

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

BULLETIN NUMBER 136

July 31, 1936

1. REVOCATION PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES - DIRECTIONS GIVEN TO REFER NO FURTHER CASES TO A MUNICIPAL BOARD WHICH DISREGARDS THE EVIDENCE SUBMITTED UNLESS AND UNTIL THE BOARD TURNS A RIGHT ABOUT FACE TOWARD SERIOUS LAW ENFORCEMENT.

July 28, 1936

Bernard J. Dunigan, Clerk,
Woodbridge, N. J.

Dear Mr. Dunigan:

I have staff report of the proceedings before your Township Committee last night against Joseph Galaida, t/a Middlesex Tavern, on charge of possession of illicit alcoholic beverages.

The report states:

"On June 24th, 1936, Inspector Murray and Investigator Creveling entered the licensed premises on routine inspection, Joseph Galaida at that time being the holder of Plenary Retail Consumption License C-8, expiring June 30th, 1936.

"Accompanied by the licensee, the investigators inspected a bedroom located on the second floor of the premises, and occupied by the licensee, wherein they found the following alcoholic beverages, bearing no indicia of tax payment, located in a closet in said bedroom:

- 1 - 4/5 qt. bottle of alcoholic beverage bearing label 'Campbell's Scotch'
- 1 - qt. bottle of alcoholic beverage labeled 'Chartreux'
- 1 - 1/5 gal. bottle of alcoholic beverage bearing label 'Old Tom Gin'
- 1 - qt. bottle of alcoholic beverage labeled 'Chartreux'
- 1 - 1/5 gallon bottle of alcoholic beverage labeled 'Apricot Brandy'
- 1 - pt. bottle of alcoholic beverage labeled 'Indian Hill Bourbon'

"Continuing their inspection, the investigators discovered a secret door located in a closet in a room on the second floor, leading into the attic of a one and one-half story addition to the main hotel building, which attic was found to contain the following alcoholic beverages:

- 1 - 5 gallon can, 1/10 full of Alcohol
- 1 - 5 gallon Glass Jug, 1/10 full of Gin
- 1 - 5 gallon Stone Jug, 1/2 full of Apple Whiskey
- 1 - 5 gallon Stone Jug, 1/2 full of Rye Whiskey
- 1 - 5 gallon Stone Jug, full of Rye
- 1 - 5 gallon Stone Jug, 1/4 full of Rye
- 1 - 5 gallon Stone Jug, 1/4 full of Rye
- 1 - 5 gallon Stone Jug, full of Port Wine
- 1 - 5 gallon Stone Jug, 3/4 full of Apple Jack
- 1 - 5 gallon Stone Jug, 3/4 full of Scotch Malt

- 1 - 5 gallon Stone Jug, 1/8 full of Apple Jack Whiskey
- 1 - 5 gallon Stone Jug, 3/4 full of Sherry Wine
- 1 - 5 gallon Stone Jug, full of Rye Whiskey
- 1 - 5 gallon Glass Jug, 1/10 full of Wine
- 1 - 5 gallon Glass Jug, 1/10 full of Wine
- 1 - 5 gallon Glass Jug, 1/3 full of Alcohol
- 1 - 1 gallon Stone Jug, 1/4 full of Alcohol
- 1 - 1 gallon Glass Jug, 1/4 full of Alcohol
- 1 - 1 gallon Glass Jug, full of Wine
- 1 - 1 gallon Glass Jug, 1/4 full of Alcohol
- 1 - 3 gallon Stone Jug, 1/2 full of Rye Whiskey
- 1 - 2 gallon Stone Jug, full of Wine
- 1 - 3 gallon Stone Jug, 1/3 full of Kummel
- 1 - Box containing 7-bottles of Assorted Alcoholic Beverages
- 1 - gallon Glass Jug, 3/4 full of Wine
- 1 - Butter Tub containing 7-bottles of Assorted Alcoholic Beverages
- 1 - Box containing 7-bottles of Assorted Alcoholic Beverages
- 1 - Bunch of Filter Papers

"The containers of the alcoholic beverages bore no indicia of tax payment.

"The investigators questioned the licensee who stated that he had been in possession of the seized property for some time prior to the repeal of the National Prohibition Act. The investigators observed a syphon hose, hung over a beam in the attic, with whiskey dripping therefrom.

