

COMMISSIONER
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 100.

December 23, 1935

1. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - RULE 6 - BEAN GUESSING CONTESTS ARE PROHIBITED BY THIS RULE.

Mr. F. Burnett:

For my guidance would you kindly advise whether I would be in order in having a guessing proposition such as filling a jar with beans and letting my customers give their estimate of same, highest number guessed to be presented with prize. This to try and interest my patrons and keep within the law.

Respectfully yours,

GEORGE H. SHIPP

December 16, 1935.

Mr. George H. Shipp,
Plaza Tavern,
South Orange, N. J.

Dear Mr. Shipp:

Licensees may not permit any lottery to be conducted or any participation right in any lottery sold or offered on the licensed premises.

New York and Indiana have decided (People vs. Lavin, 179 N. Y. 164, 71 N. E. Rep. 753; Hudelson v. State, 94 Ind. 426) that schemes such as you describe are lotteries. Other states have decided they are not. There has been no ruling on this point in New Jersey by our Court of last resort.

Irrespective of whether your guessing scheme constitutes a technical lottery or not, it is against the spirit if not the present letter of the rules governing the conduct of licensees and the use of licensed premises. Such conduct and use must be put and kept on a high plane sundered from all practices the tendency of which might justify a return to prohibition.

It is ruled that this practice is not permissible on licensed premises.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

New Jersey State Library

2. VIOLATIONS - ILLICIT ALCOHOLIC BEVERAGES - THE PENALTY OF THIRTY DAYS' SUSPENSION FOR POSSESSION OF BOOTLEG LIQUOR ESTABLISHED AS THE PRESENT STATE POLICY IS A MINIMUM AND DOES NOT PREVENT A MUNICIPAL ISSUING BODY FROM INFLECTING A GREATER SUSPENSION.

December 16, 1935.

Bernard J. Dunigan, Township Clerk
Woodbridge,
New Jersey.

Dear Mr. Dunigan:

I have staff report of the proceedings before your Township Committee on December 9th, 1935, in the matter of the charges preferred against Joseph Lanni and against Charles Wargyas, each for the sale and possession of illicit alcoholic beverages.

I note that both licensees pleaded guilty; that Lanni's license was suspended for six months and the Wargyas license for ten days.

Attorney Jerome B. McKenna of my staff has pointed out the difference in the factual situations which no doubt fully accounts for the difference in penalties inflicted, viz: that in one, seizures of illicit beverages, flavoring and coloring matter were made in quantity, both in the licensed premises and also at a grocery store conducted by the licensee, whereas in the other, there was but one half pint of whiskey, which, on analysis, proved illicit and the bottle of which contained no tax stamp, and a search of the premises failed to disclose any other illicit beverages.

The severe penalty of six months' suspension which your Township Committee have meted out for the sale and possession of illicit alcoholic beverages is decidedly heartening, particularly so, because of our correspondence in a previous case where I believed that the punishment inflicted was but nominal.

Just recently in re Morris, Bulletin #98, Item #10, copy enclosed, I had occasion to consider the disrupting effects of possession of illicit alcoholic beverages by licensees and fixed a minimum penalty in such cases of at least thirty days. For the reasons expressed therein, I will be glad if your Township Committee will adopt, in all future cases, the same minimum penalty for this offence. That decision in no wise militates against your highly commendable action in suspending one of these licenses for six months. That may well be the more appropriate penalty. In fact, as indicated in the Morris decision, I may have to step up the minimum penalties myself if experience requires it.

Please convey to the members of your Township Committee my respect and appreciation and also to the Woodbridge Police Department for their cooperation in the seizure in question.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. CLUB LICENSES - LIMITATION OF PRIVILEGES - HEREIN OF BONA FIDE GUESTS AND SPECIAL PERMITS.

December 16, 1935.

The holiday season is at hand. Many clubs, lodges, and associations holding club licenses, plan social affairs at which alcoholic beverages will be dispensed. Before plans are carried out, club licensees should have full knowledge of the limitations of their privileges under the Control Act and the rules and regulations.

The holder of a club license is entitled to sell only to bona fide club members and their guests, alcoholic beverages intended for immediate consumption on the licensed premises.

Guests are those persons expressly invited to the club by a member and who, on arrival at the club, are not only sponsored but personally attended by their hosts.

