COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 105 February 8, 1936

1. RULES - RULE PROHIBITING SALE OF ALCOHOLIC BEVERAGES TO MINOR OR TO INTOXICATED PERSON APPLIES TO ALL LICENSEES.

January 10, 1936.

My dear Commissioner:

Concerning Bulletin 26, Item 2, Sub-division 5 thereunder, I should like to be advised whether this provision includes sales over the bar to a person actually or apparently intoxicated, for immediate consumption on the licensed premises, or whether the same provision was intended to apply only to sales of alcoholic beverages in a container to such a person, for consumption off the premises.

A general interpretation of this section would be appreciated.

Very truly yours,
MEYER Q. KESSEL,
Town Attorney

January 17, 1936.

Meyer Q. Kessel, Esq.,
Town Attorney of Irvington,
Newark, N. J.

Dear Sir:-

I have your letter of January 10th.

Rule #5 of the rules set forth in Bulletin #26, Item #2 provides that "Effective immediately, no alcoholic beverages of any kind in any container shall be sold by any licensee to any person under the age of 21 years or to any person actually or apparently intoxicated".

This rule applies both in letter and in spirit to all licensees, including plenary retail consumption licensees. The title is not part of the rule and is merely designed to furnish a convenient means of designation. It can in nowise limit the effect of the rule.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By:
Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

2. MUNICIPAL ORDINANCES - NO POWER EXPRESSLY CONFERRED BY STATUTE TO PROHIBIT BY RESOLUTION ALL RETAIL SALES - THE ISSUANCE OF RETAIL LICENSES MUST BE PROHIBITED, IF AT ALL, BY ORDINANCE

January 27, 1936

W. Radcliffe Jones
Borough Clerk
Pennington, New Jersey

Dear Sir:

I have before me the resolution passed by your Mayor and Common Council on February 5, 1934 which reads:

> "BE IT RESOLVED by the Mayor and Common Council of the Borough of Pennington, in accordance with the provisions of Chapter 436, P. L. 1933, and the authority therein granted, that the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes, and boats, within the Borough of Pennington be, and the same is hereby prohibited."

The resolution was adopted on February 5, 1934 pursuant to authority expressly conferred by statute. At that time, Section 37 gave to each municipal governing body, among other powers, the option to prohibit by resolution the sale of all alcoholic beverages at retail except for consumption on railroad trains, airplanes and boats. But on April 13, 1934, the statute was amended by Chapter 85, P. L. 1934 and that part of Section 37 upon which your resolution was based, was exscinded. Now the question before us is whether or not your resolution became a nullity on April 13, 1934 when the amendment cancelled the statutory authority pursuant to which it was originally enacted.

There is, at the present time, no express authority conferred by the Act to prohibit, by resolution, all sales of alcoholic beverages at retail. This, in view of the foregoing legislative history, may indicate that because of the omission, the power does not exist. But other mechanism is expressly provided by the Act which, in practical effect, will accomplish the same result.

Section 13, sub. 1, 2, 3a, 3b and 5 of the Act says that the governing body of each municipality may prohibit, by ordinance, the issuance of one or more or all of the classes of retail license which municipalities are authorized to issue. But mere resolution will not suffice; to be legally effective, it must be done by ordinance.

If, therefore, it is still the opinion of the Common Council that no one of the several classes of retail licenses be issued in the Borough, all doubts would be resolved and the questions which your old resolution raises throwing doubt on its validity would no longer need consideration if, consistent with the statute, you would adopt an ordinance prohibiting the issuance of plenary retail consumption, seasonal retail consumption, plenary retail distribution, limited retail distribution and club licenses within your municipality.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

3. LICENSE FEES - RESOLUTIONS OR ORDINANCES SHOULD STATE SPECIFICALLY THE CLASS OR CLASSES OF LICENSE FOR WHICH THE FEE IS FIXED.

REFUNDS - MUST BE IN ACCORDANCE WITH SECTION 28 OF THE ACT.

LICENSE TERMS - LICENSES MAY BE ISSUED ONLY FOR THE TERMS SPECIFIED BY STATUTE

LICENSES - SUSPENSION IN EMERGENCIES - EXISTENCE OF THE POWER AND THE LIMITS THEREOF

LICENSE TRANSFERS - FROM PERSON TO PERSON AND FROM PLACE TO PLACE MAY BE EFFECTED IN ACCORDANCE WITH THE STATUTE.

REVOCATION - SERVICE OF CHARGES PREFERRED LEGALLY EFFECTIVE ONLY IF MADE AS SPECIFIED BY STATUTE

January 27, 1936.

