STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 67 March 29, 1935

1. LICENSES - EXTENSION - NONE NECESSARY WHERE LICENSEE IS CONTINUED IN POSSESSION AND NO TRUSTEE IS APPOINTED UNDER SECTION 77B OF THE FEDERAL BANKRUPTCY ACT

IN THE MATTER OF KUEBLER BREWING COMPANY, INC. } ON HEARING CONCLUSIONS

Appearances:

For the Department, Jerome B. McKenna, Esq.
For Kuebler Brewing Company, Inc., Frederick M. P. Pearse, Esq.

BY THE COMMISSIONER:

Kuebler Brewing Company, Inc. caused to be served upon the State Commissioner of Alcoholic Beverage Control a written notice in accordance with Section 31 of the Alcoholic Beverage Control Act, which requires that whenever any change shall occur in the facts set forth in any application for license, the licensee shall file a notice in writing of such change. The notice set forth that Kuebler Brewing Company, Inc., under the Bankruptcy Act of the United States as amended and supplemented, had filed a petition in the District Court of the United States for the Eastern District of Pennsylvania praying that said court assume jurisdiction of petitioner and continue the debtor in possession of its property and assets, with full power to continue and operate its business as provided in Section 77B of the aforementioned Act; that an order had been entered by said court approving the petition and assuming exclusive jurisdiction over the debtor and its property; that a second order had been entered continuing the debtor in possession of its property.

The first order, dated September 20, 1934, provided that the officers and directors of the debtor, pending further order of the court and subject to its control and direction, continue in possession of its property with full power and authority to continue and operate its business; that notice be given all creditors and stockholders of a hearing on October 10, 1934 at which time the advisability of continuing the officers and directors of said debtor in possession or of appointing a trustee or trustees should be determined.

The second order, dated October 10, 1934, directed, among others, that the debtor continue in possession of its property and operate its business in the usual and regular course, subject to control and order of said court.

This notice gave rise to the question of the necessity of securing from the Commissioner of an extension of the original license granted to the Kuebler Brewing Company, Inc. under Section 23 of the Alcoholic Beverage Control Act of New Jersey, which provides that licenses are not transferable except that "In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation

of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the commissioner.....may, in his.....discretion, extend said license."

Section 77B of the Federal Bankruptcy Act of July 1, 1898, as amended on June 7, 1934, provides in cases of corporate reorganizations that the Judge may continue the debtor in possession or appoint a Trustee, and in Subdivision C, Paragraph 11, declares:

> ".....In case a trustee is not appointed, the debtor shall continue in the possession of its property, and, if authorized by the judge, shall operate the business thereof during such period, fixed or indefinite, as the judge may from time to time prescribe, and shall have all the title to and shall exercise, consistently with the provisions of this section, all the powers of a trustee appointed pursuant to this section, subject at all times to the control of the judge, and to such limitations, restrictions, terms, and conditions as the judge may from time to time impose and prescribe. While the debtor is in possession (a) its officers shall be entitled to receive only such reasonable compensation as the judge shall from time to time approve, and (b) no person shall be elected or appointed to any office, to fill a vacancy or otherwise, without the prior approval of the judge."

I am of opinion that where the debtor is continued in possession there is no devolution of title by operation of law or otherwise. While the corporate debtor is deprived of certain powers which it would ordinarily have over its own property, there is no change in the title to its assets. It is the same debtor--the same licensee. To say that the debtor continuing in possession is somewhat of a quasi trustee toward its creditors and stockholders is merely pointing out an analogy to illustrate the nature of its duties. So when the Court of Chancery treats a wrongdoer as a constructive trustee, that does not affect or change the legal title but is the mere name or label of the mechanics through which the court works out its equities. To say that a refusal to appoint a trustee in bankruptcy is the same thing in legal effect on title as appointing a trustee is dispositive of the contention.

There is no devolution of title at all. Hence no extension is necessary.

