

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

BULLETIN 370.

DECEMBER 28, 1939

1. APPELLATE DECISIONS - GRANGER v. RUTHERFORD.

WALTER GRANGER, :
 :
Appellant, :
 :
vs. :
 :
BOROUGH COUNCIL of the BOROUGH :
OF RUTHERFORD, :
 :
Respondent. :
 :

ON APPEAL
CONCLUSIONS AND ORDER

Stanton T. Lawrence, Esq., Attorney for Appellant.
Oliver T. Somerville, Esq., Attorney for the Borough of Rutherford.
W. Adriance Kipp, Jr., Esq., Attorney for Rutherford licensees.

BY THE COMMISSIONER:

This is an appeal pursuant to R.S. 53:1-41 from an amendatory ordinance limiting the hours between which sales of alcoholic beverages at retail may be made in the Borough.

The original ordinance of 1936 provided:

"That no alcoholic beverages shall be sold by the licensee or by anyone on his, her or its behalf, except between the hours of seven o'clock in the morning and twelve o'clock midnight on week-days and on Sunday no alcoholic beverages shall be sold."

The amendatory ordinance, which is the subject matter of this appeal, was enacted on December 19th, 1939 and amends the above quoted section to read:

"That no alcoholic beverage shall be sold by the licensee or by anyone on his, her or its behalf, except between the hours of 7 o'clock in the morning and 12 o'clock midnight on week-days, and on Sunday no alcoholic beverages shall be sold except when the first day of January and the twenty-fifth day of December of any year shall fall on a Monday, then and in that event only, alcoholic beverages may be sold on the Sunday preceding said first day of January and twenty-fifth day of December, from 2 o'clock in the afternoon to 12 o'clock midnight."

This appeal was filed December 20, 1939.

Notice was given on the same day by the Commissioner that a public hearing on the appeal would be held on December 22, 1939, at 2:00 P.M., at the Department offices, at which time and place all interested parties may appear and be heard. This notice was sent to the Borough Council of Rutherford, c/o the Municipal Clerk and to Oliver T. Somerville, Esq., attorney for the Borough

and to all liquor licensees affected in Rutherford.

At the outset of the hearing the Borough Attorney stated that he had been instructed by the Mayor not to waive the Borough's right to five days' notice of hearing and, for lack of such notice, moved to dismiss the appeal, or, at the least, the hearing of it at this time.

The first question, therefore, is whether the Borough has any right to five days' notice.

Under R.S. 33:1-22, where there is an appeal concerning refusal to issue a license or from the granting of a license, there must be five days' notice given.

R.S. 33:1-41, pursuant to which this appeal is taken, provides:

"If any person affected or who might be affected by any limitation of the number of licenses or of the hours between which sales of alcoholic beverages at retail may be made shall consider himself aggrieved thereby, he may appeal to the Commissioner in respect thereto, and thereupon the commissioner, after public hearing, may set aside, vacate and repeal the limitation complained of or change, alter amend or otherwise modify the same."

It will be noted that in this section there is no requirement of a five-day notice. The only requisite is that there be a public hearing.

Regulations No. 14 governing appeals, Rule 5, provides that upon the filing of the petition of appeal at least five days' notice of the time and place fixed by the Commissioner for the hearing of the appeal shall be given to the appellant, the respondent issuing authority, and where the action appealed from is the granting or transfer of a license or the refusal to revoke or suspend a license, to the licensee.

Regulations No. 14, Rule 14, provides that "The rules herein contained shall be considered as general rules governing the conduct of appeals, and since they are designed to facilitate the hearing of appeals and advance justice, they may be relaxed or dispensed with by the Commissioner in any case where a strict adherence to them will result in injustice."

It follows that the Borough has no hard and fast right to a five days' notice in a case of this kind. Hence its waiver is not indispensable to the validity of this hearing. If there is any waiving to be done, it is to be done by the State Commissioner under Rule 14 which reserves that very power. The real question is whether the interests of justice require that I relax Rule 5 in the instant case.

