Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 133 July 28, 1936

1. APPELLATE DECISIONS - BURAK v. IRVINGTON and CHANCELLOR ASSOCIATION, INC.

SAM BURAK, Appellant, -vs- BOARD OF COMMISSIONERS OF THE TOWN OF IRVINGTON and CHANCELLOR ASSOCIATION, INC., Respondents	On Appeal Appellant's Insistence on Regular Procedure

It appearing that D. Frederick Burnett, Commissioner of New Jersey Department of Alcoholic Beverage Control has filed his conclusions based on testimony taken in the above entitled appeal, and it appearing that in the last paragraph of said conclusions the Commissioner states "Because I believe that the appearances should be strictly observed in these cases of possible self interest, I shall if appellant insists in writing in five days, follow the regular procedure. That is appellant's right and my duty."

The appellant does hereby within five days, insist in writing that the regular procedure be followed by the Commissioner.

Dated: July 15th, 1936.

GEORGE A. HENDERSON,
Attorney of Appellant.

SAM BURAK, Appellant, -vs- BOARD OF COMMISSIONERS OF THE TOWN OF IRVINGTON and CHANCELLOR ASSOCIATION, INC., Respondents	On Appeal ORDER

It appearing that on July 13, 1936, Conclusions were filed in the above entitled cause, (Bulletin #130, Item #2) wherein the action of respondent Board of Commissioners of the Town of Irvington, in issuing a club license to respondent Chancellor Association, Inc. was affirmed, subject, however, to being reversed upon the technical consideration that the license should have been issued by the State Commissioner because some members of the local issuing authority were also honorary members of the Chancellor Association, Inc., if appellant insisted thereon in writing within five (5) days from the date of such Conclusions;

And it further appearing that appellant has within the specified period filed with me in writing his insistence upon a

reversal by reason of the technical consideration as aforesaid;

NOW, THEREFORE, it is, on this 24th day of July, 1936,

ORDERED, that the Conclusions heretofore filed in the above entitled matter be and the same are hereby modified to the end that the action of the respondent Board of Commissioners of the Town of Irvington, in issuing a club license to the respondent Chancellor Association, Inc., be and the same is hereby reversed and the said club license is hereby cancelled, effective July 27, 1936 at midnight, without prejudice, however, to the right of respondent Chancellor Association, Inc. to apply to this Department for a club license, pursuant to Section 18A of the Control Act, and for a special permit to operate pending final action upon such application.

D. FREDERICK BURNETT,
Commissioner.

2. APPELLATE DECISIONS - WELSTEAD v. MATAWAN

THOMAS GERARD WELSTEAD,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH OF MATAWAN,)
Respondent)

John J. Meehan, Esq., Attorney for Appellant.
Edward W. Currie, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at #277 Main Street, in the Borough of Matawan.

Appellant held a consumption license issued by respondent for the past two years for other premises. When his last license ran out on June 30, 1936, he did not seek a renewal, applying instead for a new license for his present premises. There is no question raised as to the personal qualifications of appellant or the manner in which he conducted his business under his prior licenses. It is only the proposed location of the new place which creates any difficulty.

Respondent contends (1) The neighborhood in which appellant's present premises are located is essentially residential, and a large number of persons residing there object to the issuance of a license in this vicinity; and (2) The issuance of a consumption license for these premises would create a dangerous traffic hazard.

(1) The premises sought to be licensed are located, technically, in a district zoned for business. In fact, however, the only business places there are a handful of neighborhood stores, such as a grocery, hardware store, delicatessen store,

real estate office and gasoline station. Aside from these few stores the section is entirely residential, consisting of high-class private homes. Directly across the street is the start of Edgemere Heights, the finest residential section in the Borough. One of appellant's own witnesses stated as his opinion that the neighborhood was mostly residential. There has never been, at least not for the past 65 years, any license for the sale of intoxicating liquor in this vicinity, and a petition signed by 146 of the neighboring residents, backed up by vigorous personal protests at the hearing both before respondent and on appeal, eloquently bespeaks the prevailing sentiment of the community.

It does not follow that a license must issue merely because the premises are located on a street containing other stores. Ely v. Long Branch, Bulletin #99, Item #2. As said in the case cited:

> "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 the 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; * * "

Likewise the fact that the premises are located in a district zoned under the local zoning ordinance for business is not decisive when the neighborhood is, in fact, residential. Re Cranford Veterans' Holding Co., Inc., Bulletin #126, Item #11.

