COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 99. December 18, 1935

1. APPELLATE DECISIONS - DUNSTER v. BERNARDS.

LEPORT F. DUNSTER,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS (SOMERSET COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

George D. Mulligan, Esq., Attorney for Appellant.

Anthony Kearns, Esq., Attorney for Respondent.

McCarter & English, Esqs., by Herbert Baer, Esq., Attorneys for Objectors.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located on Howell's Road, Liberty Corner, Township of Bernards.

Respondent contends that the application was properly denied because the majority of the residents in the vicinity objected thereto.

Appellant's premises are located in what is admitted to be a sparsely settled residential neighborhood. A petition objecting to the issuance of the license, signed by over 100 residents of the Township, was filed with respondent. Appellant presented a petition signed by 72 residents who were in favor of the application. He argued further that many of the persons signing the objecting petition did so without knowing who the applicant was, basing their objections solely upon the manner in which the premises had been conducted by a prior licensee. Respondent, counting more names on the objectors' petition than on appellant's, summarily denied the application without further consideration.

It may very well be that the denial of appellant's application would have been proper on the ground that the premises were located in a residential neighborhood. Vannozzi v. Trenton, Bulletin #35, Item #7; Hickey v. Lopatcong, Bulletin #68, Item #1. Much may also be said for the contention that a municipal policy to deny applications for premises located in residential neighborhoods where any substantial number of persons object is reasonable and valid where actually adopted and uniformly applied. Apgar v. Tewksbury, Bulletin #66, Item #2; Hackman

v. Greenwich, Bulletin #71, Item #13; Hickey v. Lopatcong, supra. But respondent did not base its determination on the ground that the neighborhood was residential nor did it claim to have adopted any such policy. It might have done so -- it may do so in the future --but it has not done so as yet.

I had occasion to consider the effect of neighborhood petitions in Re Powell, Bulletin #59, Item #15, where it is ruled:

> "Your conclusion that a petition has no legal standing as such is correct. Such petitions may serve, when favorable, to give massed character recommendation, or show economic cause, and, when unfavorable, to serve as a vehicle of protest.
>
> "There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation without any considered thought of contents or effect or the argument on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides.
>
> "A petition is not a substitute for, nor may it in any way dispense with independent investigation to determine that the law has in all respects been complied with and that the licensee is in fact worthy. Neither does it suffice as proof of non-compliance or of unworthiness. Such matters are not proved either way by merely counting noses. If the subject matter concerns local policy, the weight to be accorded to the petition is entirely within the discretion of the Mayor and Council. It is their power and their responsibility."

Respondent merely counted signatures on a petition, upon the erroneous hypothesis that the petition bearing more signatures represented the will of the majority. No independent determination of the propriety or desirability of granting or denying appellant's application was made. It is the duty of respondent to hear both sides and its responsibility to determine on all the facts whether or not the license should be granted.

The case is, therefore, remanded to respondent for such determination.

D. FREDERICK BURNETT
Commissioner

Dated: December 11, 1935.

2. APPELLATE DECISIONS - ELY v. LONG BRANCH.

ARTHUR ELY,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS

BOARD OF COMMISSIONERS OF THE CITY OF LONG BRANCH,)

Respondent.)

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Solomon Tepper, Esq., Attorney for Appellant,

Jacob Steinbach, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises known as #30 Atlantic Avenue, Long Branch.

Respondent contends that the license was properly denied because it was socially undesirable that a license should be issued in that neighborhood and also because there was no need for licensed premises in that vicinity.

The premises are located on the southerly side of Atlantic Avenue in the block between the railroad and Ocean Avenue. On the same block there are other stores occupied by a barber, a shoemaker, a druggist and a butcher, and also a few private residences. Across the street from the premises in question is a railroad station. At the southwest corner of Atlantic Avenue and Ocean Avenue, which runs parallel with the beach, is a Fresh Air Home maintained by the Salvation Army and part of this property adjoins the rear of the premises in question. Atlantic Avenue, on the other side of the railroad, has about seven stores of the type described above and also a machine shop. Beyond these stores Atlantic Avenue is residential and the side streets are likewise residential. The stores depend on these residents for their trade. As one witness explained: "it is more or less a quiet sort of little village where there are a great many homes***with a few stores which sell commodities necessary for the home". The entire section is locally known as North Long Branch, and has a population of about nine hundred (900).

