

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

BULLETIN 246.

MAY 24, 1938

- 1. SIGNS - SIGNS ON SCREENED PORCHES ARE EXTERIOR SIGNS WITHIN THE MEANING OF THE STATE RULES AND IF ADVERTISING THE NAME, BRAND OR TRADE-MARK OF ANY MANUFACTURER OR WHOLESALER OF ALCOHOLIC BEVERAGES, ARE PROHIBITED.

Dear Sir:

Kindly advise me whether it is lawful to expose a trade name neon sign in an enclosed screened porch, considering same as on the inside of the building.

Respectfully,

Mrs. Mary Konrad

May 16, 1938

Mrs. Mary Konrad,  
Mt. Royal, N. J.

My dear Mrs. Konrad:

It is not permissible to have a neon sign advertising the name, brand or trade-mark of any manufacturer or wholesaler of alcoholic beverages on a screened porch.

Such signs may be displayed only on the interior of the licensed premises. See State Regulations No. 21, Pamphlet Rules, page 64.

A porch is not part of the interior of the premises and mere screening does not make it so. It is part of the exterior.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

- 2. APPELLATE DECISIONS - MAINIERO vs. ROXBURY TOWNSHIP.

DONATO MAINIERO, )  
Appellant, )  
-vs- ) ON APPEAL  
TOWNSHIP COMMITTEE OF THE ) CONCLUSIONS  
TOWNSHIP OF ROXBURY, )  
Respondent. )  
.....

E. Marco Stirone, Esq., Attorney for the Appellant  
King & Vogt, Esqs., by Robert H. Schenck, Esq., Attorney for  
the Respondent

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises known as the "Silver Spark Inn",

located on State Highway #6, Ledgewood, Township of Roxbury, Morris County.

Respondent contends that the denial is valid by reason of its resolution of December 11, 1935, limiting the number of plenary retail consumption licenses in the Township to 8 (excepting renewals and bona fide hotels), and the previous filling of that quota.

That resolution, so far as pertinent, provides:

"BE IT FURTHER RESOLVED that from and after July 1, 1936, there shall not be issued and outstanding in the Township of Roxbury at the same time more than eight (8) plenary retail consumption licenses, provided, however, this limitation shall not apply to licenses issued or applications made for premises operating or to be operated as a bona fide hotel, or to renewals of other plenary retail consumption licenses now issued and outstanding except as renewals of such licenses are not applied for or are refused because of bad conduct on the part of such licensees, or otherwise; it being the desire and intention of the Committee that the total number of outstanding plenary retail consumption licenses be reduced to eight (8) as soon as practicable; \* \* \*"

Although not raised by counsel, two preliminary matters are of sufficient importance to be mentioned and disposed of at this point:

(1) When appellant's application was filed, 13 consumption establishments were outstanding in the Township, of which the non-hotel premises constituted only 6. Accordingly, the question arises as to whether, because of this fact, 2 vacancies existed in the quota under the view that hotel licensees, being exempt therefrom, should not be counted in determining whether the quota is filled. Although some plausibility may attach to this view, on final analysis it is manifestly unsound. For, if valid, it would by the same token compel renewal licensees to be excluded in determining whether the quota is filled -- a result palpably at variance with the manifest intention of the resolution.

(2) The resolution is not arbitrarily discriminatory because of its exceptions in favor of renewals and of hotels. In adopting a numerical limitation, a municipality may justifiably exempt the renewal applications of existent licensees; indeed, fair dealing ordinary requires as much. See Re Dunn, Bulletin 104, Item 9. It may also justifiably exempt hotels -- which, because of their unique public service, are essentially different from ordinary drinking places. See Re Butera, Bulletin 180, Item 3.

Appellant contends that the quota is unreasonable in its application to Roxbury as a whole. The Township is located at the waters of Lake Hopatcong and near those of Budd Lake; is approximately 26 square miles in area; is traversed by several state and county highways; and has a normal population of 4,000 and a summer population estimated at 6,000. There is nothing in these facts, or in any of the facts adduced at the hearing, to show that the limitation of consumption licenses to 8 is unreasonable as a whole.

