

Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 109

March 13, 1936

1. APPELLATE DECISIONS - TENENBAUM vs. SALEM.

HOWARD TENENBAUM,)
)
Appellant,)
)
-vs-)
)
MAYOR AND COUNCIL OF THE)
CITY OF SALEM (Salem County),)
)
Respondent.)
- - - - -)

ON APPEAL
CONCLUSIONS

Harry Tenenbaum, Esq., by William H. Smith, Esq.,
Attorney for Appellant.
William B. Dunn, City Recorder, for Respondent, Pro se.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for premises known as the Casper Building on Market Street, City of Salem.

Appellant's application was filed on December 20, 1935. At that time it was open to appellant or any other well qualified person to obtain such a license. On the evening of that day, and after the application had been filed, a special meeting of the Council was held for the purpose of revising the local liquor regulations and, among other things, it was thereupon unanimously resolved that "no plenary retail distribution licenses shall be hereafter issued".

On the following day notice was sent to appellant that this resolution had been so adopted and that his application would come up for consideration at the regular meeting of the Council on December 23, 1935. At this meeting, respondent denied the application because of the resolution.

If this were all, I should be obliged to reverse for there is nothing against the character of appellant or the suitability of his premises and the prohibition of package goods stores is ineffective because enacted by resolution and not by ordinance as the statute requires. Re Pennington, Bulletin #105, item 2.

Later, however, at a meeting of the Council held January 13, 1936, an ordinance, entitled "An ordinance to fix license fees and to regulate the sale and distribution of alcoholic beverages within the City of Salem, and to provide penalties for violations thereof", was introduced and passed upon first reading. The above ordinance was duly advertised, said advertisement containing notice of a public hearing to be held on January 27, 1936, at which time the ordinance was to be considered upon second and third readings for final passage. An attorney representing appellant appeared at the meeting of the Council held on January 27, 1936 and opposed the passage of the ordinance. Despite his plea, the ordinance after the second and third readings thereof, was unanimously adopted.

A similar situation occurred in Franklin Stores vs. Elizabeth, Bulletin #61, item 1. In that case, too, the application was made and denied before the ordinance was enacted. It was there contended by the appellant that such subsequently enacted ordinance did not validate denial of the application; that such an ordinance could not have any retroactive effect; that the appeal must be adjudicated on the factual situation as it existed at the time of the denial of the application.

I there ruled:

"The spirit and not the letter of the law should dominate. Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW. True, the ordinance had not been adopted at the time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation at the time the application was denied."

The same principle was subsequently applied in Bumball vs. Bernardsville, Bulletin #66, item 9. That case dealt with a limitation of licenses which, unlike the prohibition against distribution licenses, may be effected by mere resolution. The resolution, however, was enacted after the application was filed. Following the Franklin Stores principle, I held that this fact did not preclude its consideration on appeal.

To the same effect are Krause vs. Freehold, Bulletin #76, item 8; Zdenek vs. Freehold, Bulletin #76, item 9; Redfern vs. Keansburg, Bulletin #81, item 7; Stein vs. West New York, Bulletin #101, item 7.

I, therefore, conclude that the municipal policy exhibited by the Salem ordinance, properly enunciated and in force at the time of this decision, is the true criterion on which this decision must be based rather than the factual situation as it existed at the time of the denial of the application. It duly accomplishes what the resolution attempted, but failed upon technical grounds.

Argument was made by appellant in behalf of the desirability of package goods stores for the sale of liquor, such as the appellant would have operated if this distribution license

had been granted. These arguments may properly be addressed to the governing board of the municipality and were entirely in order on January 27 last, when the ordinance was being considered for adoption. So, also, if, later on, motion is made to repeal that part of the ordinance. They have, however, no bearing on this appeal, because Section 13(3)a of the Control Act provides:

"The governing board or body of each municipality may, by ordinance, enact that no plenary retail distribution license shall be granted within its respective municipality."

The decision is thus expressly made one of local policy, and has been confided exclusively to the discretion of the governing board of each municipality. I have, therefore, no jurisdiction to review the reasonableness of the ordinance.

The action of respondent is, therefore, affirmed.

Dated, March 1, 1936.

