STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 11. January 18, 1934

#1 January 17, 1934

Referring to Rules for Advertising Notice of Intention to Apply for License, an applicant published his notice in a newspaper printed in County but not in the municipality wherein the licensed premises were situated. It appeared that there was a weekly newspaper published in that particular municipality.

The Commissioner ruled that the advertisement could not be approved; that Sec. 22 expressly requires that the publication be made in a newspaper printed in the English language "published and circulated in the municipality in which the licensed premises are located" that a weekly newspaper is nevertheless a newspaper within the meaning of the statute; that it is only where there is no newspaper published and circulated in the municipality in which the licensed premises are located that notice may be published elsewhere in the County.

The Commissioner further ruled that a monthly newspaper is not a newspaper within the meaning of Sec. 22 which contemplates publication "for two weeks successively" and hence a newspaper published monthly or fortnightly cannot comply with this requisite.

The Commissioner further ruled on a question raised whether or not an applicant may make the second publication of his notice within 7 days from the time of the first publication, for instance, the first publication to be on Friday night and the second on Monday night of the following week. The Commissioner held that this was not permissible and that no such advertisements would be approved; that while in one sense it was advertised in two different calendar weeks yet the clear intention of the Statute in requiring advertisement "once a week for two weeks successively" did not refer to calendar weeks but to a week of seven days and consequently "once a week" meant that the second advertisement to be valid could not be inserted at the earliest until the same corresponding day of the following week on which the advertisement was first inserted, for instance, if applicant first published on a Tuesday, the earliest day on which the second advertisement could be made, since the Statute required "two successive weeks", would be on the following Tuesday and the latest day would be the Monday following that second Tuesday.

#2 January 3, 1934

* * * * * * *
Brooklyn, New York.

Gentlemen:

We have for acknowledgment your telegram of December 28th requesting release of alcoholic beverages seized in Long Branch, New Jersey, by the Long Branch Police while in the custody of the * * * * Trucking Corporation.

We call your attention to Section 25 of the Alcoholic Beverage Control Act which reads as follows: "Licensees may

deliver alcoholic beverages in their own vehicles, solely, however, for their own respective business in connection with and as defined in their respective licenses, without possessing a transportation license; provided, however, that the vehicles while so used shall be marked in the manner prescribed for all vehicles authorized to transport alcoholic beverages under a transportation license, as shall be provided in rules and regulations," and also to Section 14, relating to Transportation licenses and reading: "The holder of this license shall be entitled, subject to rules and regulations, to transport alcoholic beverages into, out of, through and within the State of New Jersey and to maintain a warehouse. The fee for this license shall be two hundred dollars ($200.00). Vehicles transporting alcoholic beverages shall carry a transit receipt specifying the names and addresses of the owner of the alcoholic beverages, of the consignor, and of the consignee, and the destination."

The Long Branch Police reports in our files indicate that the liquor for which you now seek release was transported by a trucking company which had no license to do so, and, hence, such transportation was illegal and subjects the liquor to seizure. Prima Facie, therefore, the liquors have become forfeited.

Punishment for the sins of the transporter ought not, in ordinary fairness, unless the Statute as an expression of public policy clearly demands it, to be visited upon an innocent consignor.

I shall, therefore, afford you, herewith, opportunity to present under oath such extenuating circumstances as you may deem proper.

Very truly yours.

#3. The following letter, written by the Commissioner to a municipal clerk, is called to your attention:

"In looking over notices of intention in one of the local newspapers of January 20th (clipping enclosed), I note that practically all of them are improper. For instance: Beb's Grill, an application for a retail consumption license, declares that objections, if any, should be made to me as Commissioner. This is not correct. Objections to retail licenses issued by municipalities must be made direct to the City Clerk of the municipality. The advertisement must so state.

"As all such advertisements are void and of no effect, I cordially suggest, as a matter of courtesy, that you immediately send notice to each such applicant informing him thereof and advising that he immediately re-advertise in proper form; otherwise, it will be too late to complete the advertising in time for issuance of permanent license on February 6th.

"To prevent further waste of money would it not be helpful if you gave out the correct form of advertisement to fit the specific case to each applicant all as per rules of January 12th which you already have (Bulletin 9)."

#4. PRINCIPLES AND RULES CONCERNING REFUNDS OF LICENSE FEES.

