Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 131 July 23, 1936

1. ADDRESS OF
DR. FRANK H. SOMMER,
DEAN OF NEW YORK UNIVERSITY LAW SCHOOL

-at-

NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS

July 18, 1936.

STOP, LOOK AND LISTEN!

When Chairman Burnett, some weeks ago, invited me to talk to you, I protested that he was withdrawing from you the protection of that provision of the Constitution which guaranties against the infliction of cruel and unusual punishment. The protest was in vain. Therefore let the blood be upon his head, not mine.

When he insistently demanded a title for my talk, I chose "Stop, Look and Listen!" rather than a more specific title, to avoid the charge after the talk that I had plagiarized Artemus Ward's method, who once explained: "One of the peculiarities of my lecture is that it contains so many things that haven't anything to do with it." Coming to prepare the talk fear grows that some of you may conclude that it might more aptly have been entitled "Threshing over old straw."

But why should I fear fear? I have the assurance of the Nation's chief executive that we have conquered fear.

So on with the task!

First, Stop and look back.

It was, it is true, our entering the World War which centralized authority at the Nation's capital; stressed the importance of saving foods, and outlawed all things German, that gave the final push in putting over the Eighteenth Amendment. That final push was preceded by years of highly emotional agitation. That agitation, the unprejudiced must admit, was not solely emotional but had a base of powerful argument drawn from the facts. These facts need not be recounted here. That they had aroused deep and widespread moral indignation no one who reads the press of the time will question. The wave of dry legislation which swept from locality to locality and from State to State took cognizance of these facts and gave that moral indignation effect.

In the train of the Amendment and of the Volstead Act which implemented it, there followed the evils that Frederick R. Coudert had years before indicated as the inevitable consequences of sumptuary laws. He said that such laws "wholly fail to gain the objects in view, but objects not in view, and by no means desired are brought about on the largest scale: vast and useless expenditures, perjury and subordination of perjury, violations of jurors' oaths, corrupt bribery of public officials, the XXX elections turned into a scramble for the possession of the offices controlling the public machinery for the punishment of offences

in order that the machinery may be bought and sold for a price, law and its administration brought into public contempt and many men otherwise esteemed as good citizens made insensible to the turpitude of perjury, bribery and corruption." He further commented that "perhaps the worst of all is that the general regard and reverence for law are impaired, a consequence the mischief of which can scarcely be estimated."

Then came repeal!

The success of the movement for repeal was not due to belated recognition that the Amendment and its implementing legislation unwarrantedly invaded "the right to personal liberty." Its success was due to the universal conviction that the Amendment and its implementing legislation had bred, on a national scale, evils far more grave and threatening than those which they were designed to end.

Repeal was not approval of, nor a grant of warrant for return to, the evil conditions which had aroused the moral indignation of the people to the point of admitting our embarking upon an experiment which however "noble in motive" proved ignoble in its consequences.

Hundreds of thousands of men and women who hailed with satisfaction the end of the era of national prohibition confidently expected that a leaf would be taken out of the book of experience; that history would not repeat itself; that effective control would be set up by the States and that a return of the old evils would be prevented.

Now stop, look and listen once again to determine how far, if at all, these expectations have been realized.

A survey of the laws enacted by the several States to meet the situation created by repeal carries conviction that progress toward effective control has been made. Such a survey, however, shows that the opportunity afforded in framing new legislation to profit by the lessons of the past has not been generally or fully availed of.

In the passing out of national prohibition and the resuming of State control, time did not permit of comprehensive factual studies and the framing of the new legislation in the light thereof. There was consequently a general failure to set the course of the ship of resumed state control by the stars of ascertainable fact. Though time has passed and new experience has been gained, comparatively little advance has been made either in bringing together on comprehensive scale factual data or bettering the legislation that was framed in the absence of such data.

Many thousands of dollars are expended each year in subsidizing studies in the social sciences. In order of importance the problem of alcoholic beverage control stands high among our social problems. No study would be more worth while than a comprehensive co-ordinated factual study on a national scale of that problem as it faces us today, if carried on under competent, unprejudiced and disinterested auspices.

The flow of a part of the funds now subsidizing studies of crime and crime prevention might well in the interest of immediate social advance be diverted to studies of alcoholic beverage control.

