

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

BULLETIN NUMBER 181

JUNE 3, 1937.

1. LICENSES - EMPLOYEES - QUALIFICATIONS - MORAL TURPITUDE AND OTHER
DISQUALIFICATIONS CONSIDERED.

Dear Commissioner Burnett:

The Parole Division of the Department of Institutions and Agencies is responsible for the supervision of released inmates from state correctional institutions, and it is the desire of this Division to instruct all offenders in the provisions of the Alcoholic Beverage Control Act. We would like an interpretation of paragraph 22, page 21 and paragraph 23, page 23 beginning "no person who would fail to qualify for a license under this Act, etc."

I have before me an editorial captioned "Moral Turpitude?" appearing in the Herald News, Passaic, New Jersey, under date of Wednesday, November 18, 1936, in which the case of the youth on parole from Annandale sought employment as a barman, counterman and porter, not handling liquors, who apparently was given special consideration by you.

One of the chief responsibilities of the state parole officers is to see that their charges are regularly and legitimately employed. Occasionally officers report that a parolee has obtained a position in a restaurant or a grill that dispenses alcoholic beverages. Such positions consist in waiting on table, working in the kitchen or cleaning up the establishment. We are anxious to know if there is a blanket ruling prohibiting anyone on parole to accept a position of this kind where the actual dispensing or handling of liquor is not a part of their job.

We would appreciate very much the opportunity of discussing our particular problem with you at your convenience for we believe you can be of help to us.

Sincerely yours,
DEPARTMENT INSTITUTIONS AND
AGENCIES.

L. N. Yepsen, Director,
Division of Classification
and Parole.

May 27, 1937

L. N. Yepsen, Director,
Division of Classification and Parole,
Department of Institutions and Agencies,
Trenton, New Jersey.

My dear Mr. Yepsen:

To put it briefly, the Control Act, Section 23, prohibits anyone who would fail to qualify as a licensee from being knowingly employed by or connected in any business capacity whatsoever with a licensee. That means that employees of licensees must qualify as licensees in their own right. Licensees, according to Section 22, must be over twenty-one years of age, citizens of the United States, residents of New Jersey for at least the five years immediately prior to the submission of the application and shall not have committed two or more violations of the Control Act nor have been convicted of a crime involving moral turpitude.

New Jersey State Library

The only exception which the statute allows is that in Section 23, whereby persons failing to qualify as to age or residence or citizenship may, with the approval of the Commissioner and subject to rules and regulations, be employed but not in any manner whatsoever to sell or solicit the sale of any alcoholic beverages.

Assembly Bill 382 which has now passed both Assembly and Senate goes shortly to the Governor for consideration. If it becomes law, it will amend Section 23 by eliminating the condition that the employee cannot serve, sell or solicit the sale of alcoholic beverages in any manner whatsoever, so far as persons now disqualified merely by lack of residence are concerned. They must, however, still be of age and American citizens and otherwise qualified.

The question before you, I take it, is how all this affects the employment in licensed liquor establishments of persons out on parole.

The mere fact that a person is out on parole does not necessarily disqualify him. A parolist is not barred from being either employee or licensee unless he fails to meet the statutory requirements.

My chief concern is whether or not the offense for which he was convicted involves moral turpitude.

The answer, of course, depends to some extent upon the circumstances of each case. There is no hard and fast rule as to what constitutes moral turpitude. If there is any doubt, petition requesting a determination may be addressed to me as State Commissioner in accordance with the procedure set out in Bulletin 173, Item 15. After hearing has been held and all parties have been heard, decision will be rendered on the merits. The age of the parolist at the time he committed the crime is material. I place a different construction on the acts of minors under eighteen years of age than on the conduct of persons who are older. What may be turpitude in the case of an adult may be mere mischief or misdirection in the case of a youth of tender years. The considerations involved and the principles applicable are set forth in Bulletin 141, Items 1, 2 and 3. In connection with the latter, see also Chapter 174, P. L. 1936 which goes even farther than the statutes therein cited. The policy expressed in these rulings has received most cordial support. Re Pennington, Bulletin 149, Item 8; Re Murphy, Bulletin 149, Item 10; Re Souter, Bulletin 149, Item 11; Re Blank, Bulletin 149, Item 12; Re Barison, Bulletin 154, Item 8. All cases involving minors will be considered in the light of these rulings.

If the crime is found to have involved moral turpitude, the offender would be completely disqualified - he could be neither licensee nor employee. On the other hand, if it is the conclusion that the crime did not involve moral turpitude, the offender would not be disqualified because of that particular conviction, and if otherwise fully qualified, he could be licensee or employee without first obtaining any permit from me. If, however, there is no turpitude involved but he fails to qualify because of age, residence or citizenship, he may not be employed unless and until a special permit, as required by Section 23, has first been obtained. Such special permits, as hereinabove noted, are issuable only for employments not involving the sale or solicitation of the sale of alcoholic beverages, except if Assembly Bill 382 becomes law, in the case of persons disqualified merely by non-residence.

