

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 44.

August 15, 1934.

1. APPELLATE DECISIONS - DANKER VS. SCOTCH PLAINS

AUGUST DANKER,)
Appellant)
vs.) ON APPEAL
TOWNSHIP COMMITTEE OF) CONCLUSIONS
THE TOWNSHIP OF SCOTCH)
PLAINS (UNION COUNTY),)
Respondent)

John Winans, Esq., Attorney for Appellant.

Hon. Walter L. Hetfield, Jr., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant held a plenary retail consumption license for the period expiring June 30, 1934. His application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied (1) because appellant had sold alcoholic beverages during prohibited hours in violation of respondent's resolution and had been convicted therefor and (2) because appellant had unlawfully possessed and permitted the operation of a slot machine on the licensed premises.

Appellant's convictions for selling alcoholic beverages during prohibited hours are now awaiting determination by the Supreme Court on certiorari. Respondent admits that it issued licenses to others who plead guilty to similar charges. Whether, under the circumstances, appellant's convictions were sufficient justification for a denial of the application need not be determined.

Appellant admitted that during April, 1934, he possessed a slot machine upon the licensed premises. Although he denied that the machine was ever operated testimony was introduced to establish the contrary. On April 8, 1934, special police officers, in the course of an inspection of licensed premises, visited appellant's place of business. While there they operated the slot machine with the assistance of appellant's bartender. Although appellant was in the room he voiced no objection at the time the machine was operated. The machine was then confiscated and taken to police headquarters where it was found to contain \$21.50.

In Moss and Convery v. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #29, Item #12, a denial of an application was sustained on the ground that the applicant unlawfully possessed and permitted the operation of a slot machine upon the licensed premises. In the course of his opinion the Commissioner said:

"Our courts have repeatedly stated that maintenance of slot machines is unlawful and against public policy, Pure Mint Co. vs. La Barre, 96 N. J. Eq. 186 (Ch. 1924); Zaft vs. Milton, 96 N. J. Eq. 576 (Ch. 1934). Indeed, our statutes provide that the possession of any slot machine which may be used for the purpose of playing for money or other valuable thing is a misdemeanor, 2 C. S. p. 1766; Burgess vs. Drewen, 8 N. J. Misc. 179 (Sup. Ct. 1930).

Authority to dispense alcoholic beverages has at all times been recognized as a privilege, as distinguished from a right, which the issuing authority may deny for just cause. A determination by municipal issuing authority that just cause exists for the denial of an application should, on appeal, be given considerable weight.

It is admitted that prior to April, 1934, appellant together with the remaining licensees had been advised by the respondent that it would not sanction slot machines on licensed premises. Respondent has uniformly applied its policy and recently instituted revocation proceedings against the only licensee believed to have been in possession of a slot machine.

Appellant's violation of law by the possession and maintenance of a slot machine upon the licensed premises was sufficient warrant for respondent's determination that the public interest required a denial of the application.

The action of the respondent is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 9, 1934.

2. APPELLATE DECISIONS - BERKELHAMMER VS. TRENTON

ISIDOR BERKELHAMMER,)	
Appellant,)	
vs.	)	ON APPEAL
	)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF TRENTON,)	
Respondent.)	
-----))	

I. Herbert Levy, Esq., Attorney for Appellant.

Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory, and unreasonable.

Respondent further contends that the application was properly denied because no proof of publication was furnished in time. The evidence established that the delay in furnishing the proof of publication was not the fault of the appellant and that respondent knew, when it denied the application, that notice of intention had been duly published. The evidence further established that the actual reason for the denial of the application was the numerical limitation and that the delay in furnishing the proof of publication in nowise contributed thereto.

The requirement of a formal proof of publication is not contained in the Control Act but is found in regulations promulgated by the Commissioner to facilitate the issuance of licenses. See Bulletin #32, Item #10. Generally non-compliance with such regulations will justify denial of an application. Where, however, as here, respondent knew that publication had been duly made and the denial resulted from an improper application to appellant of a numerical limitation it will not be permitted to assert, as an afterthought, that the denial should be sustained because of the formal omission.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: Aug. 9, 1934.

