

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

BULLETIN NUMBER 126

June 26, 1936

1. LICENSE FEES - COMPARATIVE FIGURES - MORRIS COUNTY

The records of the Department indicate the following to be the retail license fees in Morris County:

<u>Morris County</u>	<u>P.R.C.</u>	<u>S.R.C.</u>	<u>P.R.D.</u>	<u>L.R.D.</u>	<u>Club</u>
Boonton, Town of	\$ 400.00	**	\$ 200.00	**	\$ 100.00
Boonton, Township of	350.00	**	350.00	**	150.00
Butler	500.00	**	500.00	**	**
Chatham, Borough of	500.00	**	200.00	**	150.00
Chatham, Township of	400.00	**	125.00	**	**
Chester, Borough of	250.00	\$187.50	200.00	\$ 50.00	**
Chester, Township of	200.00	150.00	**	**	**
Denville	400.00	**	300.00	**	75.00
Dover	400.00	**	400.00	**	75.00
East Hanover	250.00	187.50	250.00	50.00	***
Florham Park	365.00	**	200.00	**	150.00
Hanover, Township of	225.00	168.75	150.00	**	100.00
Harding	200.00	**	200.00	**	**
Jefferson	200.00	150.00	**	35.00	50.00
Kinnelon	200.00	**	200.00	**	50.00
Lincoln Park	275.00	**	150.00	**	**
Madison	500.00	**	200.00	**	100.00
Mendham, Borough of	250.00	**	****	**	**
Mendham, Township of	250.00	187.50	365.00	50.00	**
Mine Hill	300.00	**	300.00	**	50.00
Montville	275.00	**	175.00	**	**
Morris	350.00	**	200.00	**	100.00
Morris Plains	400.00	300.00	250.00	***	75.00
Morristown	350.00	262.50	300.00	***	50.00
Mountain Lakes	400.00	**	300.00	**	50.00
Mount Arlington	200.00	150.00	200.00	50.00	50.00
Mount Olive	300.00	**	250.00	**	**
Netcong	200.00	**	200.00	**	**
Parsippany-Troy Hills	200.00	150.00	200.00	***	***
Passaic, Township of	250.00	**	100.00	**	**
Pequannock	300.00	*****	1,000.00	***	***
Randolph	200.00	150.00	100.00	**	100.00
Riverdale	200.00	**	200.00	**	**
Rockaway, Borough of	400.00	**	400.00	**	**
Rockaway, Township of	200.00	150.00	100.00	**	50.00
Roxbury	300.00	**	150.00	**	75.00
Washington	350.00	**	200.00	**	**
Wharton	350.00	**	200.00	**	75.00

** The local regulations are silent as to the fee for this type of license. According to our records, no fee has been fixed.

*** The issuance of this type of license has been prohibited by ordinance.

**** The issuance of this type of license has been prohibited by resolution. The Control Act requires that such prohibition be enacted by ordinance.

***** The issuance of this type of license was prohibited by ordinance before the Control Act conferred the authority to do so.

P.R.C.-Plenary Retail Consumption
S.R.C.-Seasonal Retail Consumption
P.R.D.-Plenary Retail Distribution
L.R.D.-Limited Retail Distribution

New Jersey State Libr.

June 20, 1936

Respectfully submitted,
MAURICE E. ASH
Senior Inspector.

2. LICENSE FEES - COMPARATIVE FIGURES - PASSAIC COUNTY

June 20, 1936.

The records of the Department indicate the following to be the retail license fees in Passaic County:

<u>Passaic County</u>	<u>P.R.C.</u>	<u>S.R.C.</u>	<u>P.R.D.</u>	<u>L.R.D.</u>	<u>Club</u>
Bloomingtondale	\$ 300.00	***	\$ 200.00	***	***
Clifton	350.00	\$ 262.50	250.00	\$ 50.00	\$ 150.00
Haledon	225.00	168.75	200.00	***	55.00
Hawthorne	200.00	****	200.00	50.00	50.00
Little Falls	300.00	225.00	200.00	50.00	50.00
North Haledon	200.00	150.00	200.00	50.00	50.00
Passaic	500.00	**	300.00	***	150.00
Paterson	400.00	**	300.00	**	**
Pompton Lakes	325.00	**	325.00	***	***
Prospect Park	****	****	**	25.00	****
Ringwood	250.00	**	**	**	150.00
Totowa	250.00	187.50	200.00	25.00	100.00
Wanaque	225.00	168.75*	125.00	50.00	**
Wayne	340.00	*****	340.00	***	***
West Milford	250.00	187.50*	**	50.00	**
West Paterson	200.00	150.00	200.00	**	50.00

* The fee shown is the correct seasonal retail consumption license fee. The local regulation fixes a higher seasonal fee based on a previously existent higher plenary retail consumption license fee which subsequently was reduced.

