

COMMISSIONER DURNETT
SENT TO REGULAR MAILING LIST.

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

BULLETIN NUMBER 98.

December 11, 1935

1. REFERENDUM - NO LEGAL EFFECT EXCEPT UPON A QUESTION SPECIFIED BY STATUTE - OTHERWISE MERELY ADVISORY.

December 3, 1935.

Wilfred G. Turner,
City Clerk,
Union City, New Jersey

Dear Sir:

This will acknowledge receipt of the sample copy of the official general election ballot used in your municipality on November 5th last and your letter of November 23d certifying that the vote on the question on the ballot "Shall the closing hour for the sale of alcoholic beverages be extended from 2 A. M. to 3 A. M.?" was 'yes' 6,269 and 'no' 5,575.

There is no provision in the Alcoholic Beverage Control Act for referenda on any questions other than those expressly provided for in Sections 41, 42, 43, 44 and 44A (C. 254, P.L. 1935). Your referendum which submitted the question quoted above appears to have been worded with the intention of complying with Section 44A. While upon casual inspection it may appear that compliance is sufficient to render the referendum binding, this in fact is not the case.

The statute provides for referenda upon any proposed question as to the hours between which the sale of alcoholic beverages at retail may be made on weekdays, Sundays, either or both, and if both requires that the questions be specifically and separately set forth. If voted in the affirmative, the retail sale of alcoholic beverages in the municipality may be made only within the hours fixed by the referendum. Such sale at any other time is then unlawful and constitutes a violation of the Act which is a misdemeanor and punishable accordingly.

Now your referendum does not fix the hours between which the sale of alcoholic beverages at retail may be made. Instead it merely states the hour until which the sale of alcoholic beverages may be made. It would make unlawful and a violation of the Act any sale after the hour of 3:00 a. m. but would fix no hour at which sales would again become lawful, no hour at which sales would cease to be violations. The referendum, as worded, does not fix the time when the proscribed conduct is prohibited. It would, therefore, be unenforceable.

Furthermore, the statute says that the questions as to whether the proposed hours of sale shall be made effective on weekdays, Sundays, either or both shall be specifically and separately set forth. The statute contemplates, if the proposed hours are to be effective seven days of the week, two questions - one dealing with the hours of weekday sales and the other dealing with the hours of Sunday sales - and that the reference to weekdays or Sundays, as the case may be, for the sake of clarity shall be made in the questions.

Hence, it cannot be said that the question you have submitted complies substantially with the statute. It follows that it has no sanction under the Control Act. The delegation to the electorate of public questions has long been recognized but it must be by express statutory provision. In the absence thereof, the matter is not the subject of referendum. So unless there is some particular enabling statute pertaining to your City as to which your own counsel should advise, the vote on the question you submitted, while it may be considered advisory, would seem to have no binding effect. Re Rutherford, Bulletin 63, item 1.

The hours of sale indicated by the referendum to be the choice of the majority voting thereon may be made legally operative only by subsequent adoption by the Board of Commissioners via formal resolution or ordinance.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

2. SOLICITOR'S PERMIT - RULE 8 - ISSUABLE TO MEMBER OF MUNICIPAL ISSUING BODY - PROVIDED THAT NO LIQUOR LICENSES ARE ISSUED IN THAT MUNICIPALITY.

December 2nd, 1935.

MEMO. TO: D. FREDERICK BURNETT, Commissioner.

FROM: ERWIN B. HOCK

RE: Application of Arthur Elbert Johnson, 511 Grassmere Ave., Interlaken, N. J., for a Solicitor's Permit.

The above is an applicant for a Solicitor's Permit for employment by the Vanderveer Distilling Company, Manalapan, N. J. He is also a member of the Borough Council of Interlaken. Rule 8 of Rules and Regulations Governing Solicitor's Permits provides: "That no Solicitor's Permit may be issued to any member of a municipal issuing body or a municipal issuing authority or to any person charged or entrusted with the laws concerning alcoholic beverages in any manner whatsoever."

However, the Borough of Interlaken has adopted an ordinance entitled, "An Ordinance to Provide for the Protection of Property and the Prosperity and Safety of the Borough of Interlaken and its Inhabitants" This ordinance provides: "That no hotel, boarding house, tea room, roadhouse, restaurant, store, public garage or gasoline service station, trade, business or industry of whatsoever kind or nature, shall be built, constructed, operated, conducted or occupied on any lands in the Borough of Interlaken.

Therefore, the Borough is entirely a residential community and no liquor licenses of any kind have been issued.

Therefore, Mr. Johnson as Councilman is not charged in any manner whatsoever with either the regulation or control of liquor traffic in his municipality or with the enforcement of laws pertaining thereto. It seems to me it would be un-

just in these circumstances to deny Mr. Johnson's Solicitor's Permit, even in face of the aforementioned regulation. I believe that in any municipality where no liquor licenses of any typos are issued either because of zoning ordinances or because of an adopted dry policy of the municipality, that members of the municipal issuing body should not be prohibited from obtaining a Solicitor's Permit. It seems to me that some ruling should be made in the matter and, therefore, I am putting the question to you.