A person who attends an affair which is open to the public generally is not a bona fide guest within the sense of the Control Act.

In re Rockefeller, Bulletin 63, Item 10, a club licensee planned a ball. Tickets were solicited by invitation from a subscription list. A price was to be paid for the tickets. I ruled:

"While it is difficult to create a definition of 'bona fide guest' which will include every person who should be, and exclude all those who should not be so regarded, I am of clear opinion ~~that where~~ tickets are sold to the public generally for a dance or other social function so that anybody who is orderly and sober and presents the ticket is admitted, that such persons are not within the meaning of the term. An invitation to attend a ball if the invitee pays his own way is not my concept of the way to invite a guest. Such invitee hardly feels any astounding debt of gratitude for an invitation to pay his own money or any great sense of hospitality extended on condition that he who dances pays the piper. Just who is the host in these paid affairs? Without a host, there cannot be a guest--at least a bona fide guest. In a loose sense, such invitees may be said to be guests of the club, but this is not enough. They must be guests of the members. The statute so provides. A member who as host invites a person to attend as his guest doesn't allow his guest to pay for the hospitality. A 'pay guest' is not a 'bona fide guest'.

"If a club wishes to sell alcoholic beverages to non-members who attend such functions, a special permit for the occasion must be obtained. "

If a club rents its ballroom or lodge room to another organization, whether with or without fee, a special temporary permit, good only for the particular social occasion in question, must be obtained by that other

organization. If its application is granted, the special permit will include the right to purchase beverages from the club should the other organization so desire and the club consent. This permission will be granted as a practical matter in spite of technical objections that the club will profit incidentally by the sale of alcoholic beverages to non-members and persons not really guests. For, the other alternative would require the permittee to purchase its own beverages through outside channels and set up its own bar in the rented ballroom or other club room. Aside from the inconvenience and practical hardship of such arrangement upon the permittee, it is less unseemly and conduces to better control for the special permit to allow the use of the club's own bar which thus keeps the dispensation of liquor under the club's own management. After all, it is the club's own home which is being used. Under its supervision, abuses and excesses should be wholly eliminated.

Application forms for such special permits may be obtained from this Department on request. They must be accompanied by written approvals of the Chief of Police and Municipal Clerk and a fee of \$10.

Club licenses cost much less than plenary retail consumption licenses. Clubs will not be allowed to transact a full-fledged license business under the subterfuge of a club license. It is the responsibility of club as well as all other licensees to make sure that the law is obeyed. Any violation may result in revocation or serious suspension.

Clubs which have taken out a plenary retail consumption license are not subject to the license limitations above set forth, but may sell to such consumers as they please provided there is no disqualification such as minors or persons actually or apparently intoxicated.

D. FREDERICK BURNETT
Commissioner.

4. RETAIL LICENSES - ISSUANCE BY THE STATE COMMISSIONER - PRACTICE AND POLICY - HEREIN OF CONSUMPTION LICENSES ISSUED TO VOLUNTEER FIRE COMPANIES.

December 10, 1935.

Joseph Graham, Clerk,
Borough of North Haledon,
New Jersey.

Dear Sir:

Re: Application of North Haledon Fire
Company #1, for a Plenary Retail Con-
sumption License.

I have a certified copy of a resolution adopted by the Mayor and Council of the Borough of North Haledon on November 18th, 1935 declaring that they have no objection to the issuance of a Plenary Retail Consumption License to the above and are not aware of any circumstances or provisions of law or local ordinance which prohibits the issuance of such license.

Application by the North Haledon Fire Company was made direct to the Commissioner under Section 18A of the Control Act because three members of the fire company are also members of the Borough Council. The purpose of requiring the adoption of the resolution above as a prerequisite to the issuance of a retail license by the Commissioner is to prevent the issuance of a retail license by the Commissioner which would be contrary either to municipal ordinances or resolutions or to the declared policy of the municipality.

No question of the good character of the applicant in the instant case has been raised. The only problem is whether the issuance of a liquor license to an organization such as firemen, who are constantly charged with the performance of duties involving the safety of human lives, is consonant with public policy.