** The local regulations are silent as to the fee for this type of license. According to our records, no fee has been fixed.

*** The issuance of this type of license has been prohibited by ordinance.

**** The issuance of this type of license has been prohibited by resolution. The Control Act requires that such prohibitions be enacted by ordinance.

***** The issuance of this type of license was prohibited by ordinance before the Control Act conferred the authority to do so.

P.R.C. - Plenary Retail Consumption
 S.R.C. - Seasonal Retail Consumption
 P.R.D. - Plenary Retail Distribution
 L.R.D. - Limited Retail Distribution.

Respectfully submitted,
 MAURICE E. ASH
 Senior Inspector.

3. APPELLATE DECISIONS - RYAN vs. LOWER PENNS NECK.

EDWARD S. RYAN,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF LOWER PENNS NECK)	
(SALEM COUNTY))	
Respondent.)	
.		

Harry Adler, Esq., Attorney for Appellant.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license for premises 112 Lake View Avenue, Lower Penns Neck.

Respondent filed no answer and did not appear at the hearing.

Appellant testified that he complied with all the formal prerequisites and tendered the necessary fee to the Township Clerk. No reason was given him for the denial of his application.

Appellant's testimony indicates that he is personally qualified for a license. The premises in question are in a neighborhood which is partly residential and partly business. The neighboring residents joined in a petition for the issuance of the license.

The population of the Township is between 7000 and 8000 and there are several thousand employees of a nearby factory who pass through the Township daily. There is presently only one distribution licensee in the Township, located two blocks from the premises in question. Appellant testified that the service rendered by this store is not satisfactory and that residents have urged him to open another retail distribution store.

There is nothing in the record to indicate that appellant's application should have been denied.

Accordingly, respondent's action is reversed, upon the express condition that the proper pro-rated portion of the license fee payable to the respondent be paid by appellant prior to the issuance of the license.

D. FREDERICK BURNETT

Commissioner.

Dated: June 19, 1936.

4. APPELLATE DECISIONS - BLUM vs. POMPTON LAKES.

ISIDORE BLUM,)	
)	
Appellant)	
)	ON APPEAL
-vs-)	
)	CONCLUSIONS.
BOROUGH COUNCIL OF THE BOROUGH)	
OF POMPTON LAKES (PASSAIC)	
COUNTY))	
)	
Respondent.)	

Elizabeth Blume, Esq., Attorney for Appellant.
 John McNaughton, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant's application for a plenary retail distribution license was denied by the Borough Council of Pompton Lakes by reason of an ordinance adopted May 2, 1935 limiting the number of such licenses to 4, and the issuance of the allotted number.

Appellant contends that the ordinance is invalid because of an illegal penalty clause contained therein. This clause provides, in substance, that any person who shall sell or distribute any alcoholic beverage in violation of the ordinance shall, upon conviction, be subject to a fine of not less than \$25 and not more than \$100, or imprisonment for not less than 5 days and not more than 15 days, or both. Such provision clearly violates Section 7 of Article 10 of the Home Rule Act (P.L. 1917 at p.347; 2 C.S. Supp. p. 2105, par. *136-1007) authorizing municipalities to provide penalties of imprisonment not exceeding 90 days, or fines not exceeding \$200, or both. The punishment to be imposed by the magistrate must be within the limits defined by the statute, but his discretion may not be restricted by a fixed or minimum penalty. Fields v. Duffy, 115 N.J.L. 319; 180 Atl. 225 (Sup. Ct. 1935); Garden State Lines v. Nutley, 11 N.J. Misc. 502; 167 Atl. 5 (Sup. Ct. 1933); Friedman v. Maines, 8 N.J. Misc. 703; 151 Atl. 472 (Sup. Ct. 1930); aff'd. 110 N.J.L. 454; 166 Atl. 148 (E. & A. 1933). See also Massinger v. Millville, 63 N.J.L. 123; 43 Atl. 443 (Sup. Ct. 1899).