D. FREDERICK BURNETT
Commissioner.

2. MUNICIPAL EXCISE BOARDS - RULES AND REGULATIONS MADE BY SUCH BOARDS PRIOR TO JUNE 8, 1935, ARE IN FULL FORCE AND EFFECT UNLESS SINCE THEN SUPERSEDED, AMENDED OR REPEALED BY THE GOVERNING BOARD OR BODY.

MUNICIPAL EXCISE BOARDS - POWERS - EXTEND ONLY TO THE ADMINISTRATION OF ISSUANCE AND REVOCATION OF LICENSES.

March 2, 1936.

Mr. Raymond Bocca,
640 Lincoln Avenue,
Orange, New Jersey.

Dear Mr. Bocca:

I have yours of February 29th.

You ask:

- 1 - "Are the rules and regulations of the Orange Municipal Board of Alcoholic Beverage Control still in effect?"

They are, provided they were adopted prior to June 8, 1935, the effective date of Chap. 257, P. L. 1935, and further provided that they have not, since then been superseded, amended, or repealed by the Board of Commissioners of Orange.

Previous to the aforesaid 1935 amendment, the power to make local rules and regulations was lodged in the license "issuing authority" of each municipality. The issuing authority was the governing board or body except as to those municipalities which had set up local excise boards, in which latter cases, such excise boards became the issuing authority.

The amendment changed this by striking out the authority of such issuing authorities to make regulations and vesting the power in the governing board or body of each municipality so that now,

uniformly throughout the State with the exception of sixth class counties, the power to enact local regulations is lodged exclusively in the governing board or body in all cases.

The amendment did not repeal or declare void local regulations then in effect which has been duly made by local excise boards. The statute, as usual, is taken to be prospective in operation and not retroactive unless expressly so stated or the context plainly requires. It merely means that henceforth, that is from and after June 8, 1935, the power to make, alter or repeal regulations is vested in the governing body and not in the excise board. To hold that such transfer of power annihilated the existing regulations would be to rule that no regulations were in effect in Orange and all wraps were off until the Board of Commissioners made new rules, even though all they did was merely to adopt the old regulations. The Legislature did not intend any such hiatus. The Legislature intended to maintain CONTROL at all times, and not to create an interregnum during which licensees could do any old thing they pleased. The sole objective of the amendment was to transfer the power to make regulations, not to terminate those existing. Hence the rules and regulations made by the Orange Excise Board previously to the effective date of the amendment are valid unless changed or repealed since then by the Board of Commissioners.

2 - "Is the power of the Excise Board to establish rules and regulations eliminated even though some rules and regulations are adopted by the City Commission in ordinance form?"

Yes. From and after June 8th last the power to make, change and repeal rules and regulations is vested exclusively in the Board of Commissioners. It follows that the duties of the Excise Board extend only to the administration of the issuance and the suspension or revocation of licenses. See Re Lario, Bulletin #96, item 15.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

3. PLENARY RETAIL CONSUMPTION LICENSES - CANNOT BE ISSUED EXCEPT TO THOSE WHO FALL WITHIN THE RESTRICTIONS IMPOSED BY STATUTE.

PLENARY RETAIL DISTRIBUTION LICENSES - STATUTORY OPTION TO PROHIBIT IN CONNECTION THEREWITH ALL OTHER MERCANTILE BUSINESS MUST BE ADOPTED BY ORDINANCE.

February 25, 1936

Mr. John W. Knox,
Township Clerk,
Neptune, New Jersey.

Dear Sir:

* * *

Section 3 of your January 16, 1934 resolution says that no plenary retail consumption or plenary retail distribution licenses shall be granted for premises where any business other than the sale of alcoholic beverages is carried on, excepting restaurants, hotels and establishments where the serving of

food for consumption on the premises is the principal business. Now so far as this section applies to plenary retail consumption licenses, it is entirely proper aside from the exception in favor of "establishments where the serving of food for consumption on the premises is the principal business". It is proper because the Legislature has ordained in Section 13, sub. (1) of the Act that such licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business, except the keeping of a hotel or restaurant or the sale of cigars and cigarettes at retail as an accommodation to patrons or the retail sale of non-alcoholic beverages as accessory beverages to alcoholic beverages, is carried on. The exception as above quoted, however, is not provided for by statute and, therefore, must be excised in any event. But, as regards plenary retail consumption licenses, the section is unnecessary because it deals with a matter controlled entirely by statute. Neither the statutory requirements nor the statutory exceptions need be repeated in your resolution in order to be effective. See Bulletin 43, Item 8.