In adopting the aforementioned resolution, I am wondering whether your Mayor and Council gave thought to the public expediency in the issuance of such license. The thought immediately arises that, if fire should break out in your municipality, serious danger to life and limb might be occasioned if a single fireman were inebriated.

I would appreciate your referring this matter to your Mayor and Council so that they may consider the public expediency of the issuance of a permanent liquor license to the North Haledon Fire Company. I trust that you will inform me as to their reaction as soon as possible.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Erwin B. Hock
Deputy Commissioner

December 14, 1935.

Erwin B. Hock, Esq.,
Deputy Commissioner

Dear Sir:

At a regular meeting of the Mayor and Council of the Borough of North Haledon, N. J. held on December 13th, 1935, your letter under date of December 10th, 1935, directed to the attention of our Borough Clerk, regarding the application of North Haledon Fire Company No. 1, for a Plenary Retail Consumption License, was read, and after a thorough discussion and after due consideration and deliberation, I was instructed by the Council to reply to your letter hereinbefore mentioned and to state that the Mayor and Council of the Borough of North Haledon, N. J., being familiar with the personnel of said North Haledon Fire Company No. 1, is not the least apprehensive about the thought expressed in your letter regarding the public expediency of the issuance of a permanent liquor license to the fire company.

I was also instructed to advise you that the Mayor and Council of this Borough re-affirms the action of November 18th, 1935, whereby we indicated that we had no objection to the issuance of the license in question.

Respectfully yours,

GEORGE F. KEARNS
Mayor

December 16, 1935.

Erwin B. Hock, Deputy Commissioner:

I have your memorandum transmitting your letter to North Haledon of December 10th and the Mayor's reply of the 14th.

You correctly questioned the expediency of granting a liquor license to a Fire Company for reasons expressed in Bulletin #33, Item 1.

It now appears, however, that the Mayor and Council assume full responsibility. This license would have been within the exclusive province of the Mayor and Council if it were not that some of the Councilmen are also members of the Fire Company. If it were not for that, I would have no jurisdiction at all.

When this Department issues retail licenses because of such interlocking local membership, our established practice is to put ourselves as closely as possible in the position of the local issuing authority. For that purpose we require them to certify by resolution the official local sentiment. That advisory certification, while not obligatory and necessarily discountable if the dually interested members vote on it, is nevertheless given weight, and if reasonable, is followed; for instance, Re Cranford American Legion Holding Co. Inc., Bulletin #33, Item #3; Re Passaic Elks, Bulletin #95, Item #4.

Everything depends on the facts. If this were a paid public fire department, I should unhesitatingly declare it improper to issue a consumption license in respect of such premises whatever the local board might certify. You inform me, however, that the applicant is a private volunteer company; that they own their own fire house and hall; that it contains bowling alleys, shuffleboards and other harmless amusements; that the hall is used from time to time for social affairs; that it is more of a community social center than the conventional fire house; that it is essentially a club; that the social life of the members and their families is the principal reason for the hall and the bar the incident; that the bar would help to raise funds for the maintenance of the fire equipment.

I cannot say under these facts, whatever my own views of policy may be, that the action of the local Council is necessarily unreasonable.

You may, therefore, proceed to issue the license.

D. FREDERICK BURNETT
Commissioner

5. IMPORTATION OF LIQUOR FOR PERSONAL CONSUMPTION - SPECIAL PERMITS NECESSARY WHEN AMOUNT IS IN EXCESS OF THAT ALLOWED BY NEW JERSEY LAW

December 20, 1935.

The attention of New Jersey residents returning from visits to foreign countries is called to the provision in the New Jersey Liquor Law prohibiting them from bringing into the State without special permit more than one-quarter ($\frac{1}{4}$) barrel of malt beverages and one (1) gallon of wine and two (2) quarts of other alcoholic beverages. Special permits allowing importation for personal consumption in excess of the foregoing amounts may be readily obtained upon application to the State Department of Alcoholic Beverage Control, 744 Broad Street, Newark, New Jersey. Such permits will be issued upon payment of taxes due to the state and a \$5.00 permit fee.

The cooperation of steamship companies and travel agencies in bringing the contents of this notice to the attention of passengers and prospective passengers will be greatly appreciated.