The invalid penalty clause, however, does not affect those portions of the ordinance which are clearly separable and not essentially connected therewith. Staats v. Washington, 45 N.J.L. 318 (Sup. Ct. 1883); aff'd. 46 N.J.L. 209 (E. & A. 1884). A saving clause contained in the ordinance expressly provides that should any section be held invalid, such invalidity shall not affect any other section of the ordinance.

Section 5 of the ordinance in question limits the number of plenary retail distribution licenses, pursuant to the authority conferred upon municipalities by Section 37 of the Control Act. This limitation is regulative in character and requires no penalty. Blake v. Pleasantville, 87 N.J.L. 426; 95 Atl. 113 (Sup. Ct. 1915); aff'd. 89 N.J.L. 358; 98 Atl. 1084 (E. & A. 1916). It stands independent of the invalid portion of the ordinance and is not affected thereby. Doran v. Camden, 64 N.J.L. 666; 46 Atl. 724, (E. & A. 1900).

It is argued further that the ordinance is unreasonable both in its adoption and in its application to the appellant. The evidence does not support either of these contentions. Pompton Lakes has approximately 3500 residents. In summer the shopping population is more than doubled by visitors from neighboring camps and lake resorts. Yet no congestion in existing liquor stores, nor any necessity for an additional one, has been shown. The limitation was enacted after careful deliberation by the Borough Council. It was their considered opinion that the needs of the municipality were adequately supplied by the 9 plenary retail consumption and 4 plenary retail distribution licenses then outstanding. No appreciable change in conditions has occurred since the ordinance was adopted in May 1935.

There are 3 distribution licensees within 50 feet of appellant's premises, and a 4th less than two blocks away. There are several consumption licensees in the vicinity. It is true that the distribution licenses have all been granted for premises on the east side of Wanaque Avenue, which is a heavily traveled thoroughfare. Appellant's store is on the opposite side of the street, and he testified that his customers are annoyed by the necessity of making their liquor purchases across the way. Their impatience is understandable but not legally persuasive.

The ordinance, until repealed or set aside, is binding upon the action of the Borough Council. Franklin Stores Co. v. Belleville, Bulletin 102, item 2 and cases therein cited; see also Bachman v. Phillipsburg, 68 N.J.L. 552; 53 Atl. 620 (Sup. Ct. 1902). Appellant has failed to show any unreasonableness or lack of good faith on the part of the issuing authority in the denial of his application. See In re: Roselle Park, Bulletin 115, item 8.

The action of respondent is affirmed.

D. FREDERICK BURNETT

Commissioner.

Dated: June 22, 1936.

5. APPELLATE DECISIONS - FEDERICI vs. LOGAN

JOSEPH FEDERICI,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF LOGAN,)	
)	
Respondent.)	
.)	

Charles Camp Cotton, Esq., Attorney for Appellant.
James E. McGlincy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for the period ending June 30, 1937. The premises are located on Main Street, Bridgeport, Township of Logan.

Respondent denied the application because an Ordinance limiting the number of licenses had been finally adopted by the Township Committee on May 11th, at the same meeting at which appellant's license was denied.

The ordinance reads as follows:

- "1. The Township Committee of the Township of Logan hereby declared, that in their judgment, that it is necessary to limit the number of licenses to sell alcoholic beverages at retail within the limits of the said Township of Logan, County of Gloucester, and State of New Jersey.
- "2. From and after the adoption and due publication of this ordinance in accordance with the law, the number of licenses to sell alcoholic beverages at retail within the limits of the Township of Logan, County of Gloucester, and State of New Jersey, shall be limited to the issuance of one license per thousand of population.
- "3. This Ordinance shall not affect licenses granted and in effect at the time of the adoption and passage of this Ordinance.
- "4. This Ordinance shall take effect immediately."

Logan Township has three villages and one town. Bridgeport (the town) has a population of between four hundred and five hundred. Bridgeport is exclusively residential. The population of the entire township is eighteen hundred (1800). It is a rural community.