Do not mistake my meaning. I have not in view a study of the physiological and psychological effects of the use and abuse of alcoholic beverages, nor of the relation of their use and abuse to crime, poverty and human depravity and misery in general. We have ample studies and pseudo-studies of this type. What I have in mind is a comprehensive study on a co-ordinated comparative basis of State licensing, regulating, controlling and monopoly statutes; of administration under such statutes; and of results both before and since the adoption of the amendment and its repeal.

I am not suggesting a study for study's sake; an academic study to meet the common fate of surveys which are received, filed and left to accumulate the dust of passing years and ultimately to gladden the heart of a delving antiquarian.

What I have in mind is a study that will furnish comprehensively accurate factual bases for informed discussion and consideration particularly by those on whom the responsibility of administration rests. A study that will merit, by its factual accuracy and completeness, discussion and consideration until substantial agreement is reached - agreement that may serve as a springboard for movements to crystallize and solidify supporting public opinion and to secure enactment of appropriate legislation.

Such a study should reach back to our colonial legislation. The colonial records are a rich mine of regulatory and control legislation. If carrying the study back to this era served no other purpose it would furnish to those making the study, material to offset with gleams of humor the dreary wastes of modern legislation.

It would, however, serve another purpose. It would make clear that every problem that confronts us in the present, confronted the colonial legislators and administrators, that every suggestion of licensing, regulation, control and monopoly put forward in the present had its prototype at some time, somewhere, in the legislation of the colonial era. It would throw light on the causes of the failures and successes of the diverse types of colonial licensing, regulation, control and monopoly enactments.

Limitations of time prevent demonstrating the truth of these statements. Reference to Thomann's "Colonial Liquor Laws" must suffice in support.

Before leaving this topic may I suggest to Chairman Burnett that when he receives the reply of the Retail Liquor Dealers' Association of his State to his question as to their attitude as to sales on credit, which question he was moved to put by a piteous appeal of a worker's wife, that he turn to the acts of 1716 of his State and be advised how long-standing this problem is. By that act retailers were forbidden to trust any person for drink above ten shillings. Examining the records he will find that "drinker and drink-dealer -- the one as eager to get credit as the other was willing to give it, if he could safely do so -- found a way to evade this act. Drinks were sold by retailers on credit under different names, as, for example, tobacco, pipes, articles of food, etc., so that if the delinquency of the debtor rendered a law-suit necessary for the recovery of the amounts due, the accounts thus falsified with his own knowledge and connivance, could readily be presented in court as lawful claims."

He will also find that this practice induced the assembly in 1718, to enact that liquor debts contracted in violation of the law under the pretences above described should not be pleadable in court.

If the suggestion of a factual study furnishing bases for informed discussion, consideration and action is followed, such study should be supplemented and kept current by annually bringing together, systematically and completely, new legislation, administrative rulings and action, and relevant statistics. By this means the experience in each State would be made readily available to all as a basis for action.

Some time ago I was asked to discuss a highly controversial subject at a public gathering. At the entrance gate to the place of meeting I was confronted by a sign that read: "Enter at your own risk." Naturally, it gave me pause. While listening to Leonard V. Harrison's discussion yesterday morning of the "Advantages and Dangers of the State Monopoly System", that incident came to mind. I now ask leave to reserve judgment as to whether the spread of that system is to be counted among the gains in effective control, until time offers to chart advantages and dangers, and balance the one against the other.

The establishing of State Control Authorities or Administrations with large measure of administrative discretion under law, was in my judgment a social contribution. Appointments to these authorities have not generally assumed the tinge of political patronage. As the newness of these agencies wears off there is danger that the selection of appointees will take on this tinge, which is present in the appointment of other governmental officials. This danger may in a measure be averted if appointments to these authorities are made for protracted terms. With such terms, and with liberal compensation, it may be well to consider the possible advantages of a prohibition against reappointment.

Like reasons and purposes dictate the placing of the staffs of these authorities under a merit system.

State control authorities and administrators are in a position through their reports to render service in constructive leadership. Out of their experience comes seasoned conviction. Legislative bodies are entitled to the benefit of these convictions and control authorities are entitled to have them given sympathetic consideration when expressed.

If I were a member of a legislative body I would add to the procedural rules of that body a rule requiring every proposed measure relating to licensing, regulation, control, and monopoly to be submitted, while in committee, to the Control Authority for advice.

If my lot was that of a Control Administrator, I would in considering proposed legislation afford an opportunity to all affected to be heard before me.