D. FREDERICK BURNETT,
Commissioner.

December 20, 1935

6. BULLETIN ITEMS CORRECTED

Bulletin Number 41 contains two items each numbered 10, one on Sheet #13, the other on Sheet #14.

Item 10 on Sheet #14 should be renumbered as 10-a instead of plain 10.

7. LICENSES - EXTENSION OF LICENSE TO EXECUTOR - FORM OF ENDORSEMENT

Dear Sir:

I represent one, Mary A. Kearns, widow and Administratrix of the Estate of Edward H. Kearns, now deceased.

The late Edward H. Kearns obtained a Plenary Retail Consumption License for his premises located in the Borough of Lakehurst, in the County of Ocean, and after his death, his wife applied for and obtained Letters of Administration of his Estate.

My client is desirous of continuing in force the license previously obtained by her late husband and of continuing the business previously conducted by him in the Borough of Lakehurst.

In speaking to Judge Conover, the issuing authority in and for the County of Ocean, he suggested that I communicate the facts with your office for the purpose of obtaining the

extension of the original license issued to Mr. Kearns until the expiration of the term mentioned therein for the benefit of such Administratrix.

For your inspection, I am enclosing herewith a short certificate indicating the appointment of my client as Administratrix of the estate of her late husband.

After inspecting the same, will you kindly advise me what will be necessary to procure the extension of such license for the benefit of such Administratrix, since it is her intention of strictly complying with all requirements of the law.

Very truly yours,

ROBERT A. LEDERER

December 9, 1935.

Robert A. Lederer, Esq.,
Toms River, N. J.

Dear Sir:

Section 23 of the Control Act provides that in case of death of a licensee, the issuing authority may, in its discretion, extend the license for a limited time not exceeding its term to the executor, administrator, etc. of the licensee. Application for the extension should be in the form of a petition setting forth the pertinent facts relating to the issuance of the license, the death of the licensee, the qualification of the executrix, her authority to conduct the business as executrix and any other pertinent facts, and should have attached thereto a certificate evidencing the appointment of the executrix. This petition should be addressed and presented to the issuing authority (in the particular case inquired about the issuing authority is Judge Russell G. Conover, Toms River, New Jersey). If the petition is granted, the issuing authority should endorse the license to the following effect:

"This license is hereby extended, subject to all of its terms and conditions, to _____, Executrix, until _____, 193____."

Under the Act, the extension is for a limited time not exceeding, however, its term which, in the instant case, will be June 30, 1936.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

8. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - "PUNCH BOARD" CONSTITUTES LOTTERY AND IS PROHIBITED ON LICENSED PREMISES.

Dear Sir:

Re:- Punch Boards.

I would be greatly obliged to have you inform me whether or not punch boards ranging in cost from one cent to ten cents, and no chance over ten cents are allowed to be placed in stores, saloons etc.; the winner of the lucky number receiving a new style clock.

Very truly yours,

CHARLES A. FLYNN,
Chief of Police

December 18, 1935.

Charles A. Flynn, Esq.,
Chief of Police,
Plainfield, N. J.

Dear Sir:

Rule #6 of the enclosed rules concerning conduct of licensees and the use of licensed premises prohibits the conduct of lotteries on licensed premises, and rule #7 prohibits gambling of any kind on the licensed premises. In State vs. Lovell, 39 N. J. L. 458, 461 (Sup. Ct. 1877), Mr. Justice Dixon said:

"A lottery is defined as being a scheme for the distribution of prizes by chance, (Bouv. Law Dict.)-- a game of hazard, in which small sums are ventured for the chance of obtaining a larger value, either in money or other valuables. Worcester's Dict. Where a pecuniary consideration is paid, and it is determined by lot or chance, according to some scheme held out to the public, what the party who pays the money is to have for it, or whether he is to have anything, it is a lottery. State v. Clarke, 33 N. Hamp. 329; Hull v. Ruggles, 56 N.Y.424."

A "punch board" is a scheme for the distribution of prizes by chance and constitutes a lottery within the foregoing definition. The maintenance of a "punch board" in licensed premises is, therefore, prohibited by the Commissioner's rules.

