

SENT TO REGULAR MAILING LIST

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 77

June 5, 1935

1. LICENSEES - REQUIRED COOPERATION WITH CAMPAIGN AGAINST DRUNKEN DRIVING - NOTICE

TO MUNICIPAL ISSUING AUTHORITIES:

The campaign of A. W. Magee, Acting Commissioner of Motor Vehicles, against drunken driving commands respect and cooperation. I wish every motorist knew that 1443 automobile accidents were caused last year in New Jersey by drivers under the influence of liquor.

The automobile is here to stay but Repeal is on trial. If the privilege is to be continued, the intoxicated must keep his hands off the wheel.

Mr. Magee does well to emphasize the popular but misleading conception that one is not a drunken driver unless he is "soused", "pickled" or "plastered". For this is NOT the law. Our Court of Last Resort declared:

it is not essentialthat the driver of the automobile be so intoxicated that he cannot safely drive a car. The expression - under the influence of intoxicating liquor - covers not only all the well known and easily recognized conditions and degrees of intoxication, but any abnormal, mental or physical condition which is the result of indulging, in any degree, in intoxicating liquors and which tends to deprive him of that clearness of intellect and control of himself which he would otherwise possess."

His poster should go far in bringing home to every driver who drinks - this means YOU.

He will send you shortly a supply of these posters which please deliver to each licensee, with instructions that these posters be kept prominently displayed and used as a personal text to those who brag they can "hold it".

Also call their attention to the State-wide rule:

"No alcoholic beverages shall be sold to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated."

It may be that you will think of other places where the poster can be used in the public interest to advantage. If the supply runs short, contact Mr. Magee for more. He, like his predecessor, is an avowed foe of drunken driving.

In view of the pledged cooperation of President Wm. G. Wellhofer of the New Jersey Licensed Beverage Association, I do not think it necessary to make a regulation requiring display of the poster, but will do so if it appears necessary.

Your service in this matter will be appreciated.

Cordially yours,
D. FREDERICK BURNETT,
Comaissioner

Dated: June 1, 1935

New Jersey State Library

2. RULES FOR ADVERTISING NOTICE OF INTENTION - EXCEPTION IN FAVOR OF THOSE WHO ADVERTISED BEFORE REVISED RULES BECAME EFFECTIVE

May 31, 1935.

Klemmer Kalteissen, Esq.,
New Brunswick, N. J.

Dear Mr. Kalteissen:

I have yours of the 23rd.

Present holders of licenses who advertised their notice of intention to apply for a renewal license before filing their respective applications with the municipal clerk will not be penalized for their extreme diligence; provided, however, that the first insertion of advertisement shall have been made not later than May 2, 1935.

This - because the new rules were promulgated on May 1, 1935, effective immediately.

As regards a beer license - there is no such thing.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

3. REVOCATION PROCEEDINGS - SUSPENSION - SUSPENSION WILL NOT BE LIFTED WHEN LICENSEE VIOLATES DURING THE PERIOD OF SUSPENSION

In the Matter of the Petition of Anna Cangianelli of Caldwell Township, Essex County, for reinstatement of license. } CONCLUSIONS AND ORDER

The Plenary Retail Consumption License of petitioner was suspended by me on April 25, 1935, for failure to comply with the Alcoholic Beverage Tax Law, effective April 28th to the end of the fiscal year.

The Order was served on the licensee by registered mail on April 25th and the registered letter received by her on April 26th.

On subsequent check-up by this Department to see that the Order of Suspension was being complied with in good faith, it was found that alcoholic beverages were being sold despite the suspension. On May 20th, a purchase was made on the licensed premises by Investigators of this Department from James P. Cangianelli husband of the licensee. He was arrested and held in bail for violation of the Control Act. The licensee, having paid the amount due the State Tax Department, now presents this Petition for reinstatement of the license and prays that the suspension be lifted.

Her Petition states "at the time the license was suspended, it was not explained to her, nor did she have knowledge of the part that she could not carry on the said business of selling liquors and as a result of which she was apprehended during the period of suspension carrying on said business."