If this course was adopted by legislatures and by control authorities the ground would be taken from under the common justification and excuse for maintaining lobbies by alcoholic beverage interests in our halls of legislation.

An outstanding contribution toward effective control has been made in the ending by statute of proprietary and donor relationships of wholesaler to retailer. It is to such relationships and the unbridled competition for ever increased quantity distribution that many of the evils that aroused the moral indignation that made the Amendment possible, may fairly be charged. The trend in new legislation to prohibit such relationships between wholesaler and retailer closes the door, at least part way, to the return of these evils.

These and other gains can be noted. A survey of the legislation still in force indicates, however, that the lessons carried in the pages of the record of the past have not been fully learned. Laws remain that ignore the fact that the pressure of inhibitions precipitates explosions; that ignore the fact that laws are not self-executing and that their carrying out requires the intervention of human beings, and laws continue that are built about the exploded notion that all that is necessary is to enact laws and ever more laws and that the more rigid, the more strict, the more stern the laws, the more compelling their effect in the ingraining of standards. Such laws, experience abundantly shows, do not make for, but make against, effective control.

The red signal of danger flashes anew!

The rapid widening of local option territory during recent months manifests dissatisfaction with existing conditions.

The multiplication, in many localities, of on and off premises licenses far beyond the requirements of "convenience and necessity" carries a threat of return of the evil conditions which grew out of over-competition in the past. Local initiative in licensing and State control must be harmonized in policy and more closely knit if this threat is to be averted.

To remove the dread hand of political influence and consideration from State control is idle, if that dread hand is to be permitted free-play in guiding and molding local initiative in licensing.

Every current report that I have seen, though I have by no means seen all, made by State Motor Vehicle Departments indicates an increase in so-called "drunken-driver cases."

I had intended to offer a comparative table of these cases in State Control territory and in State Monopoly areas. Other demands made it impossible to carry out this intention. I suggest this as a field of possible profitable study. Its results may be enlightening.

When, as now, price cutting becomes front-page news; when police aid is required to maintain order among milling masses seeking the advantages of price-wars; when the press displays pictures of these almost riotous, and actually disorderly crowds, the permanency and success of control is threatened on a new front, and the protagonists of sumptuary legislation are justifiably heartened. Unfair competitive methods are in any case ill.

In an industry affected with social interests, whose conduct involves social responsibility, unfair competitive methods are a gross evil.

If through co-operative action of the industry measures of self-regulation cannot be adopted and made effective, the powers of State Administrators must either be extended to regulating competitive practices, or the dubious experiment of regulating prices embarked upon.

Imposition of imposts and excises on production of alcoholic beverages is age-old. It has warrant other than age and tradition. There are signs, however, that their multiplication and increase in amount may, in the dire stress of need of funds for public purposes, be carried to the point where substitution and adulteration will be resorted to, evasion stimulated, and green fields developed anew in which the bootlegger may profitably disport himself.

Would it not be wise before further increasing imposts and excises to make certain that the evils that attended constitutional prohibition and which were put out through the front door of Repeal may not re-enter through the back door of excessive imposts and excises.

Tax and excise exactions raise interstate problems. When substantial differences in impositions result in large numbers of individuals who commute from one State to another - between residence and business - carrying packages whose identity is unmistakable, stability of the industry, and observance and respect for law are endangered. The spectacle bodes ill to the success of State control. This situation demands State compacts or the exercise by the State affected of the power of self-protection which the repealing amendment was assumed to afford.

A startling number of scattered press-clippings report suicides and deaths under suspicious circumstances preceded by drinking at licensed places and locate the meetings of criminals and the planning of crimes at such places. Every such report is a blow at the permanency and success of State control. It is no doubt true that the keepers of these places may be, and in most instances they probably are, without fault.

However, since there is no inherent right to a license; since a license is a mere privilege; since abuse thereof is fraught with ill social consequence and threatens the system of licensing; since the proceeding to forfeit a license is not a criminal proceeding, is it not fair to raise the question whether a licensee ought to be given the benefit of that rule of the criminal law which requires establishing guilt beyond reasonable doubt and whether there ought not on the contrary be cast upon the licensee the burden of reasonably establishing his innocence?

Time flies!

