

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street

Newark, N. J.

BULLETIN NUMBER 4

December 7, 1933.

Herewith is, as promised in Bulletin #3, a copy of affidavit and consent as re Section 76 of statute which will serve as a guide to municipalities.

1. WHEREAS, Christian Feigenspan Brewing Co., a corporation of the State of New Jersey, has on this 6th day of December, 1933, applied to the Commissioner of Alcoholic Beverage Control for the State of New Jersey, for a license to conduct a brewery on premises in the City of Newark bounded by Freeman St., Raymond Boulevard, Christie Street and Fleming Avenue, and

WHEREAS, St. Aloysius Roman Catholic Church is located on the northwest corner of the intersection of Freeman Street and Fleming Avenue in the City of Newark and is directly across the street from the premises of the aforesaid Christian Feigenspan Brewing Co., and

WHEREAS, there is conducted in conjunction with said church, a school, which school is located on the south side of Fleming Avenue between Freeman and Christie Streets, and

WHEREAS, Section 76 of an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages," approved December 6, 1933 provides that no sale of alcoholic beverages shall be made within two hundred feet of any church or school, and

WHEREAS, D. Frederick Burnett, Commissioner of Alcoholic Beverage Control for the State of New Jersey, has ruled that the Section 76 of the aforesaid statute was enacted for the benefit of the said churches and schools and that said benefit may, by proper written consent, be waived by the said beneficiaries, and

WHEREAS, the undersigned _____ is the Pastor of the aforesaid church, and as such, has full power and authority to execute the aforesaid consent on behalf of the aforesaid church and school and to consent to granting of a license to the aforesaid Christian Feigenspan Brewing Co., thereby waiving for and on behalf of the aforesaid church and school the benefits of Section 76 of the aforesaid Act. Now, therefore,

KNOW ALL MEN BY THESE PRESENTS, that the Roman Catholic Church, Parish of St. Aloysius, and the undersigned as Pastor of the said Parish, does hereby consent to the granting to Christian Feigenspan Brewing Co. by the Commissioner of Alcoholic Beverage Control for the State of New Jersey of a Class "A" brewery license to conduct a brewery on the premises in the city of Newark, bounded by Freeman Street, Raymond Boulevard, Christie Street and Fleming Avenue, pursuant to application made to the said Commissioner by the said Christian Feigenspan Brewing Co. and dated December 6, 1933, and the said Roman Catholic Church, Parish of St. Aloysius, and the undersigned as Pastor of the said Parish, does hereby waive any benefit under Section 76 of an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages," approved December 6, 1933.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of December, 1933.

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(LS)

STATE OF NEW JERSEY }
COUNTY OF ESSEX } SS.

being duly sworn
according to law, upon his oath deposes and says:

I am a duly ordained Priest of the Roman Catholic Church and am the Pastor for St. Aloysius Parish in the City of Newark, and as such, am duly authorized by the Bishop for the Diocese of Newark, to execute the foregoing consent, and the consent of no other person is necessary to render the above consent valid and effectual in all respects, and to waive on behalf of St. Aloysius Church and school the benefits of Section 76 of an Act of the Legislature of the State of New Jersey, entitled "An Act concerning alcoholic beverages," approved December 6, 1933.

Sworn and subscribed to }
before me this 6th day }
of December, 1933 }

2. Bulletin #3 mailed at 3 a.m. to the municipal license issuing authorities inadvertently stated that a municipality can not issue a two months' temporary license. In the very next sentence, however, it was stated that the full pro-rated annual license fee must be received with the application and that such fee be paid in full, the permanent as well as the temporary license fee. The foregoing was written in view of information received that Newark and Hillside were receiving with applications merely a two months' fee. The fact is that a municipality may issue a two months' temporary license but only on condition that it receives with the application the full annual fee pro-rated up to June 30, 1934.

3. Under Section 37 of the statute, if a municipality grants a retail consumption license may it confine the licensee to the sale of merely beer and light wines and not permit the sale of hard liquors?

Ans.: This cannot be done. The reason is that since the Legislature prescribed what the license should be, you cannot change those forms of licenses, and we have prepared and sent to you the prescribed form for the licenses. Now, at the bottom of that license, you will notice a blank which says, "It is also subject to the following conditions:" The next question is, What can you put in there? The first paragraph of Section 37 says that you can limit the number of licenses if you want to and you can limit the hours and you can regulate the conduct and nature and condition of the premises. These are the only things you can put in them. If you want to put the hours of sale in well and good, but, when it says regulate the conduct, the word "regulate" does not mean prohibit and, consequently, to say that a person is prohibited from selling hard liquor is contrary to Statute. The second paragraph of Section 37 of the Statute gives you power through your governing body by resolution to prohibit three or four different things or any one of them. That second paragraph of Section 37, we believe, is unconstitutional, and we cordially advise against your taking any action thereunder. Here is the point succinctly. When the Legislature prescribes certain classes of business for which licenses may be granted, the specification of those classes by implication excludes every other classification.

December 7, 1933.

Consequently, when your municipality wants to issue a beer license but not hard liquor, it is not lawful. No regulations can rise higher than the Statute.

4. Can a person holding a retail alcoholic beverage license issued by your municipality deliver alcoholic beverages in their vehicles in any municipality other than the municipality in which the licensed premises is located? Ans.: Yes. Section 25, of the Statute provides that licensees may deliver such beverages in their own vehicles "solely, however, for their own respective business in connection with and as defined in their respective licenses without possessing a transportation license." The Statute being silent and no reference being made therein as to the terminus of such transportation, it follows that they could deliver anywhere within the State of New Jersey.
5. Bulletin #2, under "FURTHER INSTRUCTIONS", says "all licenses issued must be consecutively numbered and a report of each license issued sent daily to the Commissioner in duplicate. This is not being done by many municipalities. Will you kindly cooperate and send these as directed daily if you are not doing so at the present time. If there are any back lists of these that you have failed to send, please do so at once.

Bulletin #1, Part 4, says "proper certification of the fees fixed by your municipality shall be made to the Commissioner at once; also send two copies of all ordinances and resolutions pertaining to the manufacture and sale of alcoholic beverages." This also has been neglected in many cases. If you have not already done so, send all such matter to the Commissioner immediately.

D. FREDERICK BURNETT,
Commissioner.

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