I wonder what she thought it meant when her license was suspended! There is no obligation to explain to those who do not ask. Her ignorance that she could not lawfully sell liquor while her license was suspended does not cast the burden on the Department to see that she does know. The shoe is on the other foot. It was her business to know at her peril what she could do and what she could not do. As was said in Braunstein vs. Bridgeton, Bulletin 63, Item 9: "Rather than lift his finger to ascertain what he could do and what he could not do, he took a chance and was caught."

The petition is denied.

Dated: June 1, 1935

D. FREDERICK BURNETT,
Commissioner

4. REVOCATION PROCEEDINGS - PUNISHMENT - DISCRETION OF ISSUING AUTHORITY

May 31, 1935

Mr. George B. Conover,
Absecon, N. J.

Dear Mr. Conover:

I have for consideration the petition signed by some 350 citizens of Absecon City asking that I revoke the Myrtle Downie - Estates Casino license for violation of the Female Impersonator Rule.

I transmitted this matter to the City Council who, with reasonable promptness, tried the licensee, found her guilty as charged and suspended her license for thirty days. Subsequently they cut the suspension down to eight days on the ground, as resolved, that she had been sufficiently punished and that the suspension worked a hardship on her family and the employees of the Casino.

While I have great respect for the opinion of representative citizens of your community, these petitions are not their considered judgment after hearing both sides, but were signed in advance of the trial. There is nothing in them, therefore, which in anywise shows an abuse of power by the City Council. The decision was wholly within its jurisdiction. While the net punishment may appear on the surface to be incommensurate with the offence, that does not constitute any ground on which I may lawfully interfere.

If there are any further complaints about this place breaking the rules concerning female impersonators, I will entertain, without presently deciding, a petition praying that revocation proceedings be handled by this Department direct.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

5. APPELLATE DECISIONS - BARRY VS. SPRING LAKE HEIGHTS

JOSEPH E. BARRY and HARRY)
BARRY, PARTNERS, trading)
as BARRY'S,)
Appellants,)

-vs-

THE MAYOR AND COUNCIL OF THE
BOROUGH OF SPRING LAKE HEIGHTS
(MONMOUTH COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Joseph Mirne, Esq., Attorney for Appellants.
William J. O'Hagan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at No. 600 West Warren Avenue, Spring Lake Heights.

Respondent contends the application was properly denied, for the reason, among others, that a sufficient number of licensed places are presently operating in the Borough and that the issuance of an additional license therein is socially undesirable.

The Borough of Spring Lake Heights is a residential and resort community of approximately 1200 persons. There are now six plenary retail consumption licensees operating therein. Three of these licensed places are within a half mile of appellants' premises. One of the Borough Councilmen testified that the existing licensees do not have sufficient business to enable them to make a living, that the needs of the community are adequately serviced by the existing licensed places, and that the issuance of an additional license would be socially undesirable. Appellants concede that the local residents are adequately serviced by the existing places and that they will depend mostly on transient trade. There is nothing, however, to indicate that the proper servicing of such transient trade requires an additional licensed place in Spring Lake Heights.

In view of the foregoing, it cannot be said that appellants have sustained the burden of proving that public necessity or convenience dictate the issuance of an additional license. See Furman vs. Springfield, Bulletin #49, Item #6; Haenelt vs. Haworth, Bulletin #57, Item #11; Voos vs. Union, Bulletin #73, Item #1; Botfan vs. Howell, Bulletin #64, Item #9.

The action of respondent is affirmed.

Dated: June 1, 1935

D. FREDERICK BURNETT,
Commissioner

6. MUNICIPAL ORDINANCES - 200 FEET RULE - 1000 FEET MAY BE FIXED BY MUNICIPALITY

June 3, 1935

Hon. W. B. Yeomans,
Allendale, N. J.

Dear Sir: Re: Borough of Upper Saddle River

I have before me for consideration the proposed ordinance regulating the sale of alcoholic beverages, introduced and passed on first reading on May 21, 1935.

The question as to whether or not licenses may be prohibited near churches and schools even though at a greater distance than the statutory two hundred feet has already come before me. In the conclusions re: Staciewicz vs. Trenton, Bulletin 35, Item 10, and re: Persi vs. Trenton, Bulletin 46, Item 12, I held that the two hundred foot restriction contained in Section 76 of the Act expressed a legislative policy against the licensing of premises too near to churches and schools, that it merely stipulated the minimum requirements and that the Legislature by doing so did not contemplate depriving issuing authorities of the right to refuse licenses for premises reasonably considered by them as being too close to churches or schools, but nevertheless at a greater distance than two hundred feet.