With a law in the formulating of which the facts are squarely faced; which does not run ahead of crystallized supporting public opinion; the provisions of which are not rigid but reasonably flexible and which provides for penalties not shockingly severe; with a reasonable measure of administrative discretion in State Administrators; with State Administration freed from political influence; with administration proceeding firmly yet not arbitrarily; with whole-hearted co-operation between State Administrators and local licensing authorities, and policing officials, local, state and national, the purposes and ends of State control can be measurably effected. Complete success, however, requires the co-operation of the license-holders.

In this connection I would commend to Chairman Burnett a requirement that there be posted in every "tavern, inn, and ordinary" under his jurisdiction as a constant reminder to those conducting them of the "true use" of such establishments, these words from the preamble of the New Jersey Act of 1639, "... the true use and original design of taverns, inns and ordinaries is for the accommodating of strangers, travelers and other persons; for the benefit of men's meeting together for the dispatch of business, and for entertaining and refreshing mankind in a reasonable manner; and not for the encouragement of gaming, tippling, drunkenness and other vices...."

The "true use" of these establishments in 1639 is their "true use" today. The problem then was, as it is today, of holding their conduct to that "true use."

The building up in those conducting these establishments and all other license-holders a keen and active sense of appreciation of the fact that they are licensed to render a social service and a consciousness of their social responsibility and that abuse of true use is a social disservice, would go far to lessen the number of sleepless nights of those upon whom responsibility for administrative control rests, and assure to State control a full measure of success. That educational task is one that the organizations of wholesalers and retailers here represented must, in self-interest, place foremost in their programs of activities.

Our problem demands factually informed and practical intelligence in legislation, practical intelligence in administration and enforcement; practical intelligence in those engaged in every phase of the industry regulated and controlled. In these latter, practical intelligence essentially involves observance of law and an active appreciation of their social responsibility.

In closing, let me say that you have now my consent to give this rambling talk a new title: "Plenty nubbins: little corn."

2. MORAL TURPITUDE - HEREIN OF CRIMES WHEREIN RECORD OF CONVICTION IS CONCLUSIVE OF MORAL TURPITUDE AND OF CRIMES WHERE IT ALL DEPENDS ON THE FACTS - RAPE AND STATUTORY RAPE DISTINGUISHED.

RETAIL LICENSES - HEREIN OF APPLICATION FOR CLUB LICENSE WHERE AN OFFICER HAS BEEN CONVICTED OF CRIME INVOLVING MORAL TURPITUDE AND WHERE QUESTIONS HAVE BEEN ANSWERED FALSELY IN THE APPLICATION.

Department of Alcoholic Beverage Control,
Newark, New Jersey.

Gentlemen:

I have been requested by the Township Committee of Mount Holly Township to ascertain as to whether Section 22 of the Beverage Control Act will apply in the following case:

A local club has made application to the Township Committee for a club license. Substantially all the requirements of the Act have been met in the application except that to the questions as to whether applicants have ever been convicted of a crime or an act involving a moral turpitude the answer is "no." The records of Burlington County show, as I am advised, that one of the officers of the club was, some years ago, convicted and served time on a charge of statutory rape while another officer of the club has more recently been indicted and convicted on two charges, first, possession, etc., and secondly, having in his possession numbers as used in the well known number racket.

My opinion, as given to the Township Committee, is that under these circumstances, while the act does not specifically apply to convictions of officers of clubs as affecting the right of the club itself to obtain a license, that the purpose and intent of the act is that licenses shall not be issued to clubs where the officers of the club who would have the management of the control of the license have personally been convicted.

Accordingly the license has been held for consideration and further investigation pending a formal opinion from your office on this point at issue.

H. S. KILLIE,
Township Solicitor.

July 15, 1936

Herbert S. Killie, Esq.,
Mount Holly, New Jersey.

Dear Mr. Killie:

In re Hunting, Bulletin #102, Item #3, referring to an application for a club license which pursuant to Chapter 44, P. L. 1934 had come before me for consideration, I withheld the license until an officer of the club who had been convicted of a crime involving moral turpitude had severed his connections with the club and been replaced by one fully qualified. I did so, even though the Act does not, in so many words, expressly disqualify a club if an officer has been convicted of a crime involving moral turpitude, because I could see just as you, no reason why the stringent qualifications required by the Act (Section 22) of applicants for other classes of licenses should be relaxed in the case of club licenses.