Very truly yours

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

9. SPECIAL PERMIT - IMPORTATION BY RETAILER OF ALCOHOLIC BEVERAGES NOT OBTAINABLE IN NEW JERSEY - APPLICABILITY OF FAIR TRADE ACT

Dear Commissioner:

Pursuant to our conversation had a few days ago, I wish to interpose a protest on behalf of the organization that I represent against issuance of the so called "Special Permits" for the sum of \$25.00.

The distillers and wholesalers are doing all in their power to maintain a minimum resale price and are taking advantage of the Fair Trade Act recently passed by the Legislature in New Jersey in order to aid legitimate liquor dealers to earn a livelihood. Just recently _____ obtained a Special Permit, which enabled him to buy 100 cases of _____ from a jobber outside the State of New Jersey.

.....These two firms have an exclusive franchise for the entire State and you can readily see that the liquor in question could have been purchased from the aforementioned firms but for the questionable business tactics on the part of _____. _____ products are sold at a uniform price throughout Hudson County as well as the rest of the State and the reason he was refused the merchandise from these firms was because he was a "price Chiseler" to the detriment of hundreds of others who do not use liquor as a football in order to sell other merchandise.

The issuance of these permits in the future will cause a break of the price morale in the entire industry and certainly is unfair to the wholesalers who pay the State a large license fee and are without a doubt entitled to the business from the retailers in our State.

It is the belief of the members of our Association, that the issuance of this permit should be discontinued for the good of 98% of the dealers at large who are desirous of earning a legitimate livelihood and keep the liquor business on a high plane.

Very truly yours

HUDSON COUNTY RETAIL LIQUOR STORES ASSOCIATION

December 4, 1935.

Hudson County Retail Liquor Dealers Ass'n.,
Union City, New Jersey.

Gentlemen:

The prohibition against the purchase of alcoholic beverages outside this State by retail licensees is contained

in regulations promulgated by the Commissioner. These regulations were calculated (1) to insure the payment of taxes due to the State of New Jersey on all alcoholic beverages brought into this State and ultimately sold therein, and (2) to eliminate direct competition with New Jersey wholesalers by foreign dealers who have not paid any license fee to this State. In the past special permits have been issued in situations where these two objects would not be defeated. Thus, permits have been issued on the basis of petitions setting forth that the merchandise sought to be purchased was not obtainable in New Jersey and upon payment of taxes or the furnishing of a bond to insure such payment.

The application by _____ was similarly grounded. Its petition alleged that the merchandise sought was not obtainable by it in New Jersey and a bond was furnished to insure the payment of taxes. It is not denied that the merchandise was not obtainable by _____, in New Jersey, although the contention is that the reason it was not obtainable was because the applicant had in the past cut prices. Whether this Department has any authority to regulate prices may be seriously questioned. In any event no attempt has been made to do so. The regulations were not designed to aid in the maintenance of prices and where their aims are satisfied, it seems that they should not be permitted to be invoked for such purpose.

The petition by _____ did not disclose any contract relating to the maintenance of prices and did not present any situation covered by the Fair Trade Act (P.L. 1935, c. 58). However, in the event any similar applications are hereafter made, the effect of this Act will receive serious consideration.

In the meantime, _____ has written to this Department advising that it has adjusted its controversy and desires a cancellation of its permit.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

10. RULES GOVERNING EMPLOYMENT OF PERSONS NOT QUALIFIED AS TO AGE, RESIDENCE OR CITIZENSHIP - BLANKET PERMIT MAY BE OBTAINED FOR PERSONS SPECIALLY AND TEMPORARILY EMPLOYED AND NOT DEALING WITH LIQUOR.

Gentlemen:

Some time ago the writer called at your office and interviewed you regarding the application of the rules and regulations published by your Department under date of July 5, 1935, in respect to the above mentioned matter. At that time the writer explained that our Company was operating a chain of restaurants throughout the United States and Canada and operated six stores in the State of New Jersey, all of whom have Class C Plenary Retail Consumption Licenses. He

also advised that the three stores in Newark and the store in Paterson were included in the Metropolitan Group along with the stores in the City of New York and the stores in Trenton and Atlantic City along with the stores in Philadelphia.

If the requirements outlined in the above mentioned regulation were rigidly enforced they would impose a decided hardship on our Company for the reason that in an emergency, we are compelled to rely on our Superintendents in New York and Philadelphia to furnish help for the efficient operation of the New Jersey stores. This help may be drawn from sources outside the State and would be relieved before we would have the opportunity to file the applications on form #115.

