

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

BULLETIN NUMBER 192

JULY 2, 1937

1. DISCIPLINARY PROCEEDINGS - CRIMINAL ASSAULT UPON A.B.C. OFFICERS -
OUTRIGHT REVOCATION PLUS IMPOSITION OF SEVERE CRIMINAL PENALTIES

June 29, 1937

Irvin L. Fritts, Esq.
Township Clerk of Bethlehem
Hampton, R. D., New Jersey

Dear Mr. Fritts:

I have staff report of the proceedings before the Township Committee of Bethlehem against Andrew J. Sexton, t/a "The Jungles," Route 28, charged with (a) having sold alcoholic beverages to minors, (b) having sold and served persons who were actually or apparently intoxicated and (c) having allowed and permitted disturbances and brawls on the licensed premises.

The report states:

"Complaint having been made that violations were taking place in the licensed premises, Investigators Harry W. Creveling and Alfred J. Togno were assigned to investigate.

"On Saturday, June 12, 1937, they proceeded to the licensed premises, arriving there at about 11:30 P. M. Togno entered the barroom while Creveling remained outside in his parked automobile. Togno was served a beer by the licensee's son-in-law, Thomas Beatty. He observed several persons who were intoxicated being served and drinking beer and heard them use foul and indecent language. Between the barroom and the dance hall were swinging doors. Togno entered the dance hall where he could plainly hear all the loud and offensive talk from the barroom. He then went outside and returned to the car in which Creveling was seated. While seated there they observed a group of young men standing about other parked cars on the licensed premises and drinking out of a whiskey bottle. Two fights started which lasted from four to five minutes. Finally a third fight started and then the lights which illuminated the gas pumps were extinguished. At no time during these fights did any employee from the licensed premises attempt to stop them.

"At this point, Creveling and Togno entered the dance hall and took a seat in the booth, one removed from where six boys were seated. The waitress placed a glass of beer before each of these boys. One of the boys, later identified as Howard Stecker, paid for the beers.

"The investigators, at this point, identified themselves; told the boys not to drink the beer and requested them to remain seated until they could get their names, ages and addresses. Stecker rushed at Creveling, shouting all the time. There was a scuffle and Stecker struck at Creveling who attempted to keep

him seated. A woman interfered and immediately there was a rush of men into the room and a free-for-all took place. The boys set upon Creveling and Togno and both were beaten, Creveling most severely. Two, later identified as Russell Staats and Frank Staats, Jr., took an active part in the fight. Togno, seeing Creveling on the floor being assaulted and kicked, appealed to the crowd to help him. He heard the bartender, Thomas Beatty, say, 'Let him kill him.' No one interfered.

"Togno finally got away and summoned the State Troopers, who arrived shortly after and at 2:30 A. M. the place was closed.

"Togno took Creveling home, stopping on the way at a doctor's office where it was discovered Creveling had suffered a severe fractured nose, multiple abrasions and contusions about the head, neck, and back.

"On Sunday, June 13, 1937, Inspector Higgins contacted Prosecutor C. Lloyd Fisher of Hunterdon County who immediately started an intensive investigation resulting in the arrests of

- "1. Andrew J. Sexton, licensee and proprietor. He was charged with having maintained a disorderly house; pleaded guilty before Judge Prall in the Hunterdon County Special Sessions Court and was fined \$150.00.
- "2. Sadie McGuire, the waitress; charged with 'sales to minors'; pleaded guilty and fined \$100.00.
- "3. William Deemer, Sr.; charged with disorderly conduct; pleaded guilty; fined \$7.50.
- "4. Howard Stecker (a minor); charged with having misrepresented his age (under new act); pleaded guilty and fined \$50.00. Also charged with assault and battery. Sentenced by Judge Prall to Rahway Reformatory and fined \$500.00. The jail sentence was suspended.
- "5. Russell Staats; charged with assault and battery. Sentenced by Judge Prall to a prison term and fined \$750.00. The prison sentence was suspended.
- "6. Frank Staats, Jr.; charged with assault and battery. Sentenced by Judge Prall to a prison term and fined \$500.00. The prison term was suspended.
- "7. William Deemer, Jr.; charged with disorderly conduct; pleaded guilty and fined \$7.50.
- "8. William Black (a minor); charged under new act with having misrepresented his age; pleaded guilty; fined \$50.00.

"While the charges were pending against this licensee, he voluntarily surrendered his license. However, the proceedings continued to hearing and resulted in a

Verdict of Guilty.

Sentence - License revoked."

The report speaks for itself. In view of the splendid, prompt and wholehearted manner in which the majesty of the law has been vindicated, there is nothing left for me to do except to pay deep respect to Judge Horace Prall and Prosecutor C. Lloyd Fisher for their action in administering summary justice in the criminal matters; to the members of the Township Committee and their attorney, Anthony M. Hauck, Jr., for their vigorous and effective handling of the civil charges; and to the State Troopers for their help in time of need — and heartfelt admiration, as well as sympathy, to Creveling and Togno who, realizing what they were up against nevertheless nailed their colors, rose to heights and took it like men.

