

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N.J.

BULLETIN NUMBER 16

February 23, 1934

Item #1.

PUBLIC NOTICE

Thorough investigation convinces me of grave dangers and abuses inherent in the sale of alcoholic beverages by retail distribution licensees in bottles commonly called "nips". They serve a valuable purpose when sold on trains or in taverns for immediate consumption, thereby assuring the purchaser via the label, of purity of product and of getting exactly what he orders. But nips of gin and whiskey prominently displayed at a popular price of two for a quarter in show windows and on counters, sometimes interchangeable with a package of cigarettes and usually flaunted in the face of every prospective purchaser of cigarettes, chewing gum or candy, have induced sales that otherwise would never have been made; tempted those who had no thought of purchasing alcoholic beverages; increased drunkenness and disorder, and worked a subtle damage as the "silent salesmen" did their work.

The sale of nips in such stores in practical effect often amounts to transacting a consumption business. True, the beverage is not usually consumed on the store premises except in telephone booths and toilets, but it is often gulped down just outside the store, often in the doorway. Public parks have been littered with the empty bottles. Motorists have complained of broken glass in the streets. Our younger people have bought these nips time and again merely because of the small sized containers at attractively cheap price. So, in lesser degree but with similar effect, the sale of half pints.

Accordingly, the following rules are hereby promulgated. If these practices and the resulting evils continue, the limitation of retail sale by stores will be stepped up to the minimum of one quart.

RULES CONCERNING SALES BY RETAIL DISTRIBUTION LICENSEES.

1. Beginning March 5, 1934, no sale of less than one pint containing sixteen (16) fluid ounces of alcoholic beverages shall be made by any retail distribution licensee, but this shall not prohibit the sale of such beverages in bottles containing less than one pint, provided the number of such bottles sold at any one time to any one person contain an aggregate of at least one pint of such beverages.
2. Effective immediately, no retail distribution licensee shall permit any alcoholic beverages sold by him to be consumed on the licensed premises, nor shall he permit their containers to be opened on the licensed premises.
3. Effective immediately, no alcoholic beverages shall be sold to any person under the age of twenty-one (21) years, or to any person actually or apparently intoxicated.

D. Frederick Burnett
Commissioner.

February 22, 1934.

New Jersey State Library

Item #2. TWO HUNDRED FEET RULE - PREMISES PREVIOUSLY LICENSED

Dear Sir:

I represent ***** *****, who prior to repeal of the 18th amendment conducted a licensed soft drink establishment at *****, Camden, N.J. This property has been a saloon for upwards of thirty years. After the state act was passed he made application for license to conduct a retail liquor establishment and was refused on the ground that the Mickle School annex was within 200 ft. of the property. This school was built in 1916. It seems unfair that the owner of the property should be deprived of the use for which the property was built, by reason of the fact that the school was built subsequent to the establishment of the saloon. I have made no formal appeal for my client, but feel that he is entitled to relief.

Can you advise me whether or not you would enter an appeal in this matter under the circumstances?

Dear Sir:

It would be highly improper for me to express any opinion one way or other as to your appeal, but I have no hesitancy in calling your attention to an amendment now pending which provides that the 200 ft. clause is not to apply to the issuance or renewal of any license where such premises have been heretofore licensed for the sale of alcoholic beverages and such church or schoolhouse was constructed and established during the time said premises were operated under said previous license.

D. Frederick Burnett
Commissioner.

Item #3. RETAIL LICENSEES - EXPRESS DELIVERIES C.O.D..

February 23, 1934

K. N. Merritt, Assistant Traffic Manager,
Railway Express Agency,
230 Park Avenue,
New York, N. Y.

Dear Sir:-

Mr. Mogford of your Department has this day made a request for a ruling on the following situations: A retail licensee located in Newark wishes to ship alcoholic beverages to a consumer customer located in Trenton, N.J. via Railway Express, charges C.O.D. May the Railway Express, who are licensed transporters, lawfully make delivery in this manner and collect the purchase price on delivery in behalf of the consignor?

Since the holders of plenary retail consumption and of plenary retail distribution licenses have a right to sell to anyone for consumption off the premises, irrespective of where the purchaser resides, they may effect delivery in New Jersey of such sales by any agency lawfully licensed in this State to transport alcoholic beverages. This is true whether the sale is made for cash, or on credit, or C.O.D.

It follows that the shipment and transaction in question are lawful.