Prior to the ordinance, respondent issued and there is now outstanding one consumption license for premises at Nortonville, about two miles from Bridgeport.

Appellant contends that the ordinance means that one license should be issued for the first one thousand (1,000) population and one for the excess above one thousand.

The language, however, is clear: "shall be limited to the issuance of one license per thousand of population". "Per" means, in this connection, "for each". Until the population reaches two thousand (2,000), a second license cannot be issued.

No attempt was made to show that the ordinance, itself, is unreasonable either in its adoption or its application to appellant. Hence, the ordinance bars the issuance of a second license. Franklin vs. Belleville, Bulletin #102, item 2 and cases therein cited.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: June 22nd, 1936.

6. REFUNDS - AFTER LICENSE DECLARED VOID ON APPEAL.

June 16, 1936.

David F. Barkman, Esq.,
Babbitt Building,
Morristown, New Jersey.

Dear Sir:

I have your letter of June 9th in reference to the Charles A. Keppler case.

The decision was that the license was declared void and activity to cease forthwith. This decision cancelled the license.

In Bulletin 58, item 14, re Refunds - After Referendum, I said:

"What evidently happens is that by virtue of a referendum the retail licensee is deprived of privileges previously granted to him and which under ordinary circumstances he would continue to enjoy for the balance of the licensing period and in all respects comply with the law.

"Under the circumstances, it would be unjust to allow any more than the earned fee to be retained. Hence, where a license previously issued becomes void and inoperative by virtue of a referendum adopted pursuant to section 43 of the Control Act, said licensee shall be entitled to a refund of that prorated portion of the license fee representing the unexpired term of the license."

Following the same principle, it would be unjust to deny refund of the unearned portion of a license fee where a license is cancelled because of erroneous issuance. Here again the privileges under a license are terminated through no fault of the licensee.

However, there is one other consideration, viz.: had not the issuing authority issued the license erroneously, the application would have been denied and a 10% investigation fee deducted.

It follows that upon cancellation of a license erroneously issued that refund of the prorated unearned license fee less 10% of the full fee paid should be made to the licensee.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. PRACTICES DESIGNED UNDULY TO INCREASE THE CONSUMPTION OF ALCOHOLIC BEVERAGES - FREE LUNCH - LICENSEES CAUTIONED NOT TO OVERPLAY THE HAND.

June 22, 1936.

Thomas F. Norton, Esq.
North Bergen, New Jersey.

Dear Mr. Norton:

I have before me your letter of June 16th.

There is nothing in the Alcoholic Beverage Control Act or in the Rules and Regulations of this Department which would prohibit a licensee giving away and providing free of charge, sandwiches and free lunch.

Please, however, caution your client not to let his "generosity" run away with him. Up to a certain point what he gives away free is his own affair and I have no inclination to interfere with his doing so. Time honored customs like free lunch won't prejudice control if kept within reasonable bounds.

The statute confers upon me the power and responsibility to make rules and regulations against practices designed unduly to increase the consumption of alcoholic beverages and concerning gifts of equipment, products and things of value. If it becomes necessary for me to exercise that power in the public interest, I shall not hesitate to do so. I suggest you advise your client to do nothing in his desire to attract customers which would overplay the hand.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. LICENSEES - EMPLOYEES - NON-RESIDENTS.

June 2, 1936.

Dear Mr. Burnett:

I am presenting the following problem for your personal consideration.

Mr. Charles Krom has been the manager of the Essex and Sussex Hotel in Spring Lake, N.J. during a few months in the summer and manager of the Flamingo Hotel, Miami Beach, Florida during the winter months for the past sixteen years. During that time he has employed the same personnel in both houses.

Mr. Krom has had in his employ a number of men who have been his bartenders since repeal. One has been in his employ for ten years and the other men approximately six years. However, they are not legal residents of the State of New Jersey. Could a special permit be secured or granted by you or your Department to permit these men to work for Mr. Krom for the summer months, particularly in view of the fact that they have been in his employ for such a long period?

Sincerely yours,
J. G. BUCH

June 8, 1936.

Mr. Joseph G. Buch, Chairman,
New Jersey State Hotel Association,
Trenton, New Jersey.

Dear Mr. Buch:

I have yours of the 2nd.