It appeared from the evidence that respondent has issued no licenses for premises in that vicinity; the nearest licensed place being located about one-half mile away on Ocean Avenue in a section frequented by summer visitors and transients. In fact, witnesses were produced who resided in the neighborhood for more than forty years and who testified that, within their recollection, no liquor license had ever been issued for premises in North Long Branch.

The evidence produced at the hearing as to the need of the licensed premises was that of appellant himself and his

landlord. Appellant also produced a petition signed by twenty-four (24) people who had no objection to the opening of a bar at #30 Atlantic Avenue, but about twelve (12) of these people lived a long distance away from the premises. On the other hand, fourteen (14) objectors appeared at the hearing and testified that there was no necessity for licensed premises in that vicinity. A petition was presented which contained the names of about two hundred twenty-five (225) residents who opposed the issuance of the license.

It does not follow that a license must issue merely because the premises are located on a street containing other stores. Sanford Drug Co. vs. Maplewood, Bulletin #71, item 6; Healey vs. Orange, Bulletin #85, item 9. There are other considerations to be weighed by the issuing authority. In the present case it appears that no licenses have been issued in the vicinity of the premises in question; that the Mayor and a Commissioner, as well as many others, testified that the issuance of the license was socially undesirable; that the issuance of the license was opposed by a large majority of the residents of the neighborhood; and that the premises are in close proximity to the Fresh Air Home maintained for the use of women and children. The factual situation is similar to that in Norton vs. Camden, Bulletin #97, item 9, where it was ruled:

> "The premises in question are in a type of suburban business district, difficult to define but easily recognized and commonly understood. The type consists, in general, of a group of so-called neighborhood or community stores, separated from the town or city, not by artificial political division but rather by intervening residences or undeveloped land, and which stores service the day to day grocery, meat, bakery, drug, delicatessen and kindred immediate needs of the neighborhood as distinguished from the transaction of business generally --stores where women 'go to market' instead of 'shop' --stores where countless household purchases are made by children running errands for the family. These stores are convenient, if not practically necessary adjuncts of such residential communities and, while business in nature, nevertheless 'fit' the neighborhood. A place for the consumption of liquor is not appropriate to nor does it fit into a community of homes. While the store itself is in a technical business district, the immediate neighborhood is highly residential. A jealous regard for the preservation of a strictly home atmosphere in neighborhoods essentially residential is not unreasonable."

The factual situation is radically different from Vonella vs. Long Branch, Bulletin #71, item 12. There the premises sought to be licensed were in a district zoned for business purposes. There the respondent had issued two other consumption licenses in the vicinity. Discrimination, therefore, against that appellant was unwarranted. Here there was no personal discrimination but rather a sound discretion exer-

cised reasonably in the best interest of the community at large.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 11, 1935.

3. APPELLATE DECISIONS - VOGEL v. BELLEVILLE.

RAY LEROY VOGEL,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE (ESSEX COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Thomas A. Kenny, Esq., Attorney for Appellant.

Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located at #72 Holmes Street, Belleville.

Respondent moved to dismiss the appeal on the ground that appellant had accepted a refund of 90% of the amount deposited with his application and had thereby abandoned the same. See Simonko v. Trenton, Bulletin #34, Item #9. Since the denial of the application must be sustained on the merits, it is unnecessary to pass upon the motion for dismissal of the appeal.

Respondent based its denial in part upon the ground that there were a sufficient number of licensed places in the vicinity of appellant's premises and the issuance of an additional license in said vicinity would be socially undesirable.

