

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 7.

December 26, 1933

#1. I am asked by a municipal official whether a municipality may prohibit Sunday sales of alcoholic beverages under plenary retail consumption licenses and at the same time permit such Sunday sales by plenary retail distribution licensees.

The answer is in the affirmative so far as Sec. 37 of the Control Act is concerned and which obtains until such time as any of the referenda contemplated by the Act shall be adopted by the municipality.

Sec. 37 provides that each municipality "may as regards each respective municipality limit .....the hours between which the sales of alcoholic beverages at retail may be made and regulate the conduct of any business licensed to sell alcoholic beverages at retail".

The proposal constitutes a regulation of the conduct of the business and I rule that you may distinguish between classes of licensees providing that everyone within the same class is treated alike.

This ruling goes merely to the existence of your legal power and not to the expediency or policy of its exercise.

#2 a. Question: "Is it legal or will it be countenanced by you as Commissioner for a President or Member of City Council who owns property occupied as a saloon, or who has an interest in a saloon business, to vote as to who shall be members of such board of control and the fixing of salaries of such board?"

Answer: The answer is unequivocally "No". Anyone who is so financially interested is disqualified. The disqualification exists independent of statute. It is fundamental that no one may be judge in his own case. His judgment in determining the membership of a board which will probably, or even possibly control his own business, or in fixing the salaries for such board must not be warped by financial self-interest.

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#2 b. Question: "In the event that a governing body selects by resolution a board of control and such body acts in the issuance of licenses without the approval of the Mayor, or said body acts despite the fact that the enabling resolutions have been vetoed by the Mayor and said measures have not been passed over the veto, would you consider that body (independent of any other defects which may exist) a capable body to issue licenses for the sale of alcoholic beverages?"

Answer: Your question involves primarily matters of law pertaining to the regulation of the internal affairs of your municipality, and only secondarily concerns the control of the liquor traffic or the enforcement of the Act. The Question should therefore more appropriately be submitted to the City counsel. It is against the policy of this Department to make rulings in cases of this kind.

#3. If your local municipal issuing authority determines that the distance from the licensed premises to the school is 200 feet or more, then no consent is necessary. If within 200 feet then unless consent is given, the municipal board has no right to grant the license. Whether the consent should be given is a matter of policy and discretion for the local school board to decide.

As regards a drug store selling alcoholic beverages for home consumption, the law distinctly provides that it is unlawful so to do except upon condition that the drug store takes out a license just like any other distributor.

#4. The Commissioner was asked:

"Applicant is a holder of a federal license and has filed application together with proper fee with the municipal authorities in Asbury Park which authorities are delaying action.

"Is the applicant permitted to proceed with his business until his application is either accepted or rejected?"

"The applicant is interested in obtaining a license for plenary retail distribution."

The Commissioner ruled as follows:

"Your applicant has no right whatsoever to proceed with business until municipal authorities of Asbury Park actually issue license."

- #5. In re an application to change the address of a licensed premises from the original address licensed to another address, the statute (Sec. 23) requires that the applicant must make an application therefor, setting forth the same matters and things with respect to the premises to which a transfer of license is sought as are required to be set forth in connection with the original application for license.

There must also be published in the newspaper notice of intention to apply for transfer in the same manner as is required in case of original application for license for said premises.

When these requirements have been complied with, the application for change of location should be submitted to the issuing authority together with the actual license certificate itself, so that, if the application is granted, the permission for such change may be endorsed on the original license itself.

It is not sufficient, as some people believe, to merely notify the issuing authority of a change of address. No one has any right to do business at another address unless express permission is granted by the issuing authority.

If permission for change of location is given, the same should be written on the face of the application in this manner: "Permission is hereby given to substitute 123 A Street in (municipality), New Jersey, in place of 234 B Street in (municipality), New Jersey as the location of the licensed premises, subject, however, to all the terms and conditions of this license and subject to the statutory requirements of publication and investigation.

Dated: \_\_\_\_\_."

- #6. A citizen of a certain municipality wrote to the Commissioner protesting against the issuance of certain temporary licenses in that municipality. The Commissioner wrote him as follows:

"All licenses issued between now and February 4th are merely temporary licenses and are issued subject to investigation by the body issuing such licenses. The Control Act provides that all applicants for licenses must properly advertise their intention to apply, in a newspaper circulated in the community where the licensed premises is located. The purpose of this is to allow any citizen to file a protest with the issuing authority of your municipality against the issuance of a license to an improper person or persons. In respect to all licenses issued until February 4th, this advertising may be dispensed with in advance of temporary issuance but must be done before the temporary license is made permanent.

"If you are a taxpayer in the municipality which issued the license, you may ask for a hearing on your protest filed as aforesaid and object if, in your opinion it is improper to issue the permanent license.