Section 22 of the Control Act provides that no retail license shall be issued to anyone unless he has been a resident of the State of New Jersey for at least five (5) years continuously immediately prior to the submission of his application.

Section 23 provides that no person who would fail to qualify as a licensee shall be knowingly employed by or connected in any capacity whatsoever with the licensee, except that persons failing to qualify as to residence may, with the approval of the Commissioner, and subject to rules and regulations, be employed by any licensee, but such employee shall not in any manner whatsoever sell or solicit the sale of alcoholic beverages.

Under the above Sections I have issued a large number of Special Permits to employ persons so disqualified, but all these permits are conditioned in necessary compliance with the statute that such employee cannot serve, sell or solicit the sale of alcoholic beverages.

Therefore, Mr. Krom cannot lawfully employ as bartenders any persons disqualified because of lack of residence. If he has done it heretofore and gotten away with it, it has been merely his good luck that no complaint was made. I cordially advise strict compliance with the law. A violation of this Section constitutes an indictable misdemeanor.

I appreciate Mr. Krom's desire to employ a person of long and faithful service and am personally very sorry for both Mr. Krom and the employees so disqualified, but I have no authority to permit such employment. The Control Act gives me no discretion in such cases.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

9. LICENSEES - EMPLOYEES - NON-RESIDENTS - HEREIN OF WINE STEWARDS.

June 23, 1936.

Mr. Joseph G. Buch, Chairman,
New Jersey State Hotel Association,
Trenton, New Jersey.

Dear Mr. Buch:

As suggested in my telephone conversation with you on June 8th, I believe that the help problem of the members of your association so far as liquor is concerned may best be solved by the employment of wine stewards whose duties will be solely the selling and serving of alcoholic beverages. These wine stewards, of course, must qualify as to age, residence and citizenship as well as in every other respect. Having thus qualified one or more stewards to take over the liquor exclusively, the way is then open to employ under Special Permit, persons disqualified because of lack of residence as waiters or waitresses to sell and serve foods but who will have nothing to do whatsoever with alcoholic beverages.

For instance, as many stewards as desirable could be stationed in the dining-room for the sole purpose of taking the orders and serving alcoholic beverages. When guests wish to order drinks, the waiter or waitress, instead of taking the order will immediately summon the wine steward who will present the "wine" card to the guest for selection and order. The steward would both take the order and then serve the alcoholic beverages. The waiter or waitress would have nothing whatsoever to do with the service or sale of the alcoholic beverages.

Such stewards could easily be identified by some distinctive uniform, badge or chain and key which is the popular method used in many hotels.

Service and sales of alcoholic beverages through qualified wine stewards would be in full compliance with the Control Act and at the same time lend an air of dignity and "swankiness" which I believe would outweigh any additional expense to the licensee.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. SPECIAL PERMIT - CLUB LICENSE FOR HOUSE BOAT BEYOND LOW WATER MARK.

IN THE MATTER OF THE APPLICATION)
BY)

OLD RED BANK YACHT CLUB, INC.)

CONCLUSIONS

FOR SPECIAL PERMIT FOR PREMISES)
LOCATED AT BATTIN ROAD AND)
SHREWSBURY RIVER, FAIR HAVEN,)
NEW JERSEY)

Appearances:

Mortimer Eisher, Esq., Attorney for Applicant
Hamilton S. Battin, G. H. Planitz and John Shaughnessy,
Objectors Pro Se.

Application was duly filed by Old Red Bank Yacht Club, Inc. for special permit authorizing it to sell alcoholic beverages on its house boat located on the Shrewsbury River at Battin Road, Fair Haven, New Jersey, to its members and their guests for consumption on the licensed premises until October 1, 1936. Application for club license had previously been made to the issuing authority of Fair Haven but was not passed upon on the ground that the premises sought to be licensed were situated beyond the low water mark and were, therefore, outside the jurisdiction of the municipality. The Mayor and Council and the Chief of Police of the municipality have advised the Commissioner that they have no objection to the granting of the permit sought.

At the time application for club license was filed with the municipal issuing authority, several persons resident in the neighborhood objected. These persons were notified of the application for special permit and were afforded opportunity to be heard at a hearing held on Monday, June 22, 1936. At the hearing three persons appeared and objected to the granting of the special permit mainly on the ground that the locality was residential and the sale of liquor on the house boat would interfere with their comfort and would depress the value of their properties.