Frank D. Crain
Clerk of Tabernacle Township
R. D. 2, Vincentown, New Jersey

Dear Sir:

I have before me two resolutions passed by your Township Committee pursuant to the Alcoholic Beverage Control Act as amended and supplemented.

1. Dated June 13, 1934, fixing a license fee for the retail sale of alcoholic beverages and regulating sales thereunder, as amended by

2. Dated June 11, 1935, amending Section 4.

They are approved as submitted subject to the following comments and exceptions:

Section 3 fixes a license fee of $200.00 per annum but does not state the type of license for which the fee has been fixed. Now the statute does not contemplate any one general sort of license for the sale of alcoholic beverages at retail. Instead, it specifies five classes of retail licenses which municipalities are authorized to issue and describes in particular the privileges conferred by each. These five licenses are Plenary Retail Consumption, Seasonal Retail Consumption, Plenary Retail Distribution, Limited Retail Distribution and Club. See Bulletin 21, items 6, 11, 16, 20 and 25. The $200.00 fee which your resolution fixes could be for either Plenary Retail Consumption or Plenary Retail Distribution because it falls within the minimum and maximum limits between which the statute says these two fees must lie. It becomes the fee for both regardless of whether or not that was the result intended. But perhaps it was your intention to fix only the Plenary Retail Consumption license fee; my records indicate that only such licenses have been issued in your Township. Better to amend Section 3 to state specifically the class or classes of license for which the fee was fixed. So as to avoid any misunderstanding which may arise in the future, I suggest that this be done at once.

Section 3 further provides that no rebate shall be allowed or deduction offered for any time less than the term for which the license shall have been granted. The statute provides for one exception to this Rule. Section 28 says that, in the event any licensee, except a seasonal retail consumption licensee, shall voluntarily surrender his license there shall be returned to him, after deducting as a surrender fee 50% of the license fee paid by him, the prorated fee for the unexpired term. See Bulletin 48, items 6 and 9.

Section 3 provides in conclusion that all licenses granted pursuant to "this Act" shall be for a period not exceeding one year from and after the effective date of "said Act" or until midnight June 30, 1935 inclusive. I take it that by "this Act" and "Said Act" you mean to refer to the resolution. Now retail licenses do not run for a period of one year from and after the effective date of your resolution. Section 23 of the statute says that they shall run for the term of one year from the first day of July in each year. Hence, all (except seasonal licenses for which the statute specifies winter and summer terms) expire on the June 30th following their issuance. Furthermore, the section says that all licenses granted pursuant to the resolution shall expire midnight June 30, 1935. Hence, the entire resolution has been conditioned to become inoperative on June 30, 1935 because, by its terms, it could affect only those licenses which were issued prior to that date and expired on that date.

Thus, so far as Section 3 deals with refunds and the term for which licenses may be issued, it should be corrected. The cure is to amend the section so as to provide that no refunds shall be made except in accordance with the statute and that all licenses, except seasonal retail consumption licenses, shall expire on the June 30th following their effective date. But a better solution would be to recast the entire section so that it provides only for the license fee leaving out any reference to either refunds or license terms. Refunds, and the terms for which licenses may be issued, are controlled entirely by statute. The requirements of the statute need not be repeated in your resolutions in order to be effective. The statute protects you in any event and if you omit from your resolution the matters which are entirely controlled by statute, you will save yourself the necessity and expense of revising your resolution each time the statute may be changed. See Bulletin 43, item 8.

Section 4 would confer upon the municipal governing body or regularly delegated police authority the power to order a license suspended immediately in case of public emergency. Suspensions (so also with revocations) may be effected only pursuant to the procedure which the Legislature has set up for that purpose in Section 28 of the Act. No suspension or revocation of any license may be made until a five-day notice of the charges preferred against the licensee shall have been given to him personally or served upon him by registered mail and a reasonable opportunity to be heard thereon afforded him. See Bulletin 52, items 9 through 14, inclusive. It is, nevertheless, recognized that emergent situations may arise which require for the protection of the lives and safety of the public immediate action by duly constituted police authorities. Thus, and in such circumstances, an order to close instantly all places licensed to sell alcoholic beverages would be unquestionably proper. But

great caution must be exercised to make sure that a real emergency actually exists, that the order applies to all licensed places which may be affected by the particular situation and that the order is withdrawn as soon as the emergency passes (Re Bayonne, Bulletin 24, item 4). Such an order is vastly different from a suspension. A suspension is the adjudicated result of charges which have been preferred and the hearing thereon. The closing order is solely an exercise, in public emergency, of the municipality's inherent police power. I suggest that Section 4 be amended so that instead of conferring authority to suspend licenses in case of public emergency, it confers upon the duly constituted police authorities the power to order licensed premises closed in case of public emergency.