"At the hearing licensee testified he had not been in the attic for the last two years and that the alcoholic beverages were possessed by him for his personal use. Elizabeth Galaida, his daughter-in-law, testified the six bottles of liquor found in the bedroom closet belonged to her, had been in the closet for over six years, and kept by her to treat her friends.

"Verdict: Charges dismissed."

The fact remains that none of the liquor bears indicia of tax payment. The decision drips as doth the hose in the garret.

As I have had occasion to write your Committee previously about law enforcement, and the official bulletins in your possession are replete with the reasons why the illegal traffic must be wiped out irrespective of politics or personalities, I direct that no further local cases be transmitted hereafter to your Township Committee unless and until it affirmatively pledges serious, soberminded consideration of complaints transmitted, or a new Township Committee is elected which really means business.

I await your advices.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. SPECIAL PERMITS - REQUIRED WHERE DELIVERY OF ALCOHOLIC BEVERAGES CONSTITUTES A SALE EVEN THOUGH INDIRECTLY.

July 25, 1936

Dear Sir:

The Roebling Republican Club, of Roebling, N. J. are going to have a picnic and they are selling tickets for \$1.00 each. These tickets are sold to members and non-members.

It is their desire to know if they would be breaking the law if they gave beer away at this picnic or if they will need a special license from your department.

I have been asked this question several times by various clubs who are going to have picnics or outings. Will you kindly inform me as soon as possible if this is lawful.

The Question:

Can a club or society have an outing or picnic and give beer or liquor away when they have sold tickets to the public for said outing or picnic?

Thomas A. Callery,
Chief of Police,
Roebling, N.J.

July 28, 1936

Thomas A. Callery,
Chief of Police,
Roebling, New Jersey.

Dear Chief Callery:

I have yours of the 25th, re the Roebling Republican Club. I note that the club will sell tickets at \$1.00 each to members and guests who attend the picnic.

The club cannot, therefore, serve beer at the picnic without first obtaining a Special Permit from this Department. So long as an admission fee is charged, the beer is not actually given away free. The point is that no one could get a beer unless he purchased one of the tickets for \$1.00. Hence, it is an indirect sale, the price of beer being included in the price of the ticket. Herewith copy of ruling made in re Renner, Bulletin #115, Item #4, concerning the Young Democrats and reaching the same result.

I am enclosing an application for a Special Permit. If the above wishes to apply, they should fill out the application, have it signed by the municipal clerk and the chief of police of the municipality in which the picnic will be held and return it to this office. The fee for the permit will be \$10.00 in cash, money order or certified check drawn to the order of D. FREDERICK BURNETT, Commissioner, which must accompany the application.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Erwin B. Hock,
Deputy Commissioner.

3. LICENSEES - EMPLOYEES - ELIGIBILITY.

July 29, 1936

Mr. Arthur H. Hulfish,
Wildwood, New Jersey.

Dear Sir:

I have yours of July 2nd in reference to qualifications of persons eligible for a license and persons employed by a licensee.

Section 22 of the Control Act provides as follows:

"No retail license shall be issued to a natural person unless he is a citizen of the United States and 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. No license of any class shall be issued to any individual who is an alien; to any person under legal age; or to any person who has been convicted of a crime involving moral turpitude or who has committed two or more violations of this act."

In general, any person who does not come within the above restrictions is eligible to hold a license to be employed by a licensee. You will note that one of the restrictions is that a person must 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 employee of a retail licensee must also qualify in this respect.

Section 37 of the Control Act provides that the governing body of each municipality may, by ordinance, enact that no more than one retail license shall be granted to any person, corporation, partnership, limited partnership or association in said municipality and that said license shall cover only the licensed premises. However, this restriction only applies where a municipal governing board adopts such an ordinance. When no such ordinance is adopted, one or more licenses may be issued to one person. The Control Act contains no restriction in respect to the issuance of one or more licenses in the same family.

Your letter states that men and women from Philadelphia are employed as waiters, waitresses and bartenders. Section 23 of the Control Act allows the employment of persons disqualified because of lack of residence under a Special Permit issued by the Commissioner, but such employees may not in any manner whatsoever serve, sell or solicit the sale of alcoholic beverages. Therefore, bartenders cannot lawfully be employed either with or without a permit because their duties necessitate the sale of alcoholic beverages. Waiters and waitresses may be employed under such permit, if they do not serve or sell alcoholic beverages and their duties are confined to the serving and selling of foods and non-alcoholic beverages. If you know of any violations, please inform me of the details at once.