Now, so far as the section applies to plenary retail distribution licenses, it is of no legal force and effect. The statute, Section 13, sub. (3)a says that the governing board or body of each municipality may enact by ordinance that plenary retail distribution licenses 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. This statutory option, if availed of, must be exercised by ordinance. Mere resolution will not suffice. To be legally effective, this restriction, so far as it applies to plenary retail distribution licenses, must be adopted by ordinance. Tenenbaum vx. Salem, Bulletin 109, item 1.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

4. MUNICIPAL ORDINANCES - SCREENS - CLUB LICENSES.

February 24, 1936.

Mr. Karl Biesel
Clerk, Mullica Twp.
Elwood, New Jersey.

Dear Sir:

* * *

Section 11 of your February 2, 1934 resolution says that no alcoholic beverages shall be sold in any place concealed by screens or otherwise from public view excepting hotels, clubs or fraternal organizations. The exception in favor of hotels is approved. And this despite the fact that it could be questioned on the ground of discriminating between members of the same license class because it excepts hotels from the general regulation prohibiting the sale of alcoholic beverages in any place concealed from public view. The exception in favor of hotels falls within those contemplated by Bulletin 19, Item 7 and

Bulletin 43, Item 11 wherein certain regulations seemingly discriminatory are distinguished. Moreover, the Commissioner has ruled in a case heard on appeal and fully contested that an ordinance barring screens in licensed premises may properly except hotels from its operation; that while it does discriminate between members of the same license class, it may properly do so in the case of hotels. Retail Liquor Dealers' Association vs. Plainfield, Bulletin 70, Item 1. Also, so far as the exception applies to club licensees as a class, it is approved. I have ruled that different regulations may be properly applied to different classes of licenses (re Wenzel, Bulletin 19, Item 7) and where they have appeared to be reasonable have approved them subject, of course, to review on appeal. But so far as the exception applies to clubs and fraternal organizations holding plenary or seasonal retail consumption licenses, it is not approved. Applicants for club licenses are closely restricted by the statute and the rules and regulations in order to insure that such licenses may be issued only to bona fide clubs and in bona fide clubs the causes which give rise to screen regulations may be considered to be sufficiently remote to support omitting the screen regulation entirely. But not so with respect to clubs or fraternal organizations holding plenary or seasonal retail consumption licenses. They qualify as do any commercial applicants and have the privilege of selling to the general public. The situation resulting from your regulation would be that any commercial organization merely by classifying itself as a club or fraternal body could bring itself within the exception and thereby evade the regulation. This is because there is nothing in the regulation by which to measure whether or not a licensee could be classified as a club or fraternal organization and consequently come within the exception. I think that the section should be reworded so that the exception applies only to hotels and the holders of club licenses or, if it is desired to include club and fraternal organizations holding plenary or seasonal retail consumption licenses, to state specifically that, aside from hotels, the exception applies only to such clubs and fraternal organizations as could qualify for a club license. Then you would have a standard by which to measure.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. LICENSEES - DISQUALIFICATION - A LICENSEE MAY NOT ALSO BE A POLICEMAN

March 3, 1936.

William E. Scott, Township Clerk,
Wyckoff Township,
Wyckoff, New Jersey.

Dear Mr. Scott:

I have your inquiry of March 2nd as to whether a liquor licensee can remain as a Special Officer of the Police Department.

Neither the Control Act nor the Regulations forbid that a licensee shall be a police officer. It is, nevertheless,

obviously inappropriate and indelicate that anyone charged with the duty of enforcing the beverage law against all licensees should himself be a licensee. Even a policeman can't serve two masters! If he desires to retain his license, he should resign as policeman. If necessary, I'll make this a part of the Rules and Regulations.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

6. LICENSEES - EMPLOYEES - DISQUALIFICATION - A BARTENDER MAY NOT ALSO BE A POLICEMAN.

March 3, 1936.

Michael D. Franco, Borough Clerk,
Borough of Emerson,
Emerson, New Jersey.