This ordinance was passed on Tuesday night. It is now Friday. Christmas will be on us in three days. All the interested parties are here or represented by counsel. Everybody knows what the issue is. Two days' notice has already been given. If we now adjourn three more days to give the Mayor a full five days' notice, the Sunday before Christmas will by then be all over and the case, so far as that day is concerned, will become moot -- if the appellant should eventually win, it would be naught but a Pyrrhic victory. Thus, without any delay or fault on appellant's part, the amendatory ordinance would win the day, whether rightly or wrongly, simply because of insistence upon bare technicality to

thwart a review of its merits.

It would be a reproach to the law if it were impotent to cope with such a situation. Under the emergency, I am going to cut the red tape and relax and dispense with the normal rule of five days' notice because strict adherence to it would result in injustice and I shall, therefore, proceed to conduct the public hearing called for under R.S. 33:1-41, as to which a reasonable notice has been given. Hence, I deny the motion to dismiss or adjourn.

We come now to the merits.

The Rutherford ordinance, up till December 19th, provided that no alcoholic beverages may be sold except between 7 A.M. and midnight on weekdays, and none at all on Sundays. It applies only to package goods stores for no tavern licenses have been issued.

The amendment provides that when New Year's and Christmas shall fall on a Monday, then alcoholic beverages may be sold on the Sundays immediately preceding from 2 P.M. till midnight.

Throughout the rest of the year no alcoholic beverages are to be sold at any time on Sundays. Why, then, should there be exceptions made for Christmas and New Year's? The question which I have to decide is whether these exceptions are reasonable.

Let's take New Year's. It falls this year on a Monday. We must recognize what is going on around us. New Year's is a day of celebration. It signifies the passing of the old year and the coming in of a new one. It symbolizes the rebirth of hope for better times which springs eternal in the human breast. It is easy to understand why at midnight on New Year's Eve there is a psychological climax and a desire to kick one's heels in the air, to toast with cup to lip. But now comes the question -- why should liquor be sold on the Sunday preceding New Year's when it is not sold on the other fifty-one Sundays in the year? Aside from private profit, the only plausible reason in possible public interest I can see for making such an exception is to furnish an opportunity to buy to those who wish bottled ammunition but forgot to purchase the wherewithal by Saturday night. It is akin to what my ministerial friend over there might refer to as the plight of the foolish virgins who forgot to get alcohol - or was it oil - for their lamps; or, in modern parlance, shall we say this right to sell on this particular Sunday was given for the benefit of last minute shoppers. That is the only reasonable ground I can see for changing the hours on this Sunday from the other fifty-one in the year.

In deference to the Mayor and Borough Council, since they apparently think some consideration should be shown to such shoppers, I am going to give some effect to their ordinance; but I don't see why the liquor stores should be open from two on Sunday afternoon until midnight for such purpose. All the other Sundays in the year, the people know that the liquor stores are closed in this Borough and for some six years, or more than three hundred Sundays, they got along all right. Just because New Year's happens to come on Monday this year, and the Borough officials have so ordained, I shall honor the amendatory ordinance to a reasonable extent, but I shall not allow the stores to open at two o'clock in the afternoon. Nine o'clock at night will be early enough.

Therefore, pursuant to and by virtue of the power conferred and the trust reposed by R. S. 35:1-41, I hereby amend, change and alter the amendatory ordinance hereinbefore quoted by substituting the words "from 9 o'clock in the afternoon" for the words "from 2 o'clock in the afternoon", effective immediately.

Christmas, as compared with New Year's, is not a day of revelry except for children. The celebration at midnight on Christmas Eve is choral singing, carols, Masses. It is distinct from pagan New Year's. Christmas is a family day -- if not a holy day, at least it is a home day. I cannot see any good reason for opening the liquor stores on the Sunday immediately preceding Christmas in any municipality where they are closed all day on other Sundays. Consequently, that part of the ordinance I shall vacate entirely.

Therefore, pursuant to and by virtue of the power conferred and the trust reposed by R.S. 35:1-41, I hereby further amend, change and alter the aforesaid amendatory ordinance by striking out therefrom the words "and the twenty-fifth day of December" and also the words "and twenty-fifth day of December", effective immediately.

It is so ordered.