It is indeed interesting and gratifying to note that faced with an entirely independent set of circumstances, you have come to the same conclusion. Note, however, that Section 22 rules out applicants if they have been convicted of a crime involving moral turpitude or have committed two or more violations of the Act. Other convictions not involving moral turpitude, standing alone, need not bar the issuance of a license.

You say that one of the officers of the club was convicted and served time for statutory rape and that another officer was convicted for having in his possession numbers as used in the number racket, presumably in the nature of lottery slips.

Certain crimes such as murder, robbery, burglary, etc., must necessarily involve moral turpitude. As to these, the record of conviction is conclusive. Re Kennedy, Bulletin #118, Item #10. There can be no doubt but that rape falls within the same category. As early as Bulletin #2, I said in explaining Question 8 of the retail license application that conviction of such a crime involved moral turpitude and would disqualify the applicant. But I'm not at all sure about so-called statutory rape. There, I take it, consent was given and the only question is the age. I think it would depend largely on the particular facts, whether moral turpitude was involved or not.

On the other hand, certain crimes may or may not involve moral turpitude, depending upon the surrounding circumstances. So far as they are concerned, without knowing the full facts, it would be impossible to come to a conclusion. Re Blank, Bulletin #96, Item #10. In re Application for Solicitor's Permit, Case No. 7, Bulletin #92, Item #18, I ruled that conviction on a charge of lewdness because of the particular circumstances involved did not constitute moral turpitude. In re Application for Solicitor's Permit, Case No. 28, Bulletin #113, Item #10, I ruled that under the circumstances therein set forth, possession of lottery slips did not involve turpitude. In either case there might have been a different finding if the circumstances had been different. Cf. re Ulhich, Bulletin #70, Item #2.

The municipal license issuing authority should determine, after ascertaining the full facts in each case, whether or not a particular conviction involves moral turpitude, and therefore disqualifies the applicant, in accordance with the procedure laid down in re Blank, Bulletin #82, Item #4.

There is another point which your letter raises.

It appears that the applicant has answered "no" to the question as to whether or not any officer, director, trustee or member of the club governing body has ever been convicted of any crime. That, according to the facts that you report, is absolutely false. And, according to Section 22 of the Act, it is ample ground for denying the license.

Section 22 declares: "Applicants for licenses shall answer such questions and make such declarations as shall be prescribed by rules and regulations. ***** All applications shall be duly sworn to ..... All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor and punished accordingly. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for revocation."

The question which was answered falsely is prescribed by rules and regulations. Bulletin #72, Item #4. Hence, by statute, it was material. Since a false statement is ground for revocation of a license that has already been issued, it follows that it is good and sufficient reason for refusing to issue the license in the first place. The local license issuing authority, after considering all of the facts, must determine whether or not the applicant knowingly misstated a material fact. Cf. re Application for Solicitor's Permit, Case No. 26, Bulletin #109, Item #18. If not, mitigating circumstances may warrant allowing an amendment to the application instead of an out and out denial. But no such amendment should be permitted unless the disqualified parties have first been withdrawn.

Applicants who deliberately do not tell the truth should not get licenses. See Lynch v. Paterson, Bulletin #107, Item #1, and the cases cited therein. Cf. also re Louis Cohen, Bulletin #88, Item #9; Eckert v. Paterson, Bulletin #114, Item #13; and re Application for Solicitor's Permit, Case No. 32, Bulletin #119, Item #10.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. REFUNDS - NO POWER IN MUNICIPALITIES TO DENY REFUNDS TO WHICH, ACCORDING TO STATUTE, LICENSEES ARE LEGALLY ENTITLED - RESOLUTION PURPORTING TO DO SO DISAPPROVED.

July 15, 1936

Thomas L. Wooton,
Clerk of Madison Township,
Old Bridge, New Jersey.

Dear Sir:

I have before me the resolutions adopted by your Township Committee on June 25 and 29 and July 13, 1936, authorizing the issuance of plenary retail consumption licenses.

I note that the June 25th resolution provides in part "and it is distinctly understood and agreed that in case of discontinuing the sale of Alcoholic Beverages, no Rebate will be given or returned to the Licensees", that the June 29th resolution provides

in part "And Further it is Distinctly Understood and agreed that no Rebate will be given or asked if Business is discontinued" and that the July 13th resolution provides in part "and Further it is Distinctly Understood and agreed that in case of discontinuing the sale of Alcoholic Beverages no Rebate or Return will be asked for or given."