3. APPELLATE DECISIONS - BRAUNSTEIN VS. BRIDGETON

JACOB BRAUNSTEIN,)
 Appellant,)
 vs.) ON APPEAL
 CITY COUNCIL OF THE CITY OF) CONCLUSIONS
 BRIDGETON (CUMBERLAND COUNTY),)
 Respondent.)
 -----)

William C. Egan, Esc., Attorney for Appellant.

Samuel Iredell, Esc., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant applied for a plenary retail consumption license for the period commencing July 1, 1934, for premises located at 84 Cohansey Street, Bridgeton, New Jersey. The application was denied and an appeal duly filed. The appellant complied with all the formal requirements pertaining to his application. His character and fitness and the suitability of the premises are unquestioned.

The respondent asserts that the application was properly denied because of a resolution limiting the number of plenary retail consumption licenses to six, and the issuance of the allotted number. Although the limitation is subject to appeal, it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. See Ryman vs. Branchburg Township Committee, Bulletin #37, Item #18.

The appellant established that he had applied for a plenary retail consumption license for the period expiring June 30, 1934. His application was denied and an appeal was duly taken from the denial. Under date of June 29, 1934, the action of the respondent in denying the appellant's application was reversed.

On June 16, 1934, the appellant filed an application for a plenary retail consumption license for the year beginning July 1, 1934. On June 19th, appellant's application together with six others which were filed were considered by the respondent. The method used by the respondent in selecting the applications to be granted within the six, was not explained by the respondent. Five of the six licenses were granted to persons holding licenses for the term expiring June 30, 1934. The sixth license was issued to Salvatore Di Buono, who had previously been denied a license. The denial was upheld on appeal by the Commissioner of Alcoholic Beverage Control. His license was issued even though the notice of intention was published on the 12th day of June and the 18th day of June, only six days apart.

All the foregoing would seem to establish beyond a doubt that the limitation of six in its application to the appellant was unreasonable. After respondent was directed by order of the Commissioner to issue a license to the appellant, his position was that of a prior licensee as

of the date of his original application, and as such, was entitled to the same privileges and consideration as were the licensees who obtained their licenses originally from the respondent. The mere fact that at the time his application for the present period was acted upon by the respondent, he had not received his license, cannot deprive him of this right, inasmuch as the failure to have such a license was adjudged to have been the fault of the respondent.

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

D. FREDERICK BURNETT,
Commissioner

Dated: Aug. 9, 1934.

4. APPELLATE DECISIONS - MEYERS VS. CRANFORD

LENA MEYERS,)	
Appellant)	
vs.	)	ON APPEAL
TOWNSHIP COMMITTEE OF	)	CONCLUSIONS
THE TOWNSHIP OF CRANFORD)	
(UNION COUNTY),)	
Respondent.)	

Nicholas A. Tomasulo, Esq., Attorney for Appellant

Carl H. Warsinski, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at 415-417 Centennial Avenue, Cranford, New Jersey. The application was denied, and an appeal duly filed.

Respondent asserts that the denial of the application was justified because of the improper manner in which appellant conducted her business.

In April, 1934, she pleaded guilty to possession of a slot machine upon the licensed premises. In June, 1934, she was arrested for possessing a still thereon in violation of the Control Act, and is now on bail. One Charles Buffano, an oft-convicted criminal, lives with appellant in her apartment and frequents the licensed premises without objection of appellant. In May, 1934, said Buffano was arrested, charged with assault with intent to kill, a shooting having occurred in front of the licensed premises as the culmination of an affray originating therein.

Enough has been shown to justify the respondent in its denial of the application, because of the past conduct of appellant. Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #29, Item #12; Silver Grille, Inc. Bulletin #37, Item #5.

The action of the respondent Board is therefore affirmed.

Dated: Aug. 10, 1934. D. FREDERICK BURNETT, Commissioner

5. APPELLATE DECISIONS - CENTRAL RESTAURANT VS. TRENTON

CENTRAL RESTAURANT, INC.,)	
Appellant,)	
vs.	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,	)	CONCLUSIONS
Respondent.)	
-----)	

Linton S. Marshall, Esq., Attorney for Appellant.

Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant applied for a plenary retail consumption license for the period commencing July 1, 1934, for premises located at 12 North Warren Street, Trenton. On July 2, 1934, the application was denied. An appeal was duly filed from the denial and has come on for hearing.

Appellant complied with all the formal requirements pertaining to its application. The character and fitness of the members of the appellant corporation and the suitability of the premises are not questioned. Respondent asserts, however, that the application was properly denied (1) because of a resolution adopted on May 31st, 1934, limiting the number of plenary retail consumption licenses to be issued in the City of Trenton to 250 and (2) because an adequate number of licenses had been issued in the vicinity of the premises sought to be licensed and an additional license was socially undesirable.

The second contention need not be regarded further. Appellant's premises consist of an established restaurant in the busiest district of Trenton and there is no basis in the testimony to justify respondent's assertion that an additional license would be socially undesirable. Consequently the propriety of respondent's denial of the application must be considered solely with reference to the numerical limitation.

Prior to December, 1933, the Board of Commissioners of Trenton had issued 435 licenses authorizing the sale of 3.2 beer. Upon the passage of the Control Act the Board of Commissioners created the respondent Municipal Board of Alcoholic Beverage Control and recommended that it limit the number of plenary retail consumption licenses to be issued under the Control Act to 250. Without any independent examination or determination the recommendation was accepted and a resolution embodying the limitation was adopted on February 3, 1934. The president of

the respondent Board testified that he did not know how the figure of 250 was reached by the Board of Commissioners. Despite its limitation of 250 and in disregard thereof respondent issued 253 licenses for the period expiring June 30, 1934, and pursuant to orders of the Commissioner entered after hearings on appeal, 31 additional licenses were issued for the same period.

On May 31, 1934, the resolution limiting the number of licenses was re-adopted for the period commencing July 1, 1934, without any independent investigation or determination and solely upon the basis of the earlier recommendation of the Board of Commissioners. Whether, in view of the foregoing circumstances, the resolution was improperly adopted need not be determined since it cannot be applied to the exclusion of the appellant for the reasons hereinafter stated.

When appellant filed its application in due time and in proper form it was entitled to have it considered individually and passed upon by respondent. And since the sole basis for its exclusion was the numerical limitation, it was entitled to a license unless excluded from the prescribed number by some reasonable method of selection. That this was not done fully appears from the description of respondent's conduct set forth in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9. Appellant's application was rejected on the basis of an improper agreement between members of respondent without any individual consideration, while other new applications obviously less desirable than appellant's were granted.

It would serve no useful purpose to review at length the abundance of testimony introduced during the hearings on appeal displaying the entire absence of any uniform and reasonable bases of selection. Applications were excluded on alleged grounds that the premises sought to be licensed were in neighborhoods adequately provided for or partially residential or near theatres, schools or churches. The testimony established, however, that numerous licenses were issued for similar neighborhoods more adequately provided for, more residential in character and closer to theatres, schools or churches. Applications were denied upon the alleged ground that the applicants' investments in the premises were small; other applications, similar in nature, were granted even though the applicants had substantially lesser investments. The applicants' previous experience in the liquor business and the prior use in such business of the premises sought to be licensed were invoked by respondent as favorable considerations but no explanation was advanced for the issuance of licenses to former speakeasy proprietors who had been convicted of having violated the National Prohibition Act while other applications, for premises similarly situated, by persons of unquestioned character who had engaged in the liquor business prior to prohibition but not thereafter, were excluded.

Respondent's arbitrary manner of selection permeates all of its determinations grounded upon the limitation. As a result numerous appellants have prevailed on

appeal and the number of retail consumption licensees now operating in Trenton are substantially in excess of 250. Under the circumstances the numerical limitation must be held to be socially undesirable and its application, to the exclusion of persons otherwise qualified for premises satisfactorily situated and suitable in nature, discriminatory and unreasonable.

The action of the respondent is therefore reversed.

Dated: Aug. 11, 1934.

D. FREDERICK BURNETT,
Commissioner

6. APPELLATE DECISIONS - ROSENTHAL VS. TRENTON

BENJAMIN ROSENTHAL,)	
Appellant)	
vs.	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,	)	CONCLUSIONS
Respondent.)	
-----)	

Sidney D. Beck, Esq., Attorney for Appellant

Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory, and unreasonable.