D. FREDERICK BURNETT,
Commissioner

Dated: March 25, 1935

2. PROPOSED RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - REASONS

March 25, 1935

Slavitt & Slavitt,
17 Academy Street,
Newark, N. J.

Gentlemen:

I have your letter protesting on behalf of the Sign

Manufacturers Association against the banning of outdoor electric signs on the ground that it would be detrimental to their business and constitute a hardship.

The proposed regulations do not ban outdoor signs. They do provide that no signs bearing the name, brand or trademark of the manufacturer or wholesaler shall be displayed on the exterior of the licensed premises (Regulation #2), and that no signs costing more than $100 shall be "donated" by the manufacturer to the retailer (Regulation #1). These restrictions are designed to aid in the elimination of brewery controlled saloons and to curb the evils of brewery competition for retail trade before abuses develop.

When sign regulations were first under consideration by this Department, an open meeting was held and attended by representatives of all the industries affected, including the sign industry. At that time, it was pointed out that our foremost desire was to effect control and our foremost consideration was the public interest. It was further pointed out that any regulation must necessarily involve some restriction upon the sign industry. When the proposed sign regulations were drafted, the effort was to accomplish control with the least discomfort to the sign industry as well as to other industries affected. I firmly believe that they do not in any respect unnecessarily restrict the sign industry. Regulation #1 is no more restrictive than the provisions of the Code already in force. Regulation #2 has already been referred to. Regulation #3 relates solely to the advertising of prices in windows of licensed premises and has no relation to outdoor electrical signs in which you are interested. Regulations 4, 5 and 6 are administrative regulations which are entirely foreign to your business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

3. MUNICIPAL ORDINANCES - JAG LIST - WHEN NOT APPROVED - HEREIN OF MARITAL COMPLAINTS

March 25, 1935

William A. Rodgers, Borough Clerk,
Matawan, New Jersey.

Dear Sir:-

I note the interesting provisions of Section C (8) of your municipal resolution reading:

"(8) The police department of the boro shall keep a record of those arrested and convicted of being drunk within the boro. Anyone who has been so found on two occasions within one year shall be immediately placed on a list to be known as the Jag List. Married people whose respective spouses have justifiably complained twice about them to the boro authorities shall also be placed upon said list without further proceedings. A name once placed upon said list shall remain for two years from date thereof but said

name shall not be removed therefrom until two years have elapsed from date of last arrest and conviction or complaint of spouse. No person whose name appears on said list shall be sold by any licensee nor be permitted in any place licensed to sell for consumption on the premises.

"Any deviation, violation, or non-conformance by any licensee regardless of any intent so to do or any other extenuating circumstances, shall be sufficient cause to revoke said license, and upon such revocation, no part of any license fee shall be returned or repaid to said license."

While a Jag List may have effective merit as a temperance measure, I cannot approve your resolution as written. No person is charged with the custody or the correctness of the list. No provision is made for service of the list upon the licensees or of the names which from time to time shall be added thereto. No provision is made for removing names placed on the list by mistake or otherwise in error - in fact your section rigidly requires that a name once placed thereon must remain for two years and cannot be removed.

If these and other matters of common fairness are carefully thought out and resubmitted, I will consider the subject matter again, but as it stands, I cannot approve it because the section is entirely too arbitrary and unfair.

In any event, the inclusion on the Jag List of married persons, merely because some complaint has twice been made against them by their respective but unrespecting spouses will have to come out. Fortunately, it is not the function of this Department to pass on the justification of marital complaints. Jurisdiction over this controversial field is disclaimed at the threshold.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

4. LICENSES - SURRENDER - LICENSE EFFECTIVELY SURRENDERED MAY NOT BE RE-ISSUED

March 8, 1935

Joseph Frederick Bratt, Esq.,
Counsellor at Law,
Westwood, N. J.

Dear Sir:-

I have your letter of February 23d, inquiring whether a surrender may be withdrawn and a license re-issued after it has been effectively surrendered and refund made to the licensee. The answer to your inquiry is in the negative.

