from herein is sustained, it shall retain, in addition to the statutory investigation fee, the prorated portion of the license fee for the period subsequent to midnight, June 30, 1935, during which appellant was authorized to sell alcoholic beverages at the licensed premises.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

5. APPELLATE DECISIONS - FORD v. KNOWLTON.

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL

Thomas V. Ford,
Appellant,

-vs-

Township Committee of the Township of Knowlton (Warren County)
Respondent.

On Appeal

CONCLUSIONS

Lewis S. Beers, Esq., Attorney for appellant

Saul N. Schechter, Esq., Attorney for respondent

BY THE COMMISSIONER:

Notice and verified petition of appeal were duly filed on July 3, 1935. Pursuant to a prayer, in the petition, for ad interim relief, an order was entered directing the respondent to show cause on Tuesday, the 9th day of July, 1935, why the license held by the appellant should not be extended pending appeal, and extending the license pending the return of the order to show cause. The testimony presented upon the return of the order to show cause failed to establish that the denial of appellant's application was prima facie erroneous and accordingly the application for extension of the license pending final hearing was denied. Cf. Riegelhaupt vs. Newark, Bulletin #84, Item #4.

The matter duly came on for final hearing on July 19, 1935. The suitability of the premises and appellant's compliance with all of the statutory conditions pertaining to his application were not disputed. Respondent contended, however, that there had been drunkenness, disturbances, unnecessary noises and other improper conduct in and about the licensed premises and that consequently the application for renewal was properly denied.

Numerous witnesses were called on behalf of appellant to disprove respondent's contention. Mr. Cox, Township Constable and police officer, and Mr. Fuller, Justice of the Peace and Township Recorder, testified that no complaints had been received by them as to the conduct of the licensed premises and that to their knowledge appellant's business had been conducted properly. The testimony of Mr. Kenny, Township Treasurer, was to similar effect. Various persons resident throughout the State but familiar with the conduct of appellant's place of business testified as to the high character of its patronage and the propriety of its operation. Several witnesses, who live near the licensed premises, stated that they had never seen any improper conduct about the licensed business and denied that there were any disturbances or unnecessary noises. The appellant and his wife denied specifically the charges made by respondent.

Respondent's case rests entirely upon the testimony of Carl Mann, whose home is about 50 feet from appellant's place of business, his wife, Estelle Mann, and Mr. Harris,

whose home is about 300 feet distant therefrom. Mr. Mann testified that he was disturbed by piano playing and noises emanating from the licensed premises; that on several specific occasions persons in drunken condition came out of the licensed premises and performed indecent acts near his home; that on one occasion the appellant came out of the licensed premises in a drunken condition and swore at him. His wife's testimony was to the same effect.

This testimony must be considered, however, in the light of an animosity of long standing between the appellant and Mr. Mann. When the appellant first applied for a license shortly after repeal, Mr. Mann objected and has objected to each application thereafter. Mr. Mann admitted that at the hearing on appellant's last application before the Township Committee he said "I want to break that rat, Ford". The evidence further discloses that Mr. Edward Mann, the father of Carl Mann and a member of respondent Township Committee, had offered to sell the home occupied by Carl Mann to the appellant but the offer had been refused.

Mr. Mann testified that he was considerably disturbed by the piano playing in the licensed premises. In anticipation of this testimony appellant arranged a test which took place on Wednesday, July 17th, 1935. At about 11 p.m. the piano was played and seven (7) persons, led by Thomas Britton, Director of Vocal Music, Junior High School, East Orange, sang several songs. At the same time several persons participating in the test stood near the Mann home. Their testimony indicates that the piano playing and voices could not be heard from the Mann home.

Mr. Harris testified that the noises and piano playing at the licensed premises disturbed him, but intimated that his objections resulted from a request by Mr. Mann, the Township Committeeman.