There is no suggestion that respondent was prejudiced against appellant or did not act in utmost sincerity and good faith. Its determination that the issuance of a license in this neighborhood, in view of the character thereof and the objections filed, was reasonable. Re Cranford Veterans' Holding Co., Inc., supra, and cases therein cited.

(2) Appellant's premises are located within 125 feet of the intersection of two State highways, namely, Route #34 and Route #4 and #9. This, particularly on summer week-ends, is one of the busiest intersections in the State. As testified by the Mayor:

> "The traffic is such on week-ends that we have a rule and regulation that cars going north passing the licensed premises shall do so in a double line; cars desiring to go directly north and not to the left or west shall keep to the right; cars which wish to go to Newark and New York shall keep to the center of the road. When this double line of cars is placed on that highway it takes up the entire highway, and there is no room to park in front of the licensed premises. My observation has been that regardless of how well a man keeps his place - and there is no objection to Mr. Welstead - he conducted a licensed premises in the Borough and we have had no complaint against him - but regardless of how well he keeps his place, traveling drunks, as soon as they see a tavern sign, will park their car there, get out and go in, and when the proprietor refuses to serve them, they will drive away. To have a place located there for these people to be attracted and park their cars, where traffic is so heavy, would be a decidedly dangerous condition."

It has been held that the refusal to issue a license for premises where such issuance would create a dangerous traffic hazard is proper. Reed v. Way, Bulletin #78, Item #2. In the case cited I said:

> "The magnet of a tavern at this apex may well attract the parking of cars on or parallel or near the two converging highways, with consequent congestion and narrowing of the traffic line and increased dangers attendant upon the alighting and reloading of passengers pulling out of line, followed by the effort to pull out from a closely parked line into open traffic, often difficult under normal conditions and conceivably more so after sojourn at the oasis, all of which imperils life and limb as well as impedes the fast moving through traffic. An ounce of prevention here is worth pounds of cure. Parking grounds in the rear do not eliminate the dangers. The American public is usually in too much of a hurry to use them.
>
> * * * *
>
> "The general rights of taverns which cater primarily to transient trade using the speedways of New Jersey weigh lightly in the balance when the safety and the lives of the travelling public become of moment. In all such cases, strict construction will be the rule."

Respondent's determination that the issuance of a consumption license for these premises would create an undue traffic hazard is reasonably sustained by the evidence and the denial of appellant's application is, therefore, proper.

In view of the foregoing, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 24, 1936.

3. APPELLATE DECISIONS - PINGITORE v. RED BANK.

TONY PINGITORE,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH OF RED BANK,)
Respondent)
- - - - - - - - - - - - - - - - - - -)

Quinn, Parsons & Doremus, Esqs., by Theodore J. Labrecque, Attorneys for Appellant.

John S. Applegate, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a renewal of a plenary retail distribution license for premises

known as 75 Leighton Avenue, Red Bank.

It is admitted that appellant has complied with all the statutory prerequisites.

The denial of the renewal license was by a divided vote of the Councilmen, two voting in favor and three against. No formal answer was filed by the respondent, but as testified to by Councilman James A. Van Schoick who voted against the renewal, the reason for the refusal to renew was alleged "Sunday Sales" at the licensed premises.

No formal charges were ever preferred against this licensee during the term of his old license; nor was there any hearing on his new application where he would have had an opportunity to refute any charges that might have been preferred against him.

Mr. Van Schoick testified:

A. That the discussion on the application of Pingitore arose by reason of a police report that a man had been arrested in October, 1935 charged with being drunk and disorderly; that the report set forth this man stated to the police that he had purchased his liquor at the licensed premises on a Sunday.

B. That about four months before the application for renewal was filed Mr. Van Schoick visited the licensed premises on a Sunday morning. Upon entering, he observed a man at the counter about to purchase two pints of liquor. Mr. Van Schoick came to this conclusion because the bottles were on the counter and there was also money on the counter. He further stated that when the young man behind the counter saw him he would not complete the sale; that he later saw this same man on the street with a package.

C. That on this visit to the licensed premises, he looked into the rear room and saw the licensee, Pingitore, at a table which contained a liquor bottle; that later, after the license had been refused, Mr. Pingitore explaining this incident, told him that he only treated friends.

No witnesses other than Councilman Van Schoick testified for the respondent.