Upon the effective surrender of a license pursuant to section 28 of the Control Act, all rights of the licensee there-

to cease. The Control Act contains no provision sanctioning the reissuance of a license after its voluntary surrender and no such power may properly be implied.

The Commissioner's ruling in Bulletin #47, Item #10, on an analogous question supports the conclusion that once a license has been effectively surrendered no power exists in the issuing authority to permit the withdrawal of a surrender and the re-issuance of a surrendered license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

5. LICENSES - ISSUANCE IN NAME OTHER THAN ORIGINAL APPLICANT - AMOUNT OF REFUND

March 11, 1935

Liggett Drug Company, Inc.,
#2 Park Avenue,
New York City.

Gentlemen:

I have considered your inquiry with respect to the amount payable to you by way of refund in connection with temporary licenses #70 and #75, issued to the estate of Louis K. Liggett Company, Bankrupt.

Under the Commissioner's ruling in Bulletin #16, Item #6, the licenses ultimately issued to Liggett Drug Company, Inc. must be considered as being entirely distinct from the applications filed by the bankrupt company and the temporary licenses issued thereon. Consequently, the situation must be treated as one in which the original application filed by the bankrupt company was withdrawn or, in effect, denied. See Bulletin #57, Item #12. Upon the denial of an application after the issuance of a temporary license, the municipality should deduct 10% of the license fee, plus an earned fee representing the period during which the applicant operated under the temporary license. See Bulletin #11, Item #4.

Your letter advances the contention that the applicant was entirely without fault and therefore should not be subjected to the statutory investigation fee of 10%. It can hardly be said that the denial was in no wise the fault of the applicant in view of the fact that although the original application was in the name of the bankrupt corporation, the license was ultimately sought by and issued to Liggett Drug Company, Inc., a legal entity, distinct in legal contemplation from the bankrupt corporation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

6. REFUNDS - RELEASES FROM TAX DEPARTMENT AND MUNICIPALITY - WHEN REQUIRED

March 12, 1935

Hon. Palmer M. Way,
Judge, Court of Common Pleas,
Cape May County, N. J.

Dear Sir:-

(1) When, by error, a sum in excess of the license fee accompanies the application, the applicant is entitled to a return of the excess. (See Bulletin #46, Item #7.) In view of the fact that the excess amount was not part of the license fee which properly accompanied the application under the provisions of the Control Act, releases from the Tax Department and any municipality may not be required as a condition precedent to the return of such excess.

(2) Section 28 of the Control Act provides that where a license has been surrendered, a refund may be made provided, among other things, "that all taxes and other setoffs or counterclaims which shall have accrued and shall have become due and payable to the State of New Jersey and/or any municipality have been paid". In view of this provision it is necessary that releases from the State and municipality be obtained before a refund is made pursuant to a voluntary surrender of a license.

(3) The act contains no express provision authorizing the retention of any portion of the amount deposited, except the 10% statutory investigation fee where an application is denied or withdrawn which, in effect, constitutes a denial. See Bulletin #57, Item #12. No regulation requiring releases in such instance has been promulgated and consequently they are not presently required.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

7. REVOCATION - NO AUTHORITY TO IMPOSE FINE IN REVOCATION PROCEEDINGS

March 14, 1935

A. D. Glass, Esq.,
Borough Attorney,
Carteret, N. J.

Dear Sir:-

I have your letter of March 12th.

Section 28 of the Control Act provides that an issuing authority may revoke or suspend a license for various causes therein set forth after hearing duly held thereon. There is no

provision authorizing the issuing authority to impose a fine in lieu of suspension or revocation and no such power may be implied in the absence thereof.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

8. LIMITED DISTILLERY LICENSE - PURCHASE OF APPLE BRANDY BY LIMITED DISTILLERY LICENSEE FOR PURPOSE OF BOTTLING AND RESALE PERMITTED

March 16, 1935

New Jersey Distillers,
#110 Pennington St.,
Newark, N. J.

Gentlemen:

I have your letter of March 11th.