Although it is true that Section 22 as cited above prohibits the employment of an alien, certain foreign nations have concluded reciprocal trade agreements with the United States which supersede State laws. These treaties extend to the nationals of such countries the same rights as American citizens and, therefore, nationals thereof may both hold a license or be employed by a licensee. The Commissioner has so ruled in Bulletin #94, Item #15,

copy of which is enclosed. You will note that Germany is one of the countries which has concluded such a treaty and that, therefore, a German alien may be employed by a licensee, if he qualifies in every other respect.

The Control Act is designed to be enforced by all enforcement agencies in the State including this Department, State police, county enforcement authorities and municipal enforcement authorities. Complaints of violations of the Control Act will be welcomed whenever made to the Commissioner.

Inspections of licensed establishments throughout the State are being made every day by investigators of this Department. During the past six months some 10,000 retail establishments in the State have been inspected. Many violations were found. In some cases revocation proceedings were instituted and penalties imposed. In others, where the violation was of a minor nature and apparently unintentional, reprimands resulted. These inspections will continue.

However, this work cannot be done in a day, a week or a month because of the small staff. A special squad of investigators are assigned particularly to this duty and every effort is made to see that every licensed establishment is inspected.

This Department does not contend that there is no violation of the Control Act. Probably there are many violations committed every day, but this is where we need your cooperation. The Commissioner has often urged the public to inform him of any violations which they may see. Complaints are received daily by this Department and in each case the complaint is investigated thoroughly and appropriate steps taken at once to correct the situation if the complaint is verified.

If you have any knowledge of violation of the Control Act, I urge that you forward such information direct to Commissioner Burnett in a letter addressed to him. This information will be kept in the strictest confidence and your name will not be revealed under any circumstances to anyone. If you and every other public spirited citizen would make it their duty to forward such information to the Commissioner, it would go a long way toward better enforcement of the law.

This cooperation is welcomed at any time.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Erwin B. Hock,
Deputy Commissioner.

4. LICENSEES - EMPLOYEES - ELIGIBILITY - HEREIN OF THE MASTER OF CEREMONIES AND THE PROTESTS OF WAITERS.

Dear Sir:

It has been brought to my attention that a person must reside in the State of New Jersey five years in order to be eligible to a position as a waiter in a place of business dealing in alcoholic beverages.

As a waiter may I enter my protest to the extent that I do not understand why this ruling only applies to waiters, bartenders, and what is known as a master of ceremonies, and not to those engaged in the delivery, manufacture, and so forth.

I have always been under the impression that a person was allowed to make a legitimate living anywhere he could find it, but according to this ruling I must have formed the wrong impression.

In closing may I ask you to inform me if the ruling mentioned is correct, and if possible why are this class of employees picked out of the large group employed in this industry, and restricted to the extent they are.

Thanking you in advance for any and all information you may care to submit to me, I remain

Sincerely,
BERNARD KALNEETS.

July 29, 1936

Bernard Kalneets,
Pine Hill,
P. O. Sicklerville, N. J.

Dear Sir:

I have yours of the 27th re the employment of persons who have not been a resident of this State for five years.

Section 22 of the Control Act provides that no retail license shall be issued to anyone who has not been a resident of the State for at least five years continuously immediately prior to the submission of the application. Section 23 provides that no person who would fail to qualify as a licensee shall be knowingly employed or connected in any business capacity whatsoever with the licensee except that persons failing to qualify as to residence may, with the approval of the Commissioner, be employed by any licensee, but such employee shall not in any manner whatsoever sell or solicit the sale of alcoholic beverages.

Therefore, a person who has not been a resident of the State continuously for five years cannot be employed as a bartender by a licensee because he necessarily must sell alcoholic beverages. However, persons who are disqualified because of lack of residence may be employed by a licensee under a Special Permit, issued by the Commissioner, if such persons' duties do not include the serving or selling of alcoholic beverages. A waiter so disqualified may obtain a Special Permit conditioned that he cannot serve or sell alcoholic beverages, his duties being confined to the service and sale of foods and non-alcoholic beverages.

A master of ceremonies or any other employee of a licensee who does not serve or sell alcoholic beverages and who is disqualified because of lack of residence, also is eligible to be employed provided he first obtains a Special Permit.