Dear Mr. Franco:

The principle of re Scott, Bulletin 109, Item 5, applies to your question whether a person serving as bartender can be appointed a special officer of the Police Department. Neither a bartender nor any other employee of a licensee handling alcoholic beverages should be a policeman. The duty of one is to obey the law - of the other, to make others obey it. Wherever there is a potential conflict between self-interest and duty, the latter has the right of way. If the barkeeper desires to be a policeman for the public, he must give up the private job.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

7. REFERENDUM -- SCOPE -- MUST APPLY TO ENTIRE MUNICIPALITY AND NOT ONLY TO SEPARATE DISTRICTS THEREIN.

Dear Sir:

In a municipality such as Jefferson Township where two Districts comprise the whole, is it possible for the voters of one particular district to decide by ballot on Election Day whether their own district shall have Sunday sales of liquor?

It has recently been unofficially requested of me that I make inquiry of you in regard to this matter inasmuch as there appears to be a rising tide of sentiment in the Second District, this township, over Sunday sales. Our present ruling by the Township Committee permits the Sunday sale of liquor between the hours of 1 P.M. - 1 A. M.- I believe that a vote would eliminate this entirely.

If such a procedure is legal and permissible, will you please inform me as to the manner in which it is gone about?

Very truly yours,
ERIC V. DISBROW,
Township Clerk

March 3, 1936.

Eric V. Disbrow
 Clerk of Jefferson Township
 Oak Ridge, New Jersey

Dear Sir:

A referendum upon the question of Sunday sales cannot be effective with respect to one part of a municipality and not another. It must apply to the entire municipality. The question for which the statute provides in Section 44 is "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?". The Act provides that if the vote shall be 'yes', the sale of alcoholic beverages on Sundays pursuant to the provisions of the Act shall be permitted in said municipality and that if the vote shall be 'no', it shall thereupon become unlawful for any person to sell alcoholic beverages on Sundays in said municipality. The statute clearly indicates that the referendum affects the whole municipality.

Cordially,
 D. FREDERICK BURNETT
 Commissioner

8. SALES ON CREDIT - CHARGE ACCOUNTS NOT PROHIBITED BY THE STATUTE OR THE STATE RULES AND REGULATIONS.

March 3, 1936

Mr. James Bernstein,
 Atlantic City,
 New Jersey.

Dear Sir:

There is nothing in the Alcoholic Beverage Control Act or in the rules and regulations of this Department which would prevent a plenary retail distribution licensee from carrying charge accounts.

There may, however, be some resolution or ordinance of the local municipal governing body which would control. As to this, make inquiry directly of the City Clerk.

Very truly yours,
 D. FREDERICK BURNETT
 Commissioner

By: Maurice E. Ash,
 Senior Inspector

9. SALES ON CREDIT - NOT PROHIBITED BY THE STATUTE OR THE STATE RULES AND REGULATIONS - THE CONTROL ACT HAS NO EFFECT UPON CIVIL ACTIONS FOR PAYMENT FOR MERCHANDISE SOLD AND DELIVERED.

March 3, 1936.

Warren E. Megill,
 Justice of the Peace,
 Carney's Point, New Jersey.

Dear Sir:

There is nothing in the Alcoholic Beverage Control Act

or in the rules and regulations of this Department which would prevent sales of alcoholic beverages on credit. There may, however, be some resolution or ordinance of the local municipal governing body which would control. As to this, make inquiry directly of the Municipal Clerk of the municipality in which the sale was made.

So far as the Alcoholic Beverage Control Act is concerned, an action against a customer who purchased alcoholic beverages on credit and refused to pay for same could be brought in the same manner as any other action for payment for merchandise sold and delivered.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Maurice E. Ash,
Senior Inspector.

10. CLUB LICENSES - BONA FIDE GUESTS - POST OF VETERANS OF FOREIGN WARS HOLDING A CLUB LICENSE MAY PROPERLY SERVE ALCOHOLIC BEVERAGE TO MEMBERS OF ANOTHER POST BEARING PROPER CREDENTIALS.

MEMO TO: E. W. GARRETT
FROM: N. L. JACOBS

I have considered your inquiry as to whether a Post of the Veterans of Foreign Wars of the United States, holding a club license, may properly serve alcoholic beverages to members of another Post of the Veterans of Foreign Wars.