Accordingly, if in the exercise of sound discretion you deem the proper prescribed distance to be one thousand feet, I would approve. But in the instant case, as the regulation is presently worded, I cannot. While the distance of one thousand feet may be entirely reasonable, the wording of the ordinance makes it defective.

Section 1 makes any sale of alcoholic beverages within one thousand feet of any church building in which religious services are held or any building used for public school purposes, unlawful. As worded it rigidly prohibits all such sales in spite of express statutory exemptions to the contrary; it protects only church buildings in which religious services are held and buildings used for public school purposes; it includes within its prohibitory scope sales from vehicles, which sales are prohibited by the Act in the first place.

Section 2 prohibits the issuance of any license to sell alcoholic beverages within one thousand feet of any church building in which religious services are held or any building used for public school purposes, also in spite of express statutory exceptions to the contrary. Its effect likewise is confined only to church buildings and public schools.

The statute, on the other hand, in Section 76, prohibits the issuance of licenses for the sale of alcoholic beverages within two hundred feet of any church or public schoolhouse or private schoolhouse not conducted for pecuniary profit, excepting manufacturers, wholesalers, hotels, clubs and fraternal organizations which owned or were actually in possession of the licensed premises at the time the Act became effective. It further provides for a waiver of the protection of the restriction, for the manner in which the distance is to be measured and for an exception in favor of licensed premises within two hundred feet of which churches or schoolhouses were located after the issuance of the license.

Your regulations do not go far enough; they prescribe the restricted distance and stop at that point. I doubt that it was your intention that the ordinance be inconsistent with the statute, but its wording makes it repugnant thereto and, therefore, susceptible of misconstruction. Hence, I suggest, in order to prevent possible legal complications arising from difference in language, that both Sections 1 and 2 be redrafted to the end that they control to the extent covered by statute. It may not be necessary in order to accomplish this to repeat in full all of the statutory provisions. Sufficient, perhaps,

to make the inclusion by reference. I offer for your consideration the following, to wit:

"In accordance with the terms, exceptions and provisions of 'An Act Concerning Alcoholic Beverages' passed December 6, 1933, as amended and supplemented, no licenses shall be issued for the sale of alcoholic beverages within one thousand feet of any church or public schoolhouse or private schoolhouse not conducted for pecuniary profit."

The ordinance when properly revised as indicated above will be approved.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

7. LICENSES - CORPORATE FRONTS FOR INDIVIDUAL LICENSEES

May 18, 1935

Dear Sir:

Today there came to me one, Herman Boge, applicant for a Plenary Retail Consumption License (May 29-June 30) for a combination dance hall and bar situate in Longwood Valley in the section known as Longwood Lake, this Township.

With him was Mr. Louis Melniker, C-18, Oak Ridge, N. J. who last year applied for and was granted a Plenary Retail Consumption License for his place of business at Hopper's Corner and under the name of Oak Ridge Restaurant Co., Inc. While helping fill out the application the following came to light:

1. The Federal License for this particular place (No. 63455) is in the name of Oak Ridge Restaurant Co., Inc.

2. Mr. Herman Boge is the Agent and Assistant Secretary for said corporation. He is very evidently a newly created member with a very vague and uncertain idea as to what his corporate duties are. Since this new building for which the application is being made has been but very recently completed, it is patent that he has just been taken into the corporation (2% of stock owned by him) for the purpose of obtaining the license.

3. Mr. Melniker, as President of the corporation and who with another member of same, Mrs. Sara Duffy, has been operating the Hopper's Corner stand, intends to run the dance floor part of this new proposition while Mr. Boge handles the liquor sales.

4. Mr. Melniker, when questioned about his connection with both liquor licenses stated that he could, if any trouble was made about the matter, resign his presidency and receive a mortgage for his share of the stock. There is no question but what Mr. Melniker is the guiding light in the whole corporation.