These provisions in the Control Act apply to all retail licensees and their employees and do not discriminate against any particular class of employees. Any employee whether it be a bartender, a waiter, a bus boy or chef who is disqualified because of residence, cannot serve or sell alcoholic beverages. With the exception of the bartender, they may be employed under a Special Permit conditioned as aforementioned.

Participation in the alcoholic beverage industry is a privilege, not a right, and as such is treated by statute distinctly separate from any other industry.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

5. CLUB LICENSES - DULY CERTIFIED CHAPTERS OF STATE OR NATIONAL ORGANIZATIONS WHICH HAVE BEEN IN OPERATION IN NEW JERSEY FOR THREE YEARS CAN QUALIFY FOR CLUB LICENSES EVEN THOUGH FAILING TO HAVE A CLUB HOME FOR THE REQUIRED THREE YEARS.

LIMITATION OF LICENSES - MUNICIPAL LIMITATIONS ARE BINDING AND CAN BE SUPERSEDED ONLY BY AMENDMENT BY THE MUNICIPALITY OR BY APPEAL TO THE STATE COMMISSIONER.

July 22, 1936

Mr. D. Frederick Burnett,
Newark, New Jersey.

Dear Sir:

The American Legion, Phillipsburg, N. J. had its origin November 1918 on the battle fields of France, wherein it was known as the Warren Service Club. The organization was further advanced after the return home of the troops when demobilization completed their war activities. A charter was granted Bernard J. Donovan Post #203, November 1st, 1921. From that time on until November, 1935, the Legion never had a permanent home, occupying rooms in various buildings. We have just within the past month acquired a home, which was formerly the residence of the late Judge John I. Blair Reilly, at an expense of \$10,000.00.

With the acquiring of this home our membership has shown a marked advance and activities increased. It has also become a very perplexing question as to the activities of the home and its existence. We are very anxious and would like to have a club license but inasmuch as the Commissioners have created an ordinance which limits the number and that number is already exceeded by two, wherein they state it will be impossible for us to hope for a license until at least three existing clubs relinquish their license. Hopes seem rather gloomy. The question which presents itself in view of the fact, we as an organization have really and truly existed in the past fifteen years now become penalized because of the fact that we did not secure quarters at the previous time.

Would you care to express to us your personal opinion as to how you might feel on this matter and whether or not you think something could be done, where in a graceful fashion without embarrassment to anyone, the Commissioners in particular, we could obtain this concession. They seem very sympathetic to our plea yet feel that under the existing conditions the only course open would be the amendment of the ordinances which would again throw the barriers open for an influx of other clubs and other saloons. We want to play ball in open and above board and would certainly appreciate your reaction.

Very truly yours,
Andrew Koleser,
Adjutant.

July 29, 1936

Andrew Koleser, Adjutant,
Bernard J. Donovan Post No. 203,
Phillipsburg, New Jersey.

My dear Mr. Koleser:

As I understand the situation, there appear to be two reasons why the Post cannot get a club license; first, because although organized for some fifteen years, it has just within the past month acquired a club home, and secondly, because the Phillipsburg resolution limiting the number of club licenses would prevent it.

The fact that the Post has just within the past month acquired a club home may or may not prevent your obtaining a club license. It all depends on the circumstances. It is true that Rule 2 of the State Rules Governing the Issuance of Club Licenses (Compiled Rules, Regulations and Instructions, March, 1936, Page 25) requires that applicants shall have been in active operation in this State for at least three years continuously immediately prior to the submission of the application and that they shall have been in exclusive continuous possession and use of club quarters for the same period of time. But there is an exception to Rule 2. Rule 2 further provides that, irrespective of the foregoing, a club license may be issued to an enfranchised chapter or member club of a national or state organization, which organization shall have been in active operation in the State for at least three years continuously immediately prior to the submission of the application and which chapter or member club shall have been duly credentialed by the national or state organization to and approved by the Commissioner. If the Post can qualify as provided in the exception, your not having had a club home for the past three years will not stand in your way.

The resolution limiting the number of club licenses in Phillipsburg, adopted May 22, 1935, is the real obstacle. Under the resolution, until the number of club licenses issued and outstanding shall have been reduced to seven, no new club licenses may be issued. This resolution, until amended, repealed or otherwise superseded, is in full force and effect. It is binding upon the Board of Commissioners and must be obeyed. The only way it can be changed, otherwise than by the Board of Commissioners, is by appeal to the State Commissioner.