I shall be glad, as you request, to discuss the problem with you. When you find that you can conveniently get to Newark, simply

call my Secretary at the office, Market 3-3970, and she will arrange a time mutually convenient.

Copies of the items hereinabove referred to, together with copy of the Rules Governing the Employment by Licensees of Persons Failing to Qualify as to Age or Residence or Citizenship, have been sent you under separate cover. Numerous special rulings as to whether or not particular crimes committed have involved moral turpitude have heretofore been made and will continue to be made as requests come in in the future. It is likely that some will fit the problems with which you have to deal. If, when you have a particular case before you, you will write me and give me the complete details, I will endeavor to help you specifically on it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. MUNICIPAL ORDINANCES - APPROVAL - WHEN REQUIRED.

RETAIL LICENSES - FEES - APPLICANT NEED DEPOSIT ONLY PRORATED FEE WITH APPLICATION.

RETAIL LICENSEES - MUNICIPAL REQUIREMENT OF FIVE YEARS' RESIDENCE IN MUNICIPALITY - OPINION AS TO REASONABLENESS RESERVED PENDING APPEAL.

MUNICIPAL ORDINANCES - CONDUCT OF STATE LICENSEES CANNOT BE REGULATED.

CLUB LICENSES - MUNICIPAL REGULATIONS MUST NOT BE INCONSISTENT WITH THE STATE ACT OR THE STATE RULES.

LIMITATION OF LICENSES - EXCEPTION ALLOWING CONVERSION OF CLUB LICENSE INTO PLEINARY RETAIL CONSUMPTION LICENSE PERMISSIBLE - EXCEPTION IN FAVOR OF RENEWALS.

TWO HUNDRED FOOT RULE - UNNECESSARY TO REENACT BY MUNICIPAL ORDINANCE.

MUNICIPAL ORDINANCES - PENALTY SECTIONS - MINIMUM PENALTIES ARE PROHIBITED BY THE HOME RULE ACT.

MUNICIPAL ORDINANCES - THE STATUTE CONFERS THE AUTHORITY TO REGULATE ONLY THE POSSESSION, SALE, DISTRIBUTION AND TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF THE ACT.

MUNICIPAL ORDINANCES - VIOLATION OF THE ACT MAY NOT BE MADE SUBJECT TO FINE OR IMPRISONMENT IMPOSED BY ORDINANCE.

HOURS OF SALE - INACCURATE DESIGNATION OF HOURS NULLIFIES THE REGULATION.

MINORS - MENTAL DEFECTIVES - HABITUAL DRUNKARDS - PROHIBITION OF SALES FOR ON-PREMISES CONSUMPTION APPROVED - EXTENSION OF THE PROHIBITION TO SALES FOR OFF-PREMISES CONSUMPTION RECOMMENDED.

May 26, 1937

Abraham D. Glass, Esq.,
Borough Attorney,
Carteret, New Jersey.

My dear Mr. Glass:

I have before me your letter of April 28th; also, the copy of the proposed alcoholic beverage ordinance prepared for the Borough of Carteret, 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 13 and 14. 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 Sections 3, 6, 8, 9, 12, 16, 17, 18 and 20, to which I shall presently refer, they appear to be in proper form.

Section 2 makes all applications for licenses under the ordinance and all licenses issued thereunder and proceedings in connection therewith, subject to the provisions of the State Act and the State Commissioner's and the Council's rules and regulations. Section 3, except to the extent that it requires all applicants other than for club license to have been residents of the Borough for the five years preceding date of application, merely sets out specifically, in one instance erroneously, some of the particular requirements referred to generally in Section 2. It is not necessary in all instances that the annual license fee accompany the application. Where application for license is made for the full fiscal year - yes, but when application is made during the fiscal year, the applicant need submit only the prorated fee from date of application to the end of the year. Again, the section requires with the application "proof of publication of notice and otherwise, as may be required by the said Act and under this ordinance." Now the ordinance itself sets up no requirements concerning publication so I presume that the purpose was to include them by reference. This, however, has already been done in Section 2. Section 3, to the extent that it merely repeats the statutory requirements, is unnecessary. See Bulletin 43, Item 8. I suggest that all except the requirement of five years' residence in the Borough be struck out.

A number of the municipalities have adopted local regulations requiring applicants for retail licenses to be residents of the municipality. While they are not subject to my approval first obtained, they may, nevertheless, in connection with the denial of licenses, come before me on appeal. Two have already come up; Iamello v. Rumson, Bulletin 77, Item 9; McHugh v. West Deptford, Bulletin 106, Item 1. The former involved a regulation requiring one year's residence in the municipality. The regulation in the latter case required two.

Both I held to be reasonable. Opinion as to whether or not yours requiring five years' residence is likewise reasonable is expressly reserved pending hearing on appeal at which time I will have the benefit of argument both pro and con and will render decision on the merits.