5. While Mr. Boge very evidently intended to make application as an individual, and so advertised, signing himself Herman Boge, Oak Ridge Restaurant Co., Longwood Lake, Oak Ridge, N.J., he also applied as a corporation, with the above annotated complications.

None of which may appear as such to you, but to your humble servant, appear a bit involved in spots and needful of a bit of explaining.

I would appreciate a decision from you as regards the legality of issuing this license.

Very truly yours,
ERIC V. DISBROW,
Clerk

June 3, 1935

Mr. Eric V. Disbrow,
Clerk of Jefferson Township,
Oak Ridge, N. J.

Dear Sir:-

I have your letter of May 18th re: the application of Herman Boge for a Plenary Retail Consumption license for premises situated at Longwood Lake in your Township.

You report that Mr. Louis Melniker, who accompanied Mr. Boge when the latter appeared before you to make application for his license, now holds a Plenary Retail Consumption license for a place of business at Hopper's Corner under the name of Oak Ridge Restaurant Co., Inc. My records show that the Township Committee issued Plenary Retail Consumption license No. 18 on July 2, 1934, to Louis Melniker, an individual, for premises situated at Hopper's Corner, Jefferson Township. The corporate name, Oak Ridge Restaurant Co., Inc., does not appear. If its omission was merely your inadvertent error in making the certification of the issuance of the license, it can be remedied by your sending a corrected certification. But if the corporate name is new to you also, having just now been brought to your attention by the circumstances which your letter relates, it raises more serious questions.

The Alcoholic Beverage Control Act, in Section 23, prohibits both the transfer of any license from one person to another and the exercise of the rights and privileges of the license by anyone other than the licensee. Clearly, there could be no objection to Mr. Melniker's holding the license as an individual provided he were fully qualified and all the legal requirements were complied with. But if the license was granted to him as an individual and is now being used by the corporation, it is absolutely wrong and is being so used in violation of the law. If the license was issued to an individual, it may be exercised only by that individual. It cannot be exercised by a corporation even though the individual is a member thereof. If the corporation came into existence after the issuance of the license and desired to take over the operation of the business, the first license should have been surrendered and a new license in the name of the corporation applied for. If the individual application was in the first instance a subterfuge to license the corporation, the application was defective for failure to disclose the true ownership and interest in the business for which the license was applied and the full facts should at once be determined to the end that revocation proceedings be instituted.

So much for Mr. Melniker's license at Hopper's Corner.

Now with respect to the new application for premises at Longwood Lake:

In general, there is nothing to prevent an individual or a corporation from holding more than one retail license or to prevent an individual who holds a retail license from being interested in a corporation which holds another (provided, of course, that the applicants are otherwise fully qualified), unless the Township Committee has enacted by ordinance, pursuant to Section 37 of the Act, that no more than one retail license shall be granted to any person, corporation, partnership, limited partnership or association in Jefferson Township. My records do not contain any such ordinance by your Township Committee. So, if Mr. Melniker holds in his own name a retail license at Hopper's Corner, he would not be prevented from being a member of a corporation holding a retail license at Longwood Lake. Similarly, the Oak Ridge Restaurant Co., Inc., as a corporation, could hold two retail licenses, one in each place.

But it appears that the "Notice of Intention" to apply for the Longwood Lake license is defective, having advertised that application would be made by Herman Boge, an individual, rather than by Oak Ridge Restaurant Co., Inc., a corporation. If so, the publication should be rejected and required to be republished properly setting forth the name of the applicant corporation, together with the names and residences of all officers, directors and stockholders as required in the Revised Rules for Advertising "Notice of Intention", Bulletin 72, Item 2.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

8. LICENSEES - EMPLOYEES - RESIDENCE QUALIFICATIONS UNDER ACT
APPLY ONLY TO RETAIL LICENSEES

NON-RESIDENTS - EMPLOYMENT - NOT DISQUALIFIED EXCEPT AS TO
RETAIL LICENSEES PROVIDED OTHERWISE QUALIFIED UNDER THE ACT

June 4, 1935

E. L. Kerns Co.,
Trenton, N. J.

Dear Sir:

As regards the clerk you wish to employ who is a resident of Pennsylvania: It is true that the statute, Section 23, prohibits the employment by a licensee of anyone who would fail to qualify as a licensee. But Section 22 which requires residence within the State of New Jersey for at least five years applies only to applicants for retail licenses.