The denial of an application where the facts reasonably support the foregoing contention has frequently been sustained Bader v. Camden, Bulletin #44, Item #8. Furman v. Springfield Bulletin #49, Item #6; Clement v. Loder, Bulletin #52, Item #5; Snyder v. Middletown, Bulletin #56, Item #2; Botfan v. Howell Bulletin #64, Item #9.

Appellant's premises are located in a middle class neighborhood, largely residential, although with some factories and a considerable number of unimproved lots. There is a saloon one block east, another one block north, and a third about two blocks south of appellant's premises. The only member of the Board of Commissioners who testified stated that there was no demand for an additional place there. A member of the Belleville police force joined in this view. No contrary opinion was expressed, appellant himself stating that he did not know whether public necessity or convenience dictated the issuance of an additional license in this vicinity.

The appellant has failed to sustain the burden of proving that the action of respondent was unreasonable or motivated by anything but the exercise of a sound and honest discretion as to the best needs of the community. Henry v. Way, Bulletin #90, Item #9, and cases therein cited.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: December 11, 1935.

4. APPELLATE DECISIONS - RETAIL LIQUOR DISTRIBUTORS v. ATLANTIC CITY AND M. E. BLATT CO.

Retail Liquor Distributors Association of Atlantic City,
Appellant,
-vs-
Board of Commissioners of Atlantic City and M. E. Blatt Co.
Respondents.

ON APPEAL
CONCLUSIONS

Paul M. Salsburg, Esq., For the Appellant.

Thompson & Hanstein, Esqs., by Walter Hanstein, Esq., For the Respondent, M. E. Blatt Co.

Anthony J. Siracusa, Esq., By Samuel Backer, Esq., For the Respondent, Board of Commissioners of Atlantic City

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license by the Board of Commissioners of Atlantic City to M. E. Blatt Co. for premises located at #1300 Atlantic Avenue, Atlantic City.

Appellant contends that the license was issued for premises conducted as a department store in violation of section

9 of City Ordinance #1 for 1935, which prohibits the issuance of plenary retail distribution licenses for premises where any other mercantile business of any kind, nature or description is carried on. The testimony taken at the hearing and the view of the Hearer embodied in the record pursuant to consent of counsel, establishes clearly that the license was issued for premises conducted by the respondent-licensee as a large department store. It is consequently evident that the license was issued in direct violation of the terms of the ordinance.

The respondent-licensee contends, however, (1) that appellant is not an aggrieved person within the meaning of the Act, and is not, therefore, entitled to maintain this appeal; (2) that the Commissioner has no authority to entertain an appeal based on the ground that the issuance of the license was in violation of a municipal ordinance; (3) that the ordinance was invalid; and (4) that in any event it has been superseded by an ordinance permitting the issuance of distribution licenses to department stores.

(1) Appellant's standing to maintain an appeal from the issuance of a license by the Board of Commissioners of Atlantic City was sustained in Retail Liquor Distributors Association vs. Atlantic City and Polonsky, Bulletin #88, Item #10. For the reasons therein set forth, the first contention of the respondent-licensee is overruled.

(2) Section 19 of the Control Act provides that any taxpayer or other aggrieved person opposing the issuance of a license may appeal to the Commissioner and Section 35 provides that the Commissioner is empowered to hear all such appeals and to enter orders which shall forthwith be executed by the issuing authority whose action is appealed from. Nowhere in the Act is there any suggestion that the Commissioner may not, in the course of such appeal, consider all pertinent issues including the question of whether the license was issued in violation of a local ordinance and therefore void. Cf. Bachman vs. Phillipsburg, 68 N. J. L. 552 (Sup. Ct. 1902).