Section 5 provides that licenses shall not be transferable either as to the holder or as to the place of business, except upon special resolution of the municipal governing body. At the time the resolution was adopted, the statute provided for the transfer of licenses only from one place of business to another. It did not permit the transfer of licenses from one person to another. Since then, however, the statute has been amended, which amendment, in expressly providing for the transfer of licenses from one person to another, cures the original error. See Bulletin 83, item 1, paragraph 9, wherein Section 23 of the Act which deals with the question of transfers is explained, and Bulletin 87, item 6, wherein the procedure controlling transfers is set forth.

Section 6 says that the notice of charges to be preferred in suspension or revocation proceedings shall be served personally upon the licensee or upon any member of his or her family or upon the person in charge of the business or otherwise by registered mail as provided in the Act. The statute, Section 28, requires that the notice of the charges preferred shall be served upon the licensee personally or by registered mail addressed to him at the licensed premises. It does not provide for the service of the notice, as your Section 6 purports, upon any member of the licensee's family or upon the person in charge of the business. Service other than as required by statute would not be legally effective. Hence, rescind from Section 6 "or upon any member of his or her family or upon the person in charge of the business."

Very truly yours,
D. FREDERICK BURNETT
Commissioner

4. MUNICIPAL ORDINANCES - RESOLUTIONS AND ORDINANCES CONCERNING ALCOHOLIC BEVERAGES ARE ADOPTED PURSUANT TO AUTHORITY OF "AN ACT CONCERNING ALCOHOLIC BEVERAGES" C. 436 P. L. 1933 AS AMENDED AND SUPPLEMENTED.

LICENSES - CLUBS APPLYING FOR PLENARY RETAIL CONSUMPTION LICENSES MUST QUALIFY AS DO ALL OTHER APPLICANTS.

LICENSE FEES - MUST ACCOMPANY THE LICENSE APPLICATION.

SEASONAL RETAIL CONSUMPTION LICENSES-MUST BE PROHIBITED, IF AT ALL, BY ORDINANCE.

MISDEMEANORS - MISDEMEANORS ARE CRIMES - MUNICIPALITIES CANNOT MAKE CRIMES - ONLY THE LEGISLATURE CAN CREATE CRIMES.

January 27, 1936.

James A. Powers
Clerk of Matawan Township
Cliffwood, New Jersey

Dear Sir:

According to the preamble of your Township Committee's resolution of June 29, 1934, the resolution was enacted and purports to provide for the issuance of plenary retail consumption and distribution licenses pursuant to "An Act concerning the manufacture, distribution and sale of certain beverages having an alcoholic content and providing for licenses, regulations and fees in connection therewith and penalties for violations thereof." But this is the title of the statute providing for the sale of 3.2% beer, passed April 12, 1933, which statute was superseded on December 6, 1933 by the present Control Act "An Act concerning alcoholic beverages." The resolution should have been passed and the licenses issued pursuant to the latter not the former. The preamble should be amended so that it sets forth the title of the later Control Act not the earlier 3.2% Beer Act.

Section 3d says that licenses may be issued to regularly incorporated clubs or fraternal or military organizations which have been incorporated or organized for more than one year last past whose members pay regular annual dues.

In the first place, the resolution does not provide for club licenses. It provides only for plenary retail consumption and plenary retail distribution licenses. And so far as applicants for plenary retail consumption licenses in general are concerned, there is nothing to require that, if a corporation, they have been incorporated for more than a year or, if an organization, that they have been organized for more than a year. With clubs applying for plenary retail consumption licenses, this is however, not so. A club, according to Section 3d, must be either incorporated or a fraternal or a military organization, and if a corporation have been incorporated for more than a year, and if a fraternal or military organization have been organized for more than a year; also, the members must pay regular annual dues. Now all, regardless of the different qualifications imposed, are applying for the same class of license. Why should they not all then come in under the same rules? The fact that a club is incorporated or organized as a fraternal or military order is not, in these circumstances, the proper criterion against which to measure its qualifications for a license. Clubs which are not incorporated, or organized for purposes other than fraternal or military may be equally well qualified. The true test is, regardless of the nature or form or purpose of the organization, whether or not the applicant is fit and qualified under the statute to hold a license. That is the question the Township Committee must decide when an application is before it.

In the second place, Section 3d would require that the clubs be incorporated or the fraternal or military orders be

organized "for more than one year last past." One year last past is the year commencing on June 29, 1933 and ending on June 29, 1934, the date of adoption of the resolution.