The Hunterdon precedent is an inspiration and a comfort.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

2. MUNICIPAL ORDINANCES - SUBSEQUENT RESOLUTION MAY NOT REGULATE CONDUCT THERETOFORE CONTROLLED BY ORDINANCE UNLESS THE POWER HAS BEEN EXPRESSLY RESERVED IN THE ORDINANCE.

LICENSEES - CLASSES OF LICENSES NOT CONTROLLED BY THE ORDINANCE MAY BE REGULATED BY RESOLUTION.

LICENSEES - LICENSED PREMISES - OPENING AND CLOSING HOURS - REGULATION INEFFECTIVE UNLESS THE OPENING HOUR, AS WELL AS THE CLOSING TIME, IS SPECIFIED.

June 28, 1937

Richard A. Jessen,
Borough Clerk,
Keansburg, New Jersey.

My dear Mr. Jessen:

I have before me your letter of the 23d; also, the resolution adopted by the Borough Council on the 22nd, which provides:

"...the closing time for all premises having a license to sell alcoholic beverages shall be three o'clock, A. M., (Daylight Savings Time)."

My records disclose that the Council has heretofore enacted a regulation dealing with hours of sale and the opening and closing of places of business operating under plenary retail consumption licenses. It is Section 15 of Ordinance No. 223 adopted July 17, 1934 and provides:

"Section 15. No alcoholic beverages shall be sold for consumption in or upon premises licensed under a plenary retail consumption license except on week days between the hours of 6 A. M. and 4:00 A. M., (the following morning) and on Saturdays, Sundays and Days preceding any Holiday

between the hours of 6:00 A. M., and 5:00 A. M., (the following morning), and said hours shall constitute the opening and closing hours for places of business operating under a plenary consumption license, and no such sales shall be made except between said opening and closing hours. In all cases the music shall stop one hour before the closing time."

I find nothing in the ordinance authorizing its amendment by resolution.

In the absence thereof, the resolution cannot affect it.

The ordinance remains in full force and effect until amended, repealed or otherwise superseded by another ordinance. Eisen v. Plainfield, Bulletin 68, Item 12; Sosnow v. Freehold, Bulletin 68, Item 13; Re Wahlstad, Bulletin 90, Item 3; Re Reichenstein, Bulletin 105, Item 10; Re Griffin, Bulletin 117, Item 9. Cf. Re Somerville, Bulletin 110, Item 5.

The net result is that sales of alcoholic beverages by the holders of, and the opening and closing of places of business operating under plenary retail consumption licenses are governed by Section 15 of the ordinance and that the closing time for premises operating under plenary retail distribution and club licenses, as to which the ordinance is silent, is governed by the June 22nd resolution.

Now, as regards the resolution:

The resolution fixes only the closing time. It does not declare when the premises may reopen. It follows that they may reopen at any time, ten minutes later if they choose, thereby making the regulation a nullity.

The remedy is to state in the resolution not only the closing time but also the hour when premises may again open.

The resolution also expressly provides that the time shall be Daylight Saving Time. Daylight Saving Time is in use only from the last Sunday in April until the last Sunday in September. The rest of the year Standard Time applies. I therefore suggest that at the same time the Council amends the resolution to state the opening hour, it also strike out "Daylight Savings Time" and in place thereof insert "The hours referred to shall be deemed to be Standard Time or Daylight Saving Time whichever is the official time for the Borough."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. TRANSPORTATION INSIGNIA - EXTENSION OF TIME.

NOTICE

June 29, 1937

TO ALL LAW ENFORCEMENT AUTHORITIES:

Transportation Insignia which are required on all vehicles transporting alcoholic beverages, and Special Permits for the employment of persons disqualified because of age, residence or citizenship expire at midnight June 30, 1937. New Insignia and Special Permits must be obtained for such transportation and employments for the next fiscal year, July 1, 1937 through June 30, 1938.

However, the issuance of such Insignia and Special Permits by this Department to Retail licensees has necessarily been retarded because of the delay of some of the municipal issuing authorities in certifying the issuance of such licenses. As a result, many retailers throughout the State will be without the 1937-38 Insignia and Special Permits on July 1st.

To avoid hardship and inconvenience to these licensees who have been issued licenses but to whom no Insignia or Special Permits have been issued because of the delay in certification of issuance of the license, an extension of the 1936-37 Insignia and Special Permits has been granted to midnight, July 30, 1937.

D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - CIRIGLIANO v. HAMILTON TOWNSHIP.