It is, of course, clear that improper conduct under a prior license warrants a denial of a renewal application. See McGrath vs. Haddon Township (Camden County), Bulletin #44, Item #9. It is likewise clear that a determination by a municipal issuing authority that the licensed business has been conducted improperly in the past will be sustained if founded upon substantial evidence. In the instant case, however, no such substantial evidence appears. The testimony of the objectors considered in the light of all of the surrounding circumstances and the past relations between the appellant and Mr. Mann, throws but little doubt upon the mass of testimony introduced on behalf of appellant to establish that his business had been properly conducted.

The action of the respondent is reversed.

D. FREDERICK BURNETT
Commissioner

Dated, July 26, 1935.

6. SOLICITORS' PERMITS -- WHEN REQUIRED

June 29, 1935.

Mr. James D. Thompson,
Camden, New Jersey.

Dear Sir:

Solicitors' Permits are not required of clerical help in your office who merely answer phone calls and take orders from customers who come in, but the clerks so employed must be confined to clerical capacities. They may not offer for sale or solicit any order for the purchase or sale of any alcoholic beverage and the performance of their duties must be confined to the licensed premises.

Permits are required to be held by all salesmen and also by truck drivers if such drivers accept orders while making deliveries or in any manner whatsoever offer for sale or solicit any order for the purchase or sale of any alcoholic beverage.

Very truly yours,
D. FREDERICK BURNETT
Commissioner.

7. SOLICITORS' PERMITS -- WHEN REQUIRED

Philip Blank, Esq.,
Newark, New Jersey.

June 29, 1935.

Dear Sir:

I have your letter of June 25th asking on behalf of your clients, wholesale liquor dealers, whether or not order clerks who merely receive orders by phone from customers and salesmen and in the office from customers who call, but do not at any time solicit the purchase or sale of alcoholic beverages, are required to hold Solicitors' Permits.

The answer is in the negative if the employee's duties are actually confined to that of order clerk and do not encroach upon those of solicitor or salesman. As such, his employment must be confined to clerical capacities. He may not offer for sale or solicit any order for the purchase or sale of any alcoholic beverage and the performance of his duties must be confined to the licensed premises.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

8. LICENSED PREMISES--RESTRICTIVE COVENANTS IN DEEDS--PROCEDURE WHERE COVENANT IS MADE BY THE MUNICIPALITY ITSELF.

June 22, 1935.

Dear Sir:

Will you kindly instruct me whether a plenary distribution license should be issued to one Freedman by the Borough under the following facts:

The Methodist Episcopal Church at Verona conveyed to The Borough of Verona the premises for which this license is applied for by deed dated July 29, 1910. By this deed and the acceptance thereof, the Borough convenanted, among other things, that no spiritous, vinous or malt liquors should be sold on these premises. These same premises were conveyed by The Borough of Verona to Peter Scola on June 28, 1923 and contained the same covenant against the sale of liquor in the deed to him.

In my opinion, in view of this covenant, the Borough would be putting itself into a very anomalous position to grant a liquor license for these premises. The governing body acts somewhat in the capacity of a trustee for the citizens of the Borough. Any taxpayer might insist that application be made to the Court by the Borough for an injunction restraining such sale.

Will you kindly send me an opinion on what the attitude of the Department would be as to the granting of a liquor license for said premises?

Very truly yours,
CHESTER C. BEEKMAN
Borough Attorney.

June 25, 1935.

Chester C. Beekman, Esq.,
Borough Attorney of Verona,
Montclair, N. J.

Dear Sir:

In Bulletin #35, Item #6, the Commissioner stated that "covenants in deeds not to sell intoxicating liquors on premises for which a license is sought, however they may bind the parties to such deeds, are no legal restraint upon a court in granting tavern licenses for the public convenience. Barnegat Beach Association vs. Busby, 44 N.J.L. 627." In the case there presented the action of a municipal issuing authority in denying an application for a license because of a restrictive covenant was reversed.

The situation presented in your letter differs, however, in that the covenant was executed in 1923 by the municipality itself. Whether this fact requires a different conclusion in the instant situation, will not be determined on the basis of an ex parte inquiry. The duty of passing on the question of whether the pending application should be granted rests in the first instance with the municipal issuing authority, whose determination will not be reviewed by the Commissioner except on appeal. In the event such an appeal is taken, formal hearing will be held, at which time all of the pertinent facts can be fully presented and the legal and factual issues carefully considered and determined.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By: NATHAN L. JACOBS
Chief Deputy Commissioner
and Counsel

9. WAREHOUSE RECEIPTS LICENSE --WHEN REQUIRED -- NO EXCEPTION IN FAVOR OF OTHER LICENSEES

June 20, 1935.