Section 11 (3)b of the Control Act provides that the holder of a limited distillery license may manufacture, in a quantity dependent upon the fee paid and expressed in the license, alcoholic beverages distilled from fruit juices and rectify, blend, treat, mix and distribute his products to wholesalers and retailers.

In Bulletin #50, Item #9, the Commissioner ruled that the holder of a limited distillery license may not purchase alcoholic beverages for the mere purpose of resale, since this would not constitute selling "his products", but would be a wholesale transaction. This ruling does not apply to a situation where the holder of a limited distillery license seeks to purchase alcoholic beverages distilled from fruit juices and either bottle or rebottle the same directly for resale or mix the same with beverages distilled by it. In such cases the resulting articles are "his products". Such conduct is permitted under the principles set forth in the Commissioner's rulings in Bulletin #55, Items #4 and #5.

All of the foregoing activity must be within the provisio of your license limiting the amount which you may manufacture and sell to 10,000 gallons per year. Consequently, if you purchase 1000 gallons of alcoholic beverages distilled from fruit juices and mix or bottle the same for resale, you may only manufacture and sell 9000 gallons in addition thereto. If the amount thus purchased is increased, the remaining amount which you may manufacture and sell is correspondingly decreased.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

9. RULES GOVERNING CONDUCT OF LICENSEES - ELECTIONS - SALES DURING SPECIAL ELECTION FOR MUNICIPAL MANAGER PLAN PROHIBITED

March 16, 1935

Mr. William J. Connor,
Chairman, Good Government League,
Trenton, N. J.

Dear Sir:

I have your inquiry of March 15th.

Rule #2 of the rules governing the conduct of licensees and the use of licensed premises, promulgated by the Commissioner on October 8, 1934, provides as follows:

> "2. No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

The Muncipal Manager Form of Government Act (P. L. 1923, c. 113) provides that upon the filing of a proper petition with the municipal clerk, he shall forthwith call an election, which is referred to therein as a special election. It is clear that sales during such an election come within the prohibition of the above quoted rule.

Accordingly, no sales of alcoholic beverages at retail may be made in Trenton while the polls are open for voting at the special election for adoption of the Municipal Manager Plan, to be held on Tuesday, March 19th.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

10. CLUB LICENSES - RULES GOVERNING CLUB LICENSES - INCORPORATION OF CLUB NOT ESSENTIAL - CHANGE OF NAME DOES NOT NECESSARILY INTERRUPT CONTINUOUS NATURE OF CLUB

March 21, 1935

Harvey G. Wisnur, Esq.,
Town Clerk,
Phillipsburg, N. J.

Dear Sir:

I have your letter of March 18th.

The rules and regulations governing club licenses provide that club licenses shall be issued only to bona fide clubs and that no such license shall be issued to any club unless it shall have been in active operation in the State of New Jersey

for at least three years continuously and shall have been in exclusive, continuous possession and use of a club house or club quarters for the same period of time.

It is not essential that the club possess a certificate of incorporation and consequently, the fact that it obtained a certificate of incorporation less than three years prior to the application is not a disqualification. Furthermore, where a bona fide club has been in existence and in possession of club quarters for three years as required by the Commissioner's rules, it is eligible for a license even though it changed its name during such three year period. It is, of course, incumbent upon the municipal issuing authority to determine that the change was merely a change of name and not a dissolution of a club and the creation of a new club, some of whose members were likewise members of the old club. In this connection, you might refer to the decision of the Commissioner in Ninth Ward Italian Social Club vs. Trenton, Bulletin #54, Item #10, where, under the particular facts there involved, the Commissioner reached the conclusion that the applicant was a new club, not in fact identical with that in existence previous to the alleged change of name.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

11. BREWERY LICENSE - PURCHASE OF BEER BY BREWERY LICENSEE FOR PURPOSE OF BOTTLING AND RESALE PERMITTED

March 26, 1935

Julius Rosenberg, Esq.,
#23 Broadway,
Camden, N. J.

Dear Sir:

I have considered your inquiry as to whether a licensed brewery may purchase beer from another brewery, bottle it and sell the resulting product.