The Control Act provides that holders of club licenses may sell alcoholic beverages, intended for immediate consumption on the licensed premises, only to bona fide members and their guests. See Bulletin #100, Item #3.

The Veterans of Foreign Wars is a national organization, composed of various bodies including subordinate organizations known as Posts. These Posts are properly chartered and their respective members are duly credentialed. Members of one Post are eligible for transfer of their membership to another Post pursuant to the provisions of the Constitution and By-Laws of the Veterans of Foreign Wars. In practice, reciprocal privileges are granted among the respective Posts in the same manner as other national, fraternal and benevolent associations.

I do not believe that the Legislature contemplated limiting the privileges of a club license to exclude the service of alcoholic beverages by a constituent unit of a national organization to members of other Chapters, Posts, Branches, etc. of the same organization. The statutory language should receive a reasonable construction to fulfill the legislative intent.

Consequently, the conclusion has been reached that a Post of the Veterans of Foreign Wars may properly serve alcoholic beverages for immediate consumption on the licensed premises to visiting members of the same national organization, provided such members carry proper credentials of their membership. They may be considered bona fide guests within the meaning of the Act and

the Commissioner's rulings pursuant thereto, despite the fact that they are not actually accompanied at the time of their visit to the Post quarters by any individual holding membership in such Post, and pay for the alcoholic beverages served to them.

February 29, 1936.

11. LICENSEES -- POWER OF DIRECTOR OF PUBLIC SAFETY, IN CASES OF EMERGENCY, TO PROHIBIT EMPLOYMENT OF HOSTESSES AND FEMALE ENTERTAINERS.

My dear Mr. Burnett:

An aftermath of a Bayonne killing caused Mayor Donohoe to clean house. Among other things the Mayor instructed the police officers to notify the tavern owners to dismiss hostesses employed in the place. On this score, because of an investigation that I conducted for Facts, a local weekly, I heartily agree.

But I feel the Mayor has gone too far in his edict. Several of the tavern owners to induce business have converted their places into semi-night clubs and staged floor shows. Featuring in these performances were female talent. Mayor Donohoe has seen fit to instruct a dismissal of the female talent from the show. I visited the various places so affected and observed a marked decrease in business.

Has the Mayor the power to issue such an order? A hostess must be distinguished from a floor show participant. The former would sit at a table, shake her man for as many drinks as possible and receive her commission. The latter played no such role and records show has never been the cause of any dispute.

I seek your response - your ruling - for two reasons - 1st because the paper plans to criticize the Mayor for this attitude; and second, because I have been asked to get some information from you before the tavern owners resort to the expense of going to the courts.

Respectfully yours,
AARON FRANKEL

February 25, 1936.

Mr. Aaron Frankel,
c/o Facts Publishing,
Bayonne, New Jersey.

Dear Sir:

Section 37 of the Control Act (P.L. 1933, c. 436, last amended P. L. 1935, c. 257) authorizes municipal governing bodies to regulate the conduct of licensed establishments, subject to the approval of the Commissioner. Where a governing body considers the employment of hostesses and female entertainers in taverns to be socially undesirable, it may adopt a prohibitory ordinance or resolution which becomes effective upon the approval of the Commissioner.

In Bulletin #24, Item #4, the Commissioner pointed out that situations may arise which require immediate action by duly constituted police authorities; that the health, safety and lives of the public are the supreme law; and that rules laid down to govern the normal may have to give way in cases of emergency. The action of the Director of Public Safety in ordering the dismissal of hostesses immediately following the commission of a murder thought to involve a hostess, would seem to be within the proper exercise of his emergency powers. And I can hardly say, from the limited facts presented, that his determination that female entertainers generally should be barred in order to render his purpose effective, was improper. He may well have believed that permission to employ female entertainers could readily be used to circumvent his ruling against hostesses.

When the emergency terminates, the power of the Director of Public Safety based thereon likewise terminates. Whether the order of the Director of Public Safety should be adopted as a permanent regulation for the municipality rests with the governing body under section 37 of the Act.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

12. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER -- SIGN BEARING LEGEND "PILSNER BEER" OR "PILSNER LAGER BEER" NOT PROHIBITED BY RULE #2.