Section 6 provides: "It shall be unlawful to sell or distribute alcoholic beverages in the Borough of Carteret without a license previously applied for and granted, pursuant to the provisions of this ordinance and said Act."

The only licenses which can be applied for and granted pursuant to the provisions of both the ordinance and the Act are plenary retail consumption, plenary retail distribution and club. Section 6, however, makes it unlawful to sell or distribute alcoholic beverages except pursuant to licenses granted pursuant to both. As worded, it prohibits sale or distribution under State licenses. They are neither applied for nor granted pursuant to the ordinance. I doubt that it was your intention to make sale and distribution by State licensees unlawful. It would not be legal

in any event. I therefore suggest that the words "this ordinance and" be excised. The section will then conclude: "pursuant to the provisions of said Act." It will not prejudice you for in so far as the issuance of local retail licenses are concerned, you are fully protected by statute. Re Plainfield, Bulletin 161, Item 6; Re Laurel Springs, Bulletin 55, Item 6.

In Section 8, first line, insert "retail" immediately following "plenary." The correct designation of the license is "plenary retail distribution."

In Section 9, ninth line, insert "recreational," immediately following "religious." If club licenses are issued at all, they must be issued to all those which fall within the statutory definition and fulfill the requirements. Hence, do not change the statutory language when designating the types of clubs to which licenses may be issued. Re Siracusa, Bulletin 71, Item 1.

Section 9 provides, in conclusion that applicants for club licenses "shall have been in active operation for three years preceding the making of the application, and shall have been in exclusive continuous possession and use of the club house or club quarters for said period of time in the Borough of Carteret."

The State Rules Governing the Issuance of Club Licenses, Rule 2, prohibit the issuance of club licenses unless the club has been in active operation in New Jersey for at least three years continuously immediately prior to the submission of the application and has been in exclusive, continuous possession and use of a club house or club quarters for the same period of time, but bona fide organizations deprived of continuous possession and use by reason of foreclosure or for cause no fault of their own, may, nevertheless, obtain club licenses upon proof of their bona fideness and that possession of suitable premises has been obtained. Further, duly enfranchised chapters of national or state orders, which order has been in active operation in New Jersey for three years, may obtain club licenses if the chapter is duly credentialed by the national or state order and approved by the Commissioner. For the Rules Governing Club Licenses, see the compiled State Rules, Regulations and Instructions, page 25. It is not necessary in all cases that the club be in active operation for three years or in exclusive possession of club house or club quarters in Carteret for the same period of time. I suggest that the concluding sentence of Section 9 be omitted and that in its place, you insert "No license shall be granted to any club except in conformity with the State Rules Governing the Issuance of Club Licenses." The State Rules cover the subject matter comprehensively and will afford you full protection from the licensing of doubtful or fly-by-night organizations.

If you strike out Section 3 to the extent above suggested, then also strike out from lines three and four of Section 11 the words "as herein provided." Section 11, so far as it pertains to the payment of license fees, will then provide simply that "all fees shall be paid in advance upon presentation of the application."

Section 12 limits the number of plenary retail consumption licenses to one for each 500 of population as determined by the last Federal Census. It then goes on to say that the limitation shall not affect those now holding licenses who may renew same. So far, so good. An exception allowing renewals of presently existing licenses is but fair.

It further provides, however, that the limitation "shall not affect any club, officer or member of such club at present holding a "Club License" where such club license is replaced by a plenary retail consumption license; replacement to be by consent of the duly

authorized officers and trustees of said club." An individual, even though he be officer or member of the club, can't hold a club license. Club licenses are issuable only to corporations, organizations or associations. See in the Act, Section 13, sub. 5. I take it that what you are trying to do is provide for an exception enabling a club which holds a club license at the time the ordinance is adopted, to convert it into a plenary retail consumption license notwithstanding the limitation. If such is the case, why not then say simply "provided, however, that this limitation shall not prevent the surrender of any club license outstanding at the time this ordinance is adopted and the issuance and renewal of a plenary retail consumption license in its place." The very fact of surrender implies the club's consent.

The section provides, in conclusion, that the limitation "shall not prohibit the transfer of a plenary retail consumption license to a bona fide purchaser of a business being conducted under a plenary retail consumption license." You must also allow the renewals of such transfers. Hence, insert "or the renewal thereof" immediately following the words "the transfer of a plenary retail consumption license." The exception will then read: "and provided further however, that this limitation shall not prohibit the transfer of a plenary retail consumption license, or the renewal thereof, to a bona fide purchaser of a business being conducted under a plenary retail consumption license."

Section 16 prohibits the issuance of any license within two hundred feet of a church or public school unless a waiver from the church or school has first been obtained, said distance to be measured in the normal way that a person would properly walk from the nearest entrance of the church or school to the nearest entrance of the premises sought to be licensed.