MICHAEL CIRIGLIANO,)	
Appellant,)	
-vs-)	ON APPEAL
TOWNSHIP COMMITTEE OF THE)	CONCLUSIONS
TOWNSHIP OF HAMILTON (ATLANTIC)	
COUNTY),)	
Respondent)	
-----)	

Morgan E. Thomas, Esq., Attorney for Appellant.
No Appearance on behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at 500 South Main Street, Mays Landing, Township of Hamilton.

Respondent denied the license without specifying any reason for its action. No answer was filed herein, but in a letter received from the Clerk on June 21st, 1937, he stated that the application was rejected because five residents in the vicinity objected to the issuance of the license on account of it being a residential neighborhood and because the Committee did not believe that the building is in fit condition.

As to the reasons already given, it appears that the premises which are owned by appellant have been licensed ever since Repeal to one Guy Shearer who, a few months ago, obtained a transfer of his license to premises located about three-tenths of a mile away. The section of the Township in which appellant's premises are located is rural in character and is known locally as "Sugar Hill." The evidence introduced shows that Guy Shearer has always conducted the premises in a proper manner, and that no complaints were filed against him. From a photograph taken recently it appears that the building is a two-story substantial structure, with a small one-story addition on the side thereof and, according to appellant's testimony, the premises are in good condition. In view of this testimony and the absence of any evidence by objectors, the reasons set forth in the Clerk's letter of June 21, 1937 are not sufficient to support the action of respondent in denying the license.

It appeared, however, at the hearing that appellant's application was filed on April 28, 1937 and denied on May 17, 1937. In the meantime, namely, on May 3, 1937, respondent adopted the following resolution:

"BE IT RESOLVED by the Township Committee of the Township of Hamilton, County of Atlantic and State of New Jersey, that the number of Plenary Retail Consumption licenses issued by the Township of Hamilton, under the Alcoholic Beverage Control Act be limited to the number of twenty-one (21), with the provision, that, this number be reduced to the number of fifteen (15) as those now issued in excess of this number be relinquished by loss through violations of regulations, causing revocation or by lapsing for want of renewal as provided; with the provision, that, such licensees be permitted to make sale of their businesses as going concerns and that license may issue as provided to such purchasers, and

"BE IT FURTHER PROVIDED that such licensees for cause be permitted to transfer existing licenses to other premises."

At the hearing held on June 23, 1937 appellant alleged surprise and requested an adjournment to produce proof that when the Township Committee adopted its resolution of May 3 it intended to except from the effect of its provisions appellant's application and another which was pending at that time. An adjournment was granted.

On June 29 appellant produced Mr. Walsh, the Tax Collector, who was acting as Township Clerk at the meeting on May 3, and Mr. Ripley, who was present as a private citizen at that meeting. Both of these witnesses testified that before the resolution was adopted a Mr. Goodman, whose application for a license was then pending with appellant's application, asked the Chairman of the Township Committee if the proposed resolution would apply to the two applications then pending. The Chairman, in the presence of the other Commissioners, stated that it would not. Mr. Walsh further testified that he wrote out the resolution exactly as it appears above and read the same to the Committee, which thereupon adopted such resolution as read.

If said resolution is effective, appellant cannot succeed because there are already twenty-one retail consumption licenses outstanding in the Township. Burdo v. Hillside, Bulletin 191, Item 10. The question to be determined is whether the resolution so adopted can be varied by parole evidence. The case of Campbell v. Hackensack (Court of E. & A. 1935), 115 N. J. L., p. 209, is authority for the proposition that the records or duly authenticated copies thereof are the only competent evidence of the official actions of governing bodies, and that they cannot, as a rule, be enlarged or restrained by parole evidence.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 29, 1937.

5. APPELLATE DECISIONS - WALSH v. EGG HARBOR.

ROY J. WALSH,)	
	Appellant,)
-vs-		ON APPEAL
		CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF EGG HARBOR,)	
	Respondent)
- - - - -	- - - - -	- - - - -

Emerson Richards, Esq., Attorney for Appellant.
 C. B. Dixon, Esq., Attorney for Respondent.
 Harry Souchal, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license. The premises sought to be licensed are the same as those considered in a prior appeal, decided October 31, 1936, wherein the action of the Township Committee in denying a previous application of Walsh was affirmed. Walsh v. Egg Harbor Township, Bulletin 146, Item 7.

In that appeal, respondent set up in defense that the premises were in a high-class residential section. It appeared, however, that the nearest house was 7/8ths of a mile away and the nearest group of houses more than a mile and a quarter away. I therefore held that reason without weight.

So the other defenses, save one, set up in the previous appeal, were likewise found without merit or support.

The one ground on which that denial was sustained was the testimony that it had been the policy of the Township Committee to refuse all licenses in that section of the Township locally called "West Atlantic City," in which the Walsh premises were located.