"If, on hearing you and your corroborating witnesses, the local issuing authority should, in view of the new situation presented, agree with you that a permanent license should not be issued, then the temporary license may be revoked for good cause even before February 4th. If, however, the local issuing authority, after hearing all objections and after careful reflection, shall adjudge and decide that the permanent license should be granted, they have undoubted authority to do so and in that event all you can do is to appeal to the Board of Alcoholic Beverage Appeals within 30 days in an effort to convince that Board, if you can, that the local issuing authority erred in issuing the license or licenses of which you complain."

#7

December 18, 1933.

Hon. Leo A. Crossen,  
Supervisor of Permits,  
1100 Gimbel Bldg.,  
Philadelphia, Pa.

Dear Sir:

I am much indebted to you for sending as your representative, Mr. Edward C. Dougherty, to untangle with me the apparent impasse between Federal and State authorities re the reciprocal requirement that neither will issue a permit or license to any applicant until he has first qualified under the laws of the other issuing authority.

We have arrived at a very simple solution, now submitted herewith for your approval, viz.:

1st: There shall be filed with me an application for a State distiller's or rectifier's license.

2nd: My Department will then determine whether or not the particular applicant is qualified to engage in the particular business in all respects except the production of the Federal permit, license and/or stamps.

3rd: If so, I will then certify that fact to you but will withhold the actual issuance of the license.

4th: Such certification will enable you to determine that the applicant is "qualified under the State laws to engage in that business" in accordance with General Circular No. 147, dated December 13, 1933, of the Bureau of Industrial Alcohol, Treasury Department, signed by D. S. Bliss, Commissioner of Industrial Alcohol, and approved by Guy T. Helvering, Commissioner of Internal Revenue, and Joseph H. Choate, Jr., Director, Federal Alcohol Control Administration.

5th: The next step will be for you to notify the Collector of Internal Revenue that the party is entitled, upon payment of the tax, to the issuance of such special and other tax stamps as you may decide.

6th: Thereupon, when the applicant presents to me the necessary Federal license, permit and/or stamps, the State license (withheld as aforesaid) will be promptly issued and if you choose, I will so certify the fact to you to complete your records.

While this procedure has been evolved on the assumption that the applicant will take the first step in my office, that is not necessarily true, for there is nothing to prevent him making application for the Federal permit in the first instance to you or the Federal Alcohol Control Administration. But wherever or whatever the initial steps may be, the eventual objective and procedure will be substantially along the lines indicated.

If this meets with your approval I will be very glad to cooperate in every respect, not only with the Commissioner of Industrial Alcohol, but also with the Commissioner of Internal Revenue and the Director of the Federal Alcohol Control Administration to whom I shall forward copies of this letter by even mail.

Thank you.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

Telegraphic Reply:

Philadelphia, Pa.  
December 20, 1933

Mr. D. Frederick Burnett,  
Commissioner of Alcoholic Beverage Control,  
744 Broad Street,  
Newark, N. J.

Confirming our letter yesterday "reference your letter yesterday I believe that the procedure suggested is entirely satisfactory stop please accept my thanks for your cooperation in this matter".

Acting Supervisor HUNSBERGER

#8.

December 16, 1933.

James Clark Distilling Corporation,  
26 Exchange Place,  
Jersey City, N. J.

Gentlemen:

I have your request for ruling as to whether you, to whom has been issued Rectifier and Blender's

License No. 12, may under such license draw off alcoholic beverages from bulk into 1, 1½ and 2 liquid ounce bottles commonly called "Nips".

The gist of the purposed process is rebottling.

The Control Act permits the holder of a Rectifier and Blender's License "to rectify, blend, treat and mix distilled alcoholic beverages".

To rectify is to refine or purify especially by a process of repeated or fractional distillation.

To blend is to mix or mingle different grades, varieties or brands whether for purposes of adulteration or to produce a certain flavor or bouquet.

To treat is to manipulate; to subject to some action or process.

To mix is to combine; to form by mingling; to produce or prepare by the stirring together of ingredients; to cause a promiscuous interpenetration of the parts of two or more alcoholic beverages with each other; to unite into one combine.

None of the types of licenses provided for by the Control Act expressly cover or mention the right to re-bottle. The right to refine, to mix, to manipulate, and to combine alcoholic beverages is in its nature a greater privilege than the mere right to bottle or rebottle which is after all merely an incident or implied power derived from the main powers granted by the Act.

The statute itself contemplates legitimate rebottling because it expressly provides, Section 78, that "Any person, except a person holding a brewery, distillery, winery or rectifier's license under this act, who shall bottle alcoholic beverages for sale or resale shall be guilty of a misdemeanor and punished accordingly".

It is therefore ruled that any licensee holding a state brewery, distillery, winery or rectifier's license has the right to bottle or rebottle alcoholic beverages for sale or resale.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

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