The appellant testified he has conducted a grocery store at 75 Leighton Avenue for nine and a half years; that he has had a plenary retail distribution license since 1934. He produced five witnesses who testified as to the high-class character of the licensed premises. One was a letter carrier who has delivered mail to the licensee at the licensed premises for nine years.

The testimony of Councilman Van Schoick - raising as it does the question as to whether or not Mr. Pingitore has violated the law - standing alone, falls far short of the definite and convincing proof that should necessarily support a finding that this licensee has been guilty of such improper conduct as to deprive him of a renewal of a license, which he has held for three licensing periods. Some of it is mere hearsay. Most of it is conjecture. All of it is inconclusive.

The action of the respondent is reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 24, 1936.

4. APPELLATE DECISIONS - BORELLI v. RED BANK.

PATSY BORELLI,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH OF RED BANK,)
Respondent)

George R. Sommer, Esq., Attorney for Appellant.
John S. Applegate, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a renewal of a plenary retail consumption license for premises 2 Morford Place, Red Bank.

It is admitted that appellant has complied with all the statutory prerequisites.

No hearing was held before the Borough Council and the only notice received by appellant was a letter from the Borough Clerk dated June 25, 1936 notifying him that his application had been denied. No reason for the denial was set forth therein.

The appellant Borelli is the owner of the building housing the licensed premises. He has held three licenses for same. The first issued February 6, 1934, expiring June 30, 1934; the second issued June 28, 1934, expiring June 30, 1935, and the third issued June 17, 1935, which expired June 30 of this year.

Red Bank on January 6, 1936 passed a resolution which limited the consumption and distribution licenses to those then outstanding or for which applications were then pending.

The only witness for the respondent was Councilman Van Schoick. He stated that all other retail consumption licensees who had applied for a renewal of their licenses were granted same; that the Borelli license was refused "because the neighborhood in which the licensee's place is situated didn't want or need that kind of a place." There was no evidence to the effect that the character of the neighborhood in which appellant's premises are located had changed in any way since any of his prior licenses were issued. Renewals of licenses are not to be denied on flimsy generalities. Cracker barrel opinions, to be given weight, must be based on supporting facts. There was, to be sure, a statement by Mr. Van Schoick relative to the employment of a minor for three weeks in February, 1935 at the licensed premises which resulted in a warning to him by the Chief of Police. However, there was no legal proof of any violations having been committed by the licensee nor had he ever been brought before the Council at any time to answer formal charges.

Under the circumstances, the action of the Council in refusing to renew the license was arbitrary and unreasonable.

The action of the respondent is reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 24, 1936.

5. APPELLATE DECISIONS - COSTA v. RED BANK.

ROSARIA COSTA,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE
BOROUGH OF RED BANK,)
Respondent)
- - - - - - - - - - - - - - - - - -

Quinn, Parsons & Doremus, Esqs., by Edmund J. Canzona, Esq., Attorneys for Appellant.

John S. Applegate, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a renewal of a plenary retail distribution license for premises 62 West Bergen Place, Red Bank.

It is admitted that appellant has complied with all the statutory prerequisites.

The denial of the renewal license was by a divided vote of the Council. No formal answer was filed by the respondent but Councilman James A. Van Schoick testified that the refusal to renew was because (a) there had been complaints against appellant; (b) there were enough drinking places without this one, viz.: three within two blocks.

The testimony of Mr. Van Schoick - the only witness for respondent - on the first point was not at all conclusive. It was based in large part upon hearsay with no definite or convincing proof that any violation of the law had ever occurred on the licensed premises during the two years it had been licensed or prior thereto. The testimony discloses that Mrs. Costa had never been brought up on charges nor had there been any hearing upon objections that might have existed against her present application for a renewal of her license. If there were any convincing proof before me that this licensee had violated the trust imposed in her by the issuing authority during the period of her prior license, I would not hesitate to affirm the denial of a renewal. The testimony, however, is barren of any proof of such a nature.

On the second point, the testimony discloses that three other licensees had applied for and been granted renewal of their licenses - all holding retail consumption licenses and all within two blocks of each other. Also included in this small area is the grocery store which has been conducted by appellant for over four years. She has operated under a retail distribution license since January 21, 1935 and has, therefore, been issued two licenses.

I have recommended to municipalities desiring to limit the number of licenses, that renewals be issued to all licensees who have clear records, but that, upon conviction of any serious violations, that particular licensee should be rejected on renewal and that the number of licenses be thereby automatically reduced by each such rejection. In re Juska, Bulletin #116, Item #7; in re Haney, Bulletin #119, Item #9; in re Morton, Bulletin #126, Item #14.