On the present appeal, it now appears that early this Spring, to wit, on March 10, 1937, the Township Committee enacted a resolution declaring that "that part of the Township of Egg Harbor, between Lyons Court and Fish Creek, be and hereby is zoned against the granting of a license to sell intoxicating liquors." Thereafter, on March 24, 1937, Walsh filed his present application, which was denied by a 2 to 1 vote. Hence this appeal.

The section thus zoned against liquor licenses includes the entire residential section of so-called "West Atlantic City," and includes about three blocks of vacant land adjacent to Fish Creek. Appellant's premises not only are not within that zone, but are out on the marshes 2500 feet the other side of Fish Creek. The nearest habitation is nearly a mile away. The nearest licensed place in either direction is over two miles away."

There is no question of the good character of appellant or the high quality of the restaurant he conducts, specializing in clams, oysters and lobsters, with which he claims, not altogether unreasonably, that beer goes together like unto ham with eggs.

In the face of the fact that the Township Committee had specifically excluded the territory where appellant's place is located from the zoned section, the testimony offered in support of the present denial, that the people of West Atlantic City were against the license and wanted to hold it as a residential district, is a mistaken and arbitrary attitude in view of the physical

location out on the swamps in the midst of the cat-tails and the greenheads. The hope that it may in time become a residential section is the only color for the thought that it now is.

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

D. FREDERICK BURNETT,
Commissioner.

Dated: June 29, 1937.

6. APPELLATE DECISIONS - HAGENBUCHER v. SOMERS POINT.

RICHARD J. HAGENBUCHER and)	
ESTHER R. HAGENBUCHER,)	
)	
Appellants,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
COMMON COUNCIL OF THE CITY)	
OF SOMERS POINT,)	
)	
Respondent)	

Emerson Richards, Esq., Attorney for Appellants.
Enoch A. Higbee, Jr., Esq., Attorney for Respondent.
Edison Hedges, Esq., Attorney for Objectors, Mary Strauss and
Hower T. Marsteller.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at 528 Shore Road, City of Somers Point.

These premises have already been the occasion of an appeal involving the appellant Richard J. Hagenbucher. In January, 1934 he obtained a plenary retail consumption license for the premises, and a renewal later in the same year and again in 1935. An appeal of the 1935 renewal was filed by a nearby resident, resulting in a reversal on the ground (1) that a member of the local issuing authority was employed by Hagenbucher and (2) that Hagenbucher had knowingly falsified in his application that he had never been convicted of a crime. Marsteller v. Somers Point, Bulletin 95, Item 11.

The present application was denied on February 15, 1937. Pursuant to Hagenbucher's request, the application and the posted license fee were then returned to him. Such action is legally tantamount to an abandonment of the application and leaves nothing remaining of record from which an appeal may lie. Quinlan v. Allenhurst, Bulletin 81, Item 17, and cases therein cited; and see Radich v. Woodbridge, Bulletin 88, Item 4.

The foregoing is sufficient to justify respondent's action. However, consideration of the merits leads to the same result.

The proposed premises are located on Shore Road in a decidedly residential section of the municipality. The nearest residence is but a few feet south of the proposed premises. In the vicinity, there are large and attractive homes. The hearer, in the presence and at the request of counsel for appellants and counsel for objectors, took a personal view of the neighborhood; and his observations confirm the characterization of the area as distinctly residential.

Somers Point has a resident population of approximately 1700 but a considerably larger summer population. There are already outstanding some 20 licenses, all but one or two of which are of the plenary retail consumption type. Shore Road along its route through the city carries a number of the licensed premises. It is the opinion of the City Council that an adequate number of licenses exists in the general vicinity; and since the time that the license of appellant Richard J. Hagenbucher was declared void in 1935, the Council has repeatedly denied applications for a license covering the proposed site.

A petition of many residents in the neighborhood on Shore Road has been filed with respondent in the past protesting against licensing the proposed premises; and at the hearing on the present appeal, several of the most immediate neighbors voiced strenuous objections.

I have consistently ruled that where, as here, a neighborhood is residential in character and many residents therein are in protest, and a sufficient number of licensed places exists in the general area, denial of a license in that neighborhood cannot be said to be unreasonable. O'Rourke v. Fort Lee, Bulletin 189, Item 14, and cases therein cited.

Furthermore, the evidence reveals that when appellant Richard J. Hagenbucher previously conducted a licensed place at the proposed premises, his establishment was the occasion of many complaints by nearby residents. Loud noises continued in the place after the closing hours provided by local regulation. On several occasions, patrons came outdoors and made a public nuisance of themselves by vomiting or urinating on the grounds of nearby residents. On one occasion, several persons caused a rowdy disturbance in the place which called for the police; on another occasion a serious fight occurred immediately in front of the premises, with the same result. On several occasions, sales were made on the premises to minors. At various times, broken glass was strewn in front of the premises. Throughout this period, appellant Esther R. Hagenbucher, the wife of appellant Richard J. Hagenbucher, was living at the premises and helping with the business.