The net result, so far as this year is concerned, is that the amendatory ordinance will stand good to allow the liquor stores in Rutherford to sell alcoholic beverages from 9:00 P.M., December 31st, until midnight, and that is all.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 22, 1939.

2. DISCIPLINARY PROCEEDINGS - HARRISON LICENSEES - INADEQUATE PENALTIES.

December 19, 1939.

Francis J. McDonald,
Town Clerk,
Harrison, N. J.

My dear Mr. McDonald:

I have before me staff report and your letter of December 7th re disciplinary proceedings conducted by the Town Council against

- | | |
|--|--|
| <p>1. Helen Carey
209 John Street
Rev. 1654 (X-365-A)</p> | <p>3. Fannie Singer
28 Harrison Avenue
Rev. 1723 (X-1288(a))</p> |
| <p>2. Joseph Kuzmski
109 John Street
Rev. 1704 (X-1216(a))</p> | |

I note that Carey, charged with sale of alcoholic beverages and permitting the licensed premises to be open after the closing hour, was found not guilty; that Kuzmski, charged

with mislabeling beer taps, serving a brand of beer other than ordered and failing to have available for sale beer that was advertised for sale, had his license suspended for two days; that Singer, charged with employing a female bartender, had her license suspended for two days.

The dismissal of the charges against Carey appears totally unwarranted and against the weight of the evidence. As I get the picture, my men testified that they were served drinks as late as forty-five minutes after the closing hour. It is true that at the hearing the two bartenders (one of whom I understand was the licensee's brother and also a member of the Town Council, but who properly did not sit in judgment in this case) denied that any drinks had been sold after the closing hour. But even if the Council thought that my disinterested men were lying, what of the charge of permitting the licensed premises to be open after the closing hour? Proof of that charge requires only proof that the licensee continues to entertain the public. Re Zenda, Bulletin 271, item 5. And both bartenders admitted that there were people on the licensed premises after the closing hour!

The two-day suspension in the Kuzmski case is inadequate. A customer is entitled to be served the brand he orders, yet when my men ordered Ballantine beer they were served Rheingold drawn from a tap marked Ballantine. To make it worse, a tap labeled Rheingold was connected to a barrel of Peter Doelger beer. And although a neon sign advertised Ballantine on draft, there wasn't a drop in the place. Thus for violating three separate regulations, the license is suspended for only two days!

As for Singer, she employed a female bartender in brazen defiance of local ordinance, which states flatly that no female shall sell or serve alcoholic beverages -- a regulation that has been in effect in Harrison since 1934. And for this only two days! Doesn't the Council think much of its own regulations?

I shall ponder these matters further. It would be well if the Councilmen did too.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. RETAIL LICENSES - SUPERMARKETS - ALCOHOLIC BEVERAGES MAY BE DISPLAYED IN SHOW WINDOWS ONLY IF SUCH WINDOWS ARE PART OF THE LICENSED PREMISES.

RETAIL LICENSES - SUPERMARKETS - SIGNS AND WINDOW DISPLAYS - MERCHANDISE OTHER THAN ALCOHOLIC BEVERAGES MAY BE ADVERTISED OR DISPLAYED.

Dear Sir:

We operate supermarkets in various New Jersey municipalities, several of which supermarkets have leased liquor departments.

These leased liquor departments in some instances use show windows for liquor displays, and we would like to know if it is possible to advertise goods other than liquors, on the windows in which such liquors are displayed.

If we can have such signs advertising other merchandise, is there any restriction as to the size or type of sign or lettering?

Very truly yours,

AMERICAN GROCERY COMPANY

December 22, 1939.

American Grocery Company,
Hoboken, New Jersey.

Gentlemen:

I take it that the show windows in your supermarkets in which alcoholic beverages are displayed, have been included in the license applications as part of the licensed premises and hence, are a part of the premises for which the licenses have been issued. If so, alcoholic beverages may be displayed in such show windows. If not, they may not be so displayed for it is not permissible for retailers to display alcoholic beverages otherwise than on the licensed premises.

Presumably, there are no ordinances in the municipalities in which liquor licenses have been issued for your markets, prohibiting package goods licenses on premises where other mercantile business is conducted. Otherwise the licenses could not be issued. Such being the case, other merchandise may be advertised on the windows, or displayed in the windows, in which alcoholic beverages are displayed.

