

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 40.

July 14, 1934

1. MINORS - SALES - NO ALCOHOLIC BEVERAGES, INCLUDING BEER, MAY BE SERVED TO ANY PERSON UNDER TWENTY-ONE YEARS OF AGE.

July 5, 1934

Secretary,----- Golf Club,

Dear Sir:-

I have copy of resolution of the Board of Governors providing, among other things, "that no alcoholic liquor, except beer, shall be served to any person under eighteen years of age."

This regulation, however reasonable, is nevertheless against the law which provides that no alcoholic beverages whatsoever shall be sold to any minor, i.e. to a person under twenty-one years of age. Any beer which contains more than one-half of one per cent. of alcohol by volume is an alcoholic beverage. Such sale is a misdemeanor, punishable by fine or imprisonment or both.

May I therefore cordially advise that you change this regulation to read twenty-one years, instead of eighteen years, and to see that it is enforced immediately.

Cordially yours,

D. Frederick Burnett,
Commissioner

2. RULES GOVERNING THE TRANSPORTATION OF ALCOHOLIC BEVERAGES
OUT OF NEW JERSEY

July 9, 1934

Christian Feigenspan Brewing Company,
Newark, New Jersey.

Gentlemen:

In the preliminary stages of its consideration of the problem of interstate shipments, this Department inclined towards the view that no transportation of alcoholic beverages should be permitted in this state except in a licensed vehicle. Such a position would obviously facilitate the enforcement of the provisions of the Control Act pertaining to transportation.

After further study, however, it was concluded that in view of constitutional considerations and as a matter of comity to neighboring states, transportation through this state should be permitted of alcoholic beverages not intended for delivery, use or sale in New Jersey. Exception #2 of the rules governing transportation of alcoholic beverages into New Jersey, promulgated on July 2, 1934, provides for this situation.

To permit this exception and at the same time forbid transportation from a point within this state to a point outside this state of alcoholic beverages not intended for delivery, use or sale in New Jersey seems unfair. It would permit persons to purchase alcoholic beverages in a nearby state and transport them through New

Jersey to a distant point, but at the same time forbid such persons from purchasing alcoholic beverages from a New Jersey licensee and transporting them to such distant point.

Accordingly, the following rule is promulgated to take effect immediately:

Alcoholic beverages sold without this state, pursuant to the laws of the place of sale, by the holder of a New Jersey manufacturer's or export wholesaler's license and not intended for delivery, use or sale in New Jersey, may be transported from the licensed premises, warehouse, salesroom or office of such manufacturer or export wholesaler in New Jersey to a point outside this state in any vehicle, provided that such vehicle shall carry a waybill or similar document stating the names and addresses of the consignor and consignee and the nature and quantity of the alcoholic beverages being transported and containing a certification by the licensed manufacturer or export wholesaler that such alcoholic beverages are not intended for delivery, use or sale in New Jersey.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By:
Nathan L. Jacobs,
Counsel-in-Chief

3. SALE - WHAT CONSTITUTES - DRAWING CHANCES

June 26, 1934

My dear Commissioner:

Members of an organization have asked me if the drawing for a case of liquors by chances that are sold at 10¢ each, is in violation of the State Act.

The case of liquors is offered as the prize, is not intended for consumption on the premises where awarded and will be purchased through a regularly licensed dealer.

The members of this organization are all reputable citizens and taxpayers and have no desire to violate the Act in any way.

Yours very truly,
Paul S. Towne,
Recorder

July 9, 1934

Paul S. Towne, Recorder,
210 Main Street,
Hackensack, N. J.

My dear Judge:

I have yours of the 26th ult.

The transaction you sketched is in violation of the state law. The drawing at 10¢ a chance is just another way of attempting to sell alcoholic beverages without a license, and whether intended for consumption on or off the premises makes no difference. A license or a special permit is necessary to conduct the sale.

Very truly yours,
D. Frederick Burnett
Commissioner

4. ORDINANCES - REQUIRING LIGHTING OF PARKING SPACES

The Township Committee of Union Township submitted for approval an ordinance reading:

"Section 1. That any space owned or used in connection with the operation of a park, grove, picnic grove, saloon, tavern or place where alcoholic beverages are sold or consumed, or of any place of public amusement or assembly, which space is utilized for the purpose of parking cars, shall be lighted during the night time sufficiently to render the interior of all parked cars visible from a distance of twenty-five (25) feet. :

"Section 2. It shall be the duty of the owner, licensee, tenant or person charged with or responsible for the management of said place of business, to see to and provide for such lighting of said parking space.