Section 76 of the Control Act (C. 436, P. L. 1933 as amended by C. 85, P. L. 1934) upon which your Section 16 is based, prohibits the issuance of licenses within two hundred feet of churches or public schoolhouses or private schoolhouses not conducted for pecuniary profit, except to manufacturers, wholesalers, hotels, clubs and fraternal organizations which owned or were actually in possession of the licensed premises at the time the Act became effective, further providing for a waiver of the protection of the section, for the manner in which the two hundred feet are to be measured and for an exception in favor of licensed premises within two hundred feet of which churches or schoolhouses were located after the issuance of the license.

If you choose to include Section 16, it should, of course, be brought into line with the statute. But why include it at all? As I pointed out in connection with Section 3, the provisions of the Act need not be repeated in the ordinance for them to be effective. If you leave out Section 16, you will be saved the trouble of amending it each time the statute may be changed and it will also help you to reduce the incidental cost of advertising.

In Section 17, second line, change the "to" which follows the word "instructions" to "from." The section will then commence "Any person, excepting an officer, or other person authorized by and acting pursuant to the instructions from such officer,..."

Also, strike out from Section 17 the minimum penalties. The Home Rule Act prohibits mandatory penalties. Minimum penalties are mandatory penalties. If your municipality is governed by the Home Rule Act, the minimum penalties should be omitted. See Re Hillside, Bulletin 69, Item 9; Re Plainfield, Bulletin 161, Item 6. The section from the fifth line to the end should be revised to

read: ".....shall upon conviction thereof be subject to a fine of not more than \$100.00 or imprisonment for not more than ten days, or to both such fine and imprisonment in the discretion of the court."

According to Section 18, it would be a violation of the ordinance for any person to manufacture, sell, distribute, bottle, blend, rectify, treat, mix, process, warehouse or transport any alcoholic beverages in violation of the ordinance and the Act, or to possess alcoholic beverages with intent to do so, and to possess implements for that purpose with intent so to use the same, or to aid or abet another in so doing.

The Control Act, Section 37, as last amended by Chapter 257, P. L. 1935, confers the authority upon municipal governing bodies to make, enforce, amend and repeal such ordinances as they may deem necessary to prevent "the possession, sale, distribution and transportation of alcoholic beverages within its municipality in violation of this act." That is as far as the statute goes. Municipalities may not, therefore, enact ordinances prohibiting conduct not expressly referred to in the grant of power. The very fact that the Legislature has specified certain conduct, viz., possession, sale, distribution and transportation, in regard to which local ordinances could be enacted, excludes by implication all other conduct such as the manufacturing, bottling, blending, rectifying, treating, mixing, processing, or warehousing referred to in Section 18. See Re Plainfield, Bulletin 161, Item 6; re Red Bank, Bulletin 91, Item 2.

I suggest that Section 18 be revised and that it be confined to the possession, sale, distribution and transportation of alcoholic beverages. I offer for your consideration the following:

"Section 18. No person shall possess, sell, distribute or transport any alcoholic beverages in the Borough of Carteret in violation of any of the provisions of this ordinance or said Act."

Section 20 purports to penalize by fine or imprisonment or both anyone who shall knowingly violate any of the provisions of the ordinance and the Act. From the third line, strike out "and said Act." The Council has no authority to establish penalties of fine or imprisonment or both for violations of the Act itself. The Legislature alone has that power. Municipalities may penalize only for violation of municipally imposed duties. Violations of the Act are made misdemeanors by the Act and hence, are not within the jurisdiction of your local magistrates to adjudicate upon. Re Orange, Bulletin 52, Item 1; Re Orange, Bulletin 69, Item 3.

Sections 13 and 14, which according to the statute require my approval, will be approved as submitted subject to the following comments and exceptions:

Section 13, to the extent that it limits hours of sale, for the reasons stated in Bulletin 43, Item 2, does not need my approval in the first instance in order to be effective.

I note, however, that the hours of sale, during which hours the part of the premises in which alcoholic beverages are sold is also required to be closed, are designated in lines four and five as "the hours of 1 A. M. and 7 A. M. of the following morning." Strike out "of the following morning." The 1:00 A. M. and 7 A. M. to which you refer are in the same morning. If the 7:00 A. M. properly referred to 7:00 A. M. the following morning, it would follow that licensed places would have to be closed all day.

Also, in Section 13, ninth line, insert "municipal or special election days" immediately following the word "general" and strike out "or any school elections" in order that your rule may apply to the same elections as the State rule. See in the Rules Concerning Conduct of Licensees, Rule 2.

Section 14 provides, in part, that licensees "shall not sell or serve to any minor, mental defective or habitual drunkard any alcoholic beverage for consumption upon the premises." It does not prevent sales of alcoholic beverages to minors, mental defectives or habitual drunkards for consumption off the premises. The statute, Section 77, makes any sales of an alcoholic beverage to a minor a misdemeanor. Rule 1 of the State Rules Concerning Conduct of Licensees prohibits licensees from selling, serving or delivering alcoholic beverages to minors whether for consumption on or off the premises. If sales of alcoholic beverages for consumption on licensed premises to mental defectives and habitual drunkards are undesirable, such sales for consumption off the premises are at least equally as undesirable. I approve your section in this respect so far as it goes, but cordially suggest that its provisions be amplified as above indicated to apply to sales for off-premises consumption as well.