Dear Sir:

We are informed that there has recently been enacted an amendment to the New Jersey Alcoholic Beverage law, so as to require that anyone dealing in warehouse receipts in New Jersey must procure a license at an annual cost of $100.

The question arises with respect to Hiram Walker Incorporated which holds a Plenary Export Wholesale License, whether it or its employee who is in charge of the sale of warehouse receipts in New Jersey will have to procure a separate license under the amendment.

Yours very truly,
MORRIS HENRY FRANK

June 26, 1935.

Steckler, Frank & Steckler, Esqs.,
New York City.

Gentlemen:

P.L. 1935, c.257 provides that the sale of receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages is prohibited, except under and pursuant to the provisions of a warehouse receipts license issued by the Commissioner. When this Act was first introduced in the legislature, the suggestion was made that an exception be drawn in favor of licensees. This suggestion was rejected mainly because the sale of warehouse receipts involves special considerations and requires independent regulation as regards present licensees as well as non-licensees.

Yours very truly
D. FREDERICK BURNETT
Commissioner

By: NATHAN L. JACOBS
Chief Deputy Commissioner
and Counsel

10. RULES GOVERNING IDENTIFICATION OF STATE LICENSEES AND THEIR EMPLOYEES--NOT APPLICABLE TO RAILROAD CARRIERS.

June 18, 1935.

My dear Commissioner: Re Central Railroad Co.

It has just come to my attention that your reulations for the issuance of transportation licenses would seem on their face to be broad enough to require the finger prints of officers, directors and stockholders be submitted with the application.

In the case of a company like ours it would be impossible for me to do this. As you know our company is a railroad corporation engaged in interstate commerce and subject to the jurisdiction of the Interstate Commerce Commission. Our stock is listed on the New York and Philadelphia Stock Exchanges and is largely held by institutions, who, of course, could not furnish finger prints. Our executive officers and directors are, as you know, men of outstanding positions in the railroad and financial world, and I am confident that I could not obtain their consent to submit finger prints.

Under these circumstances I respectfully request that you waive these requirements in our case.

Yours very truly,
CHARLES E. MILLER
General Attorney

June 25, 1935.

The Central Railroad Company of N.J.
New York City

Att: Chas. E. Miller, Esq.
General Attorney

Gentlemen:

The regulations governing identification of State licensees and their employees are designed to break up the practice of disqualified persons operating under fronts or behind corporate devices and to sever entirely their connection with the liquor industry. The reasons underlying the regulations do not, in any substantial sense, apply to railroad carriers engaged only incidentally in the transportation of alcoholic beverages. Furthermore, the impracticability of applying the rules to railroad carriers is evident.

Accordingly, the Commissioner has ruled that the regulations governing identification of State licensees and their employees shall not apply to railroad carriers. This exemption does not, however, extend to their affiliated or subsidiary transportation companies engaged in the carrying of alcoholic beverages.

Very truly yours,
D. FREDERICK BURNETT
Commissioner.

By: NATHAN L. JACOBS
Chief Deputy Commissioner
and Counsel

11. MUNICIPAL ORDINANCES--SUNDAY SALES--PERMISSIBLE THAT REGULATIONS RESTRICT USE OF LICENSED PREMISES ON SUNDAYS TO CERTAIN PARTS.

Dear Sir:

There is a question presented before me now which involves the right of the municipality to prohibit the sale of intoxicating liquors over the bar on Sunday. I have been informed that you decided in one of your Regulations that the municipality would have to prohibit the sale on Sunday through the entire premises licensed, permit the bar to remain open along with the remainder of the premises.

Very truly yours,
GEO. GURDON FAY
Recorder, Haddon Township, N.J.

June 29, 1935.

Mr. George Gurdon Fay,
Recorder of Haddon Township,
Westmont, New Jersey.