Investigation discloses that the applicant is a bona fide club and has conducted its affairs properly and without complaint for many years. During 1935-1936 the house boat was located at Red Bank and alcoholic beverages were sold thereon pursuant to a club license. The house boat is connected with the shore line by means of a wooden walk, which is 228 feet in length. The approach to the wooden walk from the main road is over a private road available for use by the club members. The home of the nearest objector is approximately 400 feet from the house boat.

Under these circumstances, the applicant can readily conduct its affairs without inconvenience to neighboring residents and should be afforded an opportunity to do so. In the event the regulations of the Department and the limitations of the permit, particularly the restriction against sales of alcoholic beverages to persons other than bona fide members and their guests, are not scrupulously observed or in the event the sale of alcoholic beverages is accompanied by excessive noise or disturbances, the permit will be cancelled forthwith.

The Commissioner has granted the application for special permit.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

Dated: June 24, 1936.

11. LICENSE APPLICATION HEARING - CRANFORD VETERANS HOLDING COMPANY, INC. - HEREIN OF BUSINESS ZONES BARGING INTO RESIDENTIAL AREAS.

In the Matter of the Application)
of Cranford Veterans Holding Com-)
pany, Inc., for Transfer of Club)
License to premises situated at)
208 North Avenue West, Cranford,)
New Jersey.)
.....)

CONCLUSIONS

Anthony N. Lanza, Esq., Attorney for Applicant.
Carl H. Warsinski, Esq., Attorney for Township of Cranford.

BY THE COMMISSIONER:

Cranford Veterans Holding Company, Inc., in interest of Fiske Post #335, Veterans of Foreign Wars, seeks to transfer its Club license from 19 Union Avenue North, to 208 North Avenue West, Cranford.

The application was made to the Commissioner because one of the Township Committeemen is a stockholder of the Holding Company and a member of the Post. P. L. 1934, Chap. 44.

On March 10th, 1936, the Township Committee adopted the following resolution:

"Resolved that this Committee go on record as being opposed to the transfer of the Club license issued to the Veterans Holding Co. Inc. from 19 North Union Avenue to 208 North Avenue West."

On learning that this resolution was in existence, applicant communicated with the Township Committee and requested

that this resolution be rescinded. The communication was ordered filed. After application was made to the Commissioner, no further attempt was made to secure a favorable resolution because, as a witness for applicant explained, "it would be asinine to ask for a resolution approving the transfer unless that (prior) resolution was rescinded". Under the circumstances, therefore, the matter will be considered as if an application for a favorable resolution had been duly made to the Township Committee and duly refused.

Failure to present a copy of a favorable resolution would be sufficient cause for denying the transfer if the refusal of the local authorities to approve the transfer of the license was based on reasonable grounds. In re Woodstown Lodge of Moose, Bulletin #107, Item #4.

In order to determine whether the refusal was reasonable, it is necessary to consider both the premises to which transfer is sought and the character of the neighborhood.

The premises are a frame house on a triangular lot at the corner of North Avenue and Orchard Street. Actually, this triangular lot (known as 208 North Avenue West) is zoned for business purposes. At the apex of this triangular lot and immediately adjoining the house which has been leased by the applicant, there is a gasoline station. On the opposite side of North Avenue is a dentist's office and a beauty parlor. All the remaining property to the north, west and south of the premises in question is strictly residential except that one of these houses, having all the appearances of a private residence, is used as a funeral parlor. How this lot, the only one in the whole block, was slipped into a business zone is none of my business. The controlling feature is that the lot juts out of the business section into a highly residential section. Objections have been made by a large number of persons who reside in the immediate vicinity, of whom eighteen (18) voiced their objections at the hearing.

I find that the action of the Township Committee in refusing to approve the transfer of this license into a neighborhood which is essentially residential, is reasonable. In re Cranford American Legion Holding Company, Bulletin #84, Item #3. In re Passaic Lodge of Elks, Bulletin #95, Item #4.

The application is, therefore, denied.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 24, 1936.