Our Supreme Court has indicated that the appellate provisions of the Control Act must be exhausted, even where the objection to the issuance of the license rests upon a principle of law entirely apart from any provision of the Control Act. See Matthews vs. Asbury Park, 113 N. J. L. 205 (1934). A fortiori such appeal must be exhausted where the validity of the license is questioned on the ground that it violates an ordinance adopted pursuant to an express provision of the Control Act. The appeals in such cases would, indeed, be futile gestures if the Commissioner were not permitted to consider the issues presented. As Mr. Justice Perskie stated in the Matthews case "the legislature has evidenced a definite state-wide policy for the control of the liquor problem". The Commissioner has been afforded supervisory control over the issuance of retail licenses by municipal issuing authorities for the purpose of fulfilling such policy and this legislative intent would, in large part, be defeated if the licensee's contention were sustained. In numerous appeals the Commissioner has heretofore decided the issue of whether the license was issued in violation of a municipal ordinance. See, e. g., Owl Drug Co. vs. Elizabeth, Bulletin #68, Item #7. The respondent-licensee's second contention cannot be sustained.

(3) The ordinance was adopted pursuant to the express authority conferred by section 13(3)a of the Control Act which provides, with reference to plenary retail distribution licenses, that "the governing board or body of each municipality may, by ordinance, enact that this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on". Society has long been cognizant of the evils resulting from the intemperate use of liquor and from the earliest history of our State its sale has been dealt with in an exceptional way. As was said by the court in Paul vs. Gloucester County, 50 N.J.L. 585 (E. & A. 1888), "it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics cannot be applied". In Meehan vs. Excise Commissioners, 73 N. J. L. 382, 386 (Sup. Ct. 1906); affirmed 75 N.J. L. 557 (E. & A. 1908), the Court said:

> "The right to regulate the sale of intoxicating liquors by the legislature, or by municipal or other authority under the legislative power given, is within the police power of the State and is practically limitless. It may extend to the prohibition of the sale altogether. A license is not a contract. It is a mere privilege. Cooley Const. Lim. (5th ed) 718; Crowley v. Christensen, 137 U. S. 86; Robinson v. Haug, 71 Mich. 38."

The recent case of Tittsworth vs. Akin, 159 So. 779 (Fla. 1935) involved an issue similar to that here presented. An ordinance prohibited retail liquor dealers from engaging in any mercantile or drug business in the same building where the alcoholic beverages were sold. The Court sustained the validity of the ordinance, saying:

> "The apparent purpose of the ordinance is to suppress the harmful effects that may accrue to the public by reason of the close association of the business of selling intoxicating liquors at retail and a drug or other mercantile business of any other character when operated by the same owner in one and the same building. That there may be reasonable ground for the apprehension that so close an association of the retail intoxicating liquor business with any other sort of mercantile business will be harmful to the public welfare can hardly be questioned. Under such conditions it is apparent that the owner of the two businesses so located may take advantage of this condition to increase the sales of intoxicating liquors to the public in ways and by means which he could not employ if the businesses were otherwise located. The purpose of the ordinance appears to be to keep the retail sale of intoxicating liquors separate and apart from the drug business and other mercantile business and while it is possible that the ordinance may not entirely effectuate that purpose and it may not be based on the soundest

> sort of wisdom and reason, yet it has sufficient foundation to make it a matter within the legislative authority to enact and beyond the scope of judicial authority to hold it invalid because of being an arbitrary exercise of legislative power."

In the light of their purpose and the pertinent authorities, the validity of the statutory enactment and the ordinance adopted pursuant thereto can hardly be said to constitute an improper exercise of legislative power. The respondent-licensee's third contention is, therefore, overruled.

(4) Subsequent to the hearing of the appeal in this matter, the Board of Commissioners of Atlantic City adopted ordinance #17, regulating the issuance of licenses for the sale of alcoholic beverages. This ordinance, although not amendatory in form, was evidently intended as an amendment of ordinance #1. Section 7 of ordinance #17 provides that no plenary retail distribution license shall be issued for the sale of alcoholic beverages upon any premises where any other business is carried on; except that such licenses may be issued to "department stores operating in and licensed by the City of Atlantic City as such". Whether this ordinance can have any effect upon this appeal, taken before its adoption, need not be decided since I am of the opinion that it is invalid.

The requirement that distribution licenses be issued only to stores devoted exclusively to liquor is supported by a reasonable social policy. The exception of department stores, however, finds no support in social policy and is merely an attempt to grant a special privilege to a particular person or group of persons and to the exclusion of others substantially similarly situated. If the sale of alcoholic beverages in premises where groceries, drugs, etc. are sold is socially undesirable, then its sale in a department store, where all types of mercantile articles are sold, is at least equally undesirable.