Dear Sir:

Your information that I have ruled that municipalities would have to prohibit Sunday sales of alcoholic beverages, if at all, throughout the entire licensed premises or permit the bar to remain open along with the remainder of the premises, is not correct. No such ruling has been made. Heretofore I have approved municipal regulations which, in effect, actually do restrict the use of the licensed premises on Sundays to certain parts.

Some such regulations have prohibited any sales of alcoholic beverages over bars or in bar-rooms and the use of bars for that purpose on Sundays. Others have restricted sales on Sundays to those made in hotels or restaurants at tables with meals. See Bulletin 53, item 9, rules 11 (a) and (c). They have been approved, when otherwise proper, as reasonable regulations based upon the municipality's inherent right through its police power to control the sale of alcoholic beverages.

It was for the reason given aforesaid that Section 21 of the Haddon Township ordinance to regulate the sale of alcoholic beverages, adopted July 3, 1934, which provides in part: "That at no time on Sunday shall the licensee serve over a bar, intoxicating beverages, either by sale or giving away" was approved by me in my letter to the Township Solicitor dated February 19, 1935, re that ordinance.

Very truly yours,
D. FREDERICK BURNETT
Commissioner.

12. MUNICIPAL ORDINANCES -- SWINGING DOORS

MUNICIPAL ORDINANCES--ENACTMENT--FROM AND AFTER JUNE 8, 1935 ALL AMENDMENTS TO EXISTING REGULATIONS AND ALL NEW REGULATIONS MUST BE ENACTED BY GOVERNING BODY OF MUNICIPALITY AND NOT BY LOCAL MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL.

June 29, 1935.

Raymond Schroeder, Esq.,
Assistant Corporation Counsel,
Newark, New Jersey.

Dear Sir:

I have the resolution adopted by the Newark Municipal Board of Alcoholic Beverage Control enclosed with your letter of June 10, 1935 reading:

"BE IT RESOLVED, By the Municipal Board of Alcoholic Beverage Control of The City of Newark, that any holder of a Plenary Retail Consumption License, whose bar-room is adjacent to the street and whose bar is visible to passersby when the door leading to the bar-room is open, shall, if the principal door to the bar-room is permitted to remain open, install a swinging door or doors, or screen door, which is non-transparent from the outside."

So far as the policy of this regulation is concerned I express no official opinion or comment one way or the other. Whether it should be adopted as a local regulation is a matter resting wholly in the judgment and discretion of the local governing body. It is within your legal authority. It is approved subject, however, to the following:

You do not report the date of adoption of this resolution. If it was passed on or after June 8, 1935 it is of no effect because on that date Chapter 257, P. L. 1935, which amended the Control Act, became effective. Thereupon the authority to limit the number of licenses and hours of sale and to regulate the conduct of licensed businesses and the nature and condition of licensed premises originally conferred by Section 37 upon each municipal issuing authority was transferred and vested in the municipal governing board or body. While it would appear that such regulations heretofore duly and properly adopted by your Municipal Board of Alcoholic Beverage Control do carry over in full force and effect, since June 8th all amendments to previously enacted regulations and all new regulations must be enacted by the Board of Commissioners.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

13. CONTAINERS --CONSIDERATIONS APPLICABLE

LIMITED DISTILLERY LICENSES--COMBINATION COCKTAIL PACKAGES

June 19, 1935.

Gentlemen:

Following up your request to the writer when he called at your office, we are writing you in reference to our cocktail package.

It is our understanding that there is no problem as to the license for the present month as we hold a Plenary Distillers License at present and, therefore, the contents of this letter are addressed with the idea of a solution of the problem from July 1st on.

We have applied for a Limited Distillery license for the coming year and request permission to bottle, distribute, and sell our new and unique pint cocktail package, a sample of which you have, under this license. There are two specific cocktails on which we would like your approval, i. e., the Brandy Manhattan and the Martini.