Signs advertising alcoholic beverages must conform with Regulations No. 21, which you will find in the Pamphlet Rules on pages 66 and 67. There are no special restrictions on the size or type of the sign or lettering which may be displayed in the same window for the purpose of advertising other merchandise, but they must not, of course, be indecent, or pertain to drawings or lotteries, or be otherwise objectionable for all that is prohibited on premises licensed for the sale of liquor.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. HOURS OF SALE - SPECIAL EXTENSIONS FOR NEW YEAR'S MAY BE MADE ONLY BY ORDINANCE - EXTENSION FOR JANUARY 1, 1940, PURSUANT TO INCHOATE ORDINANCE.

MUNICIPAL REGULATIONS - MAY BE ENACTED ONLY BY ORDINANCE - THERE IS NOW NO POWER TO RESERVE AUTHORITY IN AN ORDINANCE TO AMEND IT BY RESOLUTION AND ALL SUCH AUTHORITY HERETOFORE RESERVED IS NOW VOID.

RULING SUPERSEDED - THE RULING HEREIN SUPERSEDES THE RULING IN BULLETIN 110, ITEM 5.

December 26, 1939

Henry Bersch
Borough Clerk
Dumont, New Jersey

My dear Mr. Bersch:

I have before me yours of December 19th and copy of resolution adopted by the Mayor and Council on the 11th, providing:

"Resolved that all Taverns in the Borough of Dumont be allowed to remain open to Five (5) A.M., January 1st, 1940 on New Year's Eve, December 31st, 1939."

Your present regulation of hours is in Section 14 of ordinance pertaining to alcoholic beverages adopted by the Council on February 23, 1937. It provides, so far as pertinent, that:

"All licensed premises shall be closed to the public between the hours of 3 A. M. and 12 Noon on Sunday and between the hours of 2 A. M. and 6 A. M. on all other days, provided, however, that the Mayor and Council may by resolution change the hours of closing applicable to all licensees as they deem necessary."

Now, on February 23, 1937, when that ordinance was adopted, regulations concerning hours of sale and of closing could lawfully be enacted by mere resolution. Hence, it was permissible at that time to reserve in the ordinance the power to change the hours of closing by a simple resolution, as distinguished from the formalities of an amendatory ordinance such as successive readings, publication, and opportunity for a public hearing. All that was necessary at that time to amend a regulatory ordinance by mere, informal resolution was that the power to do so be expressly reserved and clearly expressed. See Re Somerville, Bulletin 110, item 5; where the principles are explained.

There is some doubt, for the reasons in Re Haledon, Bulletin 222, item 14, whether penalties of fine or imprisonment may properly be imposed for violation of any provision of the ordinance so amended by resolution, but we need not go into that now.

The picture since July 18, 1939 has been entirely changed. It is now no longer possible to enact any regulations of the conduct of retail liquor businesses, or of hours of sale, or of the number of licenses, or of license fees, by resolution. The reason is that on July 18, 1939, Chapter 234, P. L. 1939 became law and since then all new regulations, as well as all changes in existing regulations, are required to be enacted by ordinance. See Bulletin 337, item 7. This is true whether the existing regulation was created by resolution or by ordinance. There are no exceptions. Since the law, as it now stands, bars the enactment or amendment of regulations by resolution, it follows (1) that the power to do so may no longer properly be reserved in an ordinance, and (2) that such reservations previously made may no longer be lawfully exercised. What a municipality is prohibited by Chapter 234, P. L. 1939 from doing directly, it cannot do indirectly. Re Mills, Bulletin 364, item 16. A mere resolution can neither create nor change what is required to be determined by ordinance.

The ruling in Re Somerville, Bulletin 110, item 5 is, therefore, repealed and hereby declared superseded by Chapter 234, P. L. 1939.

It follows that the reservation in Section 14 of your ordinance of the power to change the hours of closing by a resolution is now void and inert and that regulations concerning hours of sale and of closing may no longer be amended or otherwise changed except by ordinance.

The resolution of December 19, 1939 is therefore void.