Respondent also sets up in its answer that the premises sought to be licensed are located in a residential area and are presently unsuitable. Neither of these contentions finds support in the record. The official municipal map designates the neighborhood as a business zone and there are a number of large factories in the immediate vicinity. Photographs introduced in evidence coupled with the testimony of the president of the respondent Board clearly establish the suitability of the premises.

Respondent further contends that the pre-

mises sought to be licensed are too near a school, although admittedly more than 200 feet away. It has been held that a municipality may refuse to issue a license for premises too near a school even though beyond the minimum 200 feet prescribed in the Control Act. Staciewicz vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #10. Such determination, however, will be reviewed on appeal. In the instant case it appears from the testimony of the municipal engineer that the nearest entrance to the school or its grounds is approximately 440 feet from the premises sought to be licensed, and fronts on a different street. Between the school grounds and appellant's premises there are a considerable number of buildings. It also appears that respondent has issued licenses for premises closer to schools or churches than in the instant case. Its determination, therefore, that appellant's premises are too near a school cannot be sustained.

The action of respondent Board is reversed.

Dated: Aug. 11, 1934.

D. Frederick Burnett,
Commissioner

7. MEDICINAL PREPARATIONS -WHAT CONSTITUTES- BREWED MALT TONICS

Hon. J. M. Braude,
Associate Director of Finance,
Springfield, Ill.

Aug. 11, 1934.

My dear Mr. Braude:

The question is: Do we permit the sale of brewed malt tonics by drug stores that have no license to sell alcoholic beverages at retail?

As you ask it, the answer is NO. But standing alone, this might be misleading. Hence the following comment:

Our Act, Sec. 27, states that it is not designed to prohibit sales of alcoholic mixtures which are unfit for use as beverages without having a license. It then states: "No provision of this act shall apply to alcohol intended for and actually used in the manufacture and sale of any of the following when they are unfit in fact for beverage purposes, namely:(b) Patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations." It then provides that any person who shall knowingly sell, use or transport any of such products for beverage purposes or under circumstances from which he might reasonably deduce the intention of the purchaser or consignee to use them for such purposes, shall be guilty of a misdemeanor.

It follows from the foregoing that the whole question boils down as to whether or not the brewed malt tonics you mention are alcoholic beverages or are unfit for use as beverages. If the former, a license is requisite; if the latter, no license is necessary.

This Department has not determined whether or not brewed malt tonics as a class are alcoholic beverages on one hand, or, on the other, are unfit for beverage purposes. Such a broad ruling one way or other might be

very dangerous. The only fair way to handle this matter is to take up each particular tonic, one by one, and determine what it is - a task of staggering proportions.

Precedents made by the Federal authorities in pre-Repeal days are not necessarily dispositive. In view of the strictness of Prohibition, the natural effort was to ameliorate its rigors by declaring certain things to be medicinal because it was possible that they might be used as a medicine although the fact was that most users would, if questioned, frankly answer that they were purchased as a beverage. Now that Repeal is an accomplished fact, there is no occasion today for sophistry or subterfuge. If the normal use of the tonic is for beverage purposes, I believe it should be held to be a beverage even though some people might bona fide use it only as a medicine.

Cordially yours,

D. Frederick Burnett,
Commissioner

DFB:L

8. APPELLATE DECISIONS - BADER VS. CAMDEN

LOUIS BADER,)	
Appellant)	
vs.	)	ON APPEAL
	)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF CAMDEN (CAMDEN COUNTY),)	
Respondent.)	

L. Scott Cherchesky, Esq., Attorney for Appellant.

E. G. C. Bleakly, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at 211 Market Street, Camden, N. J. The application was denied, and an appeal duly filed.

Respondent contends that the application was properly denied for the reason that there are a sufficient number of licensed places in the vicinity of the premises sought to be licensed, and that an additional license in said vicinity would be socially undesirable.