It is the Commissioner's ruling that you as a plenary wholesale licensee are not prevented from employing one who is not a resident of the State of New Jersey, provided that under the Alcoholic Beverage Control Act he is otherwise qualified.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By:
Maurice E. Ash,
Senior Inspector.

9. APPELLATE DECISIONS - IAMELLO VS. RUMSON

JOSEPH IAMELLO,)	
)	
Appellant,)	
)	
-vs-)	On Appeal
)	CONCLUSIONS
MAYOR AND COUNCIL OF THE)	
BOROUGH OF RUMSON (MONMOUTH)	
COUNTY),)	
)	
Respondent.)	

.

Quinn, Parsons & Doremus, Esqs., Attorneys for Appellant.

William A. Stevens, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at #107 East River Road, Rumson.

Respondent contends that the application was properly denied by virtue of its ordinance adopted on August 23, 1934 providing that "no retail license should be issued to a natural person unless * * * he shall have been a resident of the Borough of Rumson for at least one year continuously immediately prior to the submission of the application for any such license." The ordinance was approved by the Commissioner on April 16, 1935, subject to appeal. Bulletin #43, Item #12. Hence, appellant is wholly within his rights in attacking the validity of the ordinance.

Appellant stipulated that he is not and never has been a resident of the Borough of Rumson, but argues that the ordinance is invalid because Section 22 of the Control Act defines the qualifications of an applicant for a license and omits any mention of a residence requirement in any particular municipality and therefore, invoking the doctrine expressio unius est exclusio alterius, concludes that a municipality may not superimpose such a requirement upon the statutory qualifications set forth in the Act.

But Section 29 of the Control Act, however, further provides that "each issuing authority by resolution first approved by the Commissioner may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this act and secure compliance with the provisions hereof."

And Section 21 of the Control Act provides that it shall be the duty of each issuing authority "to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this act."

And Section 74 provides: "This act is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

It will not do to isolate one section of the act on which to base the argument of invalidity. The several sections must be read in the light of each other, and reconciled, if possible, to produce an harmonious whole.

Approaching the problem with this viewpoint, the argument of appellant must fail. The ordinance is not repugnant to the Control Act. It does not lessen the requirements - it strengthens them by adding an additional qualification. It does not tie the hands of the State, for the State has committed the issuance of retail licenses to the several municipalities. Mere silence by the State Act on the point of local residence is not inconsistent with a local requirement on this score. The Borough ordinance does not deny, as contended, to a class of citizens, the constitutional guaranties of every citizen that, in the words of appellant's counsel, "these guaranties are that every citizen of the State has the same right which every other citizen of the State has. Among these rights is the right to establish any business in any particular municipality without being subjected to additional restrictions which are not imposed upon all citizens." The learned attorneys of the appellant in their excellent and helpful brief have, at this point, fallen into the error of treating as a right that which is only a privilege. See Bumball vs. Bernardsville, Bulletin #66, Item #9; Krause vs. Freehold, Bulletin #76, Item #8. As was said in the Bumball case, *supra*,

"No one has a 'right' to a license. It is, at most, a privilege conferred by the State which the issuing authority may deny in the exercise of sound discretion. Meehan v. Jersey City, 73 N.J.L. 382."

Appellant's theory, if sound, would make it mandatory for an issuing authority to issue a license to any person who came within the terms of the Act. In this he errs. For the Act is permissive and not mandatory. It defines the persons to whom, and the conditions under which, an issuing authority may issue a license but does not compel the issuance of such a license to anyone simply because he is not disqualified.

The Commissioner has often ruled heretofore that the mere fact that a person is not barred from receiving a license under the Control Act does not make it mandatory upon the issuing authority to grant his application. On the contrary, if in the exercise of a reasonable discretion the issuing authority determines that the granting of the application is undesirable the Commissioner has sustained its action in denying the application. Thus in numerous cases, where an applicant was not personally disqualified under the Act, the denial of his application was sustained on the ground that the municipal issuing authority reasonably determined that he was personally unfit to receive a license. Orofino vs. Millburn, Bulletin #45, Item #15; Saft vs. Union, Bulletin #37, Item #8; Moss & Convery vs. Trenton, Bulletin #29, Item #12; Meyers vs. Cranford, Bulletin #44, Item #4. Similarly the Commissioner has affirmed refusals to issue licenses to applicants qualified as to person and place on the ground that a sufficient number of licensed premises existed in the vicinity and the issuance of an additional license would be socially undesirable. Bader vs. Camden, Bulletin #44, Item #8; Furman vs. Springfield, Bulletin #49, Item #6; Faccidomo vs. Union Beach, Bulletin #55, Item #8; Clement vs. Loder, Bulletin #52, Item #5.