We feel that you will agree with us that, in the case of the Brandy Manhattan or a cocktail of which the major ingredient is Brandy, or a distillate of fruit juice, the wording of the Act is more than sufficient to cover such a product. We are frank to admit that the Martini presents a knotty question but one which, nevertheless, we hope meets with your approval. We believe there is reasonable justification in feeling that "his products", as stated in the Act, can be interpreted to refer to any tax paid alcoholic liquors (not malt liquors) which are tax paid and to which proper title is held. We feel that the stand taken by the Federal Government that, although our basic distillery permit is only a fruit distillers permit, it entitles us to bottle and distribute this cocktail product, which is the same line of reasoning as stated above.

We feel that the rectifier's permit fee is prohibitive on an article of so limited a sale. In the event that a favorable answer is not received on the Martini, we would be left with only one of two courses; to forget marketing this cocktail, or to have the Martini bottled out of the state. This is the last thing that we wish to do as it doesn't tend to economy and efficiency. More particularly, it would prevent fifteen to eighteen men per bottling day from receiving work on the bottling line; it would prevent purchase of glass from New Jersey, and many other incidental items.

We think you are well conversant with our desire to do the right thing, and we believe you will have to agree that this is the most honest cocktail package that has ever been placed before the public. It not only guarantees them a pint of cocktails, but they are assured of the quality of the ingredients. No doubt you will also agree that the Apple Brandy industry is the one branch of the distilling industry for which this State is well known, and that we are seriously in need of all the cooperation and help you can possibly give us. The success of the brandy industry is extremely helpful to the farmer and fruit grower, and in our particular instance alone extends to many hundreds of farmers who, without us being in a position to absorb their apple crop, would be seriously injured.

We must be very frank in stating that, considering the many overhead items, such as bonds, license fees, taxes, etc. weighed against the potential market for apple brandy, the brandy manufacturer must, in order to exist, spread this overhead load. Our cocktail proposition is our method of trying to solve this problem - spreading the general overhead expense and, we hope, producing more available cash to be able to take the farmers' apple crops this fall.

Very truly yours,

LAIRD & COMPANY

By J. E. LAIRD
President

June 19, 1935.

Laird & Co.,
Scobeyville, N. J.

Gentlemen:

The inquiries contained in your letter of June 19th have been carefully considered and the conclusions of the Commissioner are as follows:

(1) The proposed packages are not in violation of the rules concerning the size of containers of alcoholic beverages heretofore promulgated by this Department. The evils accompanying the sale of undersized containers are not present for each of the proposed packages is to be sold as a single bottle, sealed and bearing a proper stamp, containing 16 ounces of alcoholic beverages.

(2) The brandy manhattan cocktail packages, containing 74.3% of apple brandy manufactured by you and 25.7% vermouth, may be sold under a limited distillery license. Such license authorizes its holder to manufacture alcoholic beverages from fruit juices and rectify, blend, treat and mix and to distribute and sell his product to wholesalers and retailers. Under the foregoing provision it is clear that the holder of a limited distillery license may manufacture apple brandy, mix it with vermouth and sell the resulting product as a brandy cocktail. The package containing in the major part brandy and incidental vermouth constitutes substantially the same operation and is, therefore permissible.

(3) The martini cocktail package containing 73.6% gin and 26.4% vermouth may not be sold under a limited distillery license. This conclusion is necessitated by the fact that the holder of a manufacturer's license is confined by the terms of the Control Act to selling "his products". The Commissioner has heretofore ruled that this phrase refers solely to products manufactured pursuant to the New Jersey license and does not refer generally to products owned by the licensee. See Bulletin #55, Item #6. Consequently, the Martini cocktail, consisting in major part of gin, could not be the product within the meaning of the Control Act of the holder of a limited distillery license whose operations are confined to the manufacture of "alcoholic beverages distilled, from fruit juices" and the rectification, blending, treatment, sale and distribution thereof.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By: NATHAN L. JACOBS
Chief Deputy Commissioner
and Counsel.

erected 14. PLENARY RETAIL CONSUMPTION LICENSE--MAY NOT BE HELD BY A CLUB WHERE ONE OF ITS DIRECTORS IS A DIRECTOR OF A BREWERY.

Re Frank

letin 113

July 9, 1935.