The right of a municipality to deny an application where the granting thereof would result in an inordinate number of licenses in the vicinity cannot be questioned. See Foxwell vs. Board of Commissioners of the City of Atlantic City, Bulletin #41, Item #3. In the present case it appears that five plenary retail consumption licensees are operating within one block of the premises sought to be licensed, and it does not appear that public necessity and convenience dictated the issuance of

an additional license for said vicinity. The determination of respondent is justified by the evidence, and is reasonable.

The action of respondent Board is affirmed.

Dated: Aug. 13, 1934. D. Frederick Burnett, Commissioner

9. APPELLATE DECISIONS - MAC GRATH VS. TOWNSHIP OF HADDON

LAWRENCE A. MAC GRATH,)	
Appellant	)	ON APPEAL
vs.	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HADDON (CAMDEN)	
COUNTY),)	
Respondent.)	

Henry Rosenfeld, Jr. Esq., Attorney for Appellant

Mark Marritz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant applied for a plenary retail consumption license for premises located on Haddon Avenue, in the Township of Haddon, N. J., known as the "Mickey Mouse Grille". The application was denied and an appeal duly filed.

The respondent asserts that the manner in which the premises sought to be licensed were conducted in the past, justified the denial of the application. The evidence established that the appellant violated, on several occasions, the closing hour set by the respondent; that loud and offensive language was used by patrons which disturbed the nearby residents; that men, in leaving the premises in a drunken condition, would vomit over the sidewalks of the adjoining properties; that alcoholic beverages were sold to minors, and that the reputation of the "Mickey Mouse Grille" for peace and quiet in the vicinity of the licensed premises, was bad.

Authority to dispense alcoholic beverages has at all times been recognized as a privilege, as distinguished from a right, which the issuing authority may deny for just cause. A determination by municipal issuing authority, that just cause exists for the denial of the application should, on appeal, be given considerable weight. Bulletin #29, Item #12. The general reputation of the appellant's premises, coupled with the repeated violations of the Control Act and the rules and regulations of the issuing authority, were sufficient cause for the respondent's determination that public interest required a denial of the application.

The action of the respondent in denying the application is therefore affirmed.

Dated: Aug. 13, 1934. D. Frederick Burnett, Commissioner

10. CLUB LICENSES - HOLDERS MAY ALSO TAKE OUT RETAIL DISTRIBUTION LICENSE.

August 13, 1934.

A club license had been issued to a Country Club by a Borough. On inquiry from the Borough Clerk whether or not the club may also secure a retail distribution license, as it desires to sell beverages to its members in containers to be taken from the premises, the Commissioner ruled that, unless some municipal ordinance prevented, it would be proper to issue a retail distribution license to the club in addition to the club license if and when the proper application, with accompanying fee, is submitted to and approved by the Borough Council.

11. CLUB LICENSES - INTERESTED MUNICIPAL OFFICIALS - WHEN ISSUED BY COMMISSIONER.

August 13, 1934.

Dear Sir:

In response to your request for ruling as to whether Sec. 2 of P.L. 1934, Ch. 44, applies to clubs, I hold that when a member of the governing body, which constituted the issuing authority of the municipality, is also a member of the club, the application should be made direct to the Commissioner.

This supplement to the Control Act provides that no license shall be issued by any issuing authority to any member thereof or to any corporation, organization or association in which any member thereof "is interested directly or indirectly." There is room for debate as to whether mere membership in a club constitutes an "interest". The term usually signifies a pecuniary interest. The statute, however, uses the term "interested". Without running the wide gamut of the significance of that broader term, it is sufficient for this decision, in view of the objective of the statute to avoid any question or even the appearance of evil, to rule that the only proper course is to require that the application be made direct to the Commissioner. To say that one is not interested in his own club is legal subtlety, and not in accordance with natural inferences.

Yours very truly,

D. Frederick Burnett,
Commissioner

12. APPELLATE DECISIONS - NICHOLAS CUSH VS. TRENTON

NICHOLAS CUSH,)	
Appellant	)	ON APPEAL
vs.	)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF TRENTON,)	
Respondent.)	

David Deitz, Esq., Attorney for Appellant

Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton. Bulletin #41, Item #9, respondent's application of this limitation to appellant was arbitrary, discriminatory and unreasonable.