Respectfully submitted,

ERWIN B. HOCK

APPROVED SO LONG AS NO LIQUOR LICENSES ARE ISSUED IN INTERLAKEN.

D. FREDERICK BURNETT
Commissioner.

3. APPELLATE DECISIONS - CELENTANO vs. CLIFTON.

RAFFAELE CELENTANO,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS

MAYOR AND CITY COUNCIL OF)
THE CITY OF CLIFTON)
(PASSAIC COUNTY),)

Respondent.)

-----)

John A. Celentano, Esq., Attorney for Appellant.

John C. Barbour, Esq., by Donald G. Collester, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the alleged denial of appellant's application for renewal of his plenary retail consumption license for premises located at #34 Highland Avenue, Clifton.

Pursuant to Section 19 of the Control Act, as amended by P.L. 1935, chapter 257, the Commissioner issued an order upon the respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal. Upon the return of this order, the respondent contended that it had not denied appellant's application but had merely laid the same over for further consideration. Since it appeared, however, that the denial of the application would be prima facie erroneous, and that irreparable injury to appellant would result if he were forced to remain closed while his renewal application was being considered, the Commissioner entered an order extending the term of the license pending a final determination of the appeal.

The Department's records indicate that subsequent to the entry of this extension order and before the hearing of the appeal, respondent granted appellant's application and renewed his license. At the time and place fixed for hearing of the appeal neither appellant nor respondent appeared.

Rule #10 of the rules governing appeals, Bulletin #81, Item #13, provides in part:

"The failure of the appellant to appear at the time and place designated for the hearing of an appeal, shall be cause for the dismissal of the appeal."

In accordance with the foregoing, the appeal is dismissed for lack of prosecution.

D. FREDERICK BURNETT
Commissioner

Dated: December 3, 1935.

4. FORMS - APPLICATION FOR CLASS C LICENSE - NO CHANGES PRESENTLY CONTEMPLATED IN THIS FORM FOR NEXT FISCAL YEAR.

November 29, 1935.

Dear Sir:

Our supply of form "NJ ABC 13 - Application for Class C License" is almost exhausted. Before ordering a new supply we would like to ascertain whether you contemplate making any change in this application form for the year 1936.

Very truly yours,

THOMAS J. SWEENEY,
Inspector

December 3rd, 1935.

Thomas J. Sweeney, Inspector,
Department of Revenue and Finance,
Atlantic City, New Jersey.

Dear Mr. Sweeney:

No changes in Form "NJ ABC 13 - Application for Class C License" for the fiscal year beginning July 1, 1936 are contemplated.

It is possible, of course, that changes in the Control Act might be made by the Legislature in the coming session which would affect retail licenses. Such legislation, of course, might result in changes in the application forms. However, nothing is indicated at this time.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. MUNICIPAL ORDINANCES - PROHIBITED CONDUCT MUST BE DEFINED WITH SUFFICIENT PRECISION TO INDICATE EXACTLY WHAT MAY OR MAY NOT BE DONE.

December 4, 1935.

Frank J. Howell,
Clerk of Rockaway Township,
Box 333, R.D. 1,
Dover, New Jersey.

Dear Sir:

I have before me six resolutions passed by your Township Committee, pursuant to the Alcoholic Beverage Control Act as amended and supplemented.

They are approved as submitted subject to the following comments and exceptions:

The original of the resolution of December 7, 1933 refer to "An Act concerning alcoholic beverages" approved December 4, 1933; the carbon copy of the same resolution refers to "An Act concerning alcoholic beverages" approved December 5, 1933; the resolution of October 11, 1934 refers to "An Act concerning alcoholic beverages" approved December 6, 1933. The statute to which you refer was passed December 6, 1933. Each resolution should be corrected accordingly.

The concluding section of the resolution of December 7, 1933 reads:

"BE IT FURTHER RESOLVED, that no licensed places under the authority of this Township Committee shall sell on credit, sell to defectives or habitual drunkards or minors, use unfair competition, racketeering, allow prostitution or solicitation, conduct a disorderly house, allow criminals therein or disreputable characters, allow gambling, slot machines or gambling devices, employ aliens or minors to sell or handle liquors, or allow practices unduly designed to increase the consumption of alcoholic beverages."

Let us first consider that part of the regulation which provides that no licensed places under authority of the Township Committee shall use unfair competition or racketeering or allow practices designed unduly to increase the consumption of alcoholic beverages.

Regulations which impose a duty for violation of which a penalty is provided, should define the prohibited conduct with sufficient precision to indicate exactly what may or may not be done. So in the instant case, in common fairness to licensees they should be able to know in advance whether any proposed conduct on their part would or would not be prohibited. Now a general prohibition of unfair competition, racketeering and practices designed unduly to increase the consumption of alcoholic beverages tells a licensee nothing because it gives him no sure indication of what the proscribed conduct shall be. Thus, he is put into the position of subjecting his license to revocation by conduct on his part which he has no way of knowing is prohibited. Such a regulation is so vague and indefinite as to be

no rule at all which renders impossible, for all practical purposes, its enforcement. Instead, and in order to be legally enforceable, the regulations should indicate the specific requirements with which licensees must comply, the particular rules which must be obeyed, the actual conduct which is prohibited. Then, the only question left open will be one of compliance. Enforcement will be greatly facilitated. Cf. re Downe Township, Bulletin 92, item 2.