February 11, 1936

Dear Sir:

I am now applying to you for a Ruling on the word "Pilsner", which we construed as being generic, applying to a type of beer and not to a specific brand of beer. The word is actually used by a great number of breweries to indicate a light beer and is by no means exclusive with us.

Prior to your sign regulations our outdoor sign read:

CAMDEN
LAGER
BEER

To remove our identity we deleted the word "Camden" and inserted the word "Pilsner", believing in doing so that we merely indicated two types of beer.

The sign now reads:

PI LSNER
LAGER
BEER

An early decision will be very much appreciated as our customers will be rather disturbed until the question is settled.

Yours very truly,

CAMDEN COUNTY BEVERAGE COMPANY

February 24, 1936.

Camden County Beverage Co.,
Camden, New Jersey.

Gentlemen:

I have considered your letter of February 11th.

Rule #2 of the Rules Governing Signs and Other Advertising Matter (Bulletin #69, Item #8) prohibits retail licensees from displaying on the exterior of the licensed premises any signs or other advertising matter bearing the name, brand, or trade mark of any manufacturer or wholesaler of any alcoholic beverage. The Federal Alcohol Administration's Proposed Regulations Relating to Malt Beverages Misbranding and Advertising provide that the name "Pilsner" has become generic and define it as "a beer of light color, not more than 80 Lovibond, measured in 1/2 inch cell, Series 52 Glasses, with a distinctive hop flavor". A sign bearing the legend "Pilsner beer" would not refer to any particular manufacturer or wholesaler; on the contrary, it would refer to a type of beer which may have been made by any brewer.

Accordingly, it is the ruling of the Commissioner that your signs bearing the legend "Pilsner Lager Beer" do not violate rule #2 of the Rules Governing Signs and Other Advertising Matter.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

13. TRADE NAMES - "BLUE RIBBON BAR" - PERMISSIBLE.

March 5, 1936.

Mr. Antonio Di Paola,
Camden, New Jersey

Dear Sir:

I have yours of the 2nd requesting permission to use "BLUE RIBBON BAR" as the name of your new taproom, and note your frank statement that you purpose to serve Pabst Blue Ribbon beer as well as other brands.

The name you have chosen is not indicative to the public generally that any particular brand of beer is there sold. The advertising art would be flattered if it were. "BLUE RIBBON" signifies a prize of the first class or the highest honor, such as given at horse or dog shows. So far from being exclusively associated with alcoholic beverages, the BLUE RIBBON has been the distinctive badge of certain temperance or total abstinence organizations.

You are welcome to use it if you choose.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

14. BULLETIN ITEM SUPERSEDED - CORRECTION.

The word "SEVERAL" in the caption of Bulletin Number 108, Item 8, should have been "CIVIL".

It should have read: "REVOCATION PROCEEDINGS - PENDENCY OF CRIMINAL PROCEEDINGS - ISSUING AUTHORITIES HAVE THE RIGHT AND SHOULD PROCEED TO REVOKE OR SUSPEND THE CIVIL PRIVILEGES OF A LICENSED VIOLATOR WITHOUT WAITING FOR THE COURTS TO ADMINISTER CRIMINAL PUNISHMENT".

15. PROHIBITED INTERESTS IN RETAIL LICENSES - WHAT CONSTITUTES - CONDITIONAL BILL OF SALE.

March 6, 1936.

Louis Gerber, Esq.,
Princeton, New Jersey.

Dear Sir:

Yours of March 5th received, wherein you inquire whether the holder of a wholesale distributor's license may extend credit to a retail licensee and take back a conditional bill of sale covering the merchandise.

Section 40 of the Control Act prohibits any wholesaler from having any interest, direct or indirect, in the retailing of alcoholic beverages. By the ruling of the Commissioner, a chattel mortgage upon the goods and fixtures in a retail licensee's premises constitutes a prohibited interest and may not be given to secure even a past indebtedness. See Bulletin #55, item 12.

From the standpoint of an interest in the licensee's business, there would seem to be no difference between obtaining a chattel mortgage upon the goods already in the store and the delivery of the goods under a conditional bill of sale. If the one would create a prohibited interest, so would the other.

It is the Commissioner's ruling that the taking back by a wholesaler of a conditional bill of sale upon goods

sold on credit to a retail licensee, would constitute a prohibited interest under the Control Act.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Edward J. Dorton,
Attorney-in-Chief

16. ASSEMBLY BILL #123 - PURPOSE AND SCOPE.

March 7, 1936.