In City of Chicago vs. Netcher, 183 Ill. 104, 55 N.E. 707 (1899) the Court held invalid an ordinance which prohibited the sale of intoxicating beverages in any place where dry goods, clothing, jewelry or hardware were sold, but permitted the sale of intoxicating beverages in places where other types of mercantile articles were sold. In the course of its opinion the Court said:

> "If there is any evil in permitting a sealed bottle of liquor to be sold from a store where dry goods, clothing, jewelry or hardware are sold, the same evils would result from the sale from any other kind of a store. The ordinance permits the dealer in all kinds of merchandise except dry goods, clothing, jewelry and hardware to sell liquor from his store and the City cannot arbitrarily discriminate against the defendant without any basis or ground for the discrimination. Special privileges are not to be granted to favored persons in the liquor business any

> more than in any other business. ****The restriction is purely arbitrary, not having any connection with and not tending in any way towards the protection of, the public against the evils arising from the sale of intoxicating liquor. That was not the object of the ordinance and the attempted discrimination is illegal and in violation of the defendant's rights."

In Bulletin #76, Item #14, the Commissioner stated:

> "If a municipality desires to restrict plenary retail distribution licenses to the sale of alcoholic beverages exclusively, it must prohibit all other mercantile business without discrimination."

No determination need be made on the question of whether the invalidity of the exception in favor of department stores renders section 7 invalid in its entirety. If it does not, and the exception alone is exscinded, the license would be void even under the remaining portion of section 7 of ordinance #17. If it does and section 7 is exscinded in its entirety, then section 9 of ordinance #1 remains in full force and effect and renders the license void. Ordinance #17 provides in section 16 that all ordinances or parts of ordinances inconsistent therewith are repealed. However, if section 7 is invalid in its entirety, it may be disregarded and there is nothing contained in ordinance #17 which is inconsistent with section 9 of ordinance #1. Cf. City of Portland vs. Schmidt, 13 Ore. 17 (1885):

> "It is a serious question in my mind whether this provision (sec.5 of Ordinance No. 3744) is not so unreasonable as to render it a nullity, but the view I have taken of the case makes it unnecessary to decide the point. In my opinion, no provisions of the original ordinance which were valid have been repealed or superseded by provisions in the amended ordinance that are invalid. The Common Council of the City of Portland did not repeal any provision in said ordinance No. 3720, by adopting ordinance No. 3744, in consequence of conflicting provisions in the two ordinances,--if those in the latter are illegal,--although the latter ordinance contain a clause to the effect that all ordinances in conflict therewith are thereby repealed. That is the rule in regard to legislative enactments, and there is no reason why it does not apply the same to the adoption of ordinances by a municipal corporation*** if it (sec. 5 of Ordinance No. 3744) is a nullity, then the section as originally adopted, and as it stands in said ordinance No. 3720, is valid and complete."

See also Fennan vs. Atlantic City, 88 N. J. L. 435 (Sup. Ct. 1916).

The action of the respondent, Board of Commissioners of the City of Atlantic City, is reversed, effective on January 1, 1936, provided that such reversal will be vacated and the appeal herein dismissed upon proof satisfactory to the Commissioner being furnished prior to said effective date that the premises where alcoholic beverages are sold have been separated from the department store in full compliance with section 9 of City Ordinance #1 for 1935.

D. FREDERICK BURNETT
Commissioner

Dated: December 12, 1935.

5. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - EXTENSION OF TIME.

December 12, 1935.

N O T I C E

On November 25, 1935, rule #3 of the Rules Governing Signs and Other Advertising Matter was amended, effective December 6, 1935. Investigators of this Department have been delivering copies of the amended rule in the course of their inspection of licensed premises. Because of the time necessary for thorough inspection, the delivery of copies of the amended rule to all licensees in the State has not as yet been completed. In addition, numerous distribution licensees have requested that they be permitted to retain holiday window displays installed previous to notice of the modification of the rule.