8 . Dear Sir: Re: Short Hills Country Club

Under date of June 22nd, you furnished us with copy of letter dated June 20th forwarded by you to William Byrd, Esq. #63 Wall Street, New York City, re the Short Hills Country Club. Mr. Byrd had inquired whether the fact that one of the members of the Club is a director of a brewery disqualified the club from obtaining a retail consumption license. Your answer was in the negative.

We have been requested by Mr. John Montgomery, who is a director of the Fidelio Brewery Inc. of #501 First Avenue, New York City, and also a director of the Short Hills Country Club until two weeks ago, to secure a written statement from you to the effect that he is not technically violating the New Jersey law by acting as a director of the country club while also a director of the Fidelio Brewery, Inc.

Yours very truly,
FURST & FURST

July 10, 1935.

Furst and Furst, Esqs.,
Newark, N. J.

Gentlemen:

I understand that Mr. Montgomery is not a director of the Short Hills Club but is a member thereof. Accordingly, his connection with the Fidelio Brewery, Inc. is not legally objectionable under the ruling of the Commissioner in a letter addressed to William Byrd, Esq., #63 Wall Street, New York City, a copy of which is enclosed.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

July 11, 1935.

Dear Sir:

Mr. Montgomery resigned as director of the Short Hills Country Club, though he remained as a member shortly before your letter to William Byrd, Esq. of June 20th.

Will you kindly rule on the question whether Mr. Montgomery may again act as director of the Short Hills Country Club while acting in the same capacity with the Fidelio Brewery, Inc.

Yours very truly,
FURST & FURST

July 20, 1935.

Furst and Furst, Esqs.,
Newark, N. J.

Gentlemen:

In Bulletin #82, Item #14, the Commissioner ruled that a bona fide club incorporated and operating as an association not for pecuniary profit is not disqualified from obtaining a retail consumption license by the fact that one of its members is a director of a brewery. This ruling was based in large part upon the fact that a club member's interest in its retail liquor sales is so exceedingly remote as to be negligible and that consequently the purpose of section 40 is not circumvented.

The same conclusion cannot be reached, however, where a brewery director is a director of a club holding a plenary retail consumption license. There the relation between the brewery and the alcoholic beverage activity of the retail consumption licensee is close and the danger of brewery control sought to be eliminated by section 40 may be said to exist. Whether a club license may be held under these circumstances need not be presently determined.

It is the ruling of the Commissioner that a plenary retail consumption license may not be held by a club where one of its directors is a director of a brewery.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

15. ALIENS--GERMAN NATIONALS MAY NOT BE EXCLUDED FROM HOLDING ALCOHOLIC BEVERAGE LICENSES SOLELY ON THE GROUND THAT THEY ARE ALIENS -- THE TREATY CONFERS THE PRIVILEGE.

July 2d, 1935.

N. Louis Paladeau, Jr. Esq.,
Jersey City, N. J.

Dear Sir:-

Your inquiry as to whether a retail license may be issued to an alien German has been carefully considered.

In Bulletin #24, Item #5, the Commissioner ruled that in view of the Treaty of 1911 between the United States and Japan and the decision of the Supreme Court in Asakura vs.

Seattle, 265 U. S. 332 (1924), an alien Japanese is eligible to hold a license issued under the Control Act. The Treaty of Friendship, Commerce and Consular Rights concluded between the United States and Germany on December 8, 1923 accords to German nationals trade privileges similar to those accorded to Japanese nationals by the Japanese Treaty.

Accordingly, the ruling of the Commissioner with respect to Japanese aliens applies equally to German aliens who, therefore, may not be excluded from holding a license under the Control Act solely on the ground that they are aliens.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel.

16. REVOCATION PROCEEDINGS--MAINTAINABLE ALTHOUGH PROCEEDINGS ARE NOT INSTITUTED UNTIL AFTER EXPIRATION OF TERM OF PRIOR LICENSE.

July 17, 1935.