I take it that it is the thought of your Mayor and Council to make some special provision for New Year's Day. It is within their power and will be upheld to the extent that it is reasonable. Granger vs. Rutherford, Bulletin 370, Item 1. As an ordinance is necessary in any event, I recommend that, rather than make special provision only for January 1, 1940, your Mayor and Council now review Section 14 of the ordinance in its entirety and then amend Section 14 so that it comprises a complete regulation of hours and provides for New Year's Day each year, thus saving the necessity and expense of further amendments from year to year.

In the effort to be constructive and leaving the matter to the exclusive discretion of your governing body, using the substance of your own regulation, I submit for form of such amendment the following:

"Section 14. No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or allow the consumption of any alcoholic beverage on licensed premises, on weekdays between the hours of 2:00 a. m. and 6:00 a. m., or on Sundays between the hours of 3:00 a. m. and noon, excepting New Year's Day each year, as hereinafter provided.

"No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or allow the consumption of any alcoholic beverage on licensed premises, on New Year's Day when it is a weekday between the hours of 5:00 a. m. and 6:00 a. m., or on New Year's Day when it is a Sunday between the hours of 5:00 a. m. and noon.

"During the hours sales of alcoholic beverages are hereinabove prohibited, the entire licensed premises shall also be closed and no person shall be admitted or permitted to remain therein except the licensee or bona fide employees of the licensee.

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverage during a general, municipal, primary or special election while the polls are open for voting, and during such time, all licensed premises shall be closed.

"The hours above referred to shall be Eastern Standard Time, except from 2:00 a. m. on the last Sunday in April until 2:00 a. m. on the last Sunday in September of each year, when they shall be Eastern Daylight Saving Time, which time is one hour in advance of Eastern Standard Time."

As it will not be possible for the Council to complete the enactment of the ordinance prior to January 1st, I shall recognize, as in Re Nutley, Bulletin 290, item 13, the introduction and passage on first reading at any time before January 1st as sufficient to extend the hours for January 1, 1940.

Kindly send me a certified copy of the ordinance in the form in which it passes first reading and as finally adopted, for my records.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against
WALTER WEGLINSKI,
284 Day Avenue,
Fairview, New Jersey
Holder of Plenary Retail Distribution License D-6, issued by the Borough Council of the Borough of Fairview.
.....)

CONCLUSIONS
AND ORDER

Walter Weglinski, Pro Se.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control

BY THE COMMISSIONER:

Licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on November

14, 1939, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

ACCORDINGLY, it is, on this 26th day of December, 1939,

ORDERED, that Plenary Retail Distribution License D-6, heretofore issued to Walter Weglinski by the Borough Council of the Borough of Fairview, be and the same is hereby suspended for a period of five (5) days, effective January 2, 1940, at 3 A. M.

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - CASE DISMISSED

In the Matter of Disciplinary Proceedings against :

QUALITY LIQUOR CO., INC. :
1011 Broadway, :
Camden, New Jersey. :

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Distribution License No. D-19, for the :
fiscal year 1938-1939, issued by :
the Municipal Board of Alcoholic :
Beverage Control of the City of :
Camden. :

Jules E. Tepper, Esq. and Meyer L. Sakin, Esq., Attorneys for the Licensee.
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

"1. On or about April 1, 1939, you sold, without special permit, a quart bottle of Wilson 'That's All' Whiskey, a quart bottle of Calvert's 'Reserve' (blended whiskey), and a quart bottle of Canadian Club (Canadian whiskey), below the minimum consumer prices published in Departmental Bulletin #297, contrary to Rule 6 of State Regulations No. 30.

"2. On or about April 1, 1939, you sold the following combinations of alcoholic beverages: two cases of Camden beer and a quart bottle of Wilson 'That's All' whiskey; a gallon bottle of Palmer House Port Wine and a quart bottle of Calvert's 'Reserve' (blended whiskey); a gallon bottle of Palmer House Sherry Wine and a quart bottle of Canadian Club (Canadian Whiskey), at a single aggregate price for each combination, which price was less than the total of

the constituent items when sold separately, contrary to Rules 19 and 20 of State Regulations No. 20."