Section 11 of the Control Act provides that the holder of a brewery license is entitled to brew malt alcoholic beverages and to distribute and sell "his products" to wholesalers and retailers licensed pursuant to the act. Under the Commissioner's ruling in Bulletin #50, Item #9, a licensed brewery is not permitted to purchase beer for the mere purpose of resale since this would not constitute selling "his products" but would be a wholesale transaction. Where, however, a licensed brewery purchases beer and bottles same, the resulting product is "his product" within the principles set forth in the Commissioner's rulings in Bulletin #55, Items #4 and #5, and consequently such conduct is permitted.

Accordingly, it is the ruling of the Commissioner that a

licensed brewery may purchase beer, bottle same and sell the resulting product.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

12. LICENSEE - OWNERSHIP OF LICENSED BUSINESS - LICENSEE MUST BE ACTUAL OWNER

March 26, 1935

H. C. Scudder, Esq.,
#143 East State St.,
Trenton, N. J.

Dear Sir:

I have your letter of March 20th.

There is no present requirement that a licensee personally conduct the licensed business. He may entrust the management of such business to another, although full responsibility for the proper conduct of the business still remains with the licensee. See Bulletin #49, Item #4. The business, however, must be actually owned by the licensee. Evasions will not be tolerated.

Under section 32, the issuing authority is empowered to make investigations into the conduct of the licensed business, including an examination of its books. Where it is suspected that a person, purporting to be an employee and not the owner, is really the owner, an investigation of the books and records of the licensed business should be conducted and if sufficient evidence is obtained, justifying the conclusion that the licensee is not the real owner of the business, revocation proceedings should be instituted by the issuing authority pursuant to section 28 of the Control Act. In addition, a report of the matter should be transmitted to this Department so that proper steps may be taken towards the institution of such criminal proceedings as the facts may warrant.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

13. REFUNDS - WITHDRAWAL OF APPLICATION - LOSS OF INTEREST IN PREMISES AFTER REVERSAL BY COMMISSIONER BUT BEFORE ISSUANCE OF LICENSE REQUIRES DENIAL OF APPLICATION AND REFUND OF 90% OF DEPOSIT

March 27, 1935

Meyer L. Sakin, Esq.,
#515 Market Street,
Camden, N. J.

Dear Sir:

I have your letter of March 14th.

The Commissioner has ruled (Bulletin #57, Item #12) that the withdrawal of an application is in effect a denial thereof. Under section 22 of the Control Act the issuing authority is required, upon the denial of an application, to retain 10% of the deposit accompanying the application as an investigation fee.

The statute contains no exception with respect to the 10% investigation fee and the situation presented does not warrant any construction thereof relieving the applicant therefrom. After the denial of the application, an appeal was taken to the Commissioner and at the hearing thereon the action of the municipal issuing authority was reversed. Thereafter, but before the issuance of any license, appellant, having lost his interest in the premises sought to be licensed, desires to withdraw his application.

A municipal issuing authority must, in the first instance, exercise its own judgment as to whether an application should be granted or denied. Where the applicant considers himself aggrieved by denial, he may appeal to the Commissioner. Pending such appeal, however, he must retain his interest in the premises sought to be licensed, else the appeal becomes moot. See Bulletin #28, Item #6. Furthermore, if his interest is terminated even after a favorable decision on appeal, but before actual issuance of the license, no license may issue. The applicant's loss of interest in the premises sought to be licensed cannot be said to be the legally proximate result of the original denial of the application.

It is the ruling of the Commissioner that where an appellant prevails on appeal, but loses his interest in the licensed premises before the issuance of a license, his application must be denied and 90% of the deposit accompanying the application must be returned. See Bulletin #59, Item #5.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

14. MILITARY RESERVATIONS - WHOLESALE LICENSEE MAY SELL TO CAMP EXCHANGES PURCHASING BEVERAGES FOR RESALE UNDER SECTION 24 PROVIDING TAXES ARE DULY PAID

Dear Sir:

Our company has in the past been selling merchandise to Federal Reservations within the state, and have not charged the State Tax, as we were advised by the Tax Department that beverages sold to State Reservations could be shipped without the State Tax being charged.

