

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N.J.

BULLETIN NUMBER 31.

May 26 1934

1. APPELLATE DECISIONS -- BARBER VS. BRIDGETON

The action of the City Council of Bridgeton in denying a retail consumption license to Lizzie Barber was upheld by the Commissioner who rendered the following opinion:

"This appeal was submitted by stipulation. It appears therefrom that the Appellant conducts an ice-cream parlor and lunch room in the City of Bridgeton, and has complied with all conditions precedent to the issuance of a license.

"The City Council limited by resolution, plenary retail consumption licenses to hotels and restaurants only, which have been in business for a period of one year.

"It is admitted that the Appellant did not conduct the restaurant for one year prior to the submission of the application.

"Section 37 of the Control Act confers express power upon the Issuing Authority of the municipality to limit the number of licenses to sell alcoholic beverages at retail and '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.' Bul. 16, Item #8.

"The Courts have gone to great lengths in sustaining restrictive regulations which were limited, in their application, to the sale of alcoholic beverages. See Meehan vs. Excise Commissioners, 73 N.J.L. 382 (Sup.Ct.1906) aff'd. 75 N.J.L. 557 (E.& A. 1907). Compare, however, Haskell vs. Howell, 269 Ill. 550, 109 N.E. 992 (1915).

"Our Courts have declared that liquor regulations stand on a footing of their own and are sui generis. In Paul vs. Gloucester County, 50 N.J.L. 535, (E.& A. 1888), our court of last resort declared: 'The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied.' Bul. 20, Item #4.

"Confining consumption licenses to hotels and restaurants in order to control the enforcement of the liquor law is not unreasonable. Neither is the probationary period of one year which must pass before any hotel or restaurant may qualify for a license. Di Bono vs. Bridgeton, Bul. 30, Item #9.

"The decision of the respondent Board is therefore affirmed."

Respondent was represented by Samuel Iredell, Esq., and Appellant was represented by D. Joseph Novaria, Esq.

## 2. LICENSES - FEES - PRORATION UPON APPEAL

May 23, 1934

Municipal Board of Alcoholic Beverage Control  
City Hall,  
Trenton, N. J.

Gentlemen:

I have your inquiry as to the license fee payable by the appellant in the matter of Harry Levenson vs. Municipal Board of Alcoholic Beverage Control of Trenton.

As appears from the conclusions filed by the Commissioner in this matter, the appellant conducted his business until midnight, February 5, 1934, but not thereafter. Although he should be charged for the portion of the license fee earned previous to February 6, 1934, it would be unjust to exact a license fee for the period during which he was not permitted to operate under the Board's order, which has been adjudged erroneous. Accordingly, the Commissioner's ruling is that the appellant be charged the established license fee for the period from the filing of his application to June 30, 1934, less the prorated portion thereof unearned from February 6, 1934, to the date of the issuance of the license.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

## 3. SPECIAL PERMITS - PLENARY CONSUMPTION LICENSES - RESTRICTIONS ON SUNDAY SALES.

Florence, N.J., May 24, 1934

Dear Mr. Burnett:

We have a number of requests for a special one-day license from different organizations for holding picnics, parties, etc. Most of these picnics are held on Sunday.

A resolution passed by the Township Committee at their meeting held December 6, 1933 prohibited the sale of alcoholic beverages on the day of the week commonly known as Sunday.

Do we understand that your office can issue a license for one-day, and if so, would you issue a license in a municipality for "Sunday-Sales" if there were a resolution adopted by the governing body prohibiting "Sunday-selling"?

It is rumored that some organization in our municipality has a license from your office for "Sunday-Selling". We have no proof of this, nor do we take it seriously, but would appreciate your decision in the matter.

Township Committee  
(Signed) Charles B. Green  
Township Clerk.

May 25, 1934

Charles B. Green, Township Clerk.

Dear Mr. Green:

I have yours of the 24th, and thank you for bringing the matter to my attention.

It may possibly be that a special permit has been issued which inadvertently conflicts with your local resolution, but I am issuing orders effective immediately that hereafter no special one-day consumption license shall be issued to permit Sunday selling in any municipality which has adopted ordinance, resolution or referendum prohibiting Sunday selling.

Furthermore, that any such license issued for a Sunday shall be limited to such hours of sale as the municipality itself permits.