"Section 3. Any person, firm or corporation violating this ordinance, shall be subject to a fine of not more than twenty-five (\$25) Dollars, or to imprisonment for not more than ten (10) days.

"Section 4. This ordinance shall take effect immediately after publication, in the manner provided by law."

Charles Wagner, Township Attorney, wrote the Commissioner:

"The object is to make the interior of the cars visible at night, and the reason for this is that complaint has been made of improper and immoral practices that occur in such places, which possibly could be prevented by lighting the parking spaces.

"Since this would in a measure, constitute some regulation of places in which alcoholic beverages are sold, I stated that it would need your approval, before it became effective.

"The Committeemen think the subject of importance, particularly during the present Summer season, and would appreciate word from you as soon as possible, so that if the Ordinance is acceptable, it could be enacted at once."

The Commissioner wrote Mr. Wagner:

"I will approve the ordinance if enacted.

"This experiment of your Township Committeemen will be watched with keen interest, and it would not be surprising if many of the municipalities adopted similar ordinances. If it succeeds in breaking up the practises about which much complaint has been made, it will be carefully considered with a view to making it a state-wide regulation.

"I do think that the ordinance should fix a date reasonably in advance to enable the licensees to install the necessary lighting rather than to make it effective immediately."

D. FREDERICK BURNETT
Commissioner

Dated: July 10, 1974.

5. MUNICIPAL ORDINANCES - SUNDAY SALES - IMPROPER TO PERMIT SUNDAY SELLING IN PART OF A MUNICIPALITY AND WITHHOLD THE PRIVILEGE IN ANOTHER PART.

July 10, 1934

Robert Bright, Esq.,
109 East First Ave.,
North Wildwood, N. J.

Dear Mr. Bright:

I have your petition of June 30th in behalf of the inhabitants of Strathmere, an unincorporated village of Upper Township, Cape May County.

It appears therefrom that Strathmere is located on Ludlam's Island and is a portion of the municipality of Upper Township and separated therefrom by the Great Sound; that the inhabitants of Upper Township presented a petition to the Honorable LeRoy W. Loder, Judge Designate of the Court of Common Pleas of Cape May County requesting him to grant Sunday sales in Strathmere because it was a seaside resort and catered to public entertainment via fishing, sailing and crabbing parties, but also requesting that such Sunday sales should not extend to the rural or agricultural portions thereof; that the Township Committee presented a resolution to said Judge to extend Sunday sales to Strathmere only but not to the rest of the Township; that said Judge in open court stated that he believed that Strathmere by reason of its peculiar location and the circumstances in connection therewith should have the benefit of Sunday sales but doubted his power and authority to subdivide a municipality and grant such a privilege to a portion and exclude the residue thereof.

The petition prays that the State Commissioner of Alcoholic Beverage Control grant to Strathmere the privilege of Sunday sales.

The petition is, in effect, an appeal from the refusal of the issuing authority of Cape May County to allow Sunday selling in Strathmere.

It is unnecessary to determine whether, as a matter of policy, the power which the petition alleges resides in the Commissioner should be exercised because, in the instant case, I have concluded that the power does not exist. While the hours of sale as determined by the issuing authority of a municipality are subject to appeal, the trouble is that Strathmere is not a municipality. It is merely the local, unofficial name of a part of a municipality. The issuing authority has no power arbitrarily to subdivide a municipality and grant the privilege of Sunday selling to one part and exclude the other. Neither has the Commissioner.

The refusal of Judge Loder to grant the privilege of Sunday selling to the inhabitants of Strathmere is therefore affirmed and the petition dismissed.

Very truly yours,

D. Frederick Burnett,
Commissioner

6. MINORS - SALES - INDIRECT.

July 6, 1934

Dear Commissioner:

I represent the Township of Pennsauken in the County of Camden. Several of the retail consumption licensees have inquired concerning sales to minors where they are accompanied by their parents or the consumption, by a minor, on the premises of alcoholic beverages, where the minor is accompanied by a parent or parents.