The section, to that extent and for those reasons is disapproved.

Then there is that part which prohibits upon the licensed premises sales of alcoholic beverages to minors, prostitution or solicitation, the conduct of a disorderly house, criminals, disreputable characters, gambling, slot machines and gambling devices.

State-wide rules affecting such matters were promulgated on October 8 and 11, 1934, effective immediately, being Rules 1, 4, 5, 6, 7 and 8. See Bulletin 48, items 1 and 12.

Rules 1 reads: "No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly to any person under the age of twenty-one (21) years or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

Rule 4 reads: "No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute."

Rule 5 reads: "No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, brawls, or unnecessary noises, nor allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

Rule 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 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 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."

In each instance, the State-wide regulation takes precedence over all municipal rules to the extent that there is any actual conflict between the two. (Bulletin 43, item 12). While there is no actual conflict between your regulation and the State rules (Bulletin 52, item 2), yet the State rules are broader and cover more ground and so I respectfully suggest to your Township Committee that at their convenience they amend their rule 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. Your prohibition of sales on credit and sales to defectives and habitual drunkards may then be added. Your prohibition of the employment by retail licensees of aliens or minors to sell or handle liquors had better be entirely omitted because it deals with a matter controlled by statute and as to which definite rules and regulations have already been promulgated. See Bulletin 82, item 10.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. LICENSES - AUTOMATIC SUSPENSION - POWERS AND PROCEDURE OF ISSUING AUTHORITY AFTER AUTOMATIC SUSPENSION UPON CONVICTION OF LICENSEE FOR A VIOLATION OF THE CONTROL ACT.

November 27, 1935.

Dear Sir:

Yesterday, November 26th, 1935, the Board of Commissioners of the City of Passaic received a communication from Commissioner Burnett concerning the automatic suspension of Abraham Morris.

Today, November 27th, 1935, Mr. Joseph Feld, advises me that an application was made to Commissioner Whitehead to have the Board consider the duration of the sentence, which the Board of Commissioners of the City of Passaic would recommend.

To date, we have not had a case of this character for the consideration of the Board. Will you please, therefore, advise me so that I can in turn advise the Board, whether we have a right, in accordance with the statute, to deal with this problem, and if so, to what extent.

May we have your immediate advice on the subject as we desire to be heard next Tuesday, December 3rd, which is the regular meeting of the Board of Commissioners.

Thanking you for the courtesy of an immediate reply, I am,

Respectfully yours,

JOSEPH J. WEINBERGER
City Counsel

December 2, 1935.

Joseph J. Weinberger, Esq.,
City Counsel,
Passaic, N.J.

Dear Sir:-

I have your letter of November 27th.

Section 82 (P.L. 1935, c. 254) provides for the automatic suspension of a license upon conviction of the licensee for violation of the Act. Under the express terms of this section however, proceedings by the issuing authority to revoke or suspend the license are not barred by the automatic suspension. Consequently, a municipal issuing authority may, even after the statutory automatic suspension has taken effect, institute revocation proceedings and conduct a hearing on the charges preferred. At the termination of the hearing, the issuing authority may enter an order of revocation or suspension. Any order of revocation takes full effect in accordance with its terms. Any order of suspension for a period less than the balance of the term of the license will not supersede the statutory automatic suspension. It will, however, indicate the determination of the issuing authority as to what constitutes reasonable punishment, under all of the circumstances presented in the particular case and will be of significance in the event any application is thereafter made to the Commissioner for a lifting of the automatic suspension pursuant to the Act and the enclosed rulings (Bulletin #24, Item #1; Bulletin #91, Item #10).

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

7. RULES CONCERNING THE SIZE OF CONTAINERS OF ALCOHOLIC BEVERAGES - APPLICATION TO SLOE GIN CORDIALS AND FRUIT GIN CORDIALS - MAY NOT BE SOLD IN CONTAINERS OF LESS THAN EIGHT OUNCES.

Gentlemen:

We are in receipt of your letter of November 8th, together with Public Notice pertaining to the size of containers as published by your Department on June 17, 1934 (Bulletin 36, Item 5).

We note in this latter bulletin wherein you state that the New Jersey rules were drawn up in order to conform as much as possible with the recent F.A.C.A. ruling pertaining to standards of fill. With this in mind, we believe that the sale of our OLD "MR. BOSTON" ORANGE GIN and SLOE GIN in containers of 8 ounces should be permitted in your State.

Prior to the Schechter decision, the F.A.C.A. published regulations as of May 13, 1935 and under Class 6, headed "Cordials and Liqueurs", section (b), the following definition was stated:

"Sloe gin cordial or liqueur is a cordial or liqueur with the main characteristic flavoring derived from sloe berries."