The present case, however, does not come within this category. This licensee, so far from being convicted of a serious violation, has never been convicted at all of having violated any of the provisions of the Control Act or the Rules and Regulations. She stands upon equal grounds with any of the other licensees on her block who have been granted renewals of their consumption licenses. Consequently it would be unfair to single her out and deny her license and grant the others. As stated in Rajca v. Belleville, Bulletin #101, Item #1:

> "While a renewal, like an original liquor license, is a privilege and not a right, Re Marritz, Bulletin #61, Item #8, nevertheless, it is but fair, and therefore reasonable that issuing authorities should weigh the facts that worthy licensees, in reliance upon their license have expended money, incurred commitments and otherwise changed their position. In those cases private justice is weighed as against the public interest of the community."

It appears from the record before me that she is just as much entitled to a renewal of her license as the other licensees who have obtained renewals on the same block where her store is located.

The action of respondent is reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 24, 1936.

6. MUNICIPAL ORDINANCES - LIMITATION OF NUMBER OF LICENSES IN PARTICULAR SECTIONS OF MUNICIPALITY - PRINCIPLES APPLICABLE.

July 16, 1936

Dear Sir:

A few days ago I submitted to you for your approval a proposed ordinance for the Township of Denville regulating the licensing of alcoholic beverages, and in which I have provided a limitation for the number of licenses to be issued.

One of the Township Committeemen has suggested an amendment to the proposed ordinance fixing a limitation of taverns upon certain of the highways, of which there are three running through the Township.

I am mindful of Section 37 of the Control Act permitting the Township to limit the number of licenses to sell alcoholic beverages at retail and the hours between which the sales may be made.

Would you render an opinion as to the right of the Township in limiting the number upon any particular street or highway and whether or not you think this to be discriminatory.

Very truly yours,

FREDERICK C. HENN.

July 24, 1936

Frederick C. Henn, Esq.,
Jersey City, N. J.

Dear Mr. Henn:

There is no objection to limiting the number of licenses to sell alcoholic beverages at retail to a definite quota for particular streets or highways or sections provided the sections of the municipality in which the licenses will be issued are specifically designated (re Wayne, Bulletin #69, Item #6) and the number to be issued in each such section and the sections themselves are determined with due recognition of public convenience and necessity (see Brighton Hotel Co. v. Loder, Bulletin #41, Item #6).

Licenses have been denied by municipal license issuing authorities on the grounds that there were a sufficient number of licensed premises in the vicinity, that the issuance of an additional license would be socially undesirable and that the existing places adequately satisfied the local needs. They have also been denied on the ground that the neighborhood was residential. I have affirmed such denials where such was shown in fact to be the case and the conclusion was eminently proper.

I see no reason why the same policies cannot be given official standing through adoption by formal resolution. See re Scull, Bulletin #125, Item #5 and the items cited therein. In such case, all premises situated in the particular sections to which licenses are confined, are on an equal footing. No one person or premises in the district is favored over any other. They all start from scratch. Each has an equal chance at a license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. MUNICIPAL ORDINANCES - AMENDMENTS - RIGHT OF MUNICIPAL GOVERNING BODY TO AMEND.

LICENSE FEES - INCREASE IN RETAIL LICENSE FEES MAY NOT AFFECT LICENSES ISSUED AND OUTSTANDING AT THE TIME OF THE INCREASE.

TOWNSHIP OF NEW HANOVER
W.M. Ellis, Clerk
Cookstown, New Jersey

July 17, 1936

Dear Sir:

We, the Township Committee of New Hanover, issued licenses this year for the sum of $200.00 and received a petition signed by 60 people of the Township to close on Sundays, which we did. Now the license holders have a petition out with 200 signers on it, which is 60% of the registered voters, and want the places opened on Sunday. Can we, the Committee, recall the Resolution on the minutes and raise the fee and be on the right track. We feel that they should pay more fees if they are to be open on Sunday. We would like very much to have your say in this matter. Thanking you we remain

Yours truly.

July 24, 1936

W. M. Ellis,
Clerk of New Hanover Township,
Cookstown, New Jersey.

Dear Mr. Ellis:

I have before me letter of July 17th written on behalf of the Township Committee asking if the Township Committee may raise the license fee in consideration of allowing licensees to remain open Sundays. The letter is unsigned but I take it that it is yours as it is on your letterhead.