Thus, it would enable only those clubs which had been incorporated or organized during that particular period to qualify. It would prevent any not in existence during that time from qualifying in the future. It would discriminate in favor of one particular group at the expense of all others. Such a regulation, I cannot approve.

I suggest that Section 3d be rescinded. Clubs or fraternal or military organizations which may apply for plenary retail consumption licenses must qualify in any event as do other applicants. For good cause, the application may be denied. Your Township Committee has the right to refuse any unworthy applicant. To restrict the issuance of consumption licenses only to such clubs which have been incorporated and to fraternal and military organizations may unjustly deprive other clubs equally well qualified of the privilege.

Sections 6 and 7 say that anyone to whom a plenary retail consumption or distribution license shall be granted shall pay to the Township Clerk the respective annual fee. If this means that you are accepting and acting upon applications and that the Township Committee is authorizing the issuance of licenses before the applicant has paid the fee, it is not correct. The statute, Section 22, says that a deposit of the full amount of the required license fee must accompany the license application. The reason for this is that if a license is denied, the municipality is entitled to an investigation fee of ten per cent of this deposit; the remaining ninety per cent being refunded to the rejected applicant. So, if you do not insist upon the fee being paid with the application, there will be nothing against which to levy your legal ten per cent investigation fee if the application is denied.

Section 8 purports to prohibit by resolution the issuance of seasonal retail consumption licenses. The statute, Section 13, sub. 2, confers upon the governing body of each municipality the power to prohibit the issuance of seasonal retail consumption licenses but requires that it be done by ordinance. Mere resolution will not suffice . To be legal, the prohibition of seasonal retail consumption licenses must be adopted by ordinance.

Section 9 says that the Township Committee shall have the power to revoke licenses for cause. So far, so good. Then, the section concludes "and the said licensee shall, for the violation thereof, be guilty of a misdemeanor." It does not say what thing violated constitutes a misdemeanor. It just says that a violation "thereof" makes the violator guilty of a misdemeanor. Even if it had so stated, it cannot be lawfully done. Misdemeanors are crimes. Only the legislature can declare acts to be crimes. Municipalities cannot make crimes out of those acts which the legislature has not first ordained to constitute crimes. The concluding part of the section quoted above should be rescinded. It is disapproved as it stands.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

5. MINORS - THE STATUTE PROHIBITS THE EMPLOYMENT OF MINORS TO SELL OR DISPENSE ALCOHOLIC BEVERAGES IN ANY MANNER, WITHOUT EXCEPTION.

MUNICIPAL ORDINANCES - VALIDITY - NO RIGHT IN MUNICIPALITIES TO PREVENT SALES OF ALCOHOLIC BEVERAGES TO PERSONS RECEIVING RELIEF IN ABSENCE OF EXPRESS PROHIBITION BY THE RELIEF AGENCY AGAINST PURCHASES.

MUNICIPAL ORDINANCES - PLENARY RETAIL DISTRIBUTION LICENSES - STATUTORY OPTION TO EXCLUDE SUCH LICENSEES FROM TRANSACTING ANY OTHER MERCANTILE BUSINESSES DOES NOT PERMIT DISCRIMINATION.

January 27, 1936.

T. E. Brooks,
Borough Clerk,
Verona, New Jersey

Dear Sir:

Rule 4 of your Borough Council's resolution of December 6, 1933 says that no person under the age of twenty-one years shall sell or dispense alcoholic liquor by the glass or other open receptacle in any licensed establishment. Minors are prohibited not only from selling or dispensing alcoholic beverages by the glass or other open receptacle but also from selling or dispensing alcoholic beverages in any manner. Section 23 says that minors may be employed by licensees only with the approval of the Commissioner and subject to rules and regulations but even if so employed, may not in any manner whatsoever sell or solicit the sale of any alcoholic beverage.

The statute is broader than your rule. Hence, your rule should be corrected. But rather than to amend, the better cure would be to rescind it entirely because it deals with a matter entirely controlled by statute and which need not be repeated in your resolution in order to be effective. Bulletin 43, item 8.