Respondent's action in denying a license to appellants cannot be characterized as unreasonable in view of such conduct. The fact that the premises sought to be licensed were heretofore conducted improperly is a proper factor to be considered by the issuing authority in determining whether to issue a license. Mulligan v. Lyndhurst, Bulletin 146, Item 6; see Clark v. Haddon, Bulletin 187, Item 3. Nor is it sufficient for appellants to disclaim responsibility for the acts complained of. Mulligan v. Lyndhurst, supra.

In view of the foregoing findings, it is unnecessary to consider the other reasons assigned by respondent and by the objectors in justification of the denial.

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 29, 1937.

7. MUNICIPAL ORDINANCES - APPROVAL - WHEN REQUIRED.

MUNICIPAL ORDINANCES - UNLAWFUL SALES - EXTENT OF REGULATION.

MUNICIPAL ORDINANCES - CONDUCT OF STATE LICENSEES CANNOT BE REGULATED.

EXCISE BOARDS - MAY BE ESTABLISHED ONLY IN MUNICIPALITIES HAVING 15,000 OR MORE POPULATION.

MUNICIPAL INSPECTORS - APPOINTMENT.

LICENSES - ISSUABLE DURING THE FISCAL YEAR TO EXPIRE AT THE END OF THE YEAR.

EXECUTORS AND ADMINISTRATORS - EXTENSION OF LICENSE UPON DEATH OF LICENSEE IS NOT AUTOMATIC BUT SUBJECT TO THE DISCRETION OF THE LICENSE ISSUING AUTHORITY.

PENALTIES - PENALTIES OF FINE OR IMPRISONMENT MUST NOT EXCEED THOSE PERMITTED BY STATUTE - IMPOSITION OF SUCH PENALTIES DOES NOT BAR THE SUSPENSION OR REVOCATION OF THE LICENSE.

SALES TO POLICEMEN AND FIREMEN - RULINGS HERETOFORE MADE.

LICENSEES - REPORTS TO MUNICIPALITIES DISCOURAGED.

LICENSING POWER - NOT DELEGABLE TO A MUNICIPAL INSPECTOR.

LICENSEES - EMPLOYEES - IDENTIFICATION - REGULATION SHOULD APPLY TO ALL LICENSEES AND ALL EMPLOYEES.

HOURS OF SALE - HOURS OF OPENING AND CLOSING - APPLICABLE ONLY TO MUNICIPAL LICENSES.

REGULATIONS DEPENDING FOR THEIR OPERATIVE EFFECT ON ANOTHER ORDINANCE CANNOT BE CONSIDERED FOR APPROVAL WITHOUT THE OTHER ORDINANCE BEING SUBMITTED.

June 29, 1937

Louis F. Lipsey,
City Hall,
Asbury Park, N. J.

My dear Mr. Lipsey:

I have before me the proposed alcoholic beverage ordinance for the City of Asbury Park as to which you ask my approval.

According to Section 37 of the Control Act, my approval is required only of municipal regulations which deal with the conduct of licensed businesses or the nature and condition of licensed premises. Exception is made with respect to regulations limiting hours of sale. See Bulletin 43, Item 2.

I am, therefore, considering for approval only Sections 11 through 15 inclusive and 18. The other sections do not need my approval in order to be effective. So long as duly enacted in accordance with the statutes, they will become legally operative without it. With the exception of the title and of Sections 1 through 10 inclusive, 19 and 20, to which I shall presently refer, they appear to be in proper form.

In the title, third line, strike out "beverage" and in its place insert "beverages." In the fifth line strike out "deposed thereof" and in its place insert "imposed thereon."

Section 1 provides that it shall be unlawful for "any person or persons to operate, use or maintain any store, dwelling or other building or premises" for the sale or dispensing of alcoholic beverages, "without a license first had and obtained as directed by this ordinance." The proscribed conduct is the use and maintenance of premises for the unlawful sale or dispensing of alcoholic beverages. That is good so far as it goes, but it doesn't prevent unlawful sales not made on premises devoted to that purpose. The thing to do is to prohibit all unlawful sales. Moreover, while Section 20 penalizes any "person or persons, firm or corporation and officers thereof," Section 1 deals only with "person or persons." Thus a corporation could not be fined under Section 20 for the operation of an unlicensed premises, for the reason that Section 1 makes it unlawful only for "person or persons" to do so. Further, Section 1 makes it unlawful to maintain any building for the sale of alcoholic beverages without a license obtained "as directed by this ordinance." What about a State licensee who may have his plant and salesroom in Asbury Park? I doubt that it was your intention to require State licensees to obtain an additional license under the ordinance. None, in fact, are provided. It would not be legal in any event. I suggest that Section 1 be revised to read somewhat as follows:

"No person, partnership, company, corporation or association shall possess, sell, distribute or transport any alcoholic beverage in the City of Asbury Park in violation of any of the provisions of 'An Act Concerning Alcoholic Beverages,' passed December 6, 1933, P. L. 1933, C. 436, as amended and supplemented, hereinafter referred to as the 'Control Act', or the provisions of this ordinance."