I suggest that the Post request the Board of Commissioners to amend the resolution. The Board has the power to do so. Section 37 of the Control Act confers upon the governing body of each municipality the authority to limit the number of retail licenses in its municipality. The Board may fix the numerical limitation at any quota which in its discretion it deems proper. Should your request be refused, your only recourse would be to appeal. But unless you could show on appeal that the quota was unreasonable or that the regulation had been improperly applied, I doubt that I could afford you any remedy.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. LICENSEES - EMPLOYEES - DISQUALIFICATION ON GROUND OF MORAL TURPITUDE EXISTS BECAUSE OF STATUTE AND NO DISCRETIONARY EXCEPTIONS MAY BE MADE - A PARDON WILL HOWEVER REMOVE ANY DISQUALIFICATION WHICH MAY EXIST DUE TO THE PARTICULAR CONVICTION PARDONED.

July 14, 1936

Hon. D. Frederick Burnett,
Newark, New Jersey.

Dear Commissioner:

_____, of _____, is unable to procure a license in his own name to operate a saloon on a property owned by himself due to the fact that he was convicted of a crime committed more than twenty years ago and served ten months in the _____ County Work House in 1915. Since that time he has had an impeccable record. He is a veteran and served in all the major battles during the World War with distinction. _____ is the father of four children, a property owner and taxpayer in the City of Trenton.

His case is pending before the Court of Pardons and I should like to know if it might not be possible to secure special dispensation that would permit him to work in the saloon operated on his property pending the disposition of his case before the Court of Pardons.

I know of no more worthy case and would like to lend all the personal influence I might have to aid this man to earn a livelihood for his family and sincerely hope that you will make every effort to arrange for the necessary permit.

Sincerely yours,

WILLIAM P. HOWE, JR.

July 29, 1936

Hon. William P. Howe, Jr.,
Pennington, New Jersey.

Dear Mr. Howe:

I have before me your letter of July 14th re _____. I take it that the crime for which _____ was convicted involved moral turpitude. Otherwise, he would not be disqualified from procuring a license or from being employed by a licensee on that score. The statute rules out, because of criminal offense, only those whose convictions have involved moral turpitude or who have committed two or more violations of the Act.

I am indeed sorry for _____. It is a serious matter to be deprived of the means of earning a living. More so because, as you point out, he appears to be deserving of any leniency which can be shown and has had an unimpeachable record since his conviction. But unfortunately I have no discretion in the matter. There is no dispensation that I can grant. The disqualification exists because of the provisions of the statute. Consequently, there is nothing that I can do about it. Should he get a favorable decision from the Court of Pardons, then it will be another story. A pardon will, of course, remove any disqualification which may exist on account of that particular conviction. I hope the court sees fit to grant it so that he may have another chance.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner

7. MUNICIPAL ORDINANCES - SUNDAY SALES - THE POWER TO FIX HOURS OF SUNDAY SALES RESIDES IN THE MUNICIPAL GOVERNING BODY - THE RIGHT TO AMEND RESTS IN THE MUNICIPAL GOVERNING BODY - THE RECOURSE AFFORDED TO PRIVATE CITIZENS IS THROUGH REFERENDUM OF THE QUESTION "SHALL THE SALE OF ALCOHOLIC BEVERAGES BE PERMITTED ON SUNDAYS IN THIS MUNICIPALITY?" PURSUANT TO SECTION 44 OF THE ACT.

July 21, 1936

Dear Sir:

My inquiry is in reference to the procedure necessary to close the (saloons) Plenary Retail Consumption establishments in our village on Sundays.

The Township (Marlboro, Monmouth County) Committee has issued licenses to those applying in regular form throughout the Township.

Our particular situation is this: our village here has something like two hundred fifty people in it - men, women and children; we have two saloons, naturally the village is the gathering place for citizens and others living in the Township and these saloons are well patronized of course. We feel that six days a week is quite enough for these liquor dispensing places to operate - to have them open on Sunday is particularly bad because more men are idle that day and many transients stop here also. As an example, last Sunday a man came into the village with considerable money, showing the townsfolk how much he had, later staggered into the church I am serving as a minister asking for money, and still later we had to call the State Police to carry him away for he was unable to move longer and fell down on the lawn of the home next door to the church. He had a quart of liquor in his hand when he fell, which he undoubtedly bought at one of these two local places. We are not puritanical by any means but these places are a stench in the nostrils of all right-minded people.