An analogue is found in Staciewicz vs. Trenton, Bulletin #35, Item #10, where an application for a license was denied on the ground that the premises sought to be licensed were too close to a school even though not within the prohibition contained in Section 76. In affirming the denial of the application the Commissioner said:

"Section 76 expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet."

See also Persi vs. Trenton, Bulletin #46, Item #13; Ezzo & Carucci vs. Trenton, Bulletin #49, Item #13. Cf. Barbuto vs. Trenton, Bulletin #56, Item #5. In the Ezzo case, supra, the Commissioner said:

"The first paragraph of Section 76 creates an absolute prohibition against any license being granted where the premises are within 200 feet of any church or school (unless waived as aforesaid), whether the issuing authority approves of the application or not. The second paragraph merely declares that this absolute prohibition 'shall not apply' in certain cases. It does not make it mandatory that a license shall be issued. It enables, but does not require, a license to be issued where otherwise it would be absolutely prohibited. It leaves the issuing authority free to grant the application if, in proper discretion, issuance of the license is deemed advisable, but, by the same token, free to deny if deemed inadvisable."

I conclude, therefore, that a municipal issuing authority may exercise a reasonable discretion in the administration in the issuance of licenses and may superimpose reasonable conditions precedent to the issuance of any licenses although there is no warrant therefor expressed in the Control Act in so many words.

{ We come, then, to the remaining question - whether the requirement that an applicant for a retail license be a resident of the municipality in which the premises sought to be licensed are located, for a period of one year prior to the filing of the application, is reasonable. The dispensation of alcoholic beverages from time immemorial has been recognized as impregnated with public interest. The character of the persons to whom the privilege of making such sales is entrusted is of utmost importance - perhaps in the long run the most effective safeguard against abuses. An issuing authority is under the positive duty to insure the issuance of licenses only to persons of good character. It must, therefore, investigate carefully all applicants. Any requirement reasonably designed to facilitate such investigation is eminently proper. The requirement that a person be a resident of the municipality from which he seeks a license, for a period of time, so that he may become known and a basis laid to judge his character has a direct and immediate connection with the proper administration of licenses. In Re Piscataway, Bulletin #75, item #9, the Commissioner said: "I can see a good reason why a person may be required to reside in a Township for three years as a condition precedent to obtaining a liquor license. Because of his residence, opportunities would be afforded to form some estimate of his character." }

I find the ordinance is reasonable.

The action of the respondent is affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: June 3, 1935

10. REVOCATION PROCEEDINGS - SUSPENSION - NO JURISDICTION IN LOCAL ISSUING AUTHORITY TO SUSPEND LICENSE AFTER REVOCATION PROCEEDINGS HAVE BEEN INSTITUTED BY THE STATE COMMISSIONER

REVOCATION PROCEEDINGS - SUSPENSION - NO SUSPENSION MAY BE MADE UNTIL AFTER CHARGES PREFERRED AND OPPORTUNITY FOR HEARING AFFORDED

Office of The Township Clerk
FRANKLIN TOWNSHIP
In The County of Somerset
In The State of New Jersey

June 1, 1935

Mr. D. Frederick Burnett, Commr.,
744 Broad St., Newark, N. J.

Dear Mr. Burnett:

You are hereby notified that:-

At a meeting of the Township Committee of the Township of Franklin, Somerset County, N. J. held on June 1, 1935, the following action was taken:

Motion was made, seconded and carried that the liquor license of George Rieck, Address Kingston, N. J., be suspended from June 16, 1935 to June 30, 1935, inclusive, for violation of the Alcoholic Beverage Control Act.