Then, too, there are a number of positions in our various restaurants in which these employees do not come in contact with the sale or handling of liquor in any respect. In the case of porters we find from experience that this class of help is especially migratory and we believe that it would be almost impossible to abide by the rules and regulations in their case. We would, therefore, appreciate some ruling from your Department to the effect that it would not be necessary for us to register all non-qualified individuals unless they came in contact with the sale or handling of liquor in any manner.

Our Company is not averse to registering employees otherwise unqualified who do come in contact with the sale and handling of liquor. However, the last clause in paragraph 23 of the Alcoholic Beverage Control Act would seem to show that these employees would not be able to handle liquor in any way even though they were duly registered. In this connection it must be remembered that our Company is primarily engaged in the restaurant business, and that the sale of liquor is merely incidental thereto. In order to determine the extent to which liquor is handled by our serving force, we had a test check made in our largest restaurant in the City of Newark. On that day 1,119 checks were issued. Of this amount, 1,003 were for food only; 15 were for liquor only and 101 were for both food and liquor. This would show that not quite 1% of our patrons purchased liquor for consumption on the premises and that only about 10% have alcoholic beverages with their meals. These figures represent the checks issued by some 55 servers and the record shows that the greatest number of checks issued for alcoholic beverages, with or without a meal, by any server, was not in excess of 10. It seems to us that the provision in the Law is primarily intended for an establishment devoted to the sale of liquor and not to an establishment where it is merely incidental as we believe the foregoing figures will show. We would appreciate some ruling from your office in the light of the information which we have just given.

We trust we might have your decision some time in the near future in order that we might take whatever steps are necessary to bring our stores within the scope of the Law, and wish to thank you again for the courteous treatment which we received on the occasion of our visit.

Very truly yours,
CHILDS COMPANY,
By: P. F. Fuchs,
Assistant Treasurer.

December 14, 1935

Childs Company,
New York City.

Att: P. F. Fuchs, Asst. Treas.

Gentlemen:

Section 23 of the Control Act provides that persons failing to qualify as to age, residence or citizenship may be employed, with the approval of the Commissioner, provided such employees shall not, in any manner whatsoever "sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortifying, mixing, processing or bottling of any alcoholic beverage." The foregoing prohibition against the employment of disqualified persons in the sale, etc. of alcoholic beverages is absolute and is not the subject of exception by the Commissioner. The statutory prohibition is not confined to licensees engaged primarily in the sale of alcoholic beverages; on the contrary, it refers to all licensees. Consequently, you may not permit any of your employees who are not qualified in every respect to sell or solicit the sale of alcoholic beverages.

6/18/37.

This ruling was extended on June 18th, 1937, by Re Madden, Bulletin 188, Item 4, by virtue of Chapter 124 of the laws of 1937 to apply to those persons who are engaged in selling or soliciting the sale of alcoholic beverages provided, however, that the only disqualification arises because of lack of residence in New Jersey.

be employed; that adequate records of the employment be kept at the licensed premises and available for inspection; and that such other conditions as may be prescribed therein be strictly complied with.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

11. RULES CONCERNING SIZE OF CONTAINERS OF ALCOHOLIC BEVERAGES - SALESMEN EMPLOYED BY LICENSED MANUFACTURERS AND WHOLESALERS MAY POSSESS UNDERSIZED CONTAINERS FOR DISPLAY AND SAMPLING PURPOSES, BUT IN NO EVENT TO BE DELIVERED TO RETAIL LICENSEES.

December 7, 1935.

Gentlemen:

As a registered wholesaler in the State of New Jersey we would like to obtain permission from your Board to equip our salesmen with a sample case 4 inches deep, 9 inches high and 14 inches long, containing 12 - 4 oz. sample bottles of liquor manufactured in New Jersey under our Rectifier's Permit.

The contents of the sample case are to be used for display and sampling purposes by our salesmen, but under no condition will same be sold.

Will you kindly give us a ruling on the above and advise us whether we may equip our salesmen with the above-mentioned cases:

Yours very truly,
WILKINSON, GADDIS & CO.

December 14, 1935.

Wilkinson, Gaddis & Co.,
Newark, N. J.