New Jersey State Hotel Association,
Trenton, N. J.

Attention: Mr. Joseph G. Buch, Chairman

Gentlemen:

I have your letter of March 3rd, inquiring whether Assembly Bill #123, if enacted into law, will in anywise affect the present law whereby licenses may be issued to bona fide hotel corporations even though they have non-resident stockholders. The answer is in the negative.

Assembly #123 seeks to amend P. L. 1935, c. 254. Examination into the history of the foregoing provision readily discloses the purpose of the amendment. In the Commissioner's Report of February 5, 1935 to the Governor and Legislature, he pointed out that the existing statutory disqualification applicable to alien and non-resident individuals but not applicable to corporations having alien and non-resident directors, afforded obvious opportunity for evasion by the creation of dummy corporations. To eliminate such evasion he recommended that no retail license be issued to corporations, except bona fide hotels, unless each holder of more than 10% of the stock qualifies in all respects as an individual applicant. Pursuant to this recommendation, P. L. 1935, c. 254 was enacted.

Shortly after its passage, however, many reputable and long established corporations having non-resident stockholders objected to the Act on the ground that although it was not designed to disqualify them from renewing their licenses, such was its effect. To remedy this situation and at the same time effectuate the original legislative purpose of eliminating dummy corporations, Assembly #123 was drafted. If enacted, it will disqualify dummy corporations formed or operated for the purpose of evading the requirements of the Act. As was true before the enactment of P. L. 1935 c. 254, bona fide hotel and other corporations will not be disqualified solely because their stockholders are non-residents, aliens or under age.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

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

17. BREWERY LICENSEES - DENTED CANS - MAY NOT BE SOLD TO
EMPLOYEES

March 6, 1936.

Dear Sir:

We have been getting on a daily average about ten dozen dented cans, which of course, we cannot sell to our trade. This is caused by the cans slipping off the conveyors to the concrete floor.

We have at all times adhered strictly to the State Law governing the sales of Ales and Beer. In this case, however, we would like to know if there is anything in the Act which would prevent us from selling these dented cans to our office ofrce. In this way we would derive some revenue from this condition; otherwise, it is a total loss to us and would amount to a great deal at the end of the year.

We therefore would be very grateful if you would consider this and advise us accordingly.

Yours very truly,
P. BALLANTINE & SONS

March 7, 1936.

P. Ballantine & Sons,
Newark, New Jersey.

Gentlemen:

I have yours of March 6th and appreciate the situation.

The law, however, distinctly says that a brewer may sell his products only to licensed wholesalers and retailers. Every dented can sold to your office force costs some licensed retailer a sale--perhaps a customer. If you were allowed to sell to your office force direct, they would soon be buying for their uncles, their aunts, cousins, friends and friends of friends

I am sorry, but no exception can be made.

If you could sell to your office force, you would have to make a concession in price because of the dents. Why not then make the same concession to the retail trade so they, in turn, could pass it on any consumer who didn't mind the dents? That would salvage the revenue you seek.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

18. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 9th, 1936.

RE: Application for Solicitor's Permit - Case No. 26

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. In his questionnaire applicant admitted that he had been convicted of gambling and fined \$10.00. Our investigation disclosed that a person of a similar name had been convicted on a disorderly house charge in 1924 and fined \$250.00. Notice was served upon the applicant 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.

At the hearing applicant explained that his conviction on the charge of gambling followed the raiding of a poker game in which he was one of the participants. The game apparently was for small stakes. There is no question of turpitude involved in this conviction.

The disorderly house charge arose from the raiding of a roadhouse in which liquor was being sold during Prohibition. Applicant testified that he was not interested in the ownership of this roadhouse, but that he was employed there as a bartender and waiter. He further testified that prostitution was not being carried on at the premises. It seems, therefore, that the conviction was founded upon the illegal sale of alcoholic beverages during Prohibition, and it has been determined that a conviction for violation of the Prohibition Law, in the absence of aggravating circumstances, does not involve moral turpitude. Bulletin #46, item 3.