By order of Committee

John V. Garretson,
Twp. Clerk

June 3, 1935

John V. Garretson, Clerk,
Franklin Township,
R. D. 6, New Brunswick, N. J.

Dear Mr. Garretson: Re: George Rieck - Kingston Hotel

I have yours of June 1st.

The resolution is invalid because:

- 1 - It comes too late. The Township Committee failed for two months to put its own house in order. It became necessary for the State to intervene. On May 31st, order to show cause in revocation proceedings was served by the State Department on George Rieck. Since the State jurisdiction attached, there was none left in the Township Committee. As between coordinate jurisdictions, the one which first attaches becomes exclusive.
- 2 - No suspension may be adjudicated against any licensee unless written charges have been preferred against him and fair opportunity afforded him to be heard. I have heretofore ruled in Romeiko vs. Kearny, Bulletin 57, Item 13, "Even where there seems to be no question of the truth of the charge upon which revocation proceedings are based, fairness to the licensee requires that the opportunity to be heard provided for by the Act be extended to

him. Assuming that appellant had committed the violation charged, the penalty which respondent could fix varies from a minor suspension to absolute revocation entailing the licensee's disqualification for a period of two (2) years. It is conceivable that appellant may have been able to present evidence of extenuating circumstances which would have deterred respondent from imposing the most extreme penalty. The Act requires that he should have been afforded an opportunity to do so. However guilty appellant may have been in fact, it goes against the grain to revoke his license without making a specific charge against him and giving him a chance to be heard. It is not due process of law."

3. --The respondent, George Rieck, is entitled to a full and impartial hearing. Until his case is fully heard and fair determination made on the facts, his license cannot be suspended. Punishment should follow but may never precede proof of guilt.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

11. REGULATIONS GOVERNING IDENTIFICATION OF STATE LICENSEES AND
THEIR EMPLOYEES - INTERPRETATIONS

June 3, 1935

Frederic M. P. Pearse, Esq.,
Newark, N. J.

Dear Sir:-

I have your letter of May 28th.

The rules governing identification of State licensees and their employees are designed to furnish to this Department identification of those persons actually engaged in the liquor business (except retail) in this State. They must receive a common sense interpretation and application in order to effectuate their purpose without undue inconvenience to those affected. Accordingly, the following interpretations of the rules are announced by the Commissioner:

(1) Where the stock of the applicant is listed for sale on any recognized stock exchange, questionnaires need not be filed for any person whose only connection with the business of the company in this State is that of stockholder.

(2) Where a banker or other creditor, not resident in this State, lends money to a corporation and becomes a director thereof, but has no active interest in the conduct of the business and has no connection with the actual conduct of the business in New Jersey, such director need not submit a questionnaire.

(3) Stenographers, telephone operators, clerks, office boys, etc. who do not handle any alcoholic beverages and have no voice in the conduct of the business within this State, need not submit questionnaires.

(4) A person whose only connection with a foreign corporation is as registered agent, designated by certificate filed with the Secretary of State, need not file a questionnaire.

On the other hand, questionnaires must be filed by the following persons:

(1) All officers, either located within this State or actively engaged in the conduct of the business within this State.

(2) All directors, except as indicated above.

(3) All persons occupying executive positions and having within their jurisdiction business within this State, including comptrollers, bookkeepers, etc.

(4) All salesmen engaged in business within this State.

(5) All truck drivers, helpers, etc. engaged in transportation within this State.

(6) All employees in anywise engaged in the actual manufacture, sale, distribution, transportation, etc. of alcoholic beverages within this State.

The foregoing is not intended to be exclusive and further situations will be dealt with specifically as they arise.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

12. APPELLATE DECISIONS - PARKER LIQUOR STORES VS. JERSEY CITY

PARKER LIQUOR STORES, INC.,)
a corporation of the State)
of New Jersey,)
Appellant,)
-vs-)
THE BOARD OF COMMISSIONERS)
OF THE MAYOR AND ALDERMEN)
OF JERSEY CITY,)
Respondent.)
- - - - -)

ON APPEAL
CONCLUSIONS

Bennett A. Robbins, Maurice M. Krivit, and William Rubin, Esqs.,
Attorneys for Appellant.
N. Louis Paladeau, Jr., Esq., by Joseph C. Glavin, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application

for a plenary retail distribution license for premises located at #724 Bergen Avenue, Jersey City, N. J.