Accordingly, the Commissioner has ruled that plenary retail distribution licensees may retain their present window displays until January 1, 1936, notwithstanding the fact that such displays do not conform to amended rule #3 of the Rules Governing Signs and Other Advertising Matter. However, on and after January 1, 1936, retail distribution licensees, as well as all other retail licensees, may not advertise the price of any alcoholic beverage in their show windows or door or interior when visible from the street, except that placards not exceeding 1½ inches by 1½ inches and advertising the price of alcoholic beverages being sold in original containers for off premises consumption may be displayed in accordance with amended rule #3.

D. FREDERICK BURNETT
Commissioner

By: NATHAN L. JACOBS
Chief Deputy Commissioner
and Counsel

6. RULES CONCERNING IDENTITY OF ALCOHOLIC BEVERAGES SOLD ON LICENSED PREMISES.

1. No plenary or seasonal retail consumption licensee shall possess on the licensed premises any barrel or other container from which brewed malt alcoholic beverage is drawn unless there is attached to the spigot or other dispensing apparatus thereof the name or brand of the manufacturer of the product contained therein, provided that where such alcoholic beverage is served at a bar the manufactuerer's name or brand must appear in full view of the purchaser.

2. Plenary and seasonal retail consumption licensees shall, at all times, maintain on the interior of their licensed premises a sign, prominently displayed, listing the manufacturers' name or brands of the draught brewed malt alcoholic beverages sold thereon.

3. No retail licensee shall permit or suffer in or on the licensed premises any sign or other matter advertising the sale of any particular brand or type of alcoholic beverage unless such brand or type of alcoholic beverage is actually available for sale at such premises.

4. No licensee shall serve to any purchaser any alcoholic beverage other than that ordered.

5. Devices displayed pursuant to rule #1, shall not exceed 3½ inches by 3½ inches or 12¼ square inches. Manufacturers and wholesalers of brewed malt alcoholic beverages may furnish such devices provided that the cost or value of each device furnished shall, in no event, exceed $1.00.

6. Rules #1 and #2 shall take effect on February 1, 1936 and the remaining rules shall take effect immediately.

D. FREDERICK BURNETT
Commissioner

7. COMMENT UPON RULES PROMULGATED IN ITEM LAST ABOVE.

December 12, 1935

The Rules Concerning Identity of Alcoholic Beverages Sold on Licensed Premises herewith enclosed are hereby promulgated. These rules in their tentative form have heretofore been distributed to all interested parties. Conferences have been held with representatives of breweries and retail licensees and the entire subject has received careful study.

It is believed that these rules and their effective enforcement will aid considerably in the elimination of the practice by certain unscrupulous retail licensees of substituting inferior draught beer for that ordered by name by the purchaser. This practice constitutes not only unfair competition by the cheating licensee with his fellow-competitors, but is unfair to breweries with an earned reputation and is a rank deceit upon the trusting consumer.

D. FREDERICK BURNETT
Commissioner

8. WAREHOUSE RECEIPTS LICENSES - NOTICE OF PUBLIC HEARING.

December 12, 1935.

A public hearing to consider proposed regulations governing the issuance of warehouse receipts licenses will be held on Thursday, December 19th, 1935, at 2:00 P. M. at the offices of this Department, Room #807, 744 Broad Street, Newark, New Jersey. Members of the liquor industry and other persons engaged in or contemplating engagement in the sale of liquor warehouse receipts and the public generally are cordially invited to attend the hearing. All phases of the subject will be considered, particularly the following:

(1) Shall the issuance of warehouse receipts licenses be confined to the holders of New Jersey manufacturers' and wholesalers' licenses?

(2) Shall the sale, by warehouse receipts licensees, of liquor warehouse receipts to persons other than licensees be prohibited?

(3) Shall warehouse receipts licensees be prohibited from selling receipts not actually owned or possessed by them?