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,

D. FREDERICK BURNETT,
Commissioner.

3. TRADE JOURNALS - PUBLICATION OF NOTICE OF INTENTION - TRADE JOURNALS CIRCULATING IN THE LIQUOR INDUSTRY ARE NOT QUALIFIED TO PUBLISH NOTICES OF INTENTION.

May 21, 1937

My dear Commissioner:

May we have a ruling on our right to accept legal advertising on the intention of licensees to renew their licenses, for the Beer, Wine & Liquor Weekly.

We are a weekly trade paper and have been publishing regularly since repeal. If we are permitted to accept these legal advertisements, may we have a ruling as to the territory we can cover.

Sincerely yours,
Joseph Matzner,
Editor.

May 28, 1937

Joseph Matzner, Editor,
Beer, Wine & Liquor Weekly,
Newark, N. J.

Dear Sir:

I have your letter of May 21st.

Section 22 of the Control Act provides that notice of intention shall be inserted in a newspaper printed in the English

language and published and circulated in the municipality in which the premises sought to be licensed are located. The numerous interpretations of this section which have heretofore been made, have all endeavored to give full and complete effect to the legislative intent that the notice be published in such manner that it will be likely to reach objectors and all other persons who may be interested in the application. Cf. Bulletin 67, Item 16.

The courts have consistently held that trade periodicals which do not contain any substantial news of a general character, are not qualified to publish legal advertisements. Cf. Continental Life Insurance Co. v. Mahoney, 49 S. W. (2d) 371, 373 (Ark. 1932); State v. Rose, 114 So. 373, 374 (Fla. 1927). In the Mahoney case, the court said:

"The primary purpose for the printing of legal advertisements and notices of sale of property under orders of a court is to give to the notice the widest publicity practicable. Therefore, the definition of a newspaper, within the meaning of the statute is to be taken in its popular sense, which is one to which the general public would resort in order to be informed of the news and intelligence of the day and which is published at stated intervals and carries reports of those happenings of general interest to the ordinary individual."

Examination of past issues discloses that Beer, Wine & Liquor Weekly, like all other trade journals which circulate in the liquor industry, deals almost exclusively with the subject of alcoholic beverages in its manifold phases. Trade journals are not at all likely to be read by the private individual who might desire to object to an application or by any other person unless he is specifically interested in some phase of the liquor industry. Under such circumstances the granting of authority to publish notices of intention therein would do violence to the legislative purpose.

Accordingly you are advised that as presently constituted, the trade periodical known as "Beer, Wine & Liquor Weekly" is not qualified to publish notices of intention.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

4. LICENSEES - SALES WITHIN NEW JERSEY TO FOREIGN DEALERS - LICENSED RECTIFIERS AND BLENDERS MAY SELL ALCOHOLIC BEVERAGES TO FOREIGN DEALERS LICENSED IN THEIR RESPECTIVE STATES BUT NOT IN NEW JERSEY PROVIDED THE ALCOHOLIC BEVERAGES ARE ACTUALLY WITHDRAWN FROM THIS STATE IN LICENSED VEHICLES FOR ULTIMATE RESALE IN ACCORDANCE WITH THE LAWS OF THE PLACE OF SALE.

June 1, 1937

Continental Pure Products Co.,
Jersey City, N. J.

Att: Mr. Jacob S. Polefsky.

Gentlemen:

Your letter of May 14, 1937, and previous correspondence have been reviewed, independent investigation has been made by the Department and the earlier rulings have been reconsidered.

Report of investigation indicates that you have heretofore sold your products to dealers of New York and other states for ultimate resale outside this State, and that deliveries were made in licensed vehicles f.o.b. your plant at Jersey City. Under general principles of the law of sales such deliveries constituted sales within this State and the present inquiry is whether such sales may lawfully be effected within the terms of your rectifier and blender license.

Section 11(4) of the Control Act provides that licensed rectifiers and blenders may sell their products within this State to licensed New Jersey "wholesalers and retailers." This provision was designed to prohibit dealings directly with consumers, it being the legislative purpose to compel consumers generally to purchase directly from retailers. It was not designed to proscribe sales within this State to foreign dealers licensed in their respective states but not in New Jersey, of alcoholic beverages intended for resale in other states in accordance with the laws thereof. Such sales constitute a substantial portion of the regular business done by many licensed rectifiers and blenders within this State and thorough investigation evidences that they are not in anywise inimical to the interests of effective control. The statutory provision should, in the light of its purpose, be broadly construed to the end that although licensed rectifiers and blenders may not sell alcoholic beverages intended for ultimate resale or consumption within this State to any persons except licensees, they may sell to foreign dealers alcoholic beverages actually withdrawn from this State for resale elsewhere. Cf. People v. Ryan (N.Y.Ct. of App. April 27, 1937), where the court, dealing with the New York Alcoholic Beverage Control Law, restated the accepted doctrine that:

"In the interpretation of statutes, the spirit and purpose of the act and the objects to be accomplished must be considered. The legislative intent is the great and controlling principle. Literal meanings of words are not to be adhered to or suffered to defeat the general purpose and manifest policy intended to be promoted;***"

Accordingly you are advised that sales of alcoholic beverages by licensed rectifiers and blenders to foreign dealers licensed in their respective states but not in New Jersey, may properly be effected within this State provided the alcoholic beverages are actually withdrawn from this State in licensed vehicles for ultimate resale in accordance with the laws of the place of sale.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

5. LICENSEES - SALES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED.

Dear Sir: Re: Blank.

I am writing you to ask your advice what I could do to have the owner of a tavern stop serving drink to my husband as he is a sufferer of epileptic spells. I was informed some time ago that he runs a bill there which he pays every two weeks. I went personally and begged them to give him only a limited amount.

I have heart trouble and low blood pressure and am under a doctor's care and when he comes home drunk every night he annoys the whole house by throwing things around, breaking and smashing everything.

The last time I went to the tavern owner he said my husband demands the drink and treats all the others. He hasn't a shoe on his feet, nothing to show for his hard work. My husband said the tavern owner said if I informed you that he would fix me good and proper so here is his chance to see what he can do.

I went to his boss the other day because he has too much spending money; he pays none of his bills, only that one. His boss told me that every one he owes goes to him with complaints about the money owed them.

I had to move out of every place I lived on account of his drink. Now one of the tenants just moved out because they could not stand his noise any longer. My own nerves are so bad I can't stand him any more. Last November my doctor advised me to leave him if I wanted to live any length of time.

The day I went over to the place where he works my husband came home that night drunk, put the kitchen chair through the window and threw his supper in my face. It would be better to get so much a week and live in a furnished room with my two girls than a life like this.

Yours Sincerely,

May 25, 1937

Dear Madam:

I have your letter of the 16th and am mighty sorry to learn of the unfortunate situation that caused you to write. I know that a lot of unhappiness can come from excessive drinking.

We have a State-wide regulation in New Jersey applicable to all retail licensees prohibiting them from selling, serving or delivering any alcoholic beverages to any person actually or apparently intoxicated. It is Rule 1 of the State Rules Concerning Conduct of Licensees. A copy is enclosed. Violation is cause for the suspension or revocation of the license.

If the licensee of whom you write is selling to your husband in violation of the rule, I will surely have my men warn him that such conduct must immediately be stopped and none further tolerated in the future. Formal charges will be brought if he persists. This, of course, I will do and gladly. As Commissioner, I am duty bound to see to it that licensed places are conducted properly. Warnings of a general nature, however, are not likely to have much beneficial effect. It helps considerably to have specific instances to which to refer and to that end, I ask if there is any objection to the use of yours and your husband's names. Without your permission, they will not be used. With your permission, I can give your husband's name to my men in the field and thus give them specific information with which to carry through their investigation. Please let me know your wishes by return mail.

While I want to do everything for you that I can, you must appreciate that family difficulties and domestic problems are not in my domain. Unless there is evidence of actual violation of the liquor law, there is little that I can do to help.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

6. LICENSES - RETAIL - ISSUANCE.

LICENSES - LIMITATION OF NUMBER - APPLICATION TO HOTEL -
PRINCIPLES APPLICABLE.

Dear Sir:

I am an owner of the Dover, New Jersey East Blackwell Street Hotel, which for more than forty years has been run as a respectable hotel.

The last tenants moved out and during that time while the premises were unoccupied I spent more than three thousand dollars in renovating the building and putting it in first-class condition for the next tenant.

I have had several applicants for the place, but I am unable to rent it for the purpose for which it is suited, because since the completion of the repairs and improvements, the local license committee has passed a resolution that they will grant no more licenses. Their reason given for this action is that the present license holders cannot make a living. This is not in accord with the fact that holders of licenses are renewing instead of canceling them.

Irrespective of whether or not the business competition is keen, I feel that the committee's refusal constitutes an unfair discrimination against a property owner in rendering a large investment wholly unproductive because of a resolution passed after the legitimate investment was made.

Will you kindly advise me how to proceed in this matter?

Very truly yours,
(Miss) Elizabeth M. Lowe.

May 27, 1937

Miss Elizabeth M. Lowe,
Dover, New Jersey.

My dear Miss Lowe:

I am writing in reference to your letter regarding the issuance of a liquor license for your hotel.

I take it that no application for license for the hotel premises has been made but that you anticipate a denial because of the limitation on the number of licenses the Council has imposed.

The issuance of all retail licenses, except where a member of the municipal governing body or license issuing authority is interested directly or indirectly in the application being made, is a matter exclusively entrusted in the first instance to the several municipalities. No retail applications come before me, except as aforesaid, until action has been taken by the municipality and then only by way of appeal from its determination.