Pursuant to State Regulations No. 30, minimum retail prices in effect April 1, 1939, on the items of whiskey in question, were as follows:

"Wilson 'That's All' Whiskey, per quart,	\$2.25;
Calvert's 'Reserve' (Blended whiskey)	
per quart,	2.80;
Canadian Club (Canadian whiskey)	
per quart,	4.10."

On said date the licensee also handled Camden beer and Palmer House Wines, neither of which items was subject to fair trade and hence might be sold at any price.

I am satisfied, from the evidence, that at the time of the first visit to the licensed premises on April 1, 1939, Bob Goldman, an employee of licensee who was in charge of the premises, told a shopper, "Joe", that if he would purchase two crates of beer with the quart of Wilson he would give him a discount; that "Joe" then purchased the beer for \$3.00 and the Wilson for \$2.25, paying a total of \$5.25; that Bob Goldman also told Investigator Lockwood that, if he would take wine in conjunction with the quart of Calvert's "Reserve", he would give the investigator a discount of 30¢ on the gallon of wine; that Lockwood then purchased a gallon of Palmer House Wine for \$1.15 and the Calvert for \$2.80, paying a total of \$3.95. I am also satisfied that, at the time of the second visit on said date, Max Goldman, an employee of the licensee who was then in charge of the premises, told Investigator Lockwood that, if he would take sherry wine together with the quart of Canadian Club, he would give him a 35¢ discount on the sherry wine; that Lockwood then purchased a gallon of Palmer House Sherry for \$1.10 and the Canadian Club for \$4.10, paying a total of \$5.20.

Despite these representations made by agents of the licensee, there is not sufficient evidence to support either of the charges as preferred.

As to the first charge: It appears that the agents of the licensee refused to sell the items of whiskey at less than fair trade prices, although requested to do so, and the sales slips show that the amounts charged for each of the items of whiskey were in accordance with the fair trade prices. I must, therefore, dismiss the first charge.

As to the second charge: There is not sufficient evidence to show that there were combination sales of the whiskey and beer, and the whiskey and wine, at a single aggregate price for each combination, which price was less than the total of the constituent items when sold separately. The testimony shows that the agreement between the purchaser and seller in each instance was that the whiskey would be sold at fair trade prices and the beer and wine at an alleged discount. The transactions were entered on the sales slips as separate sales of the whiskey and beer in the first instance, and as separate sales of the whiskey and wines in the other instances. Hence, I am reluctantly forced to dismiss also the second charge.

In dismissing these charges I am not condoning the business practices of the licensee in misrepresenting to customers that a discount would be granted on items not covered by fair trade whereas, in fact, as appears from the evidence, any customer could have purchased the beer at \$1.50 per case and the wine at \$1.15 or \$1.10 per gallon, even if no fair trade items were purchased at the same time. The evidence as presented would have been sufficient to show, at least, that the licensee had offered discounts with the sale of alcoholic beverages for consumption off the licensed premises, but the licensee was not charged with said violation.

Accordingly, it is, on this 26th day of December, 1939
ORDERED that the charges herein be dismissed.

D. FREDERICK BURNETT,
Commissioner.

7. RETAIL LICENSES - RESIDENCE REQUIREMENTS - CORPORATE APPLICANTS.

Gentlemen:

The owner of a Plenary Retail Consumption License in the Borough of Bogota desires to sell same to individuals who reside in the Township of Teaneck. These individuals fulfill all the state requirements for licenses including residence in the State of New Jersey for the required period.

The Borough of Bogota has enacted an ordinance which states that no retail license shall be issued to a natural person unless he shall have been a resident of the said borough for a period of at least two years immediately prior to the application. Will you kindly advise if it is in the power of municipality to enact such requirement? If the municipality can enact such requirement, will such requirement apply to the case where the transferee will be a corporation whose members will all qualify under the state law as to residence but cannot qualify as to local residence.

I request this information because the state act chapter 33:1-12.1 states that no class C license shall be issued to any corporation unless the stockholders qualify in all respects as individual applicants and feel that perhaps the borough residence requirement would further limit the state requirement, that is, from 5 years residence in the state to include 2 years residence in the particular municipality.