Under section "(c), Fruit gins, such as Pineapple gin, Orange gin, Cranberry gin, and Strawberry gin, are cordials or liqueurs in which the main characteristic flavor is derived in whole directly from the respective fruit, and includes mixtures composed wholly of one kind of such liqueurs or cordials, and shall be designated as "cordials" or "liqueurs."

Therefore, in view of this ruling and in view of the fact that our Sloe Gin and Orange Gin are produced the same as any cordial, we feel that a decision should be handed down in our favor so as to permit the sale of these items in containers less than 8 ounces.

Very truly yours,

BEN BURK, INCORPORATED

November 29, 1935.

Ben Burk, Inc.,
Boston, Massachusetts.

Gentlemen:

The Federal Alcohol Administration's regulations, relating to standards of identity for distilled spirits, promulgated March 15, 1935, defined "cordials" and "liqueurs" as "products obtained by mixing or re-distilling neutral spirits, brandy, gin or other distilled spirits with or over pure juices from fruits, flowers, plants, or other natural flavoring materials, or with extracts derived from infusions, percolations or macerations of such materials, and to which sugar or dextrose or both have been added in an amount not less than 2½% by weight of the finished product." "Sloe gin cordial or liqueur" is defined as a "cordial or liqueur with the main characteristic flavoring derived from sloe berries".

The foregoing definitions are carried over into the Distilled Spirits Misbranding Regulations proposed by the Federal Alcohol Administration. This Department contemplates the adoption of the Federal Alcohol Administration's Misbranding Regulations after their promulgation. In the meantime, the proposed definitions will be accepted.

Accordingly, it is the Commissioner's ruling that sloe gin cordials and fruit gin cordials, within the terms of the definitions contained in the regulations proposed by the Federal Alcohol Administration and relating to Distilled Spirits Misbranding, may be sold in containers of not less than one-half pint or eight (8) fluid ounces pursuant to the rules concerning the size of containers of alcoholic beverages (Bulletin #36, Item #5).

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

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

8. LICENSES - AUTOMATIC SUSPENSION - EFFECT OF SUSPENSION BY ISSUING AUTHORITY FOR A PERIOD LESS THAN THAT REQUIRED BY THE STATUTORY AUTOMATIC SUSPENSION.

December 5, 1935.

Mr. A. D. Bolton,
City Clerk,
Passaic, N. J.

Dear Mr. Bolton:

I have your letter of December 4, 1935.

It is noted that at a regular meeting of the Board of Commissioners held on December 3, 1935, it was determined that the license of Abraham H. Morris, 150 - 3rd Street, Passaic, N. J., be suspended from November 26 to December 5, 1935, a period of ten days.

For your files I am enclosing copy of the letter to Joseph J. Weinberger, your City Counsel (Bulletin 98, Item 6). You will note therefrom that the automatic statutory suspension against this licensee until the end of the license term on June 30th next is still in full force and effect notwithstanding the ten day suspension by your Board. Hence, unless lifted by the State Commissioner for good cause shown, his license stands suspended until June 30th next.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Jerome B. McKenna,
Attorney.

9. RULES CONCERNING THE SIZE OF CONTAINERS OF ALCOHOLIC BEVERAGES - APPLICATION TO BRANDY.

WHOLESALE LICENSEES - FOREIGN DEALERS MAY SHIP ALCOHOLIC BEVERAGES TO LICENSED WHOLESALERS AND MANUFACTURERS THROUGH LICENSED TRANSPORTERS PROVIDED NO SOLICITATION OR SALES WITHIN THIS STATE HAS TAKEN PLACE BUT MAY NOT MAKE DROP SHIPMENTS DIRECT TO RETAILERS.

December 2, 1935.

Gentlemen:

In reference to your recent bulletin regarding sale of whiskey in half-pint containers does this apply as well to half-pints of Brandy?

Also are we permitted to order goods from out of state manufacturers for drop shipment direct to our customers or is it necessary for this merchandise to go through our warehouse first?

Yours truly,

GREENSPAN BROS. CO.

December 7, 1935.

Greenspan Bros. Co.,
Perth Amboy, N. J.

Gentlemen:

I have your letter of December 2nd.

The rules concerning the size of containers of alcoholic beverages promulgated on June 17, 1934 (Bulletin #36, item 5) provided that the minimum standard of fill for "distilled spirits" shall be one-tenth (1/10) gallon (sometimes known as a half-fifth or four-fifth pint). The definition of "distilled spirits" as therein set forth in paragraph 1 (b) includes "ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, gin and other distilled spirits for beverage use, including all dilutions and mixtures thereof". It expressly excludes cordials, liqueurs, cocktails, gin fizzes and similar alcoholic beverages, as to which the minimum standard of fill was prescribed to be eight (8) ounces. Nor was it intended to include brandy and Holland gin as to which the minimum standard of fill was prescribed to be three-fourths pint.