Earlier this week I directed that, before any special consumption license whatsoever is granted, the Department shall first notify the Chief of Police of the Municipality wherein the license is sought and ascertain what objections there are, if any, to the issuance of such license either as to person or place. I shall now add that similar notice shall be sent to the Municipal Clerk also. It will be appreciated if both the Police and the Municipal Clerks will wire their replies to me in respect to such inquiries in order that the applicant for the special license may have the benefit thereof if no real objection exists.

Applicants will save time if they will submit written consents of the local police authorities and municipal clerk concurrently with the application.

Very truly yours,

D. Frederick Burnett  
Commissioner

## 4. LICENSES - PROTESTS - APPEALS

May 26, 1934

Mr. Thomas H. Reinauer,  
70 River Road,  
Summit, N. J.

Dear Sir:

I have your letter of May 11th.

You did right in filing your protest with the City Clerk of Summit. The matter of issuance of a retail license is, in the first instance, exclusively in the hands of the local municipal officials. If the license should be granted notwithstanding your protest, you may appeal to the Commissioner. Until then, I have nothing to do with the matter and, of course, cannot express any opinion on the merits either way.

Very truly yours,

D. Frederick Burnett,  
Commissioner

5. CLUB - WHAT CONSTITUTES - PRIVATE GAIN

May 26, 1934

J. Edgar Brown, Councilman,  
Borough of Spring Lake Heights,  
Box 214, Spring Lake, N. J.

Dear Sir:

I have your letter re applications for club licenses of Spring Lake Golf and Country Club and of Homestead Golf Club, wherein you state that these clubs are operated by yearly or daily membership and by stock and bondholders for the purpose of giving to their members the privileges of playing golf and in no wise for the business of selling alcoholic beverages as a means of earning dividends.

Sec. 13 provides that club licenses shall not be issued to organizations operated "for private gain". The quoted words, however, must not be isolated from their context. The statutory definition distinguishes organizations whose primary objective is to accomplish the purposes specified in the Act from those whose main reason for existence is the acquisition of private gain. The fact that incidentally a profit is or may be made on operations in no wise debars a bona fide club from the benefits of this license. Such happy result is to be devoutly hoped for! If it does occur it will be of just so much help in lean years which may follow. It is otherwise where the recreational and athletic purposes are not ends in themselves but merely the means selected by the promoters to produce private gain.

Whether a club license should be granted or a consumption license be required depends, so far as the point of private gain is concerned, upon the finding of fact by your Council as to the real purpose of organization and operation.

Very truly yours,

D. Frederick Burnett,  
Commissioner

6. APPELLATE DECISIONS - MC GINN VS. TRENTON

FRANK A. MC GINN,	}	
Appellant		
-vs-	}	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,		CONCLUSIONS
Respondent.		

Irving H. Lewis, Esq., Attorney for Appellant  
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSSTONER:

In December, 1933, appellant applied for plenary retail consumption license for the premises located at #917 South Broad Street, Trenton. On January 15, 1934, the application filed by appellant for a permanent license was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under

the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

The premises sought to be licensed are situated within two hundred feet of the Advent Lutheran Church. The application was denied on the ground that Section 76 of the Control Act prohibits the issuance of any license for the premises in question.

Prior to the denial of his application, appellant submitted to the respondent Board a communication from the president of the Church Board of the Advent Lutheran Church, advising that it had no objection to the granting of the application. In Bulletin #3, Item #7, the Commissioner ruled that Section 76 was intended for the benefit of the church or school and could be waived by such intended beneficiary. Pursuant to an opinion from its counsel, respondent Board, however, declined to abide by the Commissioner's ruling.

The Commissioner's ruling, which has since been embodied into Section 76 by the recent amendment to the Control Act, should have been recognized and followed by respondent Board. If local issuing authorities were permitted to disregard express rulings of the Commissioner, the very foundation of uniformity and state control contemplated by the Legislature would be threatened. Although every ruling of the Commissioner may properly be questioned or criticized by counsel, councilmen and citizens, until it is overruled by our courts or changed by law, issuing authorities are duty bound to abide by and enforce it.

The communication received by respondent Board from the president of the Church Board failed to meet the formal requirements set forth by the Commissioner (See Bulletin #4, Item #1). A waiver sufficient in form has since been furnished. Since the denial of the application was not based upon the formal defects, which could have been remedied by appellant had respondent Board advised him thereof, respondent should not now be permitted to rely thereon.

At the hearing the respondent stated that upon ascertaining that the premises sought to be licensed were within two hundred feet of a church, it did not investigate the applicant or the condition of the premises. Testimony and photographs were introduced establishing the suitability of the premises sought to be licensed, and there was favorable testimony with respect to the character and fitness of the applicant.

