

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 64.

March 4, 1935

1. LICENSES - LIMITATION OF NUMBER - PRINCIPLES APPLICABLE

February 19, 1935

Hon. John McNaughton,
Pompton Lakes, N. J.

My dear Mr. McNaughton: Re: Borough of Pompton Lakes

I have yours of February 12th.

I believe that the Borough Council is within its authority, when limiting the number of licenses, in distinguishing between saloons or businesses devoted exclusively to the sale of alcoholic beverages on the one hand, and restaurants and hotels serving alcoholic beverages with meals, whether or not equipped with a bar, on the other hand. Section 37 of the Act confers the express authority upon each issuing authority to limit the number of licenses to sell alcoholic beverages at retail and the proposed distinction, although possibly open to question on the ground of affecting differently members of the same license class, appears to be a reasonable exercise of the right to control the sale of alcoholic beverages as conferred by your general police power.

This could be accomplished by a regulation reading: "There shall be no more than -- plenary retail consumption licenses outstanding in the Borough of Pompton Lakes at the same time, provided, however, that this limitation shall not apply to such licenses issued or to be issued to restaurants or hotels and further provided that such last mentioned licenses are not to be computed in determining the number of plenary retail consumption licenses outstanding according to this resolution." This answers your first and second questions.

As regards your third and fourth questions: You tell me you now have nine consumption licenses, but your Council thinks that seven are enough. If you make the limitation seven by ordinance, that is all that you can issue. Who gets the seven licenses? Which two are to be left out? How are you going to choose seven in fairness to all nine, assuming each to be worthy and have abided by the law in all respects? I have given tentative approval, subject to appeal, to local ordinances to the effect that no new license of any class authorized to be issued by the municipality shall be issued, the result of which shall be to increase the number of licenses issued and outstanding over the number existing up to the date of the issuance of such new license, until the number issued and outstanding is less than the number fixed by the ordinance, but no appeals have ever been made from such an ordinance, and the question has never been finally threshed out.

Speaking generally of limitation of licenses, I have often tried to think out the true solution. "With one license to every 400 population of New Jersey, conditions in the trade are so bad," says the New Jersey Licensed Beverage Association, "that not more than 8% of the licensees are doing business at a profit"; that, "unable to earn an honest dollar, many licensees resort to illegal

practices which bring ill repute on the entire trade." I believe the Association speaks the truth. But the question remains-- Is Limitation of the Number of Licenses a good remedy or is it a mere palliative? Cutting down the number of licensed places does not diminish the demand of the thirsty. For each license eliminated, a speakeasy usually arrives. Is it not more conducive to control to have the traffic in the open? If licenses are reduced to a population percentage, how are the licensees to be chosen? And what of those who, wholly worthy, have invested their all in their business--often the savings as well of their family and friends? On the other hand, are those who now happen to be licensed to be entrenched until they die? And this despite frequent complaints as to several of the present licensees that they cheat, violate and are unworthy? Why should those licensees who are said to resort to illegal practices because unable to earn an honest dollar be given a preference in renewals unless they are actually caught with the goods? And what of new applicants in the future and the influx of new capital or of the loss of revenue to municipalities? And what of the political football afforded by limiting the number to a point where a license becomes a franchise and is filled with favorites or with those who do favors? Is not the true solution to let the law of economic supply and demand have full sway, reduce the tax and control the situation by strict enforcement backed by rigid revocation, right and left, whenever a licensee trespasses or violates?

The questions involved are intricate, delicate and difficult. There is no snap solution. Licensees must be protected--they believe from fellow licensees--I believe from the liquor outlaw. We are pioneering in virgin territory. We must take each step with care and prayer. If you submit a local ordinance providing any reasonable plan of limitation, I shall tentatively approve, reserving final judgment until specific case arises on appeal and both sides can be heard. I shall watch each local experiment with keenest interest.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

2. WARNING--DON'T BUY BOOTLEG LIQUOR

February 18, 1935

Hon. Thomas D. Taggart, Jr.,
Atlantic City, N. J.

My dear Mr. Taggart:

Referring to your Bill, Assembly 312, which makes it a high misdemeanor to sell alcoholic beverages containing poisonous chemicals causing serious injury to health or the death of any person, I call your attention to four matters, all in the first mail this morning, which accentuate both the warning I gave last month and the timeliness of your bill.