Rule 5 of the resolution of December 6, 1933 says that no alcoholic liquor shall be served, dispensed or given to any person of the Borough who is known to be receiving local, State or C. W. A. relief. A similar question came before me in re Manasquan, Bulletin 65, item 8, wherein was submitted a proposed regulation prohibiting licensees from making sales of alcoholic beverages to any person receiving emergency relief. I there said:

"Your question brings to focus the problem of spending relief money, in whole or part, in liquor stores and saloons. While, personally, I wholly disapprove of relief clients indulging in the luxury of alcoholic beverages, it is the function of the Emergency Relief Administration, not mine, to say how its checks should be spent. Its only present regulation (Family Service Procedures Under Cash Relief, A3b) at all relevant to your inquiry applies to "alcoholism" which is a diseased condition of the system caused by the excessive use of liquor--quite a different thing from buying a drink with cash relief. If

it shall forbid relief recipients to buy any alcoholic beverages, I will back-stop it by forbidding licensees to sell them. So long, however, as cash relief is given without express restriction against the purchase of liquor, the recipient has as much right to buy legal liquor as legal milk. If he has the taste, he is going to gratify it whether from legitimate or illicit sources. All such an ordinance would now accomplish would be to discriminate against licensees and drive relief clients to the speakeasies and bootleggers.

"Until the Emergency Relief Administration decides to make its own rules on this subject, I shall not approve any such ordinance."

Hence, I will not approve municipal regulations prohibiting such sales until the several relief agencies you mention do so first. That they have not yet done. I am, therefore, reluctantly compelled to disapprove Rule 5.

The resolution of January 23, 1934, Item 3, confines the issuance of plenary retail distribution licenses to establishments the main business of which consists of either (1) groceries, goods, wares and merchandise now commonly sold in conjunction therewith, (2) delicatessen store, (3) drug store, or (4) family liquor store; further providing that any dispute as to what constitutes such businesses shall be settled in the sole discretion of the Council and that in no event, and irrespective of the foregoing designations, will any such license be issued for any establishment in which is sold school supplies.

The statute, Section 13, sub.3(a) says that the governing body of each municipality may, by ordinance, enact that plenary retail distribution licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any mercantile business other than the sale of alcoholic beverages is carried on. There is no authority conferred to set up particular classifications of prohibited businesses or to enact such prohibitions otherwise than as prescribed by statute. If a municipality desires to restrict plenary retail distribution licenses to the sale of alcoholic beverages exclusively, it must prohibit all other mercantile business without discrimination. It cannot allow the conduct of some and prohibit the conduct of others. Re Freehold, Bulletin 76, item 14; re Boonton, Bulletin 57, item 17. Moreover, if the sale of alcoholic beverages in conjunction with the mercantile businesses prohibited by your resolution is socially undesirable, then its sale in conjunction with groceries, delicatessen and drugs is at least equally undesirable. If a prohibition of the conduct of other mercantile business in conjunction with the sale of alcoholic beverages is sound social policy, exceptions which are not solidly grounded in social policy, in effect, grant special privileges as favors to certain groups at the expense of others. Such exceptions cannot be approved. Retail Liquor Distributors v. Atlantic City and M. E. Blatt Co., Bulletin 99, item 4.

If the Borough Council wishes to confine plenary retail distribution licensees to the sale of alcoholic beverages exclusively, it may do so only by ordinance and then without such exceptions.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

6. REVOCATION PROCEEDINGS - MARYLAND CLUB DISTILLING CORPORATION - MODIFICATION OF ORDER.

In the Matter of Proceedings)
to Revoke Plenary Wholesale License)
#W-2, issued to Maryland Club) ON PETITION, ETC.
Distilling Corporation.) MODIFICATION OF ORDER

Conclusions in this matter rendered January 17th, 1936 ordered the license suspended for thirty days commencing January 24, 1936.

Petition filed January 21st declares on oath, among other things that, pursuant to said order, no business has been transacted in New Jersey since January 23rd; that twenty-two employees have been laid off due to the suspension; that unless the suspension is lifted, the Corporation will not be in position to carry on business in New Jersey after the thirty days; that over one hundred people are now directly dependent upon the business carried on by this licensee in this State. The petition prays that the order of suspension be vacated and the license reinstated.

The Enforcement Division have checked and verified that strict compliance has been made with the order of suspension.

This case, involving sales without Solicitors' Permits, was the first of its kind.

Believing that this licensee has learned its lesson, and that the penalty inflicted has served its purpose in warning all licensees that the law and rules concerning solicitors' permits were made to be obeyed and will be strictly enforced, I am minded to mitigate the severity of the penalty in this initial case.

It is, therefore, on this 1st day of February, 1936,

ORDERED, that the period of suspension be reduced from thirty days to fifteen days, thereby terminating at midnight on February 8th, 1936, at which time Plenary Wholesale License W-2 shall be reinstated in full force and effect.