Very truly yours

D. FREDERICK BURNETT
Commissioner

Item #4 RESIDENCE - FIVE YEARS CONTINUOUS RESIDENCE - WHAT CONSTITUTES

February 21, 1934

Mr. Arthur V. Conover, Clerk,
Township of Manalapan,
R. D. #3,
Freehold, N. J.

Dear Sir:-

Acknowledgment is hereby made of your letter of February 19th requesting an interpretation of the provision contained in Section 22 of the Control Act that: "No retail license shall be issued to a natural person unless he shall have been a resident of the State of New Jersey for at least five years, continuously, immediately prior to the submission of the application."

The word "residence" is generally used to mean domicile or the place where a person maintains his permanent home to which, whenever he is absent, he has the intention of returning. See Cadwalader vs. Howell, 18 N.J.L. 138 (Sup. Ct. 1840); Goodrich Conflict of Laws p. 27. Consequently, when a person residing in this State departs with no intention of returning he thereby loses his residence so that if, after a time, he returns to this State the continuous character of his previous residence is destroyed and the five year period of continuous residence will date from his return.

The Control Act contemplates, however, physical presence in addition to domicile, and while temporary absence may be disregarded, protracted absence may interrupt the continuity of his residence, even though he at all times intended to return to this State. Accordingly, if he leaves for a temporary purpose and with an intention of returning and later does return, the question of whether the continuous character of his residence has been broken should be determined in each case upon the particular facts there presented. See U.S. vs. Mulvey, 232 Fed. 513 (C.C.A.2d, 1916); In Re Cook, 259 Fed. 782 (D.N.J. 1917); U.S. vs Deans, 230 Fed. 957 (C.C.A. 8th, 1916).

Reference to several specific situations which have been dealt with by the courts may prove helpful. In Brueckman vs. Frignoca 9 N.J. Misc. 128 (Sup. Ct. 1931) the court held that a person's temporary absence while at a hospital or sanatorium for the purpose of effecting a cure does not interrupt his residence. Similarly, a temporary absence at a university has been held insufficient to interrupt residence. See In The Matter of Goodman 146 N.Y. 284.

In In Re Schneider, 164 Fed. 335 (D.N.Y.1908) an alien, who after residing in the United States for one year, enlisted in the United States Navy, and at the expiration of his enlistment returned to his home. The court held that his absence from the United States during the period of his enlistment did not interrupt his continuous residence in the United States.

In In Petition of Schneider, 19 F. (2d) 404 (D.N.Y.1927) it was held that an alien's absence from the United States for fifteen months, during which time he attended his ill mother, did not interrupt his continuous residence in the United States. On the other hand in U.S. vs. Mulvey, *supra* the court found that an alien's absence from the United States for a period over two years considered in the light of all the facts there presented constituted a protracted absence which interrupted his continuous residence in the United States.

It is the duty of the Issuing Authority, after ascertaining all of the pertinent facts, to determine whether, under the principles set forth above, the applicant has been a resident of New Jersey for at least five years continuously immediately prior to the submission of his application.

Yours very truly,

D. FREDERICK BURNETT,
Commissioner

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

#5 DEPARTMENT STAFF - COMPETENCY TO ACT IN MUNICIPAL EXCISE MATTERS

February 23, 1934

Mr. Maurice Schwartz,
9 Riverside Avenue,
Red Bank, N. J.

Dear Sir:-

I have yours of February 21st.

Your question is - May an investigator on my staff sit as a member of a Borough Council to vote for or against granting liquor licenses.

There is nothing in the Control Act which prohibits an investigator or an inspector of this Department from sitting as a member of the governing board or body of a municipality. Nor is there anything intrinsically unfair or inconsistent in occupying such dual positions. In both capacities, his duty is to enforce the law. The case is radically different from that to which you liken it, i.e. where a member of the governing body is financially interested in any liquor license being granted or withheld. The rule already made properly forbids the latter action because of the conflict of duty and self-interest.

There is, however, a factor of great moment which governs the ruling now to be made. The primary duty of enforcement is placed upon the municipalities themselves. My duty is to see that they do it. It follows that my investigators and inspectors must furnish me the full unvarnished facts free from bias, preconceived opinion, and local politics or prejudices. This cannot be done if a member of my staff has previously participated in voting either for or against the granting of a liquor license.

Ruling is therefore made that no member of the Department may participate as a member of a governing board or body or local excise board or otherwise in voting for or against the granting of any liquor license.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

G-

#6 LICENSES - TRANSFER - WHAT CONSTITUTES

February 20, 1934

Leo Cluesmann, Secretary,
Department of Public Safety,
City Hall,
Newark, N. J.