Now the Township Committee has informed me that they cannot in fairness issue licenses to places on the highways outside the village for seven days a week and not do the same for those in the village. I'm willing to admit it may seem unfair to those seeking licensure but the citizens of the Community certainly must have some rights.

What I would like to know is (and I'm writing this not for myself alone but in behalf of many who naturally expect me to stand for the things that are right) would it be possible by petition or otherwise to indicate to the Township Committee that they take some possible action looking to the closing of these places on Sunday? Or is there some other way of proceeding?

Your reply and instruction in this matter will be greatly appreciated.

Very truly yours,

FRANK A. HUFF.

July 29, 1936

Rev. Frank A. Huff,
Marlboro, New Jersey.

Dear Mr. Huff:

I have before me your letter of July 21st. You asked as to the means afforded for bringing about the closing of the licensed premises in Marlboro village on Sundays.

The Township Committee correctly informed you that they could not, in fairness to the licensees, prohibit the two located in the village from selling on Sunday and allow those located outside of the village to do so. Such a regulation would be discriminatory and, therefore, invalid. All those standing in the same position and holding the same type of license are entitled to equal privileges. If the Township Committee amends its resolution so as to prohibit sales on Sunday, the regulation must apply to all.

Whether or not sales may be made on Sundays is a matter within the jurisdiction of the Township Committee to decide. Section 37 of the Alcoholic Beverage Control Act confers upon the governing body of each municipality the power to limit, by ordinance or resolution, the hours between which the sale of alcoholic beverages at retail may be made and to prohibit the retail sale of alcoholic beverages on Sunday. It was pursuant to this authority that the Township Committee adopted its resolution of February 8, 1934, amended June 28, 1935, which provides that sales may be made in Marlboro on Sundays only between the hours of 1:00 p. m. and 2:00 a. m. There is, however, nothing to prevent the Township Committee from amending the regulation at any time. At the time it was adopted it represented merely what was then supposed to be the best common interest of the public at large. Now, if experience has shown to the contrary, it may be amended or rescinded outright. The right to change it is founded on the same power which vested in the Township Committee the right to enact it in the first place.

Hence, one recourse which you have is to petition the Township Committee to change the local regulation. If you decide to do this, make your request directly to the Committee in writing and set forth in it in detail the conduct and circumstances which provoked your complaint. Support it with dates and names of witnesses. Then go before the Committee with the others who are associated with you and stand up and testify as to the facts in support of your request. You must do this because the Committee cannot make an adjudication on mere hearsay or unsubstantiated evidence. You must establish the necessity for the change in the local regulation beyond any reasonable doubt. If you do this, I am sure that the Committee will give your request careful consideration.

Your other recourse is to cause referendum to be held, pursuant to Section 44 of the Control Act, on the question "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" If a majority of the voters vote "No" in such a referendum, it will thereupon become unlawful for any person to sell alcoholic beverages on Sundays in Marlboro Township and any such sale will be in violation of the Act and constitute a misdemeanor. In order to hold such a referendum, a petition requesting the referendum and signed by at least fifteen per cent of the qualified voters of the municipality must be presented to the Township Committee. The Committee will then adopt a resolution directing the County Clerk to print the question on the official ballot to be used at the next ensuing general election. The procedure is set out fully in Section 44 of the Act, a copy of which I have sent you under separate cover.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

8. SALES - DELIVERY OF ALCOHOLIC BEVERAGES WITH MEALS IN RESTAURANT NOT LICENSED TO SELL SAME PROHIBITED - SUCH DELIVERY CONSTITUTES SALE AND IS CAUSE FOR ARREST.

July 14, 1936

Mr. Burnett, Commissioner,
Newark, New Jersey.

Gentlemen:

I operate a Restaurant right across the street from a place having liquor license. The question has been put before me several times, is this:-

According to law, if my customers ask for beer, and if they hand me their money, am I allowed to go across the street, get the beer, and bring it in my restaurant as a matter of accommodation to my patrons?

Kindly set me right according to this and oblige, as I do not wish in any way to break the law.

Sincerely,

MRS. JEAN SCHUYLER.

July 29, 1936

Mrs. Jean Schuyler,
R. D. Hackettstown, N. J.

My dear Mrs. Schuyler:

You ask if, as an accommodation to your patrons, you may take their money, send out to a licensee for beer and then serve it to them in your restaurant.