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

9. MILITARY EXCHANGES - A CAMP EXCHANGE OF THE CIVILIAN CONSERVATION CORPS OR OF THE WORKS PROGRESS ADMINISTRATION IS NOT A MILITARY CAMP EXCHANGE WITHIN THE MEANING OF THE NEW JERSEY ALCOHOLIC BEVERAGE CONTROL ACT - THE SALE OF ALCOHOLIC BEVERAGES BY SUCH AN EXCHANGE DOES NOT CONSTITUTE THE EXERCISE OF A NECESSARY FEDERAL GOVERNMENTAL FUNCTION ENTITLED TO IMMUNITY FROM STATE REGULATION - SPECIAL PERMIT FROM THE STATE COMMISSIONER CONTAINING ADEQUATE SAFEGUARDS IS THEREFORE NECESSARY.

December 12, 1935.

P. Ballantine & Sons,
Newark, N. J.

Gentlemen:

Your inquiry as to whether licensed breweries may sell beer and ale to camp exchanges of the Civilian Conservation Corps and the Works Progress Administration has been carefully considered.

The Control Act provides that licensed breweries may sell their products in New Jersey to licensed wholesalers and retailers . In general they may not sell to unlicensed

persons.

Under the provisions of section 24, no license is required for the retail sale of alcoholic beverages for consumption on the premises when sold at an exchange duly organized under the regulations of the United States Army or Navy. Such military exchanges stand in the position of retail licensees and are entitled to purchase alcoholic beverages from licensed New Jersey manufacturers and wholesalers. See Bulletin #67, Item #14.

Section 24, however, refers solely to military exchanges; it has no reference to camp exchanges conducted pursuant to the Emergency Conservation and Reforestation Law or to similar institutions. The specific legislative exception in favor of military exchanges indicates a legislative intent that other institutions be brought under State control.

The Attorney General of New York has apparently ruled that the Civilian Conservation Corps is a government instrumentality and that its activities come within the doctrine that a State may not control the means employed by the Federal Government in carrying out the functions vested in it by the Constitution and Laws of the United States. See McCulloch v. Maryland, 4 Wheat. 316 (1819). No judicial authority is cited and it may seriously be questioned whether the sale of alcoholic beverages by camp exchanges of the Civilian Conservation Corps and the Works Progress Administration constitutes the exercise of a governmental function entitled to immunity from State regulation. Cf. South Carolina vs. United States, 199 U. S. 437 (1905); Ohio vs. Helvering, 292 U.S. 360 (1934).

The social desirability of applying State regulation to such camp exchanges is evident and no authoritative reason against such exercise appears. The sale of liquor in these camp exchanges must, therefore, remain under State control.

The camp exchanges are not within the territorial jurisdiction of any municipality (cf. Bulletin #35, Item #1) and the provisions of the Control Act relating to municipal retail licenses are, therefore, inapplicable. If they desire to dispense alcoholic beverages, application may be made to the Commissioner pursuant to section 75 for a special permit authorizing the sale of beer by a licensed brewery or a wholesaler to camp exchanges for resale therein. Such special permit, when issued, will contain adequate safeguards.

It is the ruling of the Commissioner that licensed breweries and wholesalers may not sell alcoholic beverages to camp exchanges of the Civilian Conservation Corps and the Works Progress Administration except pursuant to special permit.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

10. AGE, RESIDENCE, CITIZENSHIP PERMITS--MORAL TURPITUDE -- FACTS EXAMINED--CONCLUSIONS.

December 14, 1935.

RE: Application for A.R.C. Permit - Case No. 15.

Application was filed for Age, Residence, Citizenship Permit pursuant to provisions of P. L. 1935, c. 257. The questionnaire admitted that applicant had been convicted for "possession and sale of liquor in 1929 and 1931". Notice was served upon him to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude, and a hearing was duly held.

From the evidence and from our investigation it appears that the applicant was convicted four times, i.e., in 1924, in 1928, in 1930 and in 1932, for violations of the Hobart Act and the National Prohibition Act. There do not appear to be any aggravating circumstances and these convictions, not involving moral turpitude, would not of themselves disqualify the applicant. Bulletin #46, item 3.