Dear Commissioner:

I direct my inquiry to the regulations stated in your Bulletin #80 Item #8. Would a person holding a retail consumption license who was alleged to have committed an infraction of the rules and regulations of the local Board of Alcoholic Beverage Control in the latter part of June 1935 and who was granted a renewal from July 1st, without any mention of the alleged infraction be proceeded against by revocation proceedings instituted after July 1st, 1935.

My interpretation of your regulations was that the only person who had actually been proceeded against and had received some notice from the Board could be proceeded against after the issuance of a new license starting July 1st, 1935.

Will you let me have a ruling on this matter.

Very truly yours,
SIDNEY SIMANDL

July 20, 1935.

Sidney Simandl, Esq.
Newark, N. J.

Dear Sir:

Rule #2 of the regulations relating to revocation proceedings pending or contemplated at expiration of license (Bulletin #80, Item #8) expressly provides that a license may be suspended or revoked for proper cause arising during the term of a prior license held by the licensee. Under this regulation a license may be revoked for a cause arising during the term of a prior license even though proceedings were not instituted until after the expiration of the term of the prior license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel.

17. SOLICITORS' PERMITS--WHEN ISSUABLE--WILL NOT BE ISSUED TO MEMBER OF MUNICIPAL GOVERNING BODY WHO IS ALSO SALESMAN FOR A BREWERY EVEN THOUGH SOUGHT FOR TERRITORY OTHER THAN THE MUNICIPALITY.

July 10, 1955.

Dear Commissioner: Re: Armand C. Brundage

The rules and regulations governing solicitors' permits issued June 22, 1955, provide among other things that "No Solicitor's Permit may be issued to any member of a municipal governing body. . . ."

I represent Commissioner Armand C. Brundage, who is a member of the governing body of the Town of West Orange and is also employed by the Ballantine Brewery as a canvaser-collector. His customers are licensed retailers in eleven municipalities, including West Orange.

The rule in question deprives him of the right to obtain a solicitor's permit while he holds his municipal office. While I agree with the fundamental principle involved, nevertheless I contend that the public interest does not require so severe and stringent a regulation.

It is quite obvious that the rule is too broad in its scope. A simple illustration will show that the present regulation is unreasonable. Under the rule, a member of the Township Committee of a small municipality in the northernmost part of the state would be inelligible for a permit to solicit orders for a distillery, even though his territory were entirely in Cape May County. It surely cannot be said that the political influence of such an official would extend beyond the territorial limits of his municipality.

I am willing to admit, for the sake of argument that Commissioner Brundage, because of his municipal office, may have a certain amount of influence in West Orange, but I refuse to concede that such influence is statewide or even county-wide. It seems, therefore, wholly unnecessary to require that he give up his means of livelihood as a condition to holding public office.

In further support of my argument, may I call your attention to the numerous rulings wherein you have held that no principles of fairness or impartiality were violated, nor any consequent conflict of interest where the official's liquor activities covered territory other than the municipality in which such official held office. Your most recent ruling on the subject, issued May 20, 1955, held that the Mayor of South Belmar was not disqualified from participating in his capacity as a member of the governing body of the municipality which he represented, while being at the same time employed by a club licensee in the adjoining municipality of Belmar.

For the reasons above stated, and in the interest of fair play, I respectfully urge you to modify the present regulations.

Yours respectfully,
ALFRED J. GROSSO

July 31, 1935.

Alfred J. Grosso, Esq.,
Orange, N. J.

Dear Mr. Grosso: Re: Armand C. Brundage.

I have carefully considered yours of the 10th.

Rule #8, concerning the issuance of Solicitors' Permits, provides:

> "8. No Solicitor's Permit may be issued to any member of a municipal governing body or municipal issuing authority or to any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever."

The object of the Rule was to break up unholy alliances with the alcoholic beverage industry by those charged with the enforcement of the laws governing the same.

It is against public policy for a member of a municipal governing body to participate in any matter before it which directly or immediately affects him individually. Stevens vs. Haussermann, 113 N.J.L. 162, 172 Atl. Rep. 738, Sup. Ct., 1934.

Accordingly, I ruled that a Councilman who was interested in a wholesale alcoholic beverage license was ineligible to pass on the issuance of retail licenses. Bulletin 18, item #4.