Section 28 of the Alcoholic Beverage Control Act provides that if any licensee except a seasonal retail consumption licensee shall voluntarily surrender his license, there shall be returned to him, after deducting as a surrender fee fifty per centum of the license fee paid by him, the prorated fee for the unexpired term. It then goes on to set forth the terms and conditions under which such refunds may be made. See Bulletin #21, Items #43, 44 and 45, and Bulletin #83, Item #1, paragraph 10, wherein the statute is explained, and Bulletin #48, Items #6 and 9, which illustrate the method of computation.

The Township Committee does not have the authority to deprive licensees of refunds to which, according to statute, they are legally entitled. The provision in the three resolutions purporting to do so are, therefore, disapproved.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. RETAIL LICENSES - PLENARY RETAIL CONSUMPTION - NO POWER IN MUNICIPALITIES TO RESTRICT SALES TO CLUB MEMBERS AND FRIENDS WHERE THE STATUTE CONFERS THE PRIVILEGE OF SELLING TO GENERAL PUBLIC - SPECIAL CONDITION PURPORTING TO DO SO DISAPPROVED.

July 15, 1936

Frank H. Smith,
Clerk of East Brunswick Township,
R. F. D. 3, New Brunswick, N. J.

Dear Sir:

I have before me your certification of the issuance of plenary retail consumption license No. 7 to Andrew Gyure, Lawrence Brook Country Club, Route S-28, New Brunswick and Old Bridge Pike near Westons Mill, subject to the special condition: "To sell only to Club Members & Friends."

I note that a plenary retail consumption license was issued. A plenary retail consumption license entitles the holder to sell to the general public. While Mr. Gyure may of his own volition restrict his sales to club members and their guests, he has the right, according to statute, to sell to the public if he chooses.

The Township Committee does not have the authority to restrict sales under plenary retail consumption licenses to club members and their friends. It may not issue licenses in a manner which would curtail the statutory privileges. Re Grant, Bulletin #41, Item #10.

The special condition is, therefore, disapproved.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

5. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - FORBIDDEN SIGNS - INDIRECT ADVERTISING OF PRICE PROHIBITED.

July 20, 1936

Development Syndicate, Inc.,
Schwenk's Hotel,
Clayton, New Jersey.

Att: F. J. Schwenk, Treasurer.

Dear Sir:

I have before me your letter of July 13th concerning your exterior sign.

I note that the sign reads:

BAR
Ladies and Gentlemen

CHICKEN
STEAKS
SANDWICHES

LIQUOR
Wholesale Prices
STORE

It is approved except as to the words "wholesale prices". Rule 3 of the State Rules Governing Signs and Other Advertising Matter (Compiled Rules, Regulations and Instructions, March 1936, Page 57) prohibits retail licensees from directly or indirectly advertising the price of any alcoholic beverage on the exterior of the licensed premises. Words such as "wholesale prices" are indirect advertising of price even though the price itself is not named and, therefore, are in violation of the rule. See Bulletin #120, Items #1 and 10, copies enclosed. The words "wholesale prices" must be removed; otherwise, there is no objection to the wording.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. RETAIL LICENSEES - SALES MUST BE CONFINED TO THE LICENSED PREMISES - SPECIAL PERMITS AUTHORIZING SALES OFF THE LICENSED PREMISES WILL BE ISSUED WITHIN REASONABLE AND LEGITIMATE LIMITS.

SPECIAL PERMITS - ISSUABLE TO RETAIL LICENSEES FOR SALES OFF THE LICENSED PREMISES AT PICNICS AND OUTINGS IF KEPT WITHIN REASONABLE BOUNDS - HEREIN OF THE DIFFERENCES BETWEEN SPECIAL PERMITS TO LICENSEES AND TO NON-LICENSEES.

PRACTICES DESIGNED UNDULY TO INCREASE THE CONSUMPTION OF ALCOHOLIC BEVERAGES - OUTINGS AND PICNICS BY RETAIL LICENSEES.

July 13, 1936

My dear Commissioner;

On Sunday, July 26th, 1936, the Klinker Klub (my establishment) is giving an Outing and being Host to about twenty-five of

its patrons, at Lake Musconetcong, Netcong, New Jersey, and we are planning to bring along three (3) half barrels of beer.

There is no fee being charged, or tickets sold, therefore, I would like to know if it is necessary for me to have a permit to transport the beer from Orange to Netcong, and if so, is there a fee and if so, what are the charges.