D. FREDERICK BURNETT
Commissioner

7. MUNICIPAL ORDINANCES - PROHIBITION OF SALE OF LIQUOR TO WOMEN AT THE BAR - VALIDITY.

February 3, 1936

Hon. Raymond Bocca,
Orange, New Jersey.

See also 107-7

Dear Mr. Bocca:

I have your inquiry of the 30th ult. concerning your local Rule 8, reading:

> "No female shall be permitted to be served at any public bar, nor shall any alcoholic beverage be sold over said bar to and for any female, nor shall any female be served alcoholic beverages at any public bar room."

I approved this rule ex parte on October 4, 1934, reserving the right of appeal to anyone aggrieved thereby. Regulations to the same or similar effect have been enacted in several municipalities in the State, and likewise approved, and are now in force and effect, including:

> Absecon, Atlantic City, Bayonne, Belleville, Belmar, Bergenfield, Bernardsville, Bloomfield, Bound Brook, Caldwell, Camden, Cranbury, Cranford, Deptford Township, Edgewater, Elsinboro Township, Garwood, Hackettstown, Haddon Township, Hanover Township, Hope Township, Jersey City, Kearny, Lower Penns Neck Township, Matawan, Montclair, New Brunswick, North Bergen Township, Palisades Park, Penns Grove, Phillipsburg, Piscataway Township, Plainfield, Roselle, Roselle Park, Tenafly, Union Township (Union Co.), Washington Township (Warren Co.) and Woodstown.

You now, as a member of the Orange Excise Board, inform me that your Assistant Municipal Counsel advises you that this regulation is unconstitutional and you request my ruling.

No appeal has ever been heard by me in any case which involved the validity of such a regulation, and I therefore have not had the benefit of hearing the argument and briefs on both sides, without which it would be unfair to make any final ruling. Until such time, then, as such appeal is made and decided on the merits, I shall adhere to the ruling I made ex parte in re Town of Montclair, Bulletin #16, Item #8, where, in response to the question whether the sale of liquor to women at the bar might be prohibited, I ruled:-

> "Your third question is more difficult, involving sex discrimination in liquor. If such discrimination is permissible, it must be based upon police power, i. e., the inherent power of the State to protect and promote the health,

safety, morals and general welfare of the people. If so grounded, the exercise of the delegated authority is reasonable. The whole question, therefore, boils down to this - - Does the prohibition of liquor sales to women over a public bar have anything to do with the health, safety, morals or general welfare. If it does, it is valid; otherwise, not.

"To illustrate: A municipal ordinance requiring separate toilets for men and women in private office buildings is founded on ordinary decency and comes plainly within the police power.

"So, different entrances for boys and girls in a primary, grammar, or even a high school is valid if for no other ground than to promote the safety of minors.

"On the other hand, a municipal ordinance requiring separate entrances, one for men, the other for women, in a modern office building cannot possibly be tied up with a police power, and therefore is invalid.

"A woman has as much legal and moral right to take a drink over a bar as a man. There is, at present, no demonstrable tie-up of sex discrimination in liquor with police power. Therefore, at first blush, it might appear that the distinction was arbitrary and capricious, and hence not a proper exercise of police power. Nevertheless, on reflection, there are many foresighted men and women in the State who sincerely believe that actual experience will teach that there is a definite let-down of morals when women are permitted to drink at public bars in common with men, and their number is legion.

"The very fact that public opinion is so evenly divided proves that the problem is really one of public policy. Public policy, in the last analysis, is determined by majority vote--either the electorate themselves or their chosen representatives authorized to speak for them. If the majority want it, their edict is their concrete declaration of what is the public policy of that community. This does not, of course, mean that the will of the majority may be lawfully imposed on a dissentient minority simply because the majority have so ordered. The action of the majority must be vindicated, if at all by the police power. If the facts were such that there was only one conclusion which could possibly be drawn by any reasonable person and that conclusion was that the purposed ordinance had no relationship whatsoever to public morals and general welfare, the courts would unhesitatingly declare it invalid, despite the ordinance was enacted by a majority. If, however, as appears to be the fact, public opinion is substantially and greatly divided on the question--and public leaders of thought on each side of the question are advocating their respective views with equal fervor and sincerity--then, it is fairly clear that the factual situation is susceptible of

two different conclusions, either one of which might be reached by a fair minded and competent person, the courts would with equal determination although necessarily with more hesitation in order to make sure that two such different conclusions were in fact permissible, declare it to be valid and our courts would not flinch from this duty even though unanimously each justice and judge for himself might hold the opposite conclusion.