Respondent contended that the application was properly denied because one Harold Hoffman, who is an officer of appellant corporation, is also an officer in Hoffman House Wines & Liquors, Inc., holder of a wholesale liquor license, and that therefore the issuance of a retail license to appellant would be a violation of Sections 23 and 40 of the Control Act.

At the hearing, it appeared by Exhibit A-2, dated April 16, 1935, that Thomas J. Wolfe, Director of the Department of Public Safety of Jersey City, had recommended denial of the application because "My Department, upon investigation was advised by B. Carlton Brown, Deputy Commissioner of Department of Alcoholic Beverage Control, that one of the incorporators of the company desiring the retail license also held office in a wholesale concern in violation of Section #23 of the State ABC Act."

By Exhibit R-2, dated April 10, 1935, Deputy Brown officially certified to Lieut. James B. Carey of the Department of Police, Liquor Bureau of Jersey City, in response to his inquiry, that Harold Hoffman was Secretary and also a member of the Board of Directors of Hoffman House Wines & Liquors, Inc.

This certification was not true at the time it was made, for while Harold Hoffman had been a Director and Secretary up to April 1, 1935, on that day, pursuant to Section 31 of the Alcoholic Beverage Control Act, Hoffman House Wines & Liquors, Inc., by Phillip Hoffman, President, and the father of Harold Hoffman (Exhibit A-11), certified to the State Department, by registered mail, that Harold Hoffman had that day resigned as Secretary and Director and was no longer associated with the company in any manner whatsoever.

It is apparent that Director Wolfe and the Board of Commissioners of Jersey City relied, and had a right to rely, upon the erroneous but official certification that Harold Hoffman was an officer and director in the wholesale enterprise, upon which express and sole ground the application was denied. It appears that upon receipt of that certification no further investigation was made of appellant, nor would any be necessary if the certification were true.

The case is, therefore, remanded to respondent to complete its investigation and pass upon the application on its merits.

D. FREDERICK BURNETT,
Commissioner

Dated: June 4, 1935

13. APPELLATE DECISIONS - SPACE VS. WANTAGE

RALPH SPACE,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WANTAGE (SUSSEX)
COUNTY),)
Respondent.)
- - - - -)

ON APPEAL
CONCLUSIONS

Hugh C. Baldwin, Esq., Attorney for Appellant.
Robert H. Lee, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at Beemerville, Wantage Township.

Respondent contends the application was properly denied because the premises sought to be licensed are too close to a school and adjoining playground.

Appellant's premises are in a rural district. A school is directly across the road, set back a considerable distance. The land between the roadway and the school is used as a playground. The school property, however, is not enclosed by any fence nor is there any gateway leading to the building. The actual distance from the school building to appellant's premises is about 218 feet. Whether, because of the proximity of the playground, appellant's premises are within the prohibition of Section 76 of the Control Act need not be determined because the action of respondent must be affirmed for the reasons stated hereinafter.

In Staciewicz v. Trenton, Bulletin #35, Item #10, the Commissioner held that the issuing authority may properly decline to issue a license for premises reasonably considered by them as being too near to churches or schools even though beyond 200 feet, saying:

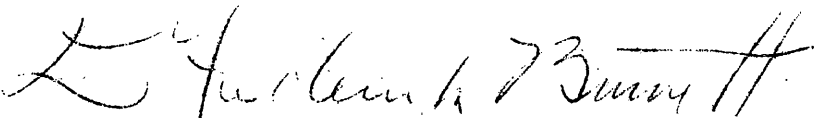
"It may be that under a proper construction of Section 76 of the Control Act, no license may be issued where the premises sought to be licensed are within 200 feet of the school's playground. See Bulletin #3, Item #8. That issue need not, however, be determined. Section 76 expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet.

"Respondent's determination that the issuance of a license for appellant's premises, substantially adjacent to a school playground, was socially undesirable, was justified by the evidence and furnished reasonable cause for the denial of the application."

See also Persi vs. Trenton, Bulletin #46, Item #13.

The action of respondent is therefore affirmed.

Dated: June 4, 1935


Commissioner