There remains to be considered the misstatement in the application because of the fact that applicant failed to set forth that he had been convicted on the disorderly house charge. In explanation of such omission, the applicant has submitted an affidavit which contains, among other things, the following:

"Since filing my application I have been informed that there is a conviction against me of record in the Hall of Records in the City of Newark, New Jersey, showing that I was convicted in 1924 on a charge of maintaining a disorderly house and fined the sum of \$250.00. I did not mention this conviction in my application because I was not informed of it at the Police Record Bureau, and for the further fact that it was my understanding that I was arrested as a material witness and did not myself pay any fines. In explanation of this I made the following statement.

"In 1924 I was employed by -----, as a waiter and bartender, at his hotel in Newark, and was arrested when a raid was conducted on the premises. I was informed that I was being held as a material witness and never was placed in jail, and never personally paid any fine. I have since been informed that Mr.-----was fined the sum of \$500.00, and sentenced to 30 days in jail, and that I was fined the sum of \$250.00. This fine if imposed upon me was not paid by me, but was paid by Mr.-----.

"At the time of filing my application I did not know or realize that what transpired in this particular case was a conviction against me, and as I was not informed of this fact when I made inquiry at the Record Bureau in the Police Department of Newark, I did not include the same in my application. If I had known this fact at the time I would have included it."

Examination of the records of the Police Record Bureau of the City of Newark discloses the fact that these records do not include a conviction on the disorderly house charge against applicant. It may be that applicant was careless in not checking the records of the County Clerk's office, but, in view of his sworn statement that he believed that he had been held merely as a material witness and that he had not paid any fine in that case, I conclude that he did not knowingly make the misstatement in his application.

It is recommended that the license be granted.

Edward J. Dorton,
Attorney-in-Chief

Approved:
D. FREDERICK BURNETT
Commissioner.

19. SPECIAL PERMIT - TO PURCHASE LIQUOR OTHERWISE THAN IN DUE COURSE - NO JURISDICTION IN STATE COMMISSIONER TO REGULATE LIQUOR PRICES OR TO DISRUPT FAIR PRICE MAINTENANCE.

March 5, 1936.

Dear Sir: Re: Simon's Delicatessen Inc. - Application for Special Permit (Bulletin 108, Item 9)

In reply to yours of February 28, 1936, wherein you denied the application as above entitled, please be advised that I am very much surprised at the stand taken by you in this matter. It appears to me that the consumers in this State, who are being served by retailers, are given no consideration by your Department, and that, with the aid of your department, the distillers are now in a position to deprive the retailer from obtaining its products and marketing the same as a reasonable profit to the public. It would also appear from your letter that your department approves the methods employed by the distillers in requiring that my clients sign a Fair Trade Agreement and thereafter sell merchandise at as high a price as the distillers may see fit to dictate under the penalty of not being able to obtain their particular products.

It is my intention to appeal your decision and also to take such other steps as I may deem necessary to protect my clients rights in the matter, but before doing so, I would appreciate the opportunity of going over the matter with you personally.

Trusting that you will afford me the opportunity above requested and awaiting your early reply, I remain,

Very truly yours,
J. HARRY BARTH

March 8, 1936.

J. Harry Barth, Esq.,
Hackensack, N. J.

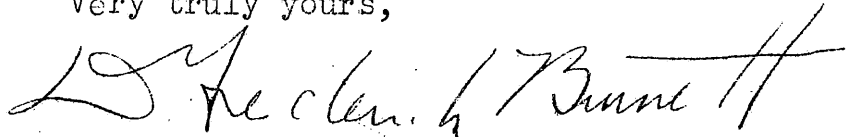
Dear Mr. Barth:

I have yours of the 5th and welcome your purposed appeal. It will set at rest my jurisdiction.

I conceive that it is not my function, either to regulate prices or to disrupt fair price maintenance. I am not an N. R. A. So far, as you think, from approving distiller's pricing agreements, I ruled that it was none of my business. Your client's solicitude for the public is not ground to confer special privilege upon him to indulge in price cutting. Nor need he fear that I have no consideration for the consumer. Prices have a habit of regulating themselves when dealers overplay their hand.

Further conference will be unavailing until the Courts declare that this matter is under my jurisdiction. I have ruled that it is not.

Very truly yours,

A handwritten signature in cursive script, appearing to read "L. S. Clark".

Commissioner