For example, suppose an adult enters a tap-room, restaurant or beer garden which is licensed to sell alcoholic beverages and is accompanied by his sixteen year old son or daughter. The parent orders, say, two glasses of beer and gives one of them to the minor to drink. Is this permissible under your present construction of the section which prohibits sales to minors?

I assume that if this were permitted that it would open the way to abuse but I thought that I would communicate with you and obtain your views thereon.

Very truly yours,
Thomas F. Salter,
Solicitor

July 9, 1934

Thomas F. Salter, Solicitor,
Township of Pennsauken,
Merchantville, N. J.

Dear Mr. Salter:

I have yours of the 6th.

The Control Act, Sec. 77, provides: "Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor and punished accordingly." It is true that where the minor is accompanied by his parent, who in a bona fide way, buys the drink for him, the evil at which the statute is aimed is not present in the same degree. But the Act makes no exceptions. If indirect sales, through the medium of a parent were permissible, so must they be through the intervention of any adult. It would, if tolerated, open a wide door to subterfuge and tricky evasion.

Although Sec. 77 is penal and, therefore, normally construed strictly, yet Sec. 74 declares that the Act is intended to be remedial of abuses inherent in the liquor traffic and shall be liberally construed.

Perhaps the situation would be better controlled by promulgating a state-wide regulation prohibiting service as well as sales of alcoholic beverages to minors by any licensee. What do you think?

Very truly yours,

D. Frederick Burnett,
Commissioner

7. SPECIAL PERMITS - CONSENT OF MUNICIPAL CLERKS - WHEN CONSENT SHOULD BE GRANTED AND WHEN WITHHELD.

MINORS - SALES - PICNICS.

June 28, 1934

Dear Sir:-

Is there no better way for your department to issue Special Permits for the sale of alcoholic beverages to clubs holding picnics, than by having them secure the written consent of a Borough Clerk?

The responsibility is too great to rest on the shoulders of one man for several reasons chiefly of which these stand out, first if he does give consent he is allowing favors to certain organizations, second, if he does not give consent he is politically prejudiced.

Personally I have never known of any picnic being held where beverages were sold that was not attended by a large number of children.

Respectfully yours,

Borough Clerk.

July 11, 1934

-----, Borough Clerk,

Dear Mr. -----:

I have yours of the 28th ult. and understand and sympathize.

The reason why I insist upon obtaining the written consent of the Clerk of the municipality where the picnic is to be held, as well as the Chief of Police, is to ascertain whether there are any local resolutions or ordinances barring sales of liquor on Sunday or limiting the hours thereof, or whether the granting of the permit would in anywise violate the declared policy of the municipality or whether the governing board have any sound objection to the character of the organization which proposes to conduct the picnic, or any other reason to submit why the permit should not be granted.

Hence, whether you give or withhold consent should depend entirely upon the foregoing considerations and nothing else. If you do give consent, don't do it or treat it as a favor, but place it squarely on the merits. If your duty impels you to withhold consent, state your reasons frankly, cards face up, and if those reasons are sound and bona fide, nobody in the long run will have any real ground for thinking that you are politically prejudiced. It is not what people say, but what you do which counts in the long run.

It is true, I suppose, that these picnics are usually attended by children, as well as grown-ups. The law provides that no alcoholic beverages whatsoever shall be sold to any minor. In order to emphasize that law, I have placed a clause in these special permits reading: "It is a misdemeanor, punishable by fine or imprisonment or both, to sell beer or any other alcoholic beverage to any person under the age of twenty-one years. This permit is expressly conditioned that no violation of the law shall be permitted, suffered or allowed by said permittee."

Very truly yours,
D. Frederick Burnett,
Commissioner

8. MUNICIPAL LICENSES - WHEN ISSUED BY STATE COMMISSIONER -
GENERAL CONSIDERATIONS

July 6, 1934

Richard DeWitt, Esq.,
192 Broadway,
Long Branch, N. J.

Dear Mr. DeWitt:

I have yours of the 3rd.