Gentlemen:

I am enclosing herewith rules concerning the size of containers of alcoholic beverages, together with recent release extending the effective date of rules #4 and #5 to January 1, 1936. You will note therefrom that possession of undersized containers by licensed wholesalers is not prohibited provided there is no sale or delivery of an alcoholic beverage to a retail licensee where the possession thereof by the retail licensee is prohibited by the rules.

Consequently, there is no objection to your equipping your salesmen with 4 ounce sample bottles, to be used by your salesmen for display and sampling purposes, but in no event to be delivered to retail licensees.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

12. MUNICIPAL ORDINANCES - SECTION 37 OF THE CONTROL ACT -
IMPLIED POWERS.

December 21, 1935.

John F. Carlton, Clerk,
Borough of South Belmar,
Belmar, New Jersey.

Dear Sir:

Section 1 of your Ordinance No. 78 says that no person shall manufacture, sell, distribute, bottle, rectify, blend, fortify, treat, mix, process, warehouse or transport any alcoholic beverages or possess implements for that purpose without having first procured the proper license therefor.

It may be that Section 1 goes too far in purporting to prohibit the manufacturing, bottling, rectifying, blending, fortifying, treating, mixing, processing or warehousing of alcoholic beverages. Section 37 of the Act, as last amended by Chapter 257, P. L. 1935, on June 8, 1935, confers the authority upon municipal governing bodies to make, enforce, amend and repeal such ordinances as it may deem necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages within its municipality in violation of the Act. That is as far as the statute goes, which leaves still open the question of whether or not the statute, by implication, will allow you to prohibit by ordinance the other unlawful conduct included in Section 1. As to this, refer to the discussion of the question in Re Red Bank, Bulletin #91, Item #2.

Section 4 raises a similar question. It says that no person shall sell or dispense, or buy, receive or procure any alcoholic beverages during the hours specified therein.

The statute, Section 37, confers upon each municipal governing body the power to limit the hours between which the sale of alcoholic beverages at retail may be made, so there is no question of your power to prohibit the sale or dispensing of alcoholic beverages during those hours. But there may, for the reasons given with respect to Section 1, be some doubt as to your power to prohibit the buying, receiving or procuring of alcoholic beverages during those hours.

As was pointed out with respect to Section 1, Section 37 of the Act authorizes only such ordinances deemed necessary to prevent the possession, sale, distribution, and transportation of alcoholic beverages in violation of the Act. This, however, does not expressly include in so many words the buying, receiving or procuring of alcoholic beverages. But the buying, receiving or procuring of alcoholic beverages may be distinguishable from the manufacturing of alcoholic beverages when the question of the extent of the implied powers which may be conferred by Section 37 is raised. Sale must involve a purchase. And to distribute alcoholic beverages some one must receive them. The relations are direct. One cannot occur without the other. On the other hand, possession, sale, distribution and transportation of alcoholic beverages does not necessarily involve, concurrently, their manufacture. They may be far removed from each other and the relation may be remote. So I approve the prohibition in Section 4 of the buying, receiving or otherwise procuring of alcoholic beverages during the prohibited hours. I believe it to be sound. But such approval is, of course, subject to any subsequent judicial determination as to the section's validity.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS - CUTINELLE v. HIGHTSTOWN

JOSEPH CUTINELLE,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH) CONCLUSIONS
OF HIGHTSTOWN (MERCER COUNTY),)
Respondent)

John J. Mechan, Esq., Attorney for Appellant.
Aaron V. Dawes, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail distribution license for premises located at #109 Rogers Avenue, Hightstown.

Respondent contends that the application was properly denied because a sufficient number of licenses had been issued in Hightstown and an additional license would be socially undesirable.

The population of Hightstown is approximately 3,000, and there are seven licensees operating therein, of whom six are plenary retail consumption licensees and one is a plenary retail distribution licensee. Respondent claims that these licensees adequately meet all existing demands. However, appellant emphasizes that Hightstown is a central shopping district for the surrounding area, being the junction of two principal express highways, namely, Routes 25 and 33, and caters to considerable transient trade, and concludes that therefore the issuance of an additional license would be proper.