At the close of the hearing, the respondent Board declined an offer for leave to investigate the applicant and examine the premises.

The action of the respondent Board in denying the application of the appellant is reversed.

D. FREDERICK BURNETT,  
Commissioner

Dated: May 23, 1934.

7. CONTAINERS - UNDERSIZED - SALES BY WHOLESALERS.

May 26, 1934

Hudson Valley Wine and Liquor Co., Inc.,  
1018 Washington St.,  
Hoboken, N. J.

Gentlemen:

The ruling of May 17th concerning undersized containers

in nowise bars you as a wholesaler from selling such undersized containers to retail consumption licensees either now or at any time after June 30th. Effective May 17th last, you may not sell any to retail distribution licensees. Since you have a legitimate outlet for sale, there is no reason why you must necessarily dispose of your stock during the extension period.

Very truly yours,

D. Frederick Burnett,  
Commissioner

8. SPECIAL PERMITS - PLENARY CONSUMPTION LICENSES - WHEN NOT ISSUABLE

May 21, 1934

Dear Commissioner:

I represent the Township of Pennsauken, in the County of Camden.

Mr. Charles Grip, a wrestling promoter who conducts wrestling matches in the City of Camden and in an open-air arena in the Township of Pennsauken in the summer-time has applied to the Township for a license to sell alcoholic beverages.

The present fee for a plenary retail consumption license is \$365. Mr. Grip does not feel that it would be worth while for him to expend the sum of 75% of this fee for a seasonal license.

These wrestling matches are conducted not more than twice a week and the alcoholic beverages would be dispensed only on those evenings from 8:00 P.M. until 11:00 P.M. At no other time would alcoholic beverages be sold on the premises.

Mr. Grip has requested me to communicate with you in order to ascertain whether a special license could be secured by him under Section 75 of the beverage act at a fee of not more than \$100.00.

Mr. Grip is not interested in dispensing hard liquors but intends only to sell beer on the premises.

Yours very truly,

Thomas F. Salter,  
Township Solicitor.

May 26, 1934

Thomas F. Salter, Township Solicitor,  
Camden, N. J.

Dear Mr. Salter:

I have yours of the 21st.

Mr. Grip (who would seem quite appropriately interested in wrestling) will have to take out a plenary retail consumption license or else a seasonal license. His application for special license from the Commissioner must be denied for the reason set forth in the antepenultimate paragraph of Item 4, Bulletin 30, herewith enclosed.

His application is virtually for a seasonal license at a lesser fee than your Township has fixed pursuant to the legislative authority delegated to it in that behalf. It illustrates what was meant in the Bulletin above mentioned of stretching so-called temporary licenses into virtual permanent licenses contrary to the true intent and meaning of Section 75.

Very truly yours,

D. Frederick Burnett,  
Commissioner

9. LICENSES - RENEWALS - NEW BOOKS.

May 26, 1934

John Gaunt, Borough Clerk,  
Runnemede, N. J.

Dear Mr. Gaunt:

I advise purchasing new books for all licenses issued in respect to the period starting July 1st. The new licenses should preferably start again at No. 1.

As regards the laws, they are now being printed and I hope to have a copy in your hands very soon. The Department has painstakingly prepared a complete index to the law, which will be printed up with it, so that I think henceforth you will have little difficulty in finding anything that you wish in the law quickly.

We also are now at work preparing an index to the Bulletins which index will be issued at or about the time that Bulletin 35 is completed.

Cordially yours,

D. Frederick Burnett,  
Commissioner

10. ALCOHOLIC BEVERAGES - UNLAWFUL SERVICE WHEN FEE IS CHARGED.

May 26, 1934

Hon. Hubert A. Hogan,  
Commissioner of Police,  
Maywood, N. J.

Dear Mr. Hogan:

Wherever any fee is charged, it is illegal to serve beer or any other alcoholic beverage to those who pay the fee, without a consumption license.

Very truly yours,

D. Frederick Burnett,  
Commissioner

11. OFFICIAL FORM OF PLENARY RETAIL CONSUMPTION LICENSE TO BE ISSUED IN RESPECT TO THE PERIOD BEGINNING JULY 1ST, 1934.

This License Expires June 30th, 1935.