Rule #4 of the rules concerning the size of containers of alcoholic beverages, promulgated on November 25, 1935, and taking effect on January 1, 1936, prohibits possession or sale of whiskey and other distilled spirits, as defined in Bulletin #36, item 5, in containers of less than one-tenth (1/10) gallon, except that consumption licensees may possess and sell alcoholic beverages in containers of not more than two (2) ounces for consumption on the licensed premises. This rule does not refer to cordials, liqueurs, cocktails, gin fizzes and similar alcoholic beverages, nor does it refer to brandy and Holland gin. As heretofore, cordials, liqueurs, cocktails, gin fizzes, champagnes and bottled highballs may be sold by manufacturers and wholesalers to licensees for resale for consumption off the licensed premises in containers of not less than eight (8) fluid ounces and brandy and Holland gin may be sold for such resale in containers of not less than three-fourths pint and all such beverages may be sold in containers of any size to consumption licensees for resale for consumption on the licensed premises.

The Commissioner's regulations prohibit absolutely the solicitation or sale of alcoholic beverages within this State by foreign dealers not licensed in New Jersey. Shipments may be made, however, by such foreign dealers to New Jersey licensed wholesalers and manufacturers, through licensed transporters, provided no solicitation or sale within this State has taken place. Such foreign dealers may not deal, directly or indirectly, with New Jersey retailers and in order to effectuate this restriction, the Commissioner has ruled that shipments may not be made from such foreign dealers directly to New Jersey retailers even where the alcoholic beverages were originally purchased by a licensed New Jersey wholesaler.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

10. LICENSES - AUTOMATIC SUSPENSION - WHEN AND TO WHAT EXTENT LIFTED BY STATE COMMISSIONER FOR GOOD CAUSE SHOWN - HEREIN OF BOOTLEG LIQUOR AND PENALTIES UPON LICENSEES.

-----X

In the Matter of the Petition :

-of-

ON PETITION

ABRAHAM H. MORRIS, to Lift
Suspension of License.

CONCLUSIONS

-----X

BY THE COMMISSIONER:

It appears from Staff Reports that on July 9, 1935, Investigators Palmieri and Grover entered the licensed premises at 3:00 P. M. to make an inspection; that they requested the bartender to allow them to inspect two rooms in the rear; that he refused, saying that he did not have a key; that half an hour later, the licensee appeared and taking the key from behind the bar opened the doors; that in a trunk was discovered a jug of alcohol, a bottle of burnt sugar, a hydrometer and gauge, a funnel and a pint bottle labeled "Contents not for beverage purposes, imitation gin"; that the licensee pleaded with the investigators to give him a break; that in a written statement, he admitted purchasing the alcohol to make whiskey which he sold over the bar for ten cents a drink; that he paid \$2.75 a gallon for the alcohol (the minimum legitimate price of which is \$4.47 per gallon).

This matter was transmitted to the Board of Commissioners of the City of Passaic, revocation proceedings were instituted, hearing held and decision reserved pending the outcome of the criminal case on the same facts then pending in the County Court. Later, on November 18th, the licensee pleaded non-vult to an indictment charging him with possession of illicit alcoholic beverages and he was fined \$100.00.

P. L. 1935, c. 254, provides:

"Upon conviction of violation of any of the provisions of the act. . . . any license held at the time of said conviction pursuant to said act by the person convicted. . . . shall suspend automatically and without notice. . . . the suspension. . . . shall continue for the balance of the term of the license unless the commissioner, in his discretion, and for good cause shown, shall otherwise order. . . ."
(Control Act Reprint, Section *82.)

The license was, therefore, automatically suspended by this conviction until the end of the license period, viz.:

June 30, 1936.

On December 3rd, the Passaic Board of Commissioners, having theretofore reserved decision as aforesaid, suspended the license from November 26th to and including December 5th 1935.

This ten day suspension, being for a less period than the automatic statutory suspension, was merely advisory.
Re: Weinberger, Bulletin 98, Item 6.

The petitioner now prays that the statutory automatic suspension be lifted.

It appears that this is his first offense. The Passaic City Commissioners certify that the applicant has borne a good reputation for honesty and integrity; that he has no record with the police authorities and they believe he has learned his lesson.

This petition being the first of its kind, requires the establishment of a fair and uniform policy pursuant to which the discretion vested in the State Commissioner to lift the automatic suspension in proper cases is to be exercised.

The licensee has been found guilty of buying and selling bootleg liquor. His action deprived both the State and the Federal Government of needed revenue. His action was unfair to his customers, who relied and had a right to rely that he was dispensing legitimate liquor without worry lest it be "cracked" from poisoned denaturants. His action was unfair to his honest competitors, who seek to eke out a livelihood on the small profits of sale of legitimate liquor and who simply can't compete with those who dispense bootleg stuff which wholly evades the 1500% ad valorem tax which is paid by the legitimate industry for the support of government. His action undermines the basic principle of Repeal, which permits the sale of legitimate alcoholic beverages, and, as a necessary consequence, outlaws all bootleg liquor. The declared objective of the Alcoholic Beverage Control Act is to "eliminate the racketeer and bootlegger".