Very sincerely yours,
Abraham L. Rosenberg

Abraham L. Rosenberg, Esq.,
Bogota, New Jersey.

December 26, 1939.

Dear Mr. Rosenberg:

Although the only residence requirement in the Alcoholic Beverage Law as regards retail liquor licenses is that an applicant must have been a five-years resident of New Jersey (R.S.33:1-25), nevertheless a municipality may adopt a local regulation requiring that, in addition, the applicant must have been a resident in the municipality for a specified and reasonable length of time. See Iamello vs. Rumson, Bulletin #77, Item 9 and McHugh vs. West Deptford, Bulletin #106, Item 1.

The Bogota municipal residence requirement, to which your letter refers, provides:

"No retail license shall be issued to a natural person unless he shall have been a resident of the Borough of Bogota for at least two years continuously immediately prior to the submission of the application." (Sec. 5, Ord. of Feb. 27, 1936.)

Although I have never had occasion to rule whether this Bogota regulation is reasonable and hence valid, nevertheless, in McHugh vs. West Deptford, supra, a similar municipal regulation in West Deptford requiring two years local residence was ruled valid. Hence, in view of that decision, the Bogota regulation is,

until taken off the books or set aside on appeal, prima facie valid and effective.

However, that regulation, since expressly limited to "natural" persons, does not impose any requirement upon corporate applicants. In consequence, it does not bar a corporate applicant from obtaining a retail liquor license in Bogota even though stockholders in the corporation are not residents in the municipality.

Nor does R.S. 33:1-12.1 bar such a corporate applicant. That statutory provision, in prohibiting a retail liquor license, in general, from being issued to a corporation unless all holders of more than 10% of the stock could qualify for the license in their individual capacity, relates only to the statutory qualifications set forth in the Alcoholic Beverage Law and not to any added municipal qualifications. See Sachs vs. Trenton et al., Bulletin #321, Item 12.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. LICENSES - SUSPENSION = PERMISSION GRANTED TO REMOVE STOCK ON HAND.

December 26, 1939.

William F. Hanlon, Esq.,
500 Third Avenue,
Bradley Beach, New Jersey.

Dear Sir:

I have your letter dated December 19th.

I take it that your client desires to remove the alcoholic beverages from his Newark store to his Neptune City store and thereafter sell the alcoholic beverages at the latter place of business.

Our records show that the license held by John Gaine for premises at 104 Hillside Avenue, Neptune City, was suspended for twenty days effective November 20, 1939, and hence said suspension has terminated; that the license held by John Gaine for premises at 441 Mt. Prospect Avenue, Newark, was suspended for forty days, effective November 20, 1939, which suspension is still in effect.

Permission to transport the liquor to Neptune City in a licensed vehicle is hereby granted.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. DISTILLATION - FOR HOME CONSUMPTION - NOT PERMISSIBLE.

December 16, 1939.

Dear Sir:

I would appreciate very much your informing me if the following action is legal under New Jersey alcoholic beverage laws.

The Spanish people make an alcoholic drink (in Spain) by distilling the grape mash left when making wine. It can also be made by soaking raisins to which sugar has been added and then distilling the entire mess. The result is a highly alcoholic beverage as strong as whiskey. It can be drunk plain or with flavors such as anise added.

Is it possible to make this in the home for consumption in the home entirely, not for sale? Is a permit necessary?

Very truly yours,
Juan D. Sanchez

December 26, 1939.

Mr. Juan D. Sanchez,
New Brunswick, New Jersey.

Dear Mr. Sanchez:

I have before me your interesting letter of December 16th.

The customs of the Spanish people, as you describe them, won't go in New Jersey. Here all manufacture of distilled spirits is forbidden except pursuant to a regular distillery license which costs anywhere from \$1,000. a year minimum to \$7,500. maximum, all depending on the amount and the thing distilled. I take it, however, you are not interested as a commercial proposition.

Distilling at home without a license is a misdemeanor, even though the entire product is designed for personal consumption only. Even the possession of an unregistered still is against the law. There is no permit I can give you.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. DRINKS FOR SPECIAL OCCASIONS - NEW YEAR'S - HOT TOM & JERRY.