However, today, we received a copy of a letter written to Lt. Commander Rosendahl, of the U. S. Naval Station in Lakehurst, in which the commissioner of the State Tax Department advises that State Reservations can purchase beverages only from holders of Manufacturers' or export wholesalers' licenses, and only these two licensees would be allowed exemptions.

Because we have never shipped merchandise out of the State of New Jersey, we wonder whether it would not be within our jurisdiction to continue shipping to Federal Reservations.

Very truly yours,
GALSWORTHY, Inc.

March 27, 1935

Galsworthy, Inc.,
#730 Frelinghuysen Ave.,
Newark, N. J.

Gentlemen:

Under the provisions of section 24, no license is required in connection with the retail sale of alcoholic beverages for consumption on the premises when sold at an exchange duly organized under the regulations of the United States Army or Navy. In connection with their purchases and sales under the authority of the foregoing section, such exchanges stand in the position of retailers. Consequently, they may purchase such alcoholic beverages from licensed wholesalers and manufacturers.

The Tax Department has ruled that for purposes of tax exemption sales to Federal reservations located within New Jersey will be treated as though they were without the boundaries of New Jersey and that consequently when such sales are made by export wholesale licensees they will be tax exempt. This ruling pertains only to tax exemption and does not in any wise limit the authority of plenary wholesale licensees to sell alcoholic beverages, on which taxes are duly paid, to exchanges located in New Jersey purchasing such beverages for resale pursuant to section 24.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

15. PRINTING OF NOTICE OF INTENTION - LEGAL NEWSPAPERS - PUBLICATION AND CIRCULATION

February 25, 1935

Dear Sir:

Many thanks for your favor of February fifth interpreting the word "published". Will you kindly advise me if my understanding is clear with reference to your opinion.

As I construe it, you hold that irrespective of where a newspaper may be printed, provided it complies with the requirements as to age of publication and being printed in the English language, that said newspaper would be eligible to receive the advertising of Notice of Intention for the particular municipality in which it is first issued to the public. Would this prohibit The Jersey Journal from receiving the advertising of Notice of Intention from license applicants in the City of Bayonne, in which city we have a branch office from which branch we issue newspapers to Bayonne residents, although the Bayonne Times is printed and published in the City of Bayonne and we believe has the largest circulation in the City of Bayonne proper?

Yours respectfully,
THE EVENING JOURNAL ASSOCIATION
WALTER M. DEAR
Treasurer

March 8, 1935

Walter M. Dear, Esq.,
The Jersey Journal,
Jersey City, N. J.

Dear Sir:-

I have your letter of February 25th.

As I stated in my last letter to you (Bulletin 63, item 7), the courts have defined the word "published" to mean the place where the paper was first issued to the public. As I understand the material facts, the Jersey Journal is published in Jersey City and would not be published in Bayonne within the meaning of the decided cases. The existence of a branch office in Bayonne does not alter the fact that the newspaper is first issued in Jersey City to the public. Any contrary conclusion would nullify the legislative purpose in requiring that the notice of intention be inserted in a newspaper published where the premises sought to be licensed are located.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

16. PUBLICATION OF NOTICE OF INTENTION - LEGAL NEWSPAPER - TRADE NEWSPAPER - PAID CIRCULATION

Dear Mr. Burnett:

The time is rapidly approaching when it will be necessary for retail and wholesale liquor dealers to file notice of intention to renew their licenses.

I have been informed that last year you issued an order to the effect that these notices could not be published in newspapers printed in foreign languages, the intent of this being to give the widest possible circulation to the publication of these notices.

I am wondering whether or not you have ever made any ruling in connection with the publication of these notices in newspapers which are printed for free distribution and have no regular paid subscribers. My thought in writing to you concerning this is that there is such a newspaper being published weekly at Paterson by striking printers, and also by silk dyers, and the probabilities are that these papers will attempt to induce certain people to publish their notices in these papers.