A penalty measured in money, such as a fine, merely deprives the cheating licensee of a part of his ill-gotten gains. He keeps the rest for himself. Fines are rather impotent to eradicate commercial violations. Aside from jail sentences, for which the bootlegger and his accessories have an understandable dislike, revocation and consequent disbarment for two years would seem the appropriate civil punishment for this kind of offense. A person licensed to sell legitimate beverages and held out to the public as worthy of confidence, proves himself unworthy when he palms off bootleg liquor upon the credulous consumer. I have no sympathy for him because his act is deliberately wrongful from the outset. It is not a case of a technical or unwitting violation, or a possible mistake.

I am informed, however, that this licensee operated only on a small scale. He took a chance and was caught. He frankly admitted his guilt. It is his first offense. The

local Board recommended clemency. They believe he has learned his lesson. Punishment, while measured in terms of past performance, should be applied for its future deterrent effect. Taking into consideration that this is a case of first impression, and giving due weight to the recommendation of the local Board, I shall for the time being, fix a minimum of thirty days' suspension on this kind of case. If I err, it is on the side of mercy. If this does not suffice to wipe out the sale of bootleg liquor in licensed places, the minimum period hereby imposed will be increased and the full deterrent forces of the law applied as experience requires.

The petition to lift the statutory automatic suspension will be granted effective December 26, 1935.

Until then, the license stands suspended.

An order will be entered accordingly.

D. FREDERICK BURNETT
Commissioner

Dated: December 7th, 1935.

11. LICENSES - PROCEDURE WHEN LICENSEE VACATES LICENSED PREMISES -
REBATES, TRANSFERS AND RE-LICENSING.

Dear Sir:

On June 30 a Plenary Retail Consumption License was granted to Clarence H. Vescelius for the Hackettstown Inn. Yesterday, the 19, he vacated the premises without giving notice of his intention to do so. Did this void his license or can he ask for a rebate or transfer to some other person?

Kindly let me know at once what the proper procedure in this case is as there is another party that would like to take over this place.

Yours very truly,

A. G. Boettiger
Town Clerk

December 9th, 1935.

Arthur C. Boettiger, Town Clerk,
Hackettstown,
New Jersey.

Dear Sir:

The fact that Mr. Vescelius vacated these premises without giving notice of his intention to do so does not void the license. If a licensee's interest in the licensed premises ceases, he may apply for transfer of the license to a different place of business under Section 23

of the Control Act, but in the absence of such transfer, the license would not enable him to operate thereunder-- at least while he has no interest in the licensed premises. (See Bulletin 48, item 8). It follows, therefore, that if application for a transfer of license is permitted, so also would application for voluntary surrender of his license under Section 28 be allowed and refund of the portion of the license fee due him made.

However, regardless of the fact that Mr. Voscelius holds a license for the premises in question, this license is not effective so long as he has no interest in the licensed premises. Therefore, your municipal issuing authority may entertain application for a license for these premises, if it is proven to their satisfaction that the applicant has a sufficient interest in the premises to support his application. Then the issuing authority will be justified in issuing such license, if the applicant is otherwise qualified.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Erwin B. Hock,
Deputy Commissioner

12. MUNICIPAL ORDINANCES - SUNDAY SALES - MAY BE CONTROLLED BY LOCAL RESOLUTION OR ORDINANCE UNLESS REFERENDUM SUPERSEDES.

November 25, 1935.

Dear Sir:

We have received your letter dated November 22nd, with a communication addressed to you from Frank Lario, Esquire, and your reply thereto of November 22nd.

Under Chapter 257 of the Laws, 1935, Section 37, page 812, it provides that the governing body may by resolution limit the number of licenses, prohibiting the sale on Sunday, and subject to your approval, regulate the conduct of the business. Then follows other provisions which have to be adopted by ordinance and not by resolution.

There is a further provision in the act that on petition a referendum can be had as to Sunday selling and as to the hours of sale.

Two or three questions have arisen under the statute and under your letter, about which we would like to have your advice. First, let us assume as at present the Commissioners have not made, and do not make any rule at all as to Sunday selling permissive or prohibitive; in other words, they take no action. In order to permit Sunday selling in Camden, does it then become necessary for the saloon keepers to file a petition and have a referendum? To put it in another way - while the Commissioners may prohibit, can they on the other hand sanction Sunday selling without a referendum?

In the second place, if the Commissioners, without a referendum can fix the hours of sale, for any day, does this not mean they can also fix the hours of sale for Sunday without a referendum?

In the third place, we understand the Alcoholic Board can make no regulations of any kind, but that the governing body may prescribe the rules and regulations which have to do with sale of liquor on Sundays, unless there is some provision in the act which would provide another method. If the only other method is by referendum, then by what authority can the Commissioners make any regulations as to Sunday selling of a permissive character? Of course, they have a right to prohibit; which right is distinctly given by the 1935 Act.

Very truly yours,

Meyer L. Sakin
Assistant City Counsel

December 9, 1935.