December 27, 1939.

Mr. Andrew H. Ziegler
t/a Ye Olde Valley Tavern
Belleville, N. J.

My dear Mr. Ziegler:

I have your inquiry about serving Hot Tom & Jerry on the house. It brings to mind eggs and sugar, boiling water and rum, nutmeg and cinnamon. That ought to warm the cockles, even in Finland!

In view that previous permissions for egg-nog and glogg for special occasions have not been abused, you may gratify the natural urge at the turn of the year for old-fashioned, open house, hospitality.

But confine it to New Year's Day and don't let anyone overdo it. If you and your fellow tavern keepers will insist on self-control by every patron, these niceties of custom may well be perpetuated.

Good wishes and good luck.

D. FREDERICK BURNETT,
Commissioner.

11. MUNICIPAL REGULATIONS - EMPLOYMENT OF WOMEN - A REGULATION AUTHORIZING SALE AND SERVICE OF ALCOHOLIC BEVERAGES BY A WOMAN ONLY WHEN SHE IS THE LICENSEE'S WIFE, DOES NOT AUTHORIZE SUCH EMPLOYMENT OF A WOMAN BY CORPORATIONS EVEN THOUGH SHE BE AN OFFICER OR THE MAJORITY STOCKHOLDER.

Dear Sir:

I will thank you to advise me as to whether, -in view of our existing regulations relative to women tending bar, or serving alcoholic beverages, - a woman, who is an officer of a corporation holding a license, and who owns fifty per cent (50%) or more of the stock of said corporation, is permitted to tend bar or sell or serve alcoholic beverages in behalf of said corporation?

Very truly yours,
Joseph B. Sugrue,
Assistant Corporation Counsel.

December 27, 1939.

Joseph B. Sugrue, Esq.
Assistant Corporation Counsel
Newark, New Jersey

My dear Mr. Sugrue:

I have yours of December 1st and take it that you refer to Resolution #4889 adopted by the Board of Commissioners on May 24, 1939, and reprinted in Re Reichenstein, Bulletin 319, item 10.

The resolution provides that it shall not be permissible for the holder of a Plenary Retail Consumption license to allow or employ any female to tend bar, sell or serve alcoholic beverages to patrons where the principal business is the sale of alcoholic beverages, or to tend bar, serve or sell alcoholic beverages to patrons directly over such bar where the principal business is other than the sale of alcoholic beverages.

The only exception is that the wife of the holder of a license may tend bar, but only during certain hours therein set forth.

There are no exceptions for officers or stockholders of corporations holding licenses. There is, in fact, no mention of corporations at all.

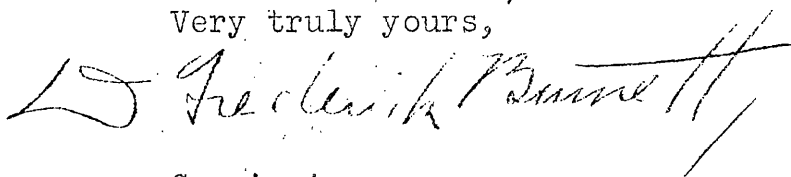
According to the resolution, if the principal business conducted by the corporation is the sale of alcoholic beverages, it is not permissible for any woman to be employed to tend bar, or sell or serve alcoholic beverages to patrons in any manner, notwithstanding that the woman is an officer of or holds stock in the corporation.

On the other hand, if the principal business conducted by the corporation is other than the sale of alcoholic beverages, it is not permissible for any woman to be employed to tend bar or to sell or serve alcoholic beverages directly over such bar, notwithstanding that the woman is an officer of the corporation or holds stock in the corporation, but it is permissible for the corporation to employ properly qualified women to sell or serve alcoholic beverages to patrons, as waitresses, provided that they do

not sell or serve directly over a bar.

In brief, the fact that a woman may be an officer of a corporation holding a license or may own a majority of the stock in such corporation, is wholly immaterial so far as her employment is concerned. A corporation, among other lacks, hath no wife.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frederick Bennett". The signature is written in dark ink and is positioned to the right of the typed name "Frederick Bennett".

Commissioner.

K