When it becomes necessary, under Chap. 44, P. L. 1934, for application to be made to the State Commissioner for a retail license which would ordinarily be issued by the municipality, the applicant has neither greater nor lesser right than when the license is issued direct by the municipality. The object of the supplement was merely to insure that no member of the municipal issuing board who was self-interested would participate in the granting of the license.

Very truly yours,

D. Frederick Burnett
Commissioner.

9. SPECIAL PERMITS - TO CHARITABLE ORGANIZATIONS -
WHEN ISSUABLE FOR MORE THAN ONE DAY

July 12, 1934

Reverend Father Anthony,
Church of the Blessed Sacrament,
Elizabeth, N. J.

Dear Pastor:

I have your application for special permit confined to the sale of beer during the week of July 16 - 21, for the charitable purposes outlined in your letter. I have not heretofore granted any special permit, even to a charitable organization for more than one day, and this for the reason that it would not be fair to the regular licensees who have to pay heavily for the privilege of selling. But I note that the City Clerk in his endorsement of your application certifies that the holders of plenary retail consumption licenses in Elizabeth have no objection to such special permit being granted to your Church, and, therefore, I am pleased to grant the application good for the time requested.

Very truly yours,

D. Frederick Burnett,
Commissioner.

10. CLUB LICENSES - APPLICATION - SUBMISSION OF CHARTER.

July 12, 1934

George W. Carr, Borough Clerk,
Lindenwold,
Camden County, N. J.

Dear Sir:-

I have yours of July 5th inquiring "if a copy of the

charter must accompany the application for a club license or if the charter may be presented and the necessary information taken therefrom".

There is no requirement in the law or the rules and regulations that a copy of the charter must accompany the application. The question is asked in the form of application: "If a corporation, is there submitted herewith a true copy of charter?" in order to supply the information which the issuing authority may need to determine whether or not a license should be issued to the particular club. If that information is presented by exhibiting the charter itself and the necessary information taken therefrom, that, of course, is sufficient.

Very truly yours,

D. Frederick Burnett
Commissioner

11. LICENSES - REVOCATION - NOT REVOCABLE FOR DELINQUENCY IN
PAYMENT OF COMMERCIAL CLAIMS INCURRED IN OPERATION
OF BUSINESS.

July 12, 1934

Dear Sir:-

I have yours of the 10th inquiring as to whether or not I "have taken or will take any action by way of suspension or revocation of license in dealers who are delinquent in the payment of bills incurred in the operation of their business under a license issued?"

As you ask the question, the answer is NO. The licensees, like other business men, are having a hard enough time to make ends meet. This office is not a collection agency.

If a licensee were guilty of fraud, that would be a matter which would decidedly interest this Department, and might result in revocation if the charges were proved. But that is something entirely different from creating a virtual preference in favor of ordinary commercial claims simply because they involve the liquor traffic, and forcing their payment ahead of other legitimate claims by fear of revocation. To that, I am unalterably opposed.

Very truly yours,

D. Frederick Burnett
Commissioner

12. MUNICIPAL EXCISE BOARDS - CONSTITUENCY - EFFECT OF UNLAWFUL
CONSTITUENCY.
LICENSES - VALIDITY - DE FACTO LICENSEES.

July 13, 1934

Alice I. Webster, City Clerk,
City Hall,
East Orange, N. J.

Dear Madam:

Complaint is made this morning that the Municipal Board of Alcoholic Beverage Control of East Orange consists of three persons all of whom are of the same political party.

Is this true?

This board was created by resolution of your City Council, December 6, 1933. Jacob Bock, Charles Weining and Harry Sharp

were elected members for one, two and three years respectively with salaries of \$250. per annum.

This resolution and these appointments were correct when made but Chap. 85, P. L. 1934, effective April 13, 1934 amended Section 5 of the Control Act so that such municipal boards must thenceforth consist of three persons "no more than two of whom shall be of the same political party". It was further amended: "The members of such municipal board shall receive no salaries". Section 6, which had enabled municipal boards to appoint inspectors and employees, was repealed.

These changes in the law were certified to you as City Clerk by me on April 16, 1934, by Bulletin 21, items 3 and 4.

It follows that if it is true that all three members of your municipal board are of the same political party, the board is illegally constituted and all its acts since April 13th last have been without authority of law. In any event, their salaries ceased on that date and all employments made by them terminated.