1 - From South River, Middlesex County, I learn that Konstand Kondiatronko was rushed to St. Peter's Hospital allegedly suffering from the effects of poison liquor; that he visited a certain saloon, spent \$2.50 and collapsed on the sidewalk as he departed; that a physician ordered him to the hospital immediately; that

later the Police confiscated several bottles of whiskey at the saloon; that four months ago this same saloonkeeper was arrested on charges of selling illicit liquor, pleaded guilty and was fined \$100. I shall make it my business to ascertain why his license was not revoked.

2 - From West New York, Hudson County, that complaints were made by parents and relatives of young people who attended dances at a certain hall, that they had become sick from drinks they had there.

3 - From Hackensack, Bergen County, that a man gave a party at a certain grill some days ago and everyone took sick.

4 - From Newark, Essex County, that Joseph Williams died at City Hospital a victim of alcohol poisoning; that "Unconscious, Williams was taken from his home to the hospital in a city ambulance. Police sought to question him where he obtained the alcohol but he failed to regain consciousness."

I have instituted immediate investigation of each case. Press your Bill to immediate passage, and tell everybody DON'T BUY BOOTLEG LIQUOR.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

3. MUNICIPAL ORDINANCES - SUPERSEDING EFFECT OF CONTROL ACT UPON EARLIER ORDINANCES IMPOSING LICENSE FEES

February 18, 1935

Hon. John McNaughton,
Pompton Lakes, N. J.

My dear Mr. McNaughton:

I have examined Ordinance 154 of Pompton Lakes, adopted December 15, 1927, entitled "An Ordinance Concerning the Licensing and Regulating of Public Places in the Borough of Pompton Lakes, Wherein Food or Drink or Both are Sold to be Consumed on the Premises." It includes by its operative terms saloons, cafes, buffets, bars and grills, wherein food or drink or both, other than soda water and ice cream, are sold to be consumed on the premises. It exacts a fee of \$5. for the privilege. While the governing body must be satisfied with the fitness of the person to conduct such business before any license is issued, avowal is made, Section 10, that the license fee is imposed for revenue purposes.

Irrespective of the fact that it was enacted prior to the Control Act and therefore cannot be said to have been enacted pursuant thereto, its frank avowal aforesaid shows that its purpose is revenue and not regulation. Hence, if submitted to me by the municipal authorities for approval, I should be forced to disapprove.

I believe that so far as concerns the sale of alcoholic beverages, this ordinance became a nullity on Dec. 6, 1933, because of the comprehensive scheme of control embodied in the later State Act. See Roche vs. Jersey City, 40 N.J.L. 257 (Sup.

Ct. 1878). The Legislature says that the maximum that any municipality can charge for a consumption license is \$2,000. If your local ordinance is good, you can charge \$2,005. to exercise the privilege. That cannot be.

I suggest that you cause the 1927 ordinance to be specifically repealed and then redraft it so as to exclude therefrom the subject of alcoholic beverages.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

4. LICENSED PREMISES - NOT PERMISSIBLE TO SELL FROM TRUCKS

SALES - MUST BE CONFINED TO LICENSED PREMISES AND NOT MADE FROM TRUCKS

February 25, 1935

Galsworthy, Inc.,
Newark, N. J.

Gentlemen:

Replying to your inquiry as to whether it is permissible to place a stock of merchandise upon a truck and sell from said truck directly to dealers:

Section 23 of the Control Act provides: "A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises."

"Licensed Premises" are defined by the Act, Section 1 (k) as "Any premises for which a license under this act is in force and effect."

"Premises" are defined, Section 1 (s), as: "The physical place at which a licensee is or may be licensed to conduct and carry on the manufacture, distribution or sale of alcoholic beverages, but not including vehicular transportation." (Italics mine.)

The words I have underscored demonstrate express legislative intent that no license may be issued in respect to an automobile or other truck as the licensed premises. A license may be issued for boats, trains or airplanes, but the Legislature has expressly forbidden the licensing of other vehicles.

The suggested procedure is therefore not permissible.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

5. GAMBLING - WHAT CONSTITUTES - QUILTS, CHECKERS, CHESS AND PING-PONG ARE NOT GAMBLING GAMES

February 25, 1935

John E. Wicoff, Township Clerk,
Plainsboro, New Jersey.

Dear Sir:

Section 2 of Resolution No. 3 and Section 3 of Resolution No. 5 read in part: ".....no gambling, slot machines, gambling devices and/or games of any sort shall be allowed within or upon said premises."