Whenever the issuing authority decides that an application for a license shall be denied, the statute requires that 10% of the deposited fee must be retained as an investigation fee. The object was to deter improper applicants from gambling on the issuance of licenses at the expense of the State or the Municipality.

As respects all temporary licenses, something additional must also be deducted, to-wit, an amount which represents that proportion of the fee which the license has earned during the time it was in effect. The reason is that the temporary licensee had the privilege of doing business the moment the license was issued and without any investigation or advertisement or hearing. He has thus had all the benefit and protection of the license right down to the date of the denial or rejection of his application, and therefore he ought to pay for it to that extent.

"Earned fee", in this connection, means that part of the license fee which represents the number of days which have elapsed from the date of the temporary license to the date on which the license ceased to be effective.

The first question is to decide when a temporary license ceases to be effective. Section 46 provides that a temporary licensee may conduct business during the two months immediately following the effective date of the Act or until revocation of the temporary license, whichever shall first occur. The Act was passed December 6, 1933, to take effect immediately. Hence, the temporary license will automatically expire on February 6, 1934, at midnight. Such automatic expiration is one way in which the temporary license may cease to be effective. The other way is to revoke it. Revocation, however, requires compliance with the procedure set forth in Section 28, including among other things a five day notice to the licensee. Hence, until the revocation proceedings have been fully completed and the revocation actually effected by a notice in writing thereof duly served upon the licensee as required by the statute, the temporary license is still effective. The temporary license ceases to be effective when the revocation has been actually effected, subject, however, to this exception - that if at any time after denial of the application the licensee, instead of insisting on the completion of the revocation, should voluntarily surrender physical possession of the license to the issuing authorities, such actual surrender will take the place of and dispense with revocation proceedings or the completion thereof if already started. In summary, the temporary license ceases to be effective either automatically on February 6, 1934 or sooner, upon completion of revocation proceedings or voluntary surrender of the license itself, whichever occurs first.

The next question is to decide which shall be deducted first - the statutory 10% or the earned fee. Obviously, it makes a difference. The statute provides (1) that the application must be accompanied by a deposit of the full amount of the pro-rated license fee; (2) that such "deposit to the extent of ninety percentum thereof shall be returned to the applicant if the application is denied and the remaining ten percentum shall constitute an investigation fee". Therefore, the maximum amount that can be returned is 90% of the original deposit. It follows that the minimum amount that must be withheld as an investigation fee is 10% of the original deposit. Hence, the 10% must be deducted, if at all, before and not after the earned fee. Next, deduct the earned fee. The reason for the qualifying phrase - "if at all" will be mentioned later.

To illustrate: Suppose the annual fee is $365.00, and the application was made 200 days before the 30th day of June next. Then the pro-rated annual fee which the applicant must have deposited, concurrently with his application, would be $200.00. First deduct 10% of $200.00 or $20.00, which leaves $180.00. Now suppose that the time which has elapsed from the date of the license to the date on which the temporary license ceased to be effective has been fifty days. During those fifty days the applicant has had all the benefit of the license and hence he should pay for that privilege 50/365 of the annual fee : which will be $50.00. The two deductions total $70.00. The gross amount to be refunded is therefore $130.00.

But further deductions may and should be made in some cases from such gross amount. It is the duty of issuing authorities to see that all additional deductions are made as the nature of the case may require.

The first inquiry under this head will be to ascertain if there are any taxes due from this licensee in respect to alcoholic beverages. Therefore, communicate with Hon. J. H. Thayer Martin, Commissioner of the State Tax Department, 744 Broad Street, Newark, to ascertain if there are any such taxes due so that he may collect them, if necessary, by levying upon the gross amount to be refunded. No part of the gross amount may be refunded until his release is obtained.

Again, the municipality may deduct such municipal taxes or other set-offs or counter claims which shall have accrued and have become due and payable to the municipality by the licensee. This requires conference with the proper municipal financial officers.

There may, perhaps, be other deductions which issuing authorities may consider proper. Decision will be made on the validity of such other deductions when the facts are fully presented with request for ruling thereon.

After a permanent license has once been issued there can be no refund of any part of it for any cause. Section 28 provides "no refund shall be made of any portion of a license fee after issuance of a license". The quoted words were primarily designed to refer to permanent licenses. Question arises as to what extent, if any, they apply to temporary licenses. The answer depends upon the facts. If the temporary license was revoked or was revocable because of the fault of the licensee, for instance, because of false statements in his sworn application or because he had been convicted of crime involving moral turpitude, then no refund may be made of any part of the license fee.