Hence, the thing for you to do is to get a tenant for your hotel and have him apply for a license. Then if his application is denied and he feels that the denial was improper, he may appeal the case to me. Such appeal must be filed within thirty days after the notice of denial has been served upon or mailed to him. Under separate cover I am sending you the Rules Governing Appeals and Notice and Petition of Appeal. Should an appeal be taken, hearing will be held and both sides will be given full and

equal opportunity to be heard. I will then determine in the light of the facts adduced and the testimony taken whether or not the denial was proper. Until all interested parties have been heard, you must realize that it would be wholly inappropriate for me to express any opinion one way or the other.

I realize full well the practical difficulties which the foregoing procedure begets, viz.: that it is easier said than done to get a tenant for a hotel which has no liquor license. If that is the situation then why do you not make the application yourself? That would be a simple way of testing out your rights. If the license were granted to you then, unless there is good cause shown, it would be transferable to the new tenant whom you might later obtain assuming, of course, that he is worthy and well qualified. It would mean that you would have to actually operate the place as a hotel or at least that the issuance of the license be conditioned upon the place being operated as a hotel and that your place would have to be a hotel in fact and not merely in name.

It is competent for municipalities to limit the number of licenses. The power is expressly conferred by Section 37 of the Act. Such limitations are, however, pursuant to Section 38, subject to review on appeal after which they may be set aside, amended or otherwise changed as the Commissioner may order. I have heretofore had occasion to consider municipal regulations limiting the number of licenses as they affected the licensing of hotels. I am also sending you under separate cover copies of the Conclusions filed in A. B. C. Holding Co., Inc. v. Newton, Bulletin 58, Item 11; Maurer v. Sussex, Bulletin 79, Item 10; Petrusha v. Mine Hill, Bulletin 146, Item 8; Ignatz v. Phillipsburg, Bulletin 167, Item 16, which will give you the considerations involved and the principles applicable.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. GAMBLING - GIFTS - ADVERTISING - SPECIAL RULINGS INDEXED.

May 26, 1937

Mr. George Porter,
Berlin, New Jersey.

My dear Mr. Porter:

You asked for the provisions in the law relating to the distribution of prizes by chance, free platters, free egg-nog, advertising five-pound Easter eggs to be given away, tap-rooms or saloons advertising delivery to homes of canned and bottled beer.

I have sent you under separate cover a copy of the compiled State Rules, Regulations and Instructions. For the general rules applicable to retail licensees, see the Rules on pages 55 through 59. In addition to these general rules, specific rulings, constructions and interpretations of the law have been made from time to time. I am, therefore, also sending you the Bulletins and items hereinafter listed which cover the particular matters in which you are interested.

Prizes, with which I am including rulings concerning gambling, gambling devices, games which may be used for gambling and lotteries in general:

Gambling:

Bean guessing contest	100-1
Bookmaking	142-3, 57-15, 48-12
Faro	48-12
Lotteries and Raffles	
Bank Night	156-7
Cash register receipts	172-9, 156-6
Cash register transactions	156-8
Hidden Bonus cards	174-1, 166-14, 120-8
Liquor	173-10, 168-6, 132-3, 43-16, 40-3
Lucky Key	143-16
Number game	163-5, 155-5
Pig	161-9
Possession of Lottery slips	163-6
Redemption of chances	132-3
"Trade at Home" coupons	155-3
Turkey	172-9, 56-11
Pool selling	48-12
Rouge et noir	48-12
Roulette	148-11, 48-12
Rules prohibiting gambling	48-12
Wager on drinking bout	140-6

Gambling Devices:

Crane and digger machines	144-3
Dice	132-7, 70-9, 65-10, 56-11
Magic beer barrel	53-8
Punch boards	164-4, 100-8, 56-11
Rules prohibiting gambling devices	48-12
Slot machines	178-4, 173-6, 169-12, 168-17, 51-6, 48-12, 29-12

Games:

Badminton	161-10
Bagatelle	161-10, 70-9, 51-1, 45-1
Baseball	51-2
Bingo	158-5, 154-7, 154-3, 153-10
Bowling Alley	161-10, 51-1
Cards	164-7, 70-9, 65-10, 51-3
Checkers	164-7, 64-5
Chess	164-7, 64-5
Darts	51-2
Monte Carlo party	159-10, 122-8
Ping-pong	161-10, 64-5
Pool	51-1
Quoits	161-10, 64-5
Ringing the cane	160-4
Shuffle board	161-10
Skee ball	161-10, 161-8
Wheel of fortune	119-6

Revocations for gambling:

Book making	142-3, 112-15
Cards	102-8
Dice	132-7
Gambling	168-17
Gambling for drinks	154-11
Lottery or raffle	169-2, 161-9
Punch boards	164-4
Slot machines	178-4, 173-6, 169-12, 168-17