There is nothing to prevent the Township Committee from amending its resolution at any time. The original resolution which fixed the fee for plenary retail consumption licenses at $200 and prohibited Sunday sales did not bind the Township Committee so as to prevent any future change. At the time it was adopted it represented merely what the Committee then supposed to be the best common interest of the public at large. Now, if experience has shown to the contrary, it may be amended or rescinded outright. The right to change it is founded on the same power which vested in the Township Committee the right to enact it in the first place. See re Lamson, Bulletin #118, Item #6 and the items cited therein.

The Township Committee may raise the plenary retail consumption license fee. However, only those whose licenses are issued after the fee has been raised may be required to pay the higher amount. An increase in the license fee may not affect licenses already issued and outstanding at the time the increase becomes effective. A licensee who with faith in his license has incurred expenditures, made commitments or otherwise changed his position, has acquired a vested right of which he may not be deprived by subsequent legislation. See Bulletin #21, Item #9. Cf. re Way, Bulletin #58, Item #6.

The Township Committee may also amend the regulation requiring licensed premises to be closed on Sundays. It may allow sales at any hours on Sundays or only during those hours which in its discretion it deems proper.

As the original regulations were adopted by resolution, both amendments may likewise be made by resolution.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. APPELLATE DECISIONS - SCHICK v. MILLVILLE.

Gustave Schick,)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF THE) CONCLUSIONS
CITY OF MILLVILLE,)
Respondent.)

Nathaniel Rogovoy, Esq., Attorney for Appellant.
Harry R. Waltman, Esq., by S. J. Salvo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's appli-

cation for a plenary retail consumption license for premises located at #4 West Main Street, Millville.

Respondent contends the application was properly denied because the character of the neighborhood and the existence of a consumption place directly across the street from appellant's premises, coupled with the large number of objections filed by persons residing in the vicinity, rendered the issuance of an additional license therein socially undesirable.

Appellant's premises are within a few feet of the western terminus of a bridge which connects the west part of Millville - the Fifth Ward - with the east part, where the principal business district is located. The only other connecting link is on a route which for most of the residents of the Fifth Ward is several miles longer. Consequently, the bridge and the approaching street - West Main Street - is heavily traveled by Fifth Ward residents and, incidentally, by many children, who, in order to go to school, must use this street and bridge. There is a tavern located almost directly across the street from appellant's place.

Approximately 300 people filed objections, and a great number appeared personally before the Board of Commissioners protesting the issuance of another license, and arguing (1) That since they have no choice but must use this street, at least one side should be left free from saloons; and (2) That the existing place in the immediate vicinity is adequate to supply the demands of the community.

Respondent, after considering the protests, denied appellant's application on both grounds.

It is unnecessary to consider the first ground because the action of respondent must be affirmed for the reasons hereinafter stated.

The right of a municipality to refuse to issue a license where the issuance thereof will result in the existence of too many licensed places in any given vicinity is well settled. Connolly v. Middletown, Bulletin #81, Item #11, and cases therein cited. Appellant has produced no substantial evidence that an additional license is necessary in this vicinity. His only contention on this issue is that the brand of beer sold in the existing place does not please all palates. However, a few blocks away, on the east side of Millville, there are several places selling other brands. A municipality is under no obligation to license a retail outlet for each brand of beer on the market. Supply is no laggard in catching up with sizeable demand. All taverns are free to carry in stock as many brands as they please. The respondent's determination on this point was reasonable. Henry v. Way, Bulletin #90, Item #9.

Appellant stresses the fact that the only City Commissioner who testified at the hearing of this appeal admitted that in the absence of protest the application might have been granted notwithstanding the existence of the other place. This, however, does not prove respondent's action unreasonable. It is the duty of a municipal issuing authority to consider all protests filed and to give such weight thereto as in the exercise of a reasonable discretion and in the light of all the circumstances they deem proper. Re Powell, Bulletin #59, Item #11. There is nothing shown to indicate any abuse of that discretion in the instant case.

The action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 25, 1936.

9. APPELLATE DECISIONS - CLARKSON v. SEA GIRT.

ALICE J. CLARKSON,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
MAYOR AND COUNCIL OF THE BOROUGH OF SEA GIRT,)
Respondent)

J. Stanley Herbert, Esq., Attorney for Appellant.
Joseph R. Megill, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a denial of an application for a renewal of plenary retail consumption license for premises located at the northwest corner of Baltimore Boulevard and State Highway, Sea Girt, New Jersey.