Meyer L. Sakin, Esq.,
Assistant City Counsel
Camden, New Jersey

Dear Sir:

I have before me your letter of November 25th.

You ask, assuming that the Board of Commissioners has taken no action with respect to Sunday sales, if it is necessary in order to permit Sunday sales first to hold a referendum or if the Board of Commissioners may permit Sunday sales without a referendum having been held. The answer, assuming that no previous action has been taken, is that it is not necessary in order to permit Sunday sales, first to hold a referendum. The Statute, Section 37, confers upon the governing body of each municipality the power to limit in the first instance, by resolution or ordinance, the hours between which the sale of alcoholic beverages at retail may be made. Such regulations and their enforcement are primarily and properly the function of the local authorities for the subject is a matter chiefly of local concern. If the Board of Commissioners takes no action to restrict or to prohibit Sunday sales, such sales in Camden would be unrestrained because there is nothing presently in the statute or in State regulations providing to the contrary.

But according to my records Section 5 of the ordinance to fix license fees, to regulate the sale and distribution of alcoholic beverages and to provide penalties for violations thereof which was adopted by your Board of Commissioners on December 27, 1934 provides so far as sales on Sundays are concerned that "No alcoholic beverage shall be sold, served or delivered nor shall any licensee suffer or permit the sale, service or delivery of any alcoholic beverage upon the licensed premises, directly or indirectly,.....between 2 A. M. on any Sunday and 7 A. M. of the following Monday;" The Board of Commissioners may, however, alter, amend or repeal this regulation by ordinance (because it was adopted by ordinance)

as in its judgment the requirements of the local situation demand. The Board may by amendment remove all restrictions as to sales on Sunday or permit sales only between specified hours or prohibit the retail sale of alcoholic beverages on Sundays entirely.

If a referendum is held with respect to Sunday sales pursuant to Sections 44 or 44A (C. 254, P. L. 1935) of the Act, it will supersede any regulations previously established by ordinance and will continue in effect until abrogated by some referendum in the future.

You also ask, assuming that the Board of Commissioners may fix hours of sale on weekdays without a referendum having been held, if it may not also fix the hours of sale on Sundays without such a referendum. The answer is in the affirmative for the reasons stated above. The Act does not distinguish between weekdays and Sundays in the authority which it confers upon municipal governing bodies to limit hours of sale.

And lastly you ask, granting that the Board of Commissioners has the authority to prohibit the sale of alcoholic beverages on Sundays, by what authority otherwise than by referendum the Board of Commissioners may permit sales on Sundays. As was said above, if the Board does not restrict or prohibit Sunday sales, such sales would be unrestrained because the statute imposes no such regulations and there are no State rules which would control to date.

Very truly yours,
D. Frederick Burnett
Commissioner

13. MUNICIPAL ORDINANCES - SUPERSEDING EFFECT OF CONTROL ACT UPON EARLIER ORDINANCES WHICH UPON REPEAL MAY HAVE AFFECTED ALCOHOLIC BEVERAGES.

MUNICIPAL ORDINANCES - LICENSING POWER - NOT DELEGABLE.

December 9, 1935.

Ralph Weed
Borough Clerk
Mount Ephraim, New Jersey

Dear Sir:

I have before me for consideration an ordinance and two resolutions adopted by your Borough Council:

1. An Ordinance to license and regulate restaurants and cafes wherein soft drinks, near beers, and general beverages are sold or served, dance halls, inns, taverns, hotels, road houses, and public houses, pool rooms, billiard parlors and bowling alleys, fixing fees therefor and penalties for the violation thereof, adopted February 7, 1927.
2. A resolution dated June 10, 1935, fixing plenary retail consumption, distribution and club license fees and regulating the sale and distribution of alcoholic beverages.

3. A resolution dated June 10, 1935, giving Ralph Weed, the Borough Clerk, the authority to issue licenses during the year commencing January 1st and ending December 31, 1935.

Although at the time of its adoption the ordinance of February 7, 1927 did not contemplate licensing or regulating the sale of alcoholic beverages, such sale being at that time proscribed by Federal Law, upon repeal, by virtue of its general terms, the question would naturally arise as to whether or not alcoholic beverages fell within its general scope. I believe that so far as the ordinance could have been concerned with the sale of alcoholic beverages it became a nullity on December 6, 1933 because of the comprehensive scheme of control adopted in the later State Act which became effective on that date. See Roche v. Jersey City, 40 N. J. L. 257 (Sup. Ct. 1878). Hence, I am not considering the ordinance for approval. I suggest that the Council amend the ordinance so as to exclude therefrom any expressed or implied encroachment upon the subject of alcoholic beverages (re Pompton Lakes, Bulletin 64, item 3) and then, if the Council chooses, make the matters which may now deal with alcoholic beverages the subject of a separate alcoholic beverage ordinance or resolution. When so doing bear in mind that the February 7, 1927 ordinance would grant licenses to run for the calendar year while licenses issued pursuant to the Alcoholic Beverage Control Act expire on each June 30th, the end of the fiscal year. Also, that the ordinance would fix fees in different amounts depending upon the nature of the business to be conducted in conjunction with the sale of the beverages while, on the other hand, the act specifies the particular types of licenses which may be issued, the privileges each would confer, and the minimum and maximum limits between which the fees must be fixed. Furthermore, that the license fee provided for in the Act is the only one which may be imposed upon the sale of alcoholic beverages. You cannot charge for an alcoholic beverage license via other ordinance or resolution in excess of that allowed by the statute.