The answer is that you may not. Such a delivery by a non-licensee would constitute a sale in violation of Sections 2 and 48 of the Control Act and would be cause for arrest.

The reasons are given in re Vaccaro, Bulletin #87, Item #2 (copy enclosed) which deals with an identical situation.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. RETAIL LICENSEES - REQUIRED BY STATE LAW MERELY TO BE RESIDENTS OF THE STATE - NEED NOT BE RESIDENTS OF THE MUNICIPALITY UNLESS LOCAL REGULATIONS REQUIRE IT.

July 29, 1936

Mrs. Jane Luszcz,
Nutley, New Jersey.

Dear Mrs. Luszcz:

There is nothing in the Alcoholic Beverage Control Act or in the State rules and regulations requiring that an applicant for a retail liquor license be a resident of the particular municipality in which his application is made. All that the State law

requires as to residence is that the applicant be a resident of the State of New Jersey for the five years immediately preceding his application.

Some of the municipalities have adopted local regulations requiring that applicants for retail licenses be residents of the municipality. According to my records, the Board of Commissioners of Nutley have not. You can verify this, however, by writing directly to Mr. Blum, the Town Clerk, and asking him.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. SPECIAL PERMITS - SERVING OF ALCOHOLIC BEVERAGES AT WEDDINGS - WHEN REQUIRED.

July 29, 1936

Mr. George C. Staada,
Paterson, New Jersey.

Dear Sir:

No license or permit is required for the serving of alcoholic beverages at weddings if the alcoholic beverages which are served are given away really free in every respect. There is nothing to prevent a person from giving away alcoholic beverages to his friends either in his home or on some rented premises.

Licenses or permits are required only if the alcoholic beverages are themselves sold or if admission is charged or if assessments are made or if the price of the alcoholic beverages is included in the price of other refreshments, in which event, although indirectly, it would be a sale of alcoholic beverages within the terms of the Control Act not an out and out gift.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. SPECIAL PERMITS - "CLUB HOUSE ON WHEELS" - CONSIDERATIONS APPLICABLE.

July 7, 1936

Dear Sir:

The undersigned are taking herewith the liberty to ask you respectfully for your advice in the following matter:

It is a part of the STENECK TRAVEL CLUB'S activity to arrange outings by buses every Sunday for their members. These excursions are having an attendance of 300 to 350 people, whereby 10 to 15 Public Service buses are used.

We intend to buy a lunch wagon to accompany these excursions for the convenience of our members, so to have sandwiches, frankfurters, ice cream, coffee, etc. available for them at reasonable cost and at any selected location. We also would like to carry beer on tap.

There will be no concession given to any outsider for this "Club House on Wheels" nor will anything be sold to any person that is not a member. It will be strictly a club matter.

Now, do we need a beer license? -- If we do, is it possible to procure a license that holds good all over the State of New Jersey? -- What would the fee for such a license approximately amount to?

We would greatly appreciate it if you will favor us with your answer and give us your advice how to proceed in this matter.

Very truly yours,
STENECK TRAVEL CLUB - INCORP.
Per - Max Vocke.

July 30, 1936

Mr. Max Vocke,
Steneck Travel Club, Inc.,
Union City, N. J.

Dear Sir:

I have yours of the 7th re the Steneck Travel Club, Inc.

The preliminary question is whether your incorporated travel club is a mutual social organization or a commercial enterprise. If the latter, special permits will not be granted for such purpose. Your outfit appears to be more than a "Club House on Wheels". With its fifteen buses and trailing lunch wagon, it looks to me like a caravan. You may submit, if you wish, the factual data as to the nature of this Club.

No such license as you seek is available in any event. The Control Act provides for neither a beer license nor a license allowing the sale of alcoholic beverages at a series of weekly outings.

Section 75 of the Control Act provides for the issuance by the Commissioner of Special Permits to provide for contingencies where it would be appropriate and consonant with the spirit of the Act to issue a license but the contingency has not been expressly provided for. Under this Section I will entertain application for a Special Permit to sell alcoholic beverages at an outing to be conducted by your club, but this permit would be effective for one day only and only at a designated place. In Bulletin #118, Item #4, copy enclosed, I ruled that Special Permits are issuable only at special or occasional affairs and not when tantamount to a regular license. In this case also the applicant desired to obtain a Special Permit for a series of affairs to be held over a period of ten or fifteen weeks.