Section 2 declares that the Mayor and Council shall be "The Alcoholic Beverage Control Board of the City of Asbury Park." According to Section 5 of the Act, only municipalities having a population of 15,000 or more, according to Federal or State census, may create Municipal Boards of Alcoholic Beverage Control. Asbury Park, according to the last census, has a population of 14,981. It may not, then, establish such a board. Strike out from Section 2, "constituted 'The Alcoholic Beverage Control Board of the City of Asbury Park', and are hereby." The Section will then read:

"The Mayor and Council of the City of Asbury Park are hereby designated as the proper issuing authority to administer the issuance of all licenses as herein provided."

Each reference to the Alcoholic Beverage Control Board in subsequent Sections of the ordinance should likewise be excised. Use instead "the Mayor and Council" or "the license issuing authority" or other appropriate designation.

Section 3 provides for the appointment of an "Inspector to the Board" to investigate applicants and premises, to inspect licensed premises and to enforce the Control Act and the State and municipal regulations. I note that Section 12-(g) refers to an "Alcoholic Beverage Control Inspector." I take it that this is the position created in Section 3. The inspector should be designated in Section 3 by his official title and thereafter referred to by that name. Hence, excise from Section 3 "an inspector to the Board" and in place thereof insert "an inspector designated and referred to hereafter as the Municipal Alcoholic Beverage Inspector" or some other appropriate name. There is nothing in the Control Act dealing with the appointment or the duties of Municipal Alcoholic Beverage Inspectors. In the absence thereof, it would seem

that the authority for such appointments must be derived from the Home Rule Act and other pertinent municipal statutes. It is a matter of local municipal law as to which the City Counsel should advise. I express no opinion on the validity of the Section one way or the other.

In Section 4, eighth line, change "retail" to "retain;" in the tenth line, change "described" to "designed" and at the end of the twelfth line add "and of this ordinance."

Section 5, as written, is merely a direction to the Council to issue licenses in the manner prescribed by the Act. So far so good. It occurs to me that what you actually meant was to go further and make all licenses granted subject to the terms and provisions of the Act. I suggest that the section be revised to read:

"All licenses granted shall be issued in conformity with and shall be subject to the terms and provisions of the Control Act and this ordinance."

To the extent that Section 6 deals with license fees, it will be satisfactory, provided the fees are fixed within the statutory limits. The last paragraph of the section, however, provides:

"All license fees required hereunder shall be paid in cash or by certified check and the full amount thereof must accompany each application for licenses when presented. All licenses shall be issued for one (1) year, commencing July 1st, and ending the following June 30th, at midnight."

While it does not necessarily imply that licenses can't be issued during the fiscal year, it carries the inference that if issued during the fiscal year the full yearly fee must be paid. License fees are prorated according to the effective date of the license. If a license is taken out July 1st, the full yearly fee must be paid but if taken out during the year the fee is prorated from date of issuance to the June 30 following. Hence, revise the last sentence of Section 6 to read "All licenses shall expire at midnight June 30th of each year." No need to refer to the proration of the fees as that is controlled entirely by statute. See in the Act Section 23.

In Section 7, lines 1, 4 and 6 insert "plenary" immediately preceding "retail consumption." In line 5 change "relinquishment" to "surrender."

In Section 8, lines 1, 4 and 6, insert "plenary" immediately preceding "retail distribution."

Section 9, which provides that upon the death of a licensee, his license may inure to the benefit of his personal representative, deals, in part, with a matter completely controlled by statute. Cf. Section 23, 2nd paragraph, of the Act. "Inure" implies that the privileges conferred by the license shall automatically pass. The Statute requires that the license issuing authority, in its discretion, expressly authorize the extension. If you think it desirable to include such a provision in your ordinance, I suggest you replace your present Section 9 with the first sentence of the paragraph of the Act indicated. It might better be left out entirely; the statute affords both the licensee and the City full protection.

In Section 10, first line, excise the comma between "club" and "license." The correct designation is "club license."

Section 19, recites verbatim the causes for revocation specified in Section 28 of the Act. Some of these causes, however, have reference only to State licenses; others, only to revocations by the Commissioner. There is no need to include them in the ordinance. To leave them out will help to reduce the costs of publication. I suggest that Section 19 be revised to read:

"Any license issued pursuant to this ordinance may be suspended or revoked for violation of any of the provisions of the Control Act or of this ordinance or of the rules and regulations promulgated by the State Commissioner of Alcoholic Beverage Control, now or hereafter in effect."