Dear Sir:-

Acknowledgment is hereby made of your letter inquiring as to whether a permanent license may be issued in the name of Liggett Drug Company, Inc. where the temporary license was issued to Louis K. Liggett Company, bankrupt.

Under the Commissioner's ruling, appearing in Bulletin #10, par. 6, issuance of the permanent license to Liggett Drug Company, Inc., a distinct legal entity from Louis K. Liggett Company, bankrupt, the holder of the temporary license would, in effect, constitute a transfer which is prohibited by Section 23 of the Control Act.

Very truly yours,

NATHAN L. JACOBS,
Counsel-in-Chief

NLJ/G-

#7 LICENSES - ISSUANCE - TRUSTEES IN BANKRUPTCY

"December 18, 1933

"I represent the Board of Commissioners of the Village of Ridgewood.

"The Trustees in bankruptcy of the Liggett Drug Stores have applied for a plenary retail distribution license, and their legal department has stated to me that a number of Municipalities in the State of New Jersey have already granted licenses to them.

The Trustees are Trustees in Bankruptcy, none of whom lives in the State of New Jersey and the Bankrupt corporation is a Massachusetts corporation authorized to do business within the State of New Jersey:

"The Trustees do not come within the provisions of Sec. 22 of the Act. Sec. 23 provides that in cases of bankruptcy the issuing authority may extend the license for a limited time not exceeding its term to the Trustee upon whom it has devolved by operation of law, but that section does not authorize the issuance of a license to a Trustee in bankruptcy in the first instance.

"Will you kindly advise me whether or not a ruling has been made by you covering such a situation and whether it is your opinion that the issuing authority has power to issue a license to the Trustees of the Liggett Drug Stores.

Yours very truly,

Thos. L. Zimmerman, Jr."

December 22, 1933

Thos. L. Zimmerman, Jr. Esq.,
551 Fifth Avenue,
New York, N.Y.

Dear Sir:

In answer to yours of the 18th of December, I agree with the conclusions you have adduced. I have not made a ruling heretofore on the point now presented by you but do so herewith, viz:

The Control Act contemplates the issuance of licenses to corporations as well as to individuals. The mere fact that the governing body of a particular corporation happens to be trustees elected in bankruptcy proceedings, as distinguished from the normal situation of control by a Board of Directors is immaterial provided that the license is issued to the corporation and not to the Trustees as such.

This ruling is made subject to the reservation that the Trustees must have legal power under the Bankruptcy Act, or under orders of the Court to apply for such license and to take the license in the name of the corporation.

I am ruling only upon the question as to whether under the Control Act a license may be issued to a corporation which is in the hands of Trustees in Bankruptcy.

Yours very truly,

Commissioner.

#8 MUNICIPAL RESOLUTION - VALIDITY

December 3, 1933

George S. Harris, Esq.,
647 Bloomfield Ave.,
Montclair, N. J.

Dear Mr. Harris:

I have your telephone message wherein you ask, with refer-

ence to the Town of Montclair:

- The Questions.
1. They would like to limit the retail licenses for consumption off the premises to places only where beverages were sold. They want to thereby prevent such places as grocery stores from selling beverages.
 2. They would like to prohibit dancing where liquor is sold on the premises.
 3. They would like to prohibit sale to women at the bars.

The Answer. All three questions are answered in the affirmative.

Reasons. Section 37 of the Control Act confers express power upon each municipality, or the Municipal Excise Board, as the case may be, to limit the number of licenses to sell alcoholic beverages at retail, the hours between which such sales may be made, 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".

Upon bare inspection, it is obvious that there is no legal objection to question No.1.

Re second question: The evil inherent in and often attendant upon the sale of liquor in public dance halls is common knowledge. It matters not whether liquor is sold for consumption on or off the premises. For, if the latter, it is but human nature that the liquor so sold will find its way back to the dance hall with remarkable celerity. The purposed prohibition comes directly under the general police power of the community and is a reasonable exercise of the authority delegated by the Legislature to the municipality, and therefore valid.

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 un-animously 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.

Reservations

1. This ruling is subject to the constitutionality of the Act which I see by the public prints has been challenged.

2. It does not take into account any question of expediency but merely of strict legal right and power. For instance, your Council might well consider the question how far your proposed limitation #1 might go, e.g. it would deprive not merely a grocery store but a drug store as well; again, as your prohibition #2 is worded, it might operate to inhibit either dancing or liquor, one or the other, in a high class club.

Very truly yours,

D . Frederick Burnett
Commissioner.