On July 3rd, 1936, an order was entered extending the term of the license until the determination of the present appeal. On the 16th day of July, 1936, the respondent Mayor and Council of the Borough of Sea Girt reconsidered their denial of appellant's application and purported to grant a renewal of her license. Respondent had no power to reconsider its previous action. Maurer v. Sussex, Bulletin #85, Item #11; Plager v. Atlantic City, Bulletin #80, Item #11, and cases therein cited. Upon being notified of the irregularity of its action, the respondent filed with me a stipulation consenting to a reversal of its action in denying the renewal application of the appellant and consenting to an order directing its issuance.

From the testimony at the hearing on appeal, it appears that the appellant is personally qualified and that the premises in question are suitable. The attorney for the respondent stipulated at the hearing that the formal prerequisites had been complied with and that respondent had no objection to the issuance of the license.

In view of the foregoing, the action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 25, 1936.

10. SPECIAL PERMITS - NOT NECESSARY FOR MERE HOUSE-WARMING FOR INVITED GUESTS WHERE AFFAIR IS NOT OPEN TO THE PUBLIC -- HEREIN OF THE DISTINCTION OF SOCIAL CELEBRATIONS FROM COMMERCIALIZED "GIFTS" TO CUSTOMERS.

July 23, 1936

My dear Mr. Burnett:

As we are unfamiliar with your liquor laws of the State of New Jersey, we are writing this letter with reference to beer, wine and liquor -

We are having our official opening here on Monday evening, and are having a few celebrities. This affair is not for the public who wander in and out at such an opening -

We have invited the City Commission of Newark, and, outside of the Commission, we will have about twenty-five other guests -

We do not want to do anything to offend your State laws in this City, and, with your permission, would like to be able to serve a few select guests that come here for the opening -

Very truly yours,
CLINTON MOTORS, INC.,
Henry P. Dowling, Treas.

July 25, 1936

Clinton Motors, Inc.,
Newark, N. J.

Gentlemen:

I have yours of July 23rd.

In re Wallenstein & Co., Bulletin #90, Item #1, I denied special permit to dispense alcoholic beverages gratuitously to friends and customers on the occasion of opening enlarged quarters stating:

> "This is not a mere 'house-warming' or social celebration. Business is going on as usual. The application frankly admits that alcoholic beverages are to be served to customers. Presumably each customer gets a drink with his purchase. No doubt, trade would be stimulated - so would the customers. In truth, the liquor would not be given away gratuitously; it would be included in the price of the purchase. Licensees pay heavily for the privilege of dispensing alcoholic beverages. Their business is necessarily subject to strict control because of abuses inherent in liquor traffic. Granting this permit would undoubtedly spur, if not create, business for the applicant, but it would constitute unfair competition with licensed retailers. * * * * * Mercantile business will have to get along on its own merits without the stimulation of liquor."

You speak of your affair on Monday as being an "opening." If it were truly that, I should not only have to deny any application for permit, but inform you that it would be illegal for you to "give" liquor to customers because that would be an indirect sale. You tell me, however, that the affair is not for the public; that you purpose to have but a few invited guests.

If you confine it to this and do not admit the public, your action is lawful and you need no special permit.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. REVOCATION PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES - FIVE DAY SUSPENSION UTTERLY INADEQUATE - NO CASES WILL BE REFERRED TO MUNICIPAL BOARDS WHICH INFLICT SUPINE PENALTIES.

July 27, 1936

John J. Reilly, Secretary,
Municipal Board of Alcoholic Beverage Control,
City Hall,
Elizabeth, N.J.

Dear Mr. Reilly:

I have before me staff reports of proceedings before your Board on May 26, June 8, June 18, and July 7 against the following licensees:

1. Mary Uzaitis

charged with possession of illicit alcoholic beverages. I note she pleaded guilty and her license was suspended for five days.

2. William Dowling

charged with possession of illicit alcoholic beverages. I note he was adjudicated guilty and his license suspended for five days.

3. Clemens Geile

charged with possession of illicit alcoholic beverages. I note that in this case, after a hearing, the charges were dismissed.

4. Patrick J. McWeeney

charged with possession of illicit alcoholic beverages. I note he was found guilty and his license suspended for five days.