The words "games of any sort" give rise to grave question as to what is meant. I have an inquiry already from one of the licensees in Plainsboro as to whether indoor quoits, checkers, chess or ping-pong may be played. I shall have to rule, as a matter of law, that they are not prohibited by your resolution because the word "games" being a general word would be construed in the light of the specific words preceding it as kindred or cognate thereto. Those specific words, viz.: "gambling, slot machines, gambling devices" all refer to matters which constitute a crime. The general words "games of any sort" must therefore be construed to mean games akin or similar to or in the general nature of gambling, slot machines or gambling devices. Thus, faro, three card monte, and red dog although not specifically mentioned would come within the generic words "games of any sort" because technically they are gambling games. On the other hand, no one will say that he who pitches the horseshoes or pushes the pawns, the kings and the rooks or paddles the ping-pong ball over the net is indulging in gambling. There is a vast distinction between gaming and games. As your resolution stands, it would therefore have to be construed to apply only to those games which are illegal and in the nature of gambling. Surely quoits, checkers, chess and ping-pong are not gambling games.

If you really wish to go to the extent of prohibiting even these innocent games, I will pass your resolution as a matter of local policy, providing it is revamped so as to show a clear intention to prohibit such games.

If such was not your intention and all that you really meant to accomplish was to prevent gambling in saloons, which I do cordially approve, then I call your attention to the fact that the following State-wide rules were promulgated October 11, 1934, effective immediately, being Rules Nos. 6, 7 and 8. See Bulletin 48, item 12.

Rule No. 6 reads: "No licensee shall allow, suffer or permit any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale, on or about the licensed premises."

Rule No. 7 reads: "No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises."

Rule No. 8 reads: "No licensee shall possess, allow, permit or suffer on or about the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing."

I therefore respectfully suggest to your Township Committee that at their convenience they amend their rules in these respects to read identically with the State rules. This not only

will preclude possible legal complications arising from differences in language and make for more effective enforcement, but also will afford to your municipality the incidental benefits set forth at length in the discussion of the problem contained in Bulletin 52, item 2. The cooperation of your Township Committee will be greatly appreciated.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

6. MUNICIPAL ORDINANCES - SUNDAY SALES - NO POWER TO DISCRIMINATE
BETWEEN CLASSES OF ALCOHOLIC BEVERAGES

MUNICIPAL ORDINANCES - VALIDITY - NO POWER TO IMPOSE ISSUING
FEES ON TOP OF LICENSE FEES

February 27, 1935

Carl Shurts, Borough Clerk,
Lebanon, New Jersey.

Dear Sir:

I have before me the resolution fixing the plenary retail consumption fee and regulating the sale of alcoholic beverages which was adopted by your Common Council on December 7, 1933 pursuant to the Alcoholic Beverage Control Act as amended and supplemented.

Item 5 of your municipal resolution restricts Sunday sales to "beer and light cordials". I cannot approve this for two reasons: (1) The indefiniteness of the term "light cordials". I do not know of any such classification of liquor. Its vagueness makes it void. (2) The absence of any power in a municipality which permits Sunday sales to confine such sales to certain classes or kinds of alcoholic beverages.

I have heretofore ruled that each municipality has the power to prohibit by resolution or ordinance of its governing body Sunday sales of all alcoholic beverages and that this power exists independent of express authority in the Alcoholic Beverage Control Act. Re Hendrickson, Bulletin 17, item 3; Re Wenzel, Bulletin 19, item 7. That ruling was based on the police power which resides in every municipal governing body to protect the lives, health and property of its citizens and to maintain good order and preserve public morals. But your resolution goes beyond this. It does not make unlawful the sale of all alcoholic beverages on Sundays but purports to permit the sale of some and at the same time prohibit the sale of other kinds. This raises at once the question of your power to effect such discrimination. The State itself has not made any such distinction. The police power of a municipality is delegated to it by the State. It therefore cannot rise higher than its source. It therefore cannot be exercised in a manner inconsistent with the policy of the State as declared by the Legislature. The State could have discriminated, if it had so chosen, between different classes of alcoholic beverages and afforded the favor of Sunday sales to one class and withheld it from another. But it did not so choose. In fact, the State itself has not made any discrimination between the differ-

ent classes of alcoholic beverages anywhere in the Control Act. So far as licenses are concerned, the Legislature has twice refused to create a separate classification for beer and light wines as distinguished from other alcoholic beverages. So far as Sunday sales are concerned, the only express authority delegated by the Legislature to municipalities to determine for themselves by referendum is the submission of the question "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" That does not mean some and not others or more or less. It means all or none. The expression of this question without discrimination as to the kinds or classes of alcoholic beverages which may be sold on Sundays excludes by implication any attempt by municipalities to effect it otherwise. Everything in the Control Act negatives differentiation in alcoholic beverages. They are treated uniformly alike. The Legislature having declared this policy, the police power of the municipality exists subject thereto and must be exercised consistently therewith.