12. NEW LEGISLATION - AMENDMENT TO CHAPTER 254, P. L. 1935,
SUPPLEMENTING THE CONTROL ACT - MUNICIPAL RETAIL LICENSES.

June 23, 1936

Senate Committee Substitute for Assembly Bill No. 123 was approved by Governor Hoffman on June 22, 1936, and thereby became Chapter 188 of the Laws of 1936. It amends Chapter 254, P. L. 1935, a supplement to the Control Act, approved June 8, 1935.

It is effective immediately.

The supplement (Chapter 254, P. L. 1935), when originally enacted, was reprinted in the July, 1935 pamphlet of the Alcoholic Beverage Control Act as Section *22A.

The new amendment provides:

"*22A. No class C license shall be issued to any corporation, except for premises operated as a bona fide hotel, unless each owner, directly or indirectly, of more than ten per centum (10%) of its stock qualifies in all respects as an individual applicant, anything to the contrary contained in the act to which this is a supplement notwithstanding; provided, that this section shall not apply to renewals of licenses."

The new matter is italicized above. Hence the only change is that the section does not apply to renewals of presently existing licenses.

D. FREDERICK BURNETT,
Commissioner.

13. NEW LEGISLATION - AMENDMENT TO THE CONTROL ACT - OWNERSHIP OF OR MORTGAGE UPON LICENSED PREMISES BY MANUFACTURER OR WHOLE-SALER AS INTEREST IN THE RETAILING OF ALCOHOLIC BEVERAGES.

June 23, 1936.

Assembly Bill No. 345 was approved by Governor Hoffman on June 22, 1936, and thereby became Chapter 196 of the Laws of 1936.

Since no effective date is stated, it will become effective on July 4, 1936.

It amends Section 40 of the Control Act to read:

"40. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this act, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler; provided, however, that prior to December sixth, one thousand nine hundred and thirty-seven the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages. And it shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part, or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaler, except as provided for in this act, or with any manufacturing, wholesaling or importing interests of any kind whatsoever outside of the State. No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used

for advertising the product of or product offered for sale by such brewery, winery, distillery or rectifying and blending plant or wholesaler."

The new matter is italicized above. It extends the moratorium which would have expired on December 6, 1936 for one year, i. e., until December 6, 1937.

D. FREDERICK BURNETT,
Commissioner.

14. LICENSES - LIMITATION OF NUMBER - PRINCIPLES APPLICABLE TO
TRANSFERS - HEREIN OF FAIRNESS TO HONEST LICENSEES.

June 24, 1936.

Louis G. Morten, Esq.,
26 Journal Square,
Jersey City, N. J.

My dear Mr. Morten:

I am sorry that you were unable to accompany Mr. O'Gorman in your proposed conference with me today.

I am wholly sympathetic with the desire of the Township of Teaneck to reduce the number of licenses. In fact, I have urged on several occasions that every time a license is revoked that the maximum number be automatically reduced. So also even though there is no revocation but only a suspension, that if the suspension is for any serious violation, that then at the end of the fiscal year that licensee be denied a renewal and the maximum number again automatically reduced by the denial. In that way we will eventually achieve with fairness to existing, law-abiding licensees a limitation that will make all of them prize the more highly their privileges and thereby tend to better enforcement.

Mr. O'Gorman puts to me as I write to you a case of a present licensee who desires to make a transfer of his license to another person and place, and that question has arisen as to whether this should not be denied in order to reduce the present number of licenses.

Assuming, for convenience, the facts as he alleges them, to wit, that there are no charges pending against the transferor and that the transferee is personally qualified, and that the place to which he seeks transfer is suitable and appropriate, I cordially advise against denial of such an application even though made with the laudable purpose of reducing the number of licenses. For such a denial would not reward a licensee who has obeyed the law in all respects by enabling him to cash in on his franchise but, on the converse, it would place him in the same category as those licensees who had cheated and been punished.

Of course, I am not in this one-sided manner making any adjudication whatsoever as to your power to refuse such transfer, for such adjudication can only be made after hearing and both sides have had full opportunity to present their argument. My present impression is that such power exists. I am talking only about the policy of its exercise. I have no hesitancy, as a matter of policy, in advising against such denial assuming the facts as Mr. O'Gorman has stated them.