5. William L. Bochenek

charged with possession of illicit alcoholic beverages. I note he was adjudicated guilty and his license was suspended for five days.

6. Joseph Bassaman

charged with possession of illicit alcoholic beverages. I note that he pleaded guilty to the charge and his license was also suspended for five days.

Because illicit alcoholic beverages strike at the very fountainhead of control of the legitimate traffic following upon Repeal, I respectfully submit that charges of this kind require even greater penalties than the five days which seem to have been settled upon by your Board. I can sympathize with a licensee who sells liquor to a person who, having the appearance of age, eventually turns out to be a minor. He might well be bona fidely mistaken. But where a man possesses illicit alcoholic beverages, he must in the very nature of things have done so deliberately with his mind made up to violate the law, to cheat his customers and to deprive the State of much needed revenue.

See my decision in re Morris, Bulletin #98, Item #10. For the reasons therein stated, I must insist hereafter, in cases involving the possession of illicit alcoholic beverages, that your

Board make the minimum penalty at least thirty days - otherwise I shall not refer any further cases but will handle them direct. Such extreme measures become necessary because of the fact that twice heretofore, to wit, on October 18, 1935 and on March 12, 1936, I have had occasion to ask the Elizabeth Municipal Board to inflict man-sized penalties. I really can't believe that your Board appreciates the disrupting effects their inert and inept action is having on sound law enforcement. Several municipalities have adopted the principle of revoking licenses outright in such cases. I am beginning to think that this may have to be necessary throughout the State unless licensees speedily learn their lesson and have nothing in stock, except legal liquor.

Please convey to your Board my thanks for their intended cooperation. I sincerely hope that hereafter I get it in full measure. The very fact of the continuing number of violations shows that licensees in Elizabeth deem it pays to take chances because of the supine penalty inflicted if caught.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. LICENSED PREMISES - WHAT CONSTITUTES - SALES BY GLASS OR OTHER OPEN RECEPTACLE CONFINED TO LICENSED PREMISES.

July 15, 1936

Dear Sir:

A licensee is granted a plenary retail consumption license to sell at a premises wherein a Singing Society holds their weekly meetings on the second floor of the same building, directly over the tavern.

Kindly advise, whether or not licensee is permitted to serve alcoholic beverages to the members of the Society on the second floor.

Very truly yours,
JOHN F. BOYCE,
City Clerk.

July 22, 1936

John F. Boyce, City Clerk,
New Brunswick, N. J.

Dear Mr. Boyce:

I have your letter of July 15, 1936.

Section 13 of the Control Act provides that a plenary retail consumption licensee may sell alcoholic beverages on the licensed premises by the glass or other open receptacle and also may sell alcoholic beverages in the original container for consumption off the licensed premises. Consequently, a retail licensee may not sell alcoholic beverages by the glass or other open receptacle to be consumed off the licensed premises.

Section 23 of said Act provides that the operation and effect of every license is confined to the licensed premises. In Bulletin #50, Item #1, the Commissioner ruled that where a licensed

place of business is located in a building situated on one-half of a double lot, the licensee may not sell alcoholic beverages on the adjacent lot; nor in a building adjacent to the licensed premises.

Your inquiry resolves itself into a question as to what constitutes the licensed premises. Usually the application will disclose the exact location.

If the license was issued only for the first floor, then the tavern owner would not be able to serve alcoholic beverages on the second floor by the glass or other open receptacle. On the other hand, if the second floor is included in the "licensed premises", then, of course, such sales and deliveries by the glass or other open receptacle to the members of the singing society that holds weekly meetings on the second floor of the same building directly over the tavern would constitute no violation by the licensee of the terms of his plenary retail consumption license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By - Jerome B. McKenna,
Attorney.

13. CHILLED ALCOHOLIC BEVERAGES - WHISKEY - NO RULE AGAINST KEEPING IT ON ICE.

Dear Mr. Burnett:

We would like to know if it is legal to keep whiskey on ice during the summer months.

The people claim the whiskey is too warm. Some people claim it isn't legal to keep whiskey on ice. So please, Mr. Burnett, let us know if it is legal.

Yours truly,
STEVE GAGYO.

July 26, 1936

Mr. Steve Gagyo,
Passaic, N. J.

Dear Mr. Gagyo:

Refrigeration of whiskey is none of your worry, so long as it's not bootleg.

You may keep it on ice, or, if you prefer, fan it.

Very truly yours,

D. Frederick Burnett

Commissioner.