I am therefore impelled to rule that pending the submission of the question of Sunday sales to the electorate in your municipality, your governing board may either permit or prohibit all sales of alcoholic beverages on Sundays, but that they lack the power to permit some and prohibit others.

If such discrimination between classes of alcoholic beverages which may be sold on Sundays is socially desirable, it is the exclusive province of the Legislature to declare it. As the law stands, there is no such power in municipalities.

Item 6, in addition to fixing a plenary retail consumption license fee of \$350, imposes an issuing fee of \$10. I do not see that there is anything to be gained by imposing this charge as a fee separate from and in addition to the regular license fee. There is no statutory authority therefor and hence I cannot approve it. If you wish the additional revenue, why not raise the license fee itself?

By imposing, as you have done, an issuing fee in addition to the regular license fee, an applicant for a license could, if the situation were carried to the extreme, be charged in excess of the statutory maximum for his license. If the maximum fee of \$2000 was charged for a plenary retail consumption license and an additional fee imposed to cover its issuance, the applicant would in effect be required to pay more for his license than the statute authorized the municipality to collect.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

7. APPELLATE DECISIONS - SWEENEY VS. CAMDEN

MICHAEL E. H. SWEENEY,)
Appellant)

-vs-)

BOARD OF COMMISSIONERS)
OF THE CITY OF CAMDEN,)
Respondent)

ON APPEAL
CONCLUSIONS

Grover C. Richman, Esq., Attorney for Appellant
Lewis Liberman, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises located at #411 Cooper Street, Camden.

Respondent contends that the application was properly denied because appellant's premises are located in a residential neighborhood and a large number of persons residing therein objected to the issuance of the license.

Appellant's premises consist of a high class restaurant in a neighborhood occupied principally by professional offices. The neighborhood also contains several undertakers, insurance offices, beauty parlors, a commercial artist and a dressmaker. Thus, immediately adjoining appellant's premises is a three story office building occupied by an insurance company, an insurance office and several lawyers. Directly across the street is a commercial parking station. Respondent has issued a plenary retail consumption license for a hotel diagonally across the street from appellant's premises within a short distance thereof. Under this license the sale of alcoholic beverages for consumption on the premises is carried on in a store fronting directly on Cooper Street.

A municipality may properly refuse to issue a license for premises located in a residential neighborhood. Vannozzi vs. Trenton, Bulletin #33, Item #7. On the other hand, a municipality is not justified in refusing to issue a license for premises in a business neighborhood simply because of the objections to the issuance of any licenses for premises located in such neighborhood. Sullivan vs. Ocean, Bulletin #38, Item #14; Brighton Hotel Co. vs. Loder, Bulletin #41, Item #6; Bunks vs. Atlantic City, Bulletin #45, Item #14; Seashore Beverage Co. vs. Way, Bulletin #47, Item #12; Elias vs. Trenton, Bulletin #54, Item #12.

It may be seen from the description set forth above that the general character of the neighborhood in which appellant's premises are located is not residential. And this is true despite the fact that some persons reside therein. Respondent has recognized that not all places of business licensed for the sale of alcoholic beverages should be prohibited in this neighborhood. The general tone of the neighborhood will be affected as little by permitting the sale of alcoholic beverages in conjunction with meals served in a high class restaurant as by permitting such sales in hotel premises. The denial of appellant's application was unreasonable.

Respondent also contends that the application was properly denied for the reason that appellant's premises are located too close to a church. It is admitted, however, the distance between the church and appellant's premises exceeds 200 feet and there is no evidence that respondent has adopted any policy prohibiting the issuance of licenses for premises deemed by it too close to churches even though beyond 200 feet. Cf. Staciowicz vs. Trenton, Bulletin #35, Item #10. This contention cannot, therefore, be sustained. See Berlangieri vs. Newark, Bulletin #38, Item #16.

The action of respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: March 4, 1935

8. APPELLATE DECISIONS - SHINN VS. CAMDEN

PHILIP W. B. SHINN,)	
Appellant)	
-vs-)	
BOARD OF COMMISSIONERS OF)	ON APPEAL
THE CITY OF CAMDEN (CAMDEN)	CONCLUSIONS
COUNTY),)	
Respondent)	
- - - - -)	

Carl Kisselman, Esq., Attorney for Appellant
 Lewis Liberman, 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 #900 Lawrence Street, Camden.