Very truly yours,

WILLIAM F. LEIMER, Prop.,
KLINKER KLUB.

July 20, 1936

William F. Leimer,
Orange, New Jersey.

Dear Mr. Leimer:

I have before me your letter of July 13th. I note that on Sunday, July 26th, you are giving an outing at Netcong for some of your patrons and are planning to take along three half barrels of beer. You ask if it is necessary for you to have a special permit to transport the beer.

The plenary retail consumption license which you hold confers the privilege of transporting alcoholic beverages in your own vehicle in connection with your licensed business provided the vehicle carries the required transportation insignia. Hence, you do not need a special permit to transport the beer if you take it to Netcong in your own licensed vehicle. Nor do you need a special permit for the transportation of the beer if it is taken up in the vehicle of a licensed transporter.

But you do need a special permit to dispense the beer at the Netcong outing even though no fee is charged nor tickets are sold for the affair.

The reason is that such gratuitous deliveries or gifts of alcoholic beverages by licensees, according to the definition in Section 1, sub. (v) of the Act, constitute sales. Since you are a licensee, the situation is radically different from that pointed out in Re Berry, Bulletin #121, Item #2. Under the Act, it is a sale even though the licensee ostensibly gives the beer away free. Now, Section 23 of the Act says that the operation and effect of every license is confined to the licensed premises. Hence, all sales under your license must be confined to your licensed premises at 37 Canfield Street, Orange, and none may be made off your licensed premises unless a special permit authorizing them has first been obtained.

Furthermore, as the beer which you will give away at the outing will, in the contemplation of the Act, be sold, it must be included in your monthly report of sales to the State Tax Department.

I am enclosing herewith an application for a special permit. Fill it out, have it signed also as indicated by the Municipal Clerk and the Chief of Police of the municipality in which the outing will be held and return it to this office at once. The time is now rather short. The fee for the permit will be $10 and must accompany the application. Special permits allow the transportation of alcoholic beverages intended to be sold thereunder in any vehicle provided the permit is carried therewith.

I have refused to issue special permits to non-licensees for private commercial purposes. Bulletin #45, Item #8. Your outing, undoubtedly, is held for the purpose of promoting fellowship and good will and thereby ultimately building up your business but you as a licensee are entitled to do just that within reasonable and legitimate limits.

I can imagine licensees vying with each other for trade and offering bigger and better picnics so to get it. If such a situation should eventually develop, I shall fall back on the authority to regulate with respect to practices designed unduly to increase the consumption of alcoholic beverages and the general authority conferred in Section 36.

The present affair seems to be harmless and properly motivated so I see no reason why the permit should not be granted. Hence, if the application is in proper order, the special permit will be mailed to you immediately.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. RETAIL LICENSEES - OPERATION OF PRIVATE BAR AND PUBLIC BAR ON LICENSED PREMISES PERMITTED - THE STATE LAW, THE STATE RULES AND MUNICIPAL REGULATIONS APPLY EQUALLY AND MUST BE ENFORCED WITH RESPECT TO BOTH.

My dear Sir:

I represent a client who is the holder of a plenary retail consumption license.

It is his desire to have a private bar in his place of business to sell and serve alcoholic beverages exclusively for guests and their friends.

This will be in addition to another bar where such beverages will be sold and served to the public generally.

Will you be good enough to inform me at your earliest convenience as to whether or not there is any ruling or law which would prevent such a usage?

Respectfully yours,

MICHAEL N. STEINBERG

July 20, 1936

Michael N. Steinberg, Esq.,
Orange, New Jersey.

Dear Mr. Steinberg:

Neither the Alcoholic Beverage Control Act nor the State rules and regulations would prevent a consumption licensee from having two bars, one private and one public, provided both are on the licensed premises and covered by the license.

There may, however, be some local municipal regulation which would bear on the point. As to this, inquire of the Clerk of the municipality in which your client's premises is located.