If the charge is true, the legal existence of the board terminated automatically on April 13th last. There is no necessity either for resignations or for removals. Legally, there is no such board.

You will therefore please certify the facts to me at once.

Our records show your municipal board has issued 17 consumption, 15 distribution and 2 club licenses for the current fiscal year. If these licenses were in fact issued by an illegally constituted board it would logically follow that each such license was void and the holders guilty of a crime in making unlicensed sales of alcoholic beverages. It was so held in an early New Jersey case, Flaucher vs. City of Camden, 56 N.J.L. 244.

However, logic must give way in this case to the fairer tests of good faith and ordinary human experience. Honest licensees, who in good faith and in reliance upon the color of apparent authority have paid the City its fees, incurred expenses, made commitments and otherwise changed their position on the faith of the licenses granted, must be properly protected. If the State Commissioner does not himself know at this moment the political faith of the members of your municipal board, how can a private citizen be expected to know it! It would be utterly unfair under these circumstances and at this juncture either to refuse them licenses, Berkelhammer vs. Trenton, Bulletin 28, item 5, or to declare their present licenses void and to condemn good citizens as unwitting criminals. Lang vs. Bayonne, 74 N.J.L. 455. The City, having held this board out as being vested with proper authority, is now estopped as a matter of sound public policy from denying it. No punishment should or will be inflicted on honest licensees who without fault on their part have been placed in this invidious position.

From this moment on, however, no further licenses shall be issued by the board and all such future licenses will be held void and illegal - that is to say, if the complaint made as to the legal constituency of the board is true.

You will please communicate this letter at once to each member of the City Council of East Orange.

Very truly yours,

D. Frederick Burnett
Commissioner

13. SPECIAL PERMITS - TO SELL STOCK ON HAND AT EXPIRATION OF
LICENSE - PROCEDURE

July 13, 1934.

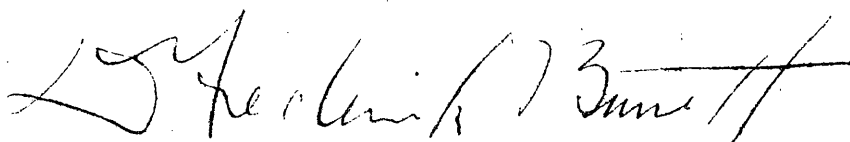
The following rules are hereby promulgated:

RULES GOVERNING THE ISSUANCE OF SPECIAL PERMITS TO DISPOSE OF
ALCOHOLIC BEVERAGES AT EXPIRATION OF LICENSE.

1. In lieu of application for a special permit, file with the State Commissioner of Alcoholic Beverage Control an affidavit setting forth the following:
 1. Name and address of applicant.
 2. Kind and number of his former license.
 3. By whom issued.
 4. Location of former licensed premises.
 5. Place where alcoholic beverages sought to be disposed of are held.
 6. Place from which alcoholic beverages will be sold if special permit is granted.
 7. A complete and itemized inventory of the alcoholic beverages held by applicant for whose disposition a special permit is sought.
 8. The approximate length of time required to dispose of said alcoholic beverages.
 9. Full statement of reason for making application for special permit.
 10. All other pertinent facts deemed necessary by the applicant to warrant the issuance of such permit.
2. Also file a waiver from State Tax Commissioner showing that applicant has complied with all tax requirements in respect to such permit.
3. If applicant formerly held a retail license, also file letter from issuing authority which granted said license stating that applicant for special permit has complied in all respects with the Alcoholic Beverage Control Act and the rules and regulations and with municipal ordinances and/or resolutions.
4. A reasonable fee will be charged for said special permit, the amount thereof to be determined by said State Commissioner at the time application is made.
5. Said special permit, if granted, will confer upon the permittee the right to sell only to persons, firms or corporations duly licensed under the Control Act as amended and supplemented, either as manufacturers, wholesalers or retailers, and to sell without this State to any persons, firms or corporations duly licensed pursuant to the laws of the places of such out-of-state sale.

14. BULLETIN ITEMS - ITEM SUPERSEDED

Ruling concerning special permits in Bulletin 38, Item 3, is superseded by Bulletin 40, Item 13.



Commissioner