The number of transients passing the premises sought to be licensed is one, but only one, of the factors to be considered by an issuing authority in determining whether an additional license for any particular vicinity is necessary or socially desirable. Furman v. Springfield, Bulletin #49, Item #6; Botfan v. Howell, Bulletin #64, Item #9.

In Sussex County Drug Co. v. Newton, Bulletin #47, Item #3, the Commissioner affirmed the denial of an application for a plenary retail distribution license on facts similar to those in the case at bar, saying:

"The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently serviced by another liquor store is difficult to sustain, especially in the case of a distribution license for off-premises consumption. For, with telephone and transportation facilities, such a store can properly service an area of much greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality. Its decision may be reversed if it fails in the ultimate test of public necessity and convenience. In the instant case, the appellant has failed to sustain the burden of proof."

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 22, 1935.

14. APPELLATE DECISIONS - GINSBERG v. ROCKAWAY.

HARRY GINSBERG,)
Appellant,)
-vs-)
MAYOR AND COUNCIL OF THE)
BOROUGH OF ROCKAWAY (MORRIS)
COUNTY),)
Respondent)

ON APPEAL
CONCLUSIONS

I. Ezra Newmark, Esq., Attorney for Appellant.
William A. Hegarty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the revocation of his plenary retail consumption license.

Respondent contends that the revocation was justified because (a) Appellant had sold alcoholic beverages at 12:55 A.M. on

September 14th, in violation of Section 6 of respondent's resolution limiting the hours of sale to midnight; and (b) Appellant had permitted persons other than himself and his employees to be upon the licensed premises after the closing hour, in violation of Section 7 of the resolution.

With the consent of respondent and pursuant to Section 28 of the Control Act an order was entered staying the revocation pending the determination of the appeal.

At the hearing of the appeal appellant denied both charges and testified that although a man and woman were in his licensed premises at approximately 1:00 A. M. on September 14th, that they were not there in order to purchase, did not in fact purchase, nor were they served, any alcoholic beverages or any kind of drink whatsoever; that they were interested jointly with appellant in a concession at the Allentown Fair and were merely choosing glasses to be used in serving milk at the Fair; that they were shown several kinds of glasses, finally indicated the kind best suited for their purpose, made arrangements to have the glasses picked up the following morning, and left immediately. The two people who were in the licensed premises at the time in question testified both before respondent and at the hearing on appeal and corroborated appellant's testimony.

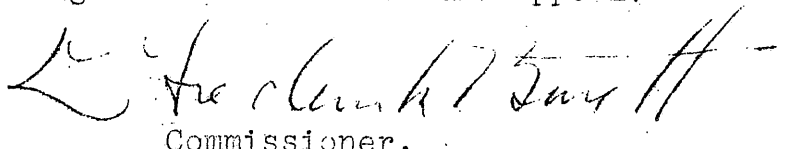
On the other hand, the Rockaway Chief of Police and another member of the local police force testified that at 12:55 on the night in question they looked through the rear door of appellant's place; that a man and woman were in front of the bar and appellant behind it; that they saw appellant draw two glasses of beer and push them across the bar to the man and woman, who, after drinking them, left through the front door; that the officers did not enter the licensed premises but knew that it was beer which was served because they saw the head "blown off" and because they knew that there was no tap on the bar for anything but beer.

It appeared at the hearing that appellant, in his application for his license, stated he had never been convicted of any crime; in his petition of appeal he reiterated this statement and swore to it under oath in the verifying affidavit. In fact he had been convicted of a violation of the Federal Prohibition Act and was forced to admit it when confronted with a certified copy of the record of conviction. He offered no explanation for his false statements. While it is true that the conviction would not necessarily have barred him from receiving a license, nevertheless his false application and false affidavit on appeal impair in large measure his credibility and diminish the force of his explanation of circumstances which were, to say the least, unusual as well as suspicious. There is no reason for accepting his story instead of that of two officers sworn to uphold the law and whose credibility is unimpaired. It must therefore be concluded that the evidence reasonably sustained respondent's verdict that appellant was guilty of selling alcoholic beverages during prohibited hours.

In view of the foregoing it is unnecessary to consider the second charge.

The action of respondent is affirmed.

An order will be entered vacating the previous order staying the revocation pending determination of the appeal.



Commissioner.

Dated: December 22, 1935.