The second resolution of June 10, 1935 purports to confer upon the Borough Clerk for the year 1935 the authority to issue licenses in compliance with the Alcoholic Beverage Control Act. If all that this means is that the Borough Clerk is to perform the ministerial duties of signing and delivering licenses after the Borough Council, sitting as the governing body, has specifically adjudicated in each individual instance that they should be issued, well and good. If it is meant to delegate to or confer upon the Clerk the power to decide whether or not particular licenses shall be issued, it is not valid. It is not clear from the resolution which was intended. Consequently, as worded, it cannot be approved.

The statute, Section 18, makes the administration of the issuance of all retail licenses, other than retail transit, the duty of the governing body of each municipality except in such cases where it has been delegated to a Municipal Board of Alcoholic Beverage Control duly created pursuant to the Act. While there is no objection to the Borough Council designating the Clerk as its agent to sign and deliver licenses in its behalf, no right exists to delegate the function of issuing licenses otherwise than to the extent expressly mentioned. As the Borough of Mt. Ephraim has no Municipal Board, it follows that licenses may be issued only upon the affirmative vote of the Borough Council.

Therefore, I cordially suggest that the resolution be amended merely to confer upon the Borough Clerk the duty of signing and delivering licenses after they have been expressly approved and ordered issued by the Borough Council.

Moreover, if any licenses have in fact been issued by the Clerk without having been expressly authorized by the Borough Council, it follows that all such licenses were improperly issued. Hence to the extent that they may be now in force and effect, they should be submitted at once to the Borough Council in order that their issuance be either ratified or reconsidered, as the governing body in each instance may decide. See re Guttenberg, Bulletin 66, item 8, Cf. re Hackensack, Bulletin 93, item 10.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. MUNICIPAL EXCISE BOARD - POWERS EXTEND ONLY TO THE ADMINISTRATION OF THE ISSUANCE AND SUSPENSION OR REVOCATION OF LICENSES - NO RIGHT TO EXTEND CLOSING HOURS

December 9, 1935.

Thomas J. Wieser, Clerk
Municipal Board of Alcoholic Beverage Control
Linden, New Jersey

Dear Sir:

I have your letter of December 4th advising that the Linden Board of Alcoholic Beverage Control has ordered that the closing hour on January 1, 1936 shall be 5:00 a. m. in place of 2:00 a. m.

The Municipal Board of Alcoholic Beverage Control no longer has the power to enact rules and regulations with respect to the sale of alcoholic beverages. On June 8, 1935, Section 37 of the Act was amended by Chapter 257, P. L. 1935 to vest that power exclusively in the municipal governing body, in your case the Common Council. See Bulletin 83, item 1, paragraph 14, wherein the amendment is set forth and explained. Since then the duty of the Municipal Board of Alcoholic Beverage Control has extended only to the administration of the issuance and the suspension or revocation of licenses. Re Lario, Bulletin 96, item 15.

The order of the Municipal Board of Alcoholic Beverage Control extending the closing hour until 5:00 a. m. on January 1st standing alone has no legal effect. To be legally effective, it must be adopted by the Common Council.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

15. REFERENDUM - NO LEGAL EFFECT EXCEPT UPON A QUESTION SPECIFIED BY STATUTE - OTHERWISE MERELY ADVISORY.

December 9, 1935.

Harold J. Schlosser
Borough Clerk
Milltown, New Jersey

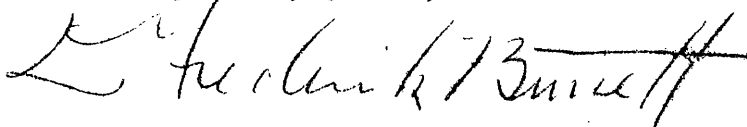
Dear Sir:

I have your letter of November 29th certifying that at the general election held on November 5th last there was submitted on referendum the question "Shall the closing hour of business for the holders of licenses for the sale of alcoholic beverages be extended to 2.A. M. Sundays included?" and that the vote on the question was 'yes' 416 and 'no' 589.

I note that the majority voted 'no' and that in consequence thereof the referendum would not alter or amend the Borough Council's resolution of June 28, 1934, Section 15 of which fixed the weekday closing hour at one a.m. and prohibited all sales on Sunday.

But I call to your attention that there is no provision in the Alcoholic Beverage Control Act for referenda on any questions other than those expressly provided for in Sections 41, 42, 43, 44 and 44A (C. 254, P.L. 1935) and that even if voted in the affirmative, your question because it is not in compliance with the statute, for the reasons set forth in re Union City, Bulletin 98, Item 1 (copy attached), would have no binding effect.

Very truly yours,



Commissioner