After all, the big thing to be achieved is not ruthless, indiscriminate reduction in the number of licensees, but rather making sure that only the fittest survive. If there is nothing against a person and his place, it seems only fair to go along with him on his transfer.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

15. SPECIAL PERMITS - NO POWER IN MUNICIPALITIES TO FIX OR COLLECT FEES.

LICENSES - CLUB LICENSES - SPECIAL PERMITS NOT NECESSARY FOR PUBLIC AFFAIRS FOR CLUBS HOLDING PLENARY RETAIL CONSUMPTION LICENSES.

June 17, 1936.

Dear Sir:

I have been instructed by the Mayor and Council to write to you in regard to the fee which is charged to the White Beeches Golf and Country Club of \$10.00 for the special parties run by them.

As this causes considerable inconvenience in obtaining the necessary signatures and seal each time one of these applications goes through it is the opinion of the Mayor and Council that these fees should go to the Borough.

Will you kindly let us have your views on the matter.

Very truly yours,

W. L. LEWIS
Borough Clerk.

June 25, 1936.

Walter L. Lewis,
Borough Clerk,
Haworth, New Jersey.

Dear Mr. Lewis:

I have before me your letter of June 17th.

Section 75 of the Control Act, in pursuance of which special social permits to sell alcoholic beverages are issued, provides that the fees for such permits shall be determined in each case by the Commissioner and shall be payable to him. No authority is conferred upon municipalities to fix or to collect such fees. In the absence thereof, the power does not exist.

I am sorry if the municipal approvals which I require have become burdensome. That, of course, was the farthest from my mind. On the contrary, I ask the consent of the municipal officials to the granting of the permits in a spirit of cooperation with and protection of the interests of the municipality in which the permit will be exercised. I cannot possibly be familiar with the local conditions and aware of the local regulations in 564 municipalities. Hence, the necessity of obtaining from the Chief of Police an approval as to the character and reputation of the applicant and

from the Clerk a certification to the effect that the issuance of the permit would not be contrary to any local resolutions, ordinances or policies.

According to my records, the White Beeches Golf and Country Club holds a club license. Why don't you suggest to the Country Club that instead of a club license, it take out a regular plenary retail consumption license. Under such license, the club could sell to such extent as it chose, to the general public not only for consumption on premises but also package goods for off premises consumption. There would then no longer be the necessity for taking out a special permit each time a public affair were held. Both the club and the Borough would be saved the inconvenience attendant to applying for the special permits and the Borough would gain in addition the added revenue from the higher license fee.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

16. MUNICIPAL ORDINANCES - SCREENS - EXTENT OF EXCEPTIONS IN
FAVOR OF CLUBS

June 25, 1936.

Edmond J. Dwyer, Esq.
Newark, New Jersey.

Dear Sir:

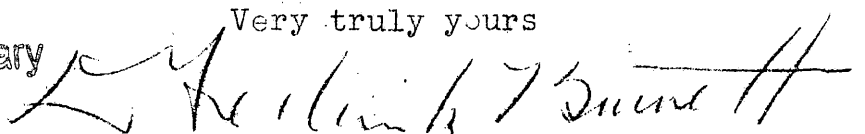
Re: City of Orange.

I have before me the proposed ordinance concerning alcoholic beverages which was introduced and passed on first reading at the meeting of the Board of Commissioners held on June 16th and which will come up for final consideration at the meeting to be held July 7th.

I note that Section 14, which requires that during closed hours all rooms in which alcoholic beverages are served or sold be open to public view, contains an exception in favor of "club rooms and club bars." The exception as worded is too broad. It is, therefore, disapproved. The trouble is that it exempts all rooms and bars of premises nominally called "clubs" regardless of the class of license held and irrespective of the genuineness of the club. Not all so called clubs are really clubs at all. Some are mere ordinary commercial enterprises which have adopted or which masquerade under that name. As your regulation now stands, any commercial organization merely by calling itself a club could bring itself within the exception and thereby evade the regulation. I therefore suggest that you excise from Section 14 the words "with the exception of club rooms and club bars" and substitute the words "with the exception of the rooms and bars of those licensees who can qualify for club licenses in accordance with the statute and with Section 2(c)." Then you will have a definite standard by which to measure. Cf. re Voorhees Township, Bulletin 105, item 9; re Mullica Township, Bulletin 109, item 4; re Pine Hill Borough, Bulletin 115, item 13.

Very truly yours

New Jersey State Library



Commissioner.