Section 20 imposes maximum penalties of fine and imprisonment of \$500 and 364 days, respectively, for violation of the ordinance. If Asbury Park is governed by the Home Rule Act, the maximum penalties that may be imposed are \$200 fine, or 90 days imprisonment, or both. Re Hillside, Bulletin 69, Item 9. The penalties you may impose depend on the powers delegated to your municipality in the statutes. As to this, the City Counsel should advise. As regards the right reserved to suspend or revoke despite the imposition of fine or imprisonment, strike out "and in addition thereto, said licensee may have said license revoked by the issuing authority for the violation of any section of this ordinance." "Said licensee" and "said license" don't refer to anything. Then, add to Section 20, a separate sentence reading: "Prosecution under this section shall not bar proceedings to suspend or revoke the license, pursuant to Section 19."

Sections 11 through 15 and 18 of the ordinance which deal with the conduct of licensed businesses and the nature and condition of the licensed premises require my approval to be effective. They are approved except as follows:

Section 11, third line, excise the comma between "hotels" and "guests." As it now stands, the last part of the regulation nullifies the first and the net result is no regulation at all. I take it that it was your intention to prohibit service in any room not open to the public generally except in guest rooms or private dining rooms of hotels.

From Section 12-(c), fourth line, strike out the comma between "mental defective" and "habitual drunkard" and in its place insert the word "or." As it now stands, sales to "any mental defective, habitual drunkard" are prohibited. I take it that you wish to prohibit sales to either mental defectives or habitual drunkards, not solely to those persons who are both mental defectives and habitual drunkards.

Section 12-(d), insofar as it prohibits sales to policemen or firemen "on duty" is disapproved for indefiniteness for the reasons stated in re Johnson, Bulletin 110, Item 11. If you will revise it and resubmit it along the lines of the regulations in re Miller, Bulletin 117, Item 3 and Bulletin 117, Item 7, it will be approved.

In connection with Section 12-(e) which prohibits the employment of minors to sell or solicit the sale of alcoholic beverages, see Rule 2 of the Rules Governing Employment, pamphlet

Rules, page 16, which also prohibits minors from serving or handling alcoholic beverages. I suggest that you revise 12-(e) to make it as broad as the State Rule.

Section 12-(f) requires monthly reports by each licensee of the amount of alcoholic beverages on hand, the source of supply, the means of delivery, the number and size of containers purchased, the age and brand of the beverages, and such other information as may be required. Technically, I suppose it is within your power to require such reports and therefore I shall give the regulation tentative approval. But it does seem to me that the information thus elicited will be of little or no actual value. The Tax Department uses such reports to check back against wholesalers. Yours will be useful only as an inventory and will be out of date the day after it is filed. Licensees are now required to submit monthly report of sales to the State Tax Commissioner; there seems to be no real need for imposing the additional burden of a similar municipal report. Unless you have some specific use for the information in mind, I suggest that you excise this section completely. At any rate, the reference to the "Alcoholic Beverage Control Board" should be stricken out. See my comments with respect to Section 2. The report, if required, should be made to the City Council.

Section 12-(g) is disapproved. As drawn, it gives the Municipal Alcoholic Beverage Inspector a veto power over applications if he does not "approve" the licensed premises. No such power may be delegated to the Inspector. Applications may be granted or denied only by the Council. Re Guttenberg, Bulletin 66, Item 8. Likewise, the provision that for failure to "abide by any directions for a change in the premises about to be licensed" the application shall be denied, is also bad. So also, the reservation of power to revoke a license for alteration of the premises "in any way contrary to the directions" of the Inspector, goes entirely too far. Licenses may be revoked only for good and sufficient cause. I suggest that you omit 12-(g) entirely. The right to inspect premises of both applicants and licensees is conferred by statute. See re Schwenker, Bulletin 187, Item 10. Municipal license issuing authorities may, in their discretion, deny licenses for premises found to be unsuitable or grant the applications upon special condition that the defect described shall first be remedied. Re Salter, Bulletin 184, Item 8 and the items cited therein. No need to reserve these powers in the ordinance.

Section 12-(i) through 12-(m) which deal with the identification of persons engaged in the liquor trade apply only to licensees, their agents, bartenders and waiters. Agents, bartenders and waiters do not comprise all employees of licensees. There are, in addition, managers and others acting in executive capacities, chefs, kitchen help, cashiers, bus boys, porters, musicians and entertainers. Should not the rules also apply to them? And what about corporations? You can't fingerprint a corporation and where the officers, directors and stockholders are not themselves actually engaged in the business as agents, bartenders or waiters, under your rules no identification would be required.

If you want to make a clean sweep of it and make these regulations really effective, the thing to do is to make them applicable to every individual, partnership or corporation holding a license and to all persons connected in any capacity whatsoever with the licensee's alcoholic beverage business as director, officer, stockholder, partner, owner, employee or otherwise. Then you will have real control.