The applicant has made a misstatement in his questionnaire in that he has admitted two convictions, whereas from his record it appears that he was convicted on four different occasions as set forth above. At the hearing applicant attempted to explain this by stating that he understood the question referred to convictions on which he had served time in jail. It is true that after conviction on two of the charges he was sentenced to jail, and after conviction upon the other two charges he was fined in one case the sum of Twenty-Five ($25.00) Dollars and in the other case the sum of Two Hundred ($200.00) Dollars and placed on probation. Consideration might be given to an attempted explanation were it not for the following fact which developed from the investigationin this case.

It appears that on June 3, 1935 he was arrested for violation of Section 23 of the Control Act. At that time the applicant, although an alien, was acting as bartender for a licensee. It further appears that on June 11, 1935 the case against the applicant was dismissed and the licensee was fined One Hundred ($100.00) Dollars for employing the applicant, an alien, as bartender. Thus it seems that the applicant has violated the provisions of the present Control Act.

It has been decided that the fact that a licensee has violated the present Control Act should be taken into consideration in determining whether or not a license should issue. Maddock vs. Trenton, Bulletin #50, item 3. The same reasoning should apply, of course, in determining whether or not a permit should be granted to the present applicant.

Considering all the facts of this case, it is recommended that the application for A.R.C. permit be denied.

Edward J. Dorton
Attorney-in-Chief

Approved:
The applicant seems to have the habit.
D. FREDERICK BURNETT
Commissioner

11. APPELLATE DECISIONS - RETAIL LIQUOR DISTRIBUTORS vs. ATLANTIC CITY and MITCHELL-FLETCHER CO.

Retail Liquor Distributors Association of Atlantic City, a corporation of the State of N.J.,

Appellant,

-vs-

Board of Commissioners of the City of Atlantic City and Mitchell-Fletcher Co., a corporation of the State of Delaware,

Respondents.

ON APPEAL
CONCLUSIONS

Paul M. Salsburg, Esq., For the Appellant

James A. McMenamin, Esq., For the Respondent, Mitchell-Fletcher Co.

Anthony J. Siracusa, Esq., by Samuel Backer, Esq., For the Respondent, Board of Commissioners of the City of Atlantic City

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license by the Board of Commissioners of Atlantic City to Mitchell-Fletcher Co. for premises located at #50 South Annapolis Avenue, Atlantic City, New Jersey.

The petition of appeal alleges that the licensee conducts a grocery, delicatessen and provision store and that its license was issued in violation of section 9 of City Ordinance #1 for 1935, which prohibits the issuance of plenary retail distribution licenses for premises where any other mercantile business of any kind, nature or description is carried on. See Retail Liquor Distributors Association vs. Atlantic City and M. E. Blatt Co. Bulletin #99, Item #4.

At the hearing it appeared that partitions had been erected separating the liquor department from the remainder of the premises and that the entrance to the liquor department was at #50 South Annapolis Avenue, whereas the entrance to the grocery store was at #4101 Atlantic Avenue. It further appeared however, that a small door had been constructed leading directly from the grocery store to the liquor store. At the hearing counsel for the licensee stipulated that this door would be permanently closed and counsel for the appellant stipulated that in such event the issuance of the license was unobjectionable.

Recent investigation discloses, however, that this door has been permitted to remain open in violation of the purposes expressed in City Ordinances #1 and #17. Such investigation further discloses that alcoholic beverages are advertised in the grocery store and bottles of champagne are displayed in the windows thereof. The licensee will be afforded a period of twenty (20) days from the date hereof to remove the door

loading into the grocery store and replace it by a solid partition and to remove all alcoholic beverages and signs or other matter advertising the sale thereof from within the grocery store.

Upon receipt of proof satisfactory to the Commissioner, on or prior to January 3, 1936, that such changes have been made the appeal herein will be dismissed; otherwise the action of the respondent Board of Commissioners will be reversed and the license cancelled.

Commissioner

Dated: December 14, 1935.