"One other thing: if any real demand should arise from a substantial number of respectable women who desire to drink over the bar as well as men, then the municipality ought in fairness to license bars exclusively for women. If the demand really exists there will doubtless be many to jump at the opportunity to capitalize it. Perhaps the truth of the matter may be that the feminine desire is not so much to drink over the bar with men, but rather to have the right to do so, like any other citizen, if they so choose."

Pursuant to that ruling, I have approved the aforesaid regulations of the several municipalities named.

I believe the regulation constitutional.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

8. COURT DECISIONS - ESSEX COUNTY COMMON PLEAS - STATE vs. GOLDBLATT

COURTS - JURISDICTION - POLICE COURTS, COURTS OF QUARTER SESSIONS AND SPECIAL SESSIONS

COMPLAINTS - VALIDITY - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES

The Commissioner is indebted to Honorable Richard Hartshorne, Judge of the Court of Common Pleas of Essex County for his conclusions recently rendered in State vs. Goldblatt.

ESSEX COUNTY COURT OF COMMON PLEAS

State of New Jersey by complaining witness Louis Teufel, Plaintiff,

vs.

Israel Goldblatt, Defendant.

Review of Conviction on Appeal

O P I N I O N

Decided February 3, 1936.

Frank A. Boettner, Corporation Counsel of the City of Newark, for the plaintiff.

Charles Handler, for the defendant.

Jerome B. McKenna, for the State Alcoholic Beverage Control Department, intervening on behalf of the State of New Jersey.

HARTSHORNE, J.:

On this appeal from defendant's conviction for a violation of the Alcoholic Beverage Control Act (P. L. 1933, chap. 436, sec. 48, as amended by P. L. 1934, chap. 85), the State raises the preliminary objection that this court lacks jurisdiction to hear such appeal, on the ground that the conviction appealed from in the Third Criminal Court of Newark was not a summary conviction, of which this court would have jurisdiction, but a criminal trial, on a parity with a trial in the Court of Special Sessions, a review of which is within the sole jurisdiction of the Supreme Court. Under P. L. 1895, p. 97, as amended by P. L. 1934, p. 403, the Newark Police Courts are given jurisdiction to try violations of the Act, which are made misdemeanors, provided the defendant waives his right to indictment and trial by jury. In other words, such court has no jurisdiction to try with a jury, and its jurisdiction to try at all does not attach until after the above waiver. The jurisdiction of such court is therefore not on a parity with that of the Court of Quarter Sessions, which has jurisdiction to try with a jury, and the Court of Special Sessions is on a parity with the Court of Quarter Sessions, the entire personnel and procedure in both being the same, except for the absence of the jury in Special Sessions. Such procedure is obviously more formal than that in the Police or Recorder's Courts, where a jury can never be impaneled in criminal cases, and where the jurisdiction is confined largely to violations of ordinances and the Disorderly Persons Act. In other words, the trial of a certain class of minor misdemeanants in the Police or Recorder's Courts, after waiver of indictment and jury trial, is the equivalent of the trial of alleged violators of an ordinance or the Disorderly Persons Act. All such convictions are summary convictions, without right to trial by jury, the test normally alluded to. (Orange v. McConnell, 71 N. J. L. 418; Sawicky v. Keron, 79 N. J. L. 382, at 386.)

The complaint herein is objected to on the ground that it does not properly describe an offense because of vagueness and uncertainty. It charges the defendant with the possession of an illicit alcoholic beverage with intent to sell the same, in violation of Section 48 of the act. Such section explicitly penalizes "any person * * * who shall * * * possess * * * alcoholic beverages with intent to * * * sell * * * alcoholic beverages in violation of the provisions of this act." Same would appear quite sufficient, and, if any indefiniteness existed, a bill of particulars would be procurable.

The objection that the offense set out in the complaint is not covered by the act would seem without merit, in view of the above; nor do the provisions of Section 2 of the act, making it unlawful to "sell * * * alcoholic beverages in this state ex-

cept in accordance with this act" raise a serious question in that regard, in view of the fact that by Section 1 (v) of the act "sale" is specifically defined, among other things, as "possessing with intent to sell". See State v. Feigenbaum and State v. Schill, both recently decided in the Essex County Court of Common Pleas.

That there is evidence to support the conviction is clear. This is not a trial de novo, the sole question in this aspect being whether or not there is any substantial evidence to support the decision of the lower court. The record shows that the liquor was in a bottle in a closet off the bar, in which were pretzels and other articles used at the bar, and that the defendant was in charge of the bar. This is clearly sufficient to support an inference that defendant's possession was for the purpose of sale rather than for mere personal use.

Conviction affirmed.