STATE OF NEW JERSEY

No. C \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality)

PLENARY RETAIL CONSUMPTION LICENSE

Pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages", (P.L.1933, C-436), as amended and supplemented, a Plenary Retail Consumption license is hereby granted to:

\_\_\_\_\_  
(Name of Licensee)

with respect to the premises located in said municipality at:

\_\_\_\_\_  
(Location of Licensed Premises)

This license entitles the holder to sell, for consumption on the licensed premises, any alcoholic beverages by the glass or other open receptacle, and also to sell all alcoholic beverages in original containers for consumption off the licensed premises.

This license further confers all the rights and privileges pertaining thereto, under the above mentioned Act and any amendments thereof and supplements thereto, and is expressly subject to the terms, provisions, limitations, requirements and conditions set forth in, and any rules and regulations promulgated heretofore and hereafter by the State Commissioner of Alcoholic Beverage Control pursuant to, said Act and amendments and supplements. It is also subject to the provisions of all municipal ordinances and/or resolutions of the above named municipality which have been or shall have been approved by said State Commissioner.

It is also subject to the following special conditions if any are herein set out:

Dated: \_\_\_\_\_, 193 .

Fee paid on application: \$ \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality or  
Municipal Board)

Municipal Corporate Seal

\_\_\_\_\_  
(Municipal Officer or Agent)



12. OFFICIAL FORM OF PLENARY RETAIL DISTRIBUTION LICENSE TO BE ISSUED IN RESPECT TO THE PERIOD BEGINNING JULY 1ST, 1934.

This License Expires June 30th, 1935.

STATE OF NEW JERSEY

No. D \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality)

PLENARY RETAIL DISTRIBUTION LICENSE

Pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages", (P.L.1933, C.456), as amended and supplemented, a Plenary Retail Distribution license is hereby granted to:

\_\_\_\_\_  
(Name of Licensee)

with respect to the premises located in said municipality at:

\_\_\_\_\_  
(Location of Licensed Premises)

The holder of this license shall be entitled to sell all alcoholic beverages in original containers for consumption OFF the licensed premises.

This license further confers all the rights and privileges pertaining thereto, under the above mentioned Act and any amendments thereof and supplements thereto, and is expressly subject to the terms, provisions, limitations, requirements and conditions set forth in, and any rules and regulations promulgated heretofore and hereafter by the State Commissioner of Alcoholic Beverage Control pursuant to, said Act and amendments and supplements. It is also subject to the provisions of all municipal ordinances and/or resolutions of the above named municipality which have been or shall have been approved by said State Commissioner.

It is also subject to the following special conditions if any are herein set out:

Dated: \_\_\_\_\_, 193 .

Fee paid on application: \$ \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality or Municipal Board)

Municipal Corporate Seal

\_\_\_\_\_  
(Municipal Officer or Agent)

13. OFFICIAL FORM OF SEASONAL RETAIL CONSUMPTION LICENSE TO BE ISSUED IN RESPECT TO THE PERIOD BEGINNING JULY 1ST, 1934.

This License Expires \_\_\_\_\_

STATE OF NEW JERSEY

No. C.S. \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality)

SEASONAL RETAIL CONSUMPTION LICENSE

Pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages", (P.L.1933, C.436), as amended and supplemented, a Seasonal Retail Consumption License is hereby granted to:

\_\_\_\_\_  
(Name of Licensee)

with respect to the premises located in said municipality at:

\_\_\_\_\_  
(Location of Licensed Premises)

The holder of this license shall be entitled to sell during the period from \_\_\_\_\_ 193\_\_\_\_\_  
(May 15th to Sept. 15th; or Nov. 15th to \_\_\_\_\_ 193\_\_\_\_\_  
to \_\_\_\_\_ 193\_\_\_\_\_ for consumption on April 15th, whichever period it is issued for)

the licensed premises any alcoholic beverages by the glass or other open receptacle, and also to sell all alcoholic beverages in original containers for consumption off the licensed premises.

This license further confers all the rights and privileges pertaining thereto, under the above mentioned Act and any amendments thereof and supplements thereto, and is expressly subject to the terms, provisions, limitations, requirements and conditions set forth in, and any rules and regulations promulgated heretofore and hereafter by the State Commissioner of Alcoholic Beverage Control pursuant to, said Act and amendments and supplements. It is also subject to the provisions of all municipal ordinances and/or resolutions of the above named municipality which have been or shall have been approved by said State Commissioner.

This license is subject to the following special condition:

Dated: \_\_\_\_\_, 193 .