Respondent also sets up in its answer that appellant is personally unfit to have a license. Several witnesses testified that appellant's reputation is good, and that the business had been properly conducted under the prior license. Respondent's contention is based upon an incident observed by a member of respondent Board and an investigator during an inspection of the premises. The latter testified as follows:

"I observed about five or six persons sitting to my left, and there was a young lady there, about twenty-one or twenty-two, and there was an elderly person standing - about around fifty years - and this man was talking to this young lady, and says 'Go on, drink it, drink it up', and she finally drank it up, and he says, 'There you are, you could drink forty or fifty of them'".

The alcoholic beverage was beer and the young lady was not intoxicated. She did not object to nor was she coerced into drinking. No disorder attended the incident and there is nothing to connect appellant therewith except that it happened in his place of business. While practices unduly designed to increase the consumption of alcoholic beverages will justify a denial of an application, in the instant case the evidence does not indicate appellant was guilty of such practices, nor of permitting improper conduct upon the licensed premises.

There is also testimony that at the time of the inspection there was an intoxicated middle aged woman, accompanied by a middle aged man, upon the licensed premises. The testimony shows, however, that when this woman had come in a short time prior to the inspection, she was already intoxicated and that appellant had refused to serve her.

Respondent's allegations that appellant is unfit to have a license is not sustained by the evidence.

Respondent further contends that the premises sought to be licensed are unsuitable for the reason that there is only one lavatory thereon. Appellant offered to install an additional lavatory.

The action of respondent Board is reversed upon the express condition that appellant install an additional lavatory upon the licensed premises prior to the

sale of any alcoholic beverages thereon.

Dated: Aug. 14, 1934.

D. Frederick Burnett,
Commissioner

13. MUNICIPAL RESOLUTIONS - LIMITATION OF LICENSES - RESCIS-
SION OR AMENDMENT

August 14, 1934.

Lester M. Drew, Borough Clerk,
Borough of Hamburg, N. J.

Dear Mr. Drew:

I have yours of the 8th inst.

There is nothing to prevent your Mayor and Council from rescinding at any time their previous resolution limiting the number of retail consumption licenses to two for a period of one year. The right to enact it, in the first place, was founded on general underlying police power. So is the right to rescind it. The resolution neither constituted a contract with those two licensees nor a representation on which they had a right to rely because the resolution was not enacted for their benefit but in what was at the time supposed to be the best common interest of the public at large. If experience shows that sound public policy requires that the resolution should be amended or rescinded outright, there is nothing in the law to prevent.

Very truly yours,

D. Frederick Burnett,
Commissioner.

14. MUNICIPAL ISSUING OFFICIALS - OATHS OF WITNESSES -
POWER TO ADMINISTER

August 14, 1934

Edmund J. Dwyer, Chairman
Municipal Board of Alcoholic Beverage Control
Orange, N. J.

Dear Mr. Dwyer:

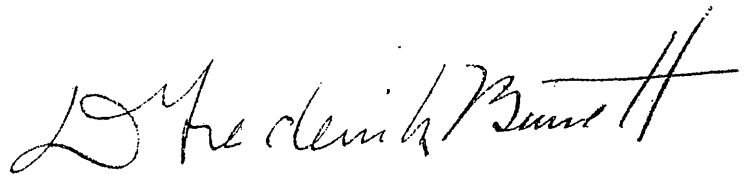
I have yours of August 10th inquiring as to whether your Board has the power to administer an oath prior to taking testimony.

The answer is YES.

The creation of your Board by resolution of the City Commissioners of Orange pursuant to sec. 5 of the Act made your Board the issuing authority for Orange. Sec. 32 of the Act expressly empowers each issuing authority "for the purpose of any investigation, examination, inspection, revocation, rule to show cause and every other proceeding authorized under this act

or appropriate for its enforcement to examine, under oath, any and all persons whatsoever and to compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers and documents of any person or persons and to take any oath or affirmation of any person to any deposition, statement, report or application required in the administration of this act, or of any and all other acts now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution and sale thereof, or the collection of taxes thereon."

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frederick B. Smith". The signature is written in dark ink and is positioned centrally on the page.

Commissioner.