Respondent contends that the application was properly denied for the reason, among others, that there is one licensed place of business directly across the street from appellant's premises; that said licensed place is adequate to supply the needs of the residents in the vicinity; that the issuance of an additional license would be socially undesirable and is opposed by persons residing therein.

Appellant's premises are located at the intersection of Ninth and Lawrence Streets. Lawrence Street is admittedly a narrow residential street, lined with one family frame houses. Ninth Street is occupied by both residences and stores, the stores being small neighborhood stores such as groceries, tailor shops, barbers and the like. The entrance to appellant's premises is catercornered facing both streets. One of the corners of the intersection is now occupied by a saloon. Respondent has determined to restrict the number of saloons in neighborhoods of this class which are to a considerable extent, although not entirely residential. There is no evidence that this policy has not been uniformly applied throughout the municipality.

Appellant relied on the fact that respondent has heretofore permitted three saloons to operate at said intersection simultaneously. This fact is not denied but there is testimony that respondent has determined to refuse to issue licenses for premises in such neighborhoods, except renewals, in order to reduce the great number of saloons presently existing therein. In accordance with this policy, respondent has denied an application for a license for another of the corners of this very intersection.

The question of whether appellant's premises are located in a strictly residential neighborhood because the entrance thereto fronts, in part at least, on Lawrence Street need not be considered (Cf. Doherty vs. Atlantic City, Bulletin #58, Item #8) since the action of respondent must be affirmed for the reasons hereinafter stated.

The denial of an application where the granting thereof would result in the existence of too many licensed places in any given vicinity is proper. Bader vs. Camden, Bulletin #44, Item #8; Furman vs. Springfield, Bulletin #49, Item #6; Clement vs. Loder, Bulletin #52, Item #5; Faccidomo vs. Union Beach, Bulletin #55, Item #8.

In determining whether a sufficient number of licensed places exists in any given vicinity it is proper to consider the physical nature of the neighborhood as well as the temper of the persons residing therein. A considerable number of persons objected to the issuance of the license upon the ground that the existing licensed place in the vicinity was adequate to supply the needs thereof. This, together with the character of the neighborhood, clearly indicates that respondent's policy is reasonable and the denial of appellant's application pursuant thereto proper.

Accordingly, the action of respondent is affirmed.

Dated: March 4, 1935
D. FREDERICK BURNETT,
Commissioner

9. APPELLATE DECISIONS - BOTFAN VS. HOWELL TOWNSHIP

SAMUEL BOTFAN,)
Appellant)
-vs-)
TOWNSHIP COMMITTEE OF)
HOWELL TOWNSHIP,)
Respondent)

ON APPEAL
CONCLUSIONS

Milton Shoenholz, Esq., Attorney for Appellant
McDermott & Finegold, Esqs., by Mr. Finegold, Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for the transfer of a plenary retail consumption license to other premises.

Although no express appeal from the denial of such an application is provided for in the Control Act, it is argued that the entire structure of the Act contemplates the allowance of such an appeal. See Knights of St. Stephens Club vs. Trenton, Bulletin #37, Item #16. This issue need not, however, be determined since the action of respondent must be sustained on the merits.

Respondent contends that the application for a transfer was properly denied because a sufficient number of licensed places are now operating in the vicinity of premises to which the license is sought to be transferred and the existence of an additional licensed place in said vicinity would be socially undesirable.

Appellant's proposed place of business is located along Route 33, which is a State Highway carrying considerable traffic. The neighborhood is rural and very sparsely settled, there being less than 100 people residing therein for a distance of one-half mile. Diagonally across the road, about 100 feet away, is a place of business now operating under a plenary retail consumption license. There is a second similar place about 500 feet away. Appellant concedes that the local residents are adequately served by the existing licensed places, but argues that the large number of transients traveling along the highway justifies his application.

The right of a municipality to deny an application where the granting thereof would result in the existence of too many licensed places in any particular vicinity is well settled. Bader vs. Camden, Bulletin #44, Item #8; Furman vs. Springfield, Bulletin #49, Item #6; Clenent vs. Loder, Bulletin #52, Item #5; Faccidoro vs. Union Beach, Bulletin #55, Item #8.

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 reaching its decision. Furman vs. Springfield, Supra. There is ample testimony that the needs of the transient trade are adequately serviced by the existing licensed places in the vicinity. No evidence to the contrary has been introduced. Appellant has failed to sustain the burden of proof.

The action of respondent is affirmed.



Dated: March 4, 1935

Commissioner