Fee paid on application \$ \_\_\_\_\_  
(Name of Municipality or Municipal Board)

Municipal Corporate Seal

\_\_\_\_\_  
(Municipal Officer or Agent)

14. OFFICIAL FORM OF LIMITED RETAIL DISTRIBUTION LICENSE TO BE ISSUED IN RESPECT TO THE PERIOD BEGINNING JULY 1ST, 1934.

This License Expires June 30th, 1935.

STATE OF NEW JERSEY

No. D.L. \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality)

LIMITED RETAIL DISTRIBUTION LICENSE

Pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages" (P.L.1933, C.436), as amended and supplemented, a Limited Retail Distribution License is hereby granted to:

\_\_\_\_\_  
(Name of Licensee)

with respect to the premises located in said municipality at:

\_\_\_\_\_  
(Location of Licensed Premises)

This license entitles the holder to sell only unchilled, brewed, malt alcoholic beverages for consumption off the licensed premises, the same to be sold only in original containers and in quantities of not less than seventy-two (72) fluid ounces.

This license further confers all the rights and privileges pertaining thereto, under the above mentioned Act and any amendments thereof and supplements thereto, and is expressly subject to the terms, provisions, limitations, requirements and conditions set forth in, and any rules and regulations promulgated heretofore and hereafter by the State Commissioner of Alcoholic Beverage Control pursuant to, said Act and amendments and supplements. It is also subject to the provisions of all municipal ordinances and/or resolutions of the above named municipality which have been or shall have been approved by said State Commissioner.

This license is further subject to the following special conditions:

Dated: \_\_\_\_\_ 193 .

Fee paid on application \$ \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality or Municipal Board)

Municipal Corporate Seal

\_\_\_\_\_  
(Municipal Officer or Agent)

15. OFFICIAL FORM OF CLUB LICENSE TO BE ISSUED IN RESPECT TO THE PERIOD BEGINNING JULY 1ST, 1934.

This License Expires June 30th, 1935.

STATE OF NEW JERSEY

No. C.B. \_\_\_\_\_

\_\_\_\_\_  
(Name of Municipality)

CLUB LICENSE.

Pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages" (P.L.1933, C.436), as amended and supplemented, a Club License is hereby granted to:

\_\_\_\_\_  
(Name of Club)

with respect to the premises located in said municipality at:

\_\_\_\_\_  
(Describe Licensed Premises)

This license entitles the holder to sell only to bona fide club members and their bona fide guests, alcoholic beverages for immediate consumption only on the licensed premises.

This license further confers all the rights and privileges pertaining thereto under the above mentioned Act and any amendments thereof and supplements thereto, and is expressly subject to the terms, provisions, limitations, requirements, and conditions set forth in, and any rules and regulations promulgated heretofore and hereafter by the State Commissioner of Alcoholic Beverage Control pursuant to, said Act and amendments and supplements. It is also subject to the provisions of all municipal ordinances and/or resolutions of the above named municipality which have been or shall have been approved by said State Commissioner.

This license is further subject to the following special conditions:

Dated: \_\_\_\_\_ 193 .

\_\_\_\_\_  
(Name of Municipality or Municipal Board)

Fee paid on application \$ \_\_\_\_\_

By \_\_\_\_\_  
(Municipal Officer or Agent)

Municipal Corporate Seal

## 16. BULLETIN ITEMS - CERTAIN ITEMS SUPERSEDED.

Items 11, 12, 13, 14 and 15 of this Bulletin supersede, effective for the period beginning July 1, 1934, all previous forms heretofore promulgated concerning the several types of licenses respectively as are set forth in said items.

THE REVISED RULES APPLICABLE TO ALL MUNICIPAL RETAIL LICENSES EXCEPT CLUB LICENSES FOR ADVERTISING "NOTICE OF INTENTION" TO APPLY FOR A LICENSE, and which will be set forth in bulletin 32, supersede, effective for the period beginning July 1, 1934, all previous rules heretofore promulgated in respect to the same subject matter.

Form A-10, which will also be set forth in Bulletin 32, as the prescribed form of all applications for municipal retail licenses, except club licenses, supersedes, effective for the period beginning July 1, 1934, all previous forms heretofore promulgated in respect to the same subject matter.

The official form of application for Club License is not superseded. It is set forth in Bulletin 25, item 3.

The rules and regulations governing Club Licenses, and which include rules for advertising "Notice of Intention" to apply for a license, are still in full force and effect and will be found in Bulletin 25, item 1.

D. FREDERICK BURNETT,  
Commissioner