9. MUNICIPAL ORDINANCES - REGULATIONS SHOULD BE SUFFICIENTLY PRECISE TO INDICATE EXACTLY THE EXTENT OF THEIR APPLICATION - OTHERWISE THEY ARE FOR ALL PRACTICAL PURPOSES UNENFORCEABLE.

February 4, 1936.

Stewart R. Dye,
Clerk of Voorhees Township,
Ashland, New Jersey.

Dear Sir:

Section 12 of your Township Committee's resolution of June 20, 1934, provides that "Curtains and screens at the windows and doors of all licensed places, excepting clubs, shall be so arranged that the interior of the place licensed shall be fully exposed to public view at all times." So far as the exception applies to club licensees as a class, it is approved. I have ruled that different regulations may be properly applied to different classes of licenses (see re Wenzel, Bulletin 19, item 7) and where they appeared to be reasonable have approved them subject, of course, to review on appeal. But so far as the exception may apply to clubs holding plenary retail consumption licenses, it is not approved. Applicants for club licenses are closely restricted by the statute and rules and regulations in order to insure that such licenses may be issued only to bona fide clubs and in bona fide clubs the causes which give rise to screen regulations may be considered to be remote enough to support omitting the screen regulation entirely. But not so with respect to clubs holding plenary retail consumption licenses. They qualify as do any commercial applicants and have the privilege of selling to the general public. Any commercial organization, merely by classifying itself as a club, could bring itself within the exception in your Section 12 and thereby evade the regulation. There is nothing in your regulation by which to measure whether or not a licensee could be classified as a club and, therefore, come within the exception. I suggest that the section be reworded either to apply only to the holders of club licenses or if it is desired to include clubs holding consumption licenses, to state specifically the terms and conditions compliance with which would enable clubs to qualify for the privilege of exemption.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

10. MUNICIPAL ORDINANCES - CANNOT BE SUPERSEDED OR AMENDED BY MERE RESOLUTION.

MUNICIPAL EXCISE BOARDS - POWERS EXTEND ONLY TO ADMINISTRATION OF ISSUANCE AND REVOCATION OF LICENSES - THE MUNICIPAL GOVERNING BODY IS VESTED EXCLUSIVELY WITH THE POWER TO REGULATE THE SALE OF ALCOHOLIC BEVERAGES AT RETAIL.

February 4, 1936.

Harry S. Reichenstein,
City Clerk,
Newark, New Jersey.

Dear Sir:

I have before me the resolution adopted by your Municipal Board of Alcoholic Beverage Control on December 31, 1935, abrogating on January 1, 1936 the restriction as to closing hours contained in the resolution fixing such hours adopted on December 19, 1933.

My records show:

First, that Resolution No. 1108, which fixes hours of sale and also closing hours, was adopted by your Board of Commissioners on December 19, 1933.

Second, that Ordinance No. 2368, "An Ordinance to regulate and establish the opening and closing hours of establishments licensed for the sale of alcoholic beverages and fixing a penalty for violation of the provisions thereof", was adopted by your Board of Commissioners on July 25, 1934.

Third, that Ordinance No. 3515 likewise fixing closing hours and amending Ordinance No. 2368, was adopted by your Board of Commissioners on April 10, 1935.

Fourth, that Ordinance No. 3904 likewise fixing closing hours and amending Ordinance No. 2368 as amended by Ordinance No. 3515, was passed by your Board of Commissioners on July 3, 1935.

From the record it would appear that Resolution No. 1108 is no longer operative in any event. Although not specifically repealed, it was undoubtedly superseded on July 25, 1934 by Ordinance No. 2368 which enacts the same regulation in the form of an Ordinance, further providing penalties for violations. The Municipal Board's resolution of December 31, 1935 does not purport to abrogate the ordinance. It could not even if it wanted to. The ordinance as amended still stands.

Moreover, Section 37 of the Control Act as amended on June 8, 1935 by Chapter 257, P. L. 1935 provides that the governing board or body of each municipality may, as regards said municipality, limit the hours between which the sale of alcoholic beverages at retail may be made and subject to the approval of the Commissioner first obtained, regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted. Accordingly, the duty of the Municipal Board of Alcoholic Beverage Control now extends only to the adminis-

tration of the issuance and the suspension or revocation of licenses. Rules and regulations, to be legally effective, must be adopted by your Board of Commissioners. Re Newark, Bulletin 84, item 12; re Lario, Bulletin 96, item 15.

In the light of the foregoing, the Municipal Board's resolution of December 31, 1935 is of no legal effect. It is, therefore, disapproved.

Very truly yours,

Herbert F. Smith

Commissioner