Most sincerely yours,
HARRY B. HAINES
Publisher

March 27, 1935

Mr. Harry B. Haines,
Publisher, Paterson Evening News,
Paterson, N. J.

Dear Sir:-

Section 22 of the Control Act provides that notice of intention shall be inserted in a newspaper printed in the English language and published and circulated in the municipality in which the premises sought to be licensed are located. Although the Control Act is silent on the matter, the Commissioner has ruled that the notice of intention must be published in a newspaper designated by the legislature as qualified to publish legal advertisements. See Bulletin #35, Item #2. Under our statute only newspapers which have been published for at least one year are qualified to publish legal advertisements. See 3 C.S. p. 3764. A newspaper need not be published daily; a weekly publication will suffice. See Bulletin #11, Item #1.

Where a newspaper has no paid circulation and is not published at regular intervals, it will not qualify for the publication of notices of intention. Cf. 20 R.C.L. 202. Whether a newspaper circulating principally among a particular trade is qualified to publish notices of intention is not, however, properly the subject of such general determination. The fact that a newspaper is devoted primarily to news which will interest a particular trade, will not disqualify it from publishing notices of intention if, in addition to such special news, it also publishes news of a general character. Cf. In Re Labor Journal, 213 Pac. 498 (Cal. 1923). The conclusion may well be otherwise if the newspaper contains no substantial news of a general character. Cf. Continental Life Insurance Co. vs. Mahoney, 49 S. W. (2d) 371, 373 (Ark. 1932); State vs. Rose, 114 So. 373, 374 (Fla. 1927). In the Mahoney case, the court said:

> "The primary purpose for the printing of legal advertisements and notices of sale of property under orders of a court is to give to the notice the widest publicity practicable. Therefore, the definition of a newspaper, within the meaning of the statute is to be taken in its popular sense, which is one to which the general public would resort in order to be informed of the news and intelligence of the day and which is published at stated intervals and carries reports of those happenings of general interest to the ordinary individual."

Each case must be decided by the issuing authority on its own particular facts on the basis of the foregoing principles and bearing in mind that the legislature contemplated that notices of intention shall be published in such manner that they will be likely to reach persons interested in and affected by the respective applications for licenses.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

17. TURPITUDE - WHAT CONSTITUTES - CONVICTION UNDER NATIONAL PROHIBITION LAW

Dear Sir:

Having been convicted of a violation of the Eighteenth Amendment -------, 1924 and been sentenced to one day in the custody of the U. S. Deputy Marshal by Justice Bodine, Federal Court, Trenton, N. J., I now address you regarding my status. I am desirous of opening a tap room but do not know whether I am eligible to a license because of the above. Same is the only time I have violated the law.

Kindly give me a ruling.

March 29, 1935

Dear Sir:-

Section 22 of the Control Act provides that no retail license of any class shall be issued to any person convicted of a crime involving moral turpitude. The courts have generally defined a crime involving moral turpitude as something immoral in itself regardless of the fact that it is punished by law. There is no hard and fast rule as to what constitutes moral turpitude. It cannot be measured by the nature or character of the offense, unless, of course, it be an offense inherently criminal, the very commission of which implies a base and depraved nature. The circumstances attendant upon the commission of the offense usually furnish the best guide.

I believe, and have therefore ruled that a single violation of the former national prohibition law, unless accompanied by aggravating circumstances, does not constitute moral turpitude. It is, however, impossible to pass upon any given case without knowing whether there were any aggravating circumstances connected with the violation.

Whether, in the light of the foregoing, an applicant for a license is personally qualified must be determined in the first instance by the issuing authority to whom the application is made. If the application be for a retail license the issuing authority will be the local issuing authority and not the State Department. The determination of such local issuing authority can be reviewed by me only by virtue of an appeal. I cannot, therefore, at this time express any opinion upon the particular facts of your case.

Very truly yours,

D. Frederick Burnett
Commissioner