So, in the Asbury Park cases, Bulletin 39, items 2 and 3, I ruled that a Mayor of a municipality, who was also the manager of a hotel therein which held a retail license, was disqualified from voting upon discriminations contained in a local ordinance favorable to his own hotel.

Again, in re Brundage, Bulletin 80, item #7, I held that a member of the Board of Commissioners of West Orange who was employed by a brewery as a salesman and collector could not vote upon a proposed ordinance limiting the sale of alcoholic beverages to premises exclusively devoted thereto and upon which no other mercantile business might be conducted.

In re Reese, Bulletin 82, item #2, I held that a Councilman who was a member of a municipal governing body and also a salesman and collector for a brewery could not obtain a Solicitors' Permit unless he resigned as Councilman on the ground that municipal governing bodies had the power to determine to whom licenses should be issued, to fix the license fees, to enact ordinances governing the liquor traffic, to determine what kinds of licenses shall be issued and whether more than one may be granted to any one person because all these matters should be decided by independent men who had no financial interest in or gainful employment by the brewing industry.

In re Ballantine Brewing Co., Bulletin 82, item #1, Rule 8 was held to apply to a member of a Township Committee although a separate excise board had been constituted by the local

municipal governing body to issue licenses, because it was the municipal governing body which held the whip hand over the retail industry and which had the exclusive power to determine the fees, enact the regulatory ordinances and make the decisions as to the kinds and number of licenses.

I gladly note that you agree with the fundamental principle involved, which, as you see from the foregoing survey, has been uniformly applied. Your present effort, I take it, is to seek modification or relaxation of the Rule to the extent that a Solicitor's Permit may be granted to a brewery salesman who is also a member of a municipal governing body conditioned, however, that no solicitation may be made in the municipality of which the salesman is a member of the governing body.

The lines of influence are not so easily defined. The primary duty of enforcing the alcoholic beverage control act is placed on local municipal officials. That duty should be their first concern. It must be their only concern when the image of self-interest collides with that duty. The employee, however well-intentioned, must economically heed his master's voice or lose his job. He cannot serve the public and a conflicting private interest at the same time. He must renounce one or the other. The salutary principle must not be frittered away by engrafting exceptions which will eventually sap its life blood. The matter is not one of personality but of principle. However high the character of your client, a sound public policy demands that a Solicitor's Permit be denied him unless and until he resigns the public office which charges him with the duty of enforcing the law governing those very permits and every other ramification of the retail trade.

Considered then on the basis of principle, it is obvious that if the exception which you propose were allowed, it would apply to all cases. A Commissioner of West Orange then could operate in the contiguous territory of East Orange and so a Councilman of East Orange sell in the adjoining Town of West Orange, and both be employed by the same brewery. Form would be followed but substance sacrificed. Prospective customers might well, in such case, be solicited with the insidiously effective declaration: "Commissioner So and So, or Councilman Whosit is not allowed you know to solicit any business in this territory but he will be mighty well pleased, - in fact permanently grateful - for anything you may do for Mr. Smith who represents the same brewery. He'll get the credit, you know, for all orders you may place."

To state your proposition when thus analyzed is to refute it.

Even if nothing were said, the solicited retailer would draw his own conclusions. What he believes, is truth to him on which he acts. The field of influence is not limited or defined by conventional municipal boundary lines. We cannot ignore what the retailer and every one else knows. Modification of the rule as suggested by you would spell its eventual nullification. The application is therefore denied.

The South Belmar ruling (Bulletin 76, item #2) to which you refer is not apposite. The Mayor of South Belmar was the steward of the Moose Home in Belmar - a municipal official

employed in a different municipality by a club licensee privileged to serve only club members and their regular guests. It would be torturing the principle to say that employment by a retail licensee in another place could reasonbly influence the Mayor's action in his home town. If he had been employed by a brewery, or a wholesaler, or any other licensee which operated in both places, the instant situation would be presented. So also if he worked for a retail licensee which had branch stores in both places. As it was no principle of fairness or impartiality was violated. The cases are radically different.

Very truly yours,

D. Frederick Burnett,
Commissioner.