Free platters, with which I am including gifts of food, liquor or other merchandise:

Gifts by retail licensees:

Beer at parade	94-3
Coupons and discount cards	166-14, 123-10, 120-8
Door prize	172-1
Free lunch	154-10, 132-8, 126-7, 86-14, 47-13, 19-10
Liquor, generally	153-11, 87-15
Liquor, Christmas gifts	55-10
Liquor, with meals	176-4
Mulligan	167-9, 107-6, 106-7
Municipal regulation prohibiting	164-3
Picnic for customers	131-6
Pretzels	19-10
Prize	164-3, 153-11
Samples by package goods store	63-2, 19-8

Gifts by Wholesale Licensees:

Advertising matter	75-10, 74-11, 73-10
Beer barrel for display	174-14
Free beer coupons	90-5
Golf score cards	73-10
Holiday packages	148-5
Liquor to non-licensees	176-13, 123-6, 118-1, 69-7, 55-10, 37-11
Picnic	140-4
Samples to consumers	173-17
Samples to retailers	100-11
Uniforms, equipment, etc.	172-4

So-called gifts by non-licensees:

Liquor with meals	136-8, 123-5, 55-13, 19-8
Liquor to stimulate trade	146-10, 133-10, 90-1, 69-7, 55-13

Advertising, with which I am including house-to-house solicitation, mail and newspaper advertising, radio advertising, word slogan contests, indecent advertising, sacrilegious matter, etc.:

"All the beer you can drink for a dollar"	79-3
Book matches	166-14
Christmas Gifts	55-10
Contests	
Bean guessing	100-1
Slogan and limerick	161-1
Word	159-12, 156-5
Charity, gift of proceeds to	162-1
Circulars, handbills	173-17, 153-1, 68-2, 48-13
Complimentary advertising	169-10, 115-1
Coupons, discount cards	166-14, 129-2
Delivery to consumer at house	82-7
Displays	
Beer barrels	174-14
"Biggest beer in town"	74-9
Bottles	122-9, 74-9
Industrial exhibition	172-1, 71-8, 71-7
Map	75-3
Menu containing price	176-4, 76-5
Nips	173-13
Prize in raffle	168-6
Still	75-3

So-called gifts by non-licensees (Cont'd)

Exterior signs	171-12, 78-7, 75-11
Free beer tickets	90-5
Gambling equipment	143-16, 86-12
Golf score cards	73-10
Hidden bonus cards	174-1, 166-14, 120-8
Holiday packages	148-5
Indecent	168-14, 168-12, 168-4, 167-1
Labels, retailers	132-9
Loss leader	127-5
Mail	173-17, 153-1, 68-2, 48-13
Newspaper	173-17, 153-1, 48-13
Objectionable	162-12
Price, for consumption off premises	162-3, 143-12, 131-9, 131-5, 130-10, 130-9, 120-10, 120-1, 82-7
Price, for consumption on premises	176-4, 76-5
Prize, donation of liquor	172-1
Radio broadcasting	172-5, 159-12
Sacrilegious matter	143-11
Sandwich men	169-12
Santa Claus	148-6, 148-5, 148-1, 143-11
Solicitation, house-to-house	173-17, 153-1, 68-2, 48-13
Tapsters	128-1
Trade names	129-2, 109-13, 109-12, 94-14, 41-10A, 33-14, 27-5
Uniforms to Ball teams	172-4

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Maurice E. Ash,
Senior Inspector.

8. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF PERSONS CONVICTED OF CRIME - SUSPENDED SENTENCE ON CONDITION THAT DISQUALIFIED PERSON BE NOT EMPLOYED IN THE FUTURE REQUIRES PERIODIC CHECKS AND IS JUSTIFIABLE GROUND FOR REFUSAL TO ISSUE RENEWAL LICENSE.

June 2, 1937

Charles Schmidt, Esq.,
Borough Attorney of Montvale,
Hackensack, N. J.

Dear Mr. Schmidt:

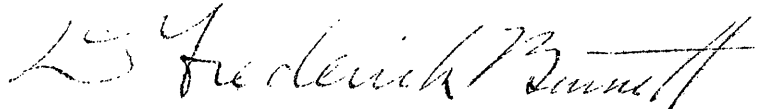
I have staff report of the proceeding before the Borough Council of Montvale against Alvina Izzo, charged with having knowingly employed a person ineligible for such employment by reason of a conviction of crime — receiving stolen goods.

I note the licensee pleaded guilty but that sentence was suspended on the condition that Joseph Izzo, the husband of the licensee — the disqualified person — be not employed on or about the licensed premises.

I suggest that periodic check be made at the licensed premises to see that the order of the Council is scrupulously obeyed.

If you wish to cut down the number of licensees in your Borough for the year which begins on July 1st, you may take this proven violation into consideration.

Very truly yours,



D. Frederick Burnett,
Commissioner.

Inspected by: E. E. B. ANDERSON and found O. K.