The fact, however, that one of the bars is nominally private does not mean that it is exempt from the regulations applicable to public bars. The State Rules Concerning Conduct of Licensees and Use of Licensed Premises apply to all licensees and the entire licensed premises without exception. The municipal regulations applicable to plenary retail consumption licensees must also be uniformly obeyed. The permission to maintain and operate a so-called private bar for sale and service to particular patrons of the licensee is wholly a matter of the private convenience of the licensee and is not a dispensation from, or an exception in favor of or a grant of immunity to the licensee in respect to the operation and effect of all laws and all rules and regulations governing plenary retail consumption licensees.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. LICENSEES - INSPECTION OF BOOKS, RECORDS AND ACCOUNTS - MAY BE MADE ON APPOINTMENT IF NOT AVAILABLE WHEN INVESTIGATOR CALLS.

July 13, 1936

Dear Commissioner:

Will you please rule on the questions:

License C-1, Borough of Clayton, Gloucester County, issued to Development Syndicate, Inc., a New Jersey corporation.

QUESTION - Are we required to open our stock books to any of your inspectors who may call here to inspect the premises.

QUESTION - On request of any of your inspectors, are we required to give them a list of our stockholders.

SUGGESTION - We have complied with the law; application contains this information, and while we have no objections to allowing this inspection, still when an officer of the corporation is not here no one is authorized

to give this information; therefore, if your answer to the above questions is YES, it is suggested that when an officer is not here when your inspector calls, that he give notice of his intentions and fix a time when he will call to inspect the books, so that an officer can be here to allow the inspection.

Will thank you very kindly for your ruling in this matter.

DEVELOPMENT SYNDICATE, INC.,
By - F. J. Schwenk,
Treas.

July 20, 1936

Development Syndicate, Inc.,
Schwenk's Hotel,
Clayton, New Jersey.

Attention: F. J. Schwenk, Treasurer.

Dear Sir:

I have before me your letter of July 13th concerning inspection of your books.

You are required by law to disclose on request to my inspectors any and all corporate information which may be contained in your corporate records. Section 32 of the Alcoholic Beverage Control Act expressly authorizes the State Commissioner and each other issuing authority to make such investigations as shall be deemed proper in the administration of the Act and, among other things specifically enumerated, authorizes the examination of all books, records, accounts, documents and papers of the licensee.

I appreciate your point that none but officers of the corporation are authorized to allow such inspections. Your suggestion is approved; to wit, that if one of my duly accredited men calls and asks to see your books in the absence of your officers the thing to do is to fix a definite time and place convenient to both the investigator and your officers when and where the corporate records may be examined.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. LICENSES - SUSPENSION - LICENSEES WHO, IN CONTEMPTUOUS DEFIANCE OF AN ORDER OF SUSPENSION, REITERATE VIA ALLEGED "EXPLANATION" THE VERY OFFENSE FOR WHICH THE LICENSE WAS SUSPENDED, ARE SUBJECT TO OUTRIGHT REVOCATION.

July 20th, 1936.

Commissioner D. Frederick Burnett,
744 Broad Street,
Newark, New Jersey.

Honorable dear Sir:

After I returned from your office this afternoon, I reconsidered the entire situation in which the Parker Liquor Stores, Inc. has been involved. I am writing this letter to let you know that I now realize that I was in the wrong in posting the sign revealing your order so that the general public might be aware of the same. In doing so, I did not have the slightest idea that I was reincurring any violation which I might have committed in the past. I thought I was merely excusing myself before the public for my temporary shut down by letting it know that I was not carrying any bootleg whiskey or committing any crime of moral turpitude or of a serious nature.

Upon returning to the store, I removed the sign which you claim was a violation. I did not, at any time, intend to be obstinate or stubborn in obeying your previous order. If I have been so, in any way, or incurred your personal grievance, I wish openly to retract such conduct and personally offer to you my apologies.

I trust you will understand that as human beings we are all sometimes subject to lack of emotional control and you will excuse my previous conduct upon this basis.

Honorably and respectfully yours,

Philip Hoffman.

July 21, 1936.

Mr. Philip Hoffman,
Parker Liquor Stores, Inc.,
Jersey City, N. J.

Dear Sir:

Yours of the 20th reached me just as I was about to sign a rule to show cause why your license should not be revoked outright for evasive defiance and contempt of the order of the Board of Commissioners of Jersey City suspending your license.

The motive of your purported "explanation" to your prospective customers as to why you were closed down, reiterating the very words of the offensive signs for which your license had been suspended and couched in slick, but sickly thin, terms of self-advertising to make it appear you were a martyr instead of an offender, was painfully obvious to all except ostriches.

In view of your instant retraction, I shall excuse you this time.

Very truly yours,

D. Frederick Burnett

Commissioner.