Your letter seems to indicate that these outings or excursions have no particular destination, and that they merely will stop on the roadside in any available place to partake of refreshments. No permit could be issued to dispense alcoholic beverages under these conditions because the beverages must be dispensed at a designated place in a designated municipality. One of the requirements in filing an application for such permit is that the signatures of both the chief of police and clerk of the municipal-

ity where the alcoholic beverages will be dispensed are obtained. The place where the beverages will be dispensed must be designated so that the proper signatures may be first obtained.

I am enclosing an application form for such Special Permit for your information. This form must be executed for such occasion and for each club when alcoholic beverages are to be dispensed. The application must be signed by the chief of police and clerk of the municipality where the outing or excursion is to be held and returned to this Department accompanied by a fee of \$10.00 in cash, money order or certified check drawn to the order of D. FREDERICK BURNETT, Commissioner.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. CONSUMPTION LICENSEES - MAY DISCRIMINATE TO WHOM THEY SELL EXCEPT ON ACCOUNT OF RACE, CREED OR COLOR - NO OBLIGATION TO SELL TO ADULT ALTHOUGH SOBER.

July 30, 1936

Mr. Fred Dorflinger,
Hillside, New Jersey.

Dear Sir:

Your letter inquires whether a tavern owner may refuse to sell you a drink even though you are sober and over twenty-one years of age.

The Act to Protect all Citizens in their Civil and Legal Rights prohibits tavern keepers, among others, from refusing to sell to any person on account of race, creed or color. Otherwise, a licensee may refuse to sell to any person.

The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law. They cannot sell to minors; they cannot sell to persons who are intoxicated; they must keep order on the licensed premises. It is no excuse for a violation of any of these duties that the licensee may have thought the purchaser was over twenty-one or was sober. They have been repeatedly warned that in case of doubt they are not to sell, and this is the only safe advice for them to follow if they want to keep their licenses. Since a tavern keeper is absolutely responsible for such violations, it is but fair that he be given a correspondingly wide discretion in determining whether or not to sell to any particular person. He who takes the risk must be given the right to decide.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. CHURCHES - CHURCH CLUBS - MAY OBTAIN LICENSES IF DESIRED AND THEY ARE QUALIFIED.

July 27, 1936

Department of Alcoholic Beverage Control,
Newark, N. J.

Dear Sirs:

I would like to have your opinion as to whether the St. Nicholas Ukrainian Catholic Church, in itself, is eligible for

a Club License. They have a club which has never been incorporated and I told them it must have been incorporated for a period of three years in order to get a club license. Now they ask for the license in the name of the church itself and to be under the direction of the Board of Trustees. It seems to me somewhat out of place to issue a liquor license to a church but I would like your view as to the legality of same.

Very truly yours,
HARVEY BARTOW,
Township Clerk.

July 30, 1936

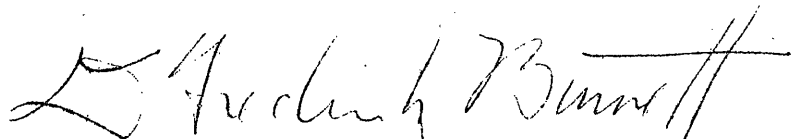
Harvey Bartow,
Clerk of Independence Township.

Dear Mr. Bartow:

It is not necessary that a club be incorporated in order to qualify for a club license. The Control Act, Section 13, sub. 5, provides for the issuance of club licenses to corporations, associations or organizations. You cannot, therefore, insist on incorporation. According to the State rules, all that is required is that the club shall have been in active operation in this State for at least three years continuously immediately prior to the submission of the application and shall have been in exclusive, continuous possession and use of club quarters for the same period of time. See re Wismer, Bulletin #67, Item #10; re Christiansen, Bulletin #102, Item #4, and the Rules Governing the Issuance of Club Licenses, Compiled Rules, Regulations and Instructions, March 1936, Page 25.

If the Church or the club to which you refer is able to qualify in accordance with the statute and the State and local regulations, there is no reason why the Township Committee cannot issue them a license. They stand in the same position as any other applicant. If application is made by the club for the church premises or within two hundred feet thereof, then the protection afforded the church by Section 76 of the Act must first be waived by the duly authorized governing body of the church. If, however, the application is made by the church itself for the church premises or within two hundred feet thereof, the fact that the church itself has made the application may well be said to constitute a waiver and none in addition to the application need be required.

Very truly yours,



Commissioner.