There may be situations, however, where notwithstanding a temporary license had been issued, it will be proper that a refund should be made. This will occur every time where the temporary license, although revocable, is not revoked or revocable because of the fault of the licensee himself. For instance, it would be eminently unfair and therefore improper to forfeit the entire amount of the deposit which accompanied an application where the municipal issuing officials, in the exercise of sound discretion, had decided to limit the number of licenses to be issued in that community and the application was denied merely because of such limitation; or again, where

it happened that three applications were made in respect to licensed premises in the same block or in respect to different corners of the same intersecting streets, and the issuing authorities denied the application on the ground that these dispensaries were entirely too close together and rejected one or more of them on that ground; so, again, in the situation which occurred in the City of Newark and some other municipalities where, in good faith but under a mistaken impression of the law, the city authorities issued a temporary license based on a two months' fee instead of the required full pro-rated annual fee. Later, when the City was convinced that its interpretation was unsound, it properly demanded the full pro-rated annual fee and in default threatened revocation. In such case, the fault is manifestly not that of the licensee and therefore there can be no forfeiture of the entire amount so deposited. In such a case it would not even be fair to charge the applicant the 10% investigation fee. It wouldn't be right for the City to take the money on an implied representation that those who paid it would get a two months' license for $83.00 if otherwise duly qualified, and later declare, not only that they could not get a license at all unless they paid in a further sum of $250.00, but also that 10% of the $83.00 would be forfeited unless they paid in such further sum. In such a case, (and this illustrates the qualifying phrase "if at all" as mentioned above if the licensee withdrew his application and surrendered his temporary license, he is entitled to a refund without any deductions of the statutory 10%, but subject however to the deduction of the earned fee and the additional deduction hereinbefore set forth.

If no temporary license has ever been issued because, for instance, of questions arising on the face of the application, no earned fee may be deducted for the applicant has not had the protection and privilege of an actual license but the 10% investigation fee and the other deductions as aforesaid may be retained where the application is eventually denied because of the fault of the applicant himself.

The term "voluntary surrender", as used above, requires careful consideration.

One phase of it is set forth in the Commissioner's report of January 15, 1934 to the Governor and Legislature reading: "It may well happen that after a license is issued, the licensee meeting increasing and unexpected competition may become concerned with a practical exposition of the law of diminishing returns. Section 28 provides that no refund shall be made of any portion of a license fee after issuance of the license. When he finds, perhaps, that his profits are dwindling, and upon realizing that he cannot cash in his license, the natural temptation arises to buy from bootleggers or to sell to drunks or to dilute his goods. Rather than lead someone into temptation, deliverance from the evil may be effected by providing that any licensee may voluntarily surrender his license and have his pro-rated fee for the unexpired term returned, provided that he has not committed any violations of this Act or done anything which in the discretion of the issuing authorities should bar or stop him from making such claim for refund, and further providing that all taxes due to the State or to any municipality in respect to alcoholic beverages have been paid. It is so recommended."

It must be borne in mind, however, that the above is merely a recommendation. It is not the law as yet and may not be at all. Consequently, actual voluntary surrender of a license does not put the applicant in a place where he can demand the unearned portion of his license fee as matter of right and this is true even though he is willing to forfeit 10% as an investigation fee.

Another phase is presented by an applicant in Trenton who, before his application was finally passed upon, signified his desire to withdraw or otherwise abandon his application. Whether the law is amended or not, he should certainly not stand in any better position with respect to the return of a part of the license fee than an applicant who was found to be properly entitled to a permanent license. Otherwise, upon word leaking out that the issuing authorities purposed to deny his application or were even contemplating such action, he would be in a position of achieving a better position by signifying his desire to withdraw or abandon the application.

In such a case, no earned fee may be deducted because none has been earned since no license has been issued. Whether the 10% investigation fee may be retained, depends on the finding of fact by the issuing authorities that the application, if not withdrawn or otherwise abandoned, would have been denied because of the fault of the applicant himself. Even if not his fault as regards his application, yet, if he is in default as to any obligation to the State or Municipality, the other deductions aforesaid may and should be made.

In no case should the original application itself ever be returned to the applicant. It must be kept by the issuing authorities as part of their permanent records in order to be able to justify at any time any deduction made by them.

D. FREDERICK BURNETT,
Commissioner.