Section 12-(i), as it now stands, purports to call for questionnaires regarding the location, nature and condition of

licensed premises and the personal history of employees, from the licensee and also from his agents, bartenders and waiters. The information regarding the premises should be required of the licensee, not of his employees. The personal histories should come from the individual employees themselves. There is nothing in the section requiring personal histories of licensees. As noted above, such a regulation to be really effective should apply to all in the industry. Correct the reference to the "Alcoholic Beverage Control Board." See re Section 2 above.

Sections 12-(j), (k), (l) and (m) should, as pointed out above, likewise be made to apply to all licensees and employees. As now worded, they apply only to some employees and not at all to corporations. Also, correct the references to the Alcoholic Beverage Control Board.

In Section 12-(k) change the word "resolution" in the fifth line to "ordinance" and then put a comma between "ordinance" and "which." Also, in the sixth line change "exhibited" to "examined."

I note that Section 13 attempts to deal with house-to-house solicitation. Such solicitation has already been made the subject of State rule. See Rule 3 of the Rules Concerning Conduct of Licensees, pamphlet Rules, Page 55. Please revise your Section 13 to read identically with the State rule.

Section 14 commences "No person or persons, partnership, firm, corporation, limited partnership or association, shall sell or serve any alcoholic beverage between the hours of A.M. and twelve o'clock noon on Sundays,....." The regulation, as worded, will prohibit all service of alcoholic beverages on Sunday between the stipulated hours wherever and howsoever made, whether by licensees or by persons not holding licenses in their own homes. I take it that what you meant to prohibit was the sale or service of alcoholic beverages on licensed premises.

Furthermore, the regulation fixes only Sunday hours. It is silent as to weekdays. Your earlier resolutions fix hours of sale on Sundays and on weekdays as well. Section 14 itself later requires, after making the hours of sale the hours during which premises must be closed, that consumption licensees shall draw aside their curtains and screens during the closed hours on both weekdays and Sundays, all of which as regards weekdays is utterly ineffective unless you fix the weekday hours of sale. Cf. Re May, Bulletin 180, Item 5.

Section 14 continues ".....and no place or establishment licensed under an Act of the Legislature of the State of New Jersey, entitled 'An Act Concerning Alcoholic Beverages,' shall be open during the above prohibited hours, except that restaurants, drug stores and establishments where the principal business is other than the sale of alcoholic beverages, may remain open during the above prohibited hours for such other purposes only." Establishments licensed under the Act include those operating under State licenses as well as those operating pursuant to licenses issued by the municipality. I take it that what you actually mean is that the regulation should apply only to those licenses issued under the ordinance. Your power to control the conduct of State licensees is extremely doubtful. The proviso enabling restaurants, drug stores and establishments where the principal business is other than the sale of alcoholic beverages to remain open for the privilege of conducting their other businesses during the hours other licensees are required to be closed, is tentatively approved subject, of course, to review on appeal. See Peck v. West Orange, Bulletin 147, Item 1, Peck v. West Orange, Bulletin 171, Item 10 and the items cited therein.

Section 14 should be corrected accordingly. I offer for your consideration the following:

"No alcoholic beverages shall be sold at retail in the City of Asbury Park between the hours of a.m. and a.m. on weekdays or between the hours of a.m. and twelve o'clock noon on Sundays.

"During the hours hereinabove set forth when sales are prohibited, all licensed premises except restaurants, drug stores and establishments where the principal business is other than the sale of alcoholic beverages, must likewise be closed. Establishments where the principal business is other than the sale of alcoholic beverages may remain open during those hours for the conduct of such other business.

"During the hours they are required to be closed, all plenary retail consumption licensees shall draw aside any curtains or screens obscuring the view of the interior from the street.

"The hours hereinabove mentioned shall be deemed to be Standard Time or Daylight Saving Time whichever is the official time for the City.

"The hours of sale and of closing hereinabove imposed shall not apply on January 1st of each year."

Section 15 endeavors to prohibit lotteries, gambling, gambling games and gambling devices. The subject matter is fully covered by State rule. See Rules 6, 7 and 8 of the Rules Concerning Conduct of Licensees, pamphlet Rules, Page 56. I suggest that for the sake of uniformity you strike out your Section 15 and in its place, insert the three State rules.

I note that Section 18 prohibits plenary retail consumption licensees from having any concert, cabaret, dancing or entertainment unless a license, as may be required by ordinance now existing or hereafter enacted, is first obtained. The cabaret ordinance has not been submitted. I do not have it before me. Without it I cannot consider Section 18.

The approvals hereinabove given are subject, as in the case of all municipal regulations given ex parte approval, to review on appeal. See re Hauck & Felter, Bulletin 130, Item 3, and the items cited therein.

Very truly yours,
L. Frederick Bennett

Commissioner.

Inspected by:
J. L. ARTS
and found O. K.