Appellant further contends that the limitation is unreasonable in its application to him and to the vicinity in question. His premises are located in Ledgewood (a small unofficial community in the Township), whose population has been estimated at from 200 to 400. Both this community and the neighborhood of appellant's premises are, although not closely developed, nevertheless residential in character. The only business places, besides appellant's, are the Ledgewood general store and a garage, both of which are located some 1,200 feet away, and a lunch wagon located at a traffic circle some 200-300 feet away. Several residences are also "tourist houses", but these do not appear to alter the general residential atmosphere of either the particular vicinity at appellant's premises or the community as a whole.

Although appellant's place is on State Highway #6, it is located upon a portion of that highway which, since the establishment of Route #10 nearby, is no longer heavily trafficked. State Highway #6 in its 5-mile route through the Township already has 6 consumption establishments, one being approximately a mile above and another approximately a mile below appellant's place.

Appellant, in light of these facts fails to demonstrate that the limiting resolution is in anywise unreasonable in its application to him or to the vicinity in question, or that public necessity and convenience require that his premises be licensed despite that limitation.

Appellant next contends that the limitation has not been uniformly applied because consumption licenses have been granted for non-hotel premises in the past despite the previous filling of the quota; that it is therefore discriminatory to enforce it against him. Passing over the question whether those licenses, if improperly issued, furnish the basis for further violation of the quota (see Great Eastern Super Markets, Inc. vs. Orange, Bulletin 227, Item 6), it appears that since adoption of the quota no new licenses have been issued, or outstanding licenses transferred, except for hotel premises.

Appellant lastly contends that his premises constitute, in part, a hotel, and therefore are exempt from the quota. His place is a one-family residential house, the first floor of which is used as a way-side restaurant and store (the latter to be discontinued in the event the license being applied for is granted). On the second floor, there are 4 bedrooms, one and sometimes two of which are occupied by appellant and his brother, the remainder being rented to transient guests. Between the hours of 11 P. M. and 8 A. M. the front door to the premises remains locked. I should hardly call such a place a hotel! Appellant himself has aptly characterized it as an ordinary "tourist house". That is all it is. It therefore does not come within the exception.

In view of the exhausted quota, appellant's application was validly denied.

The action of respondent is therefore affirmed.

May 17, 1938.

D. Frederick Burnett  
Commissioner

3. MUNICIPAL REGULATIONS - A REGULATION PURPORTING TO APPLY ONLY TO LICENSES ISSUED PURSUANT TO THE RESOLUTION IN WHICH THE REGULATION IS ADOPTED, IS OF DOUBTFUL EFFECT WHEN LICENSES ARE IN FACT ISSUED PURSUANT TO A DIFFERENT RESOLUTION.

MUNICIPAL REGULATIONS - DISTRIBUTION LICENSEES - MUNICIPALITY MAY NOT CONFER PRIVILEGE OF ON-PREMISES SALES UPON PLENARY RETAIL DISTRIBUTION LICENSEES.

MUNICIPAL REGULATIONS - PUBLIC VIEW - FAILURE TO SPECIFY POINT OR PLACE FROM WHICH VIEW IS REQUIRED MAKES THE REGULATION A NULLITY.

MUNICIPAL REGULATIONS - RESIDENCE IN STATE - REQUIREMENT THAT APPLICANT BE RESIDENT FOR THE PAST FIVE YEARS IMPROPER.

MUNICIPAL REGULATIONS - SIZE OF CONTAINERS - PROHIBITION OF POSSESSION OF ALL ALCOHOLIC BEVERAGES IN BULK DISAPPROVED.

May 16, 1938.

Walter Beisch,  
Township Clerk,  
North Bergen, N. J.

My dear Mr. Beisch:

On May 14th, I wrote you enclosing copy of letter of the same date to Samuel Moskowitz, Esq., regarding the effect of Rule 6 of regulations adopted by the Municipal Board of Alcoholic Beverage Control on December 13, 1933, as amended by resolution of the Board of Commissioner adopted February 23, 1938. Bulletin 245, Item 3.

I now have before me your letter of May 5 and copy of Rule 6 as amended on May 4.

The regulation is defective in certain other respects which I now call to your attention.

It is an amendment to the resolution of the Municipal Board adopted December 13, 1933. Its operation is confined to "The holder of each license issued hereunder." It therefore applies only to the holders of licenses issued pursuant to the December 13, 1933 resolution or as that resolution may have subsequently been amended. But on June 20, 1934, the Board of Commissioners adopted a resolution fixing a schedule of license fees for all five of the classes of retail licenses municipalities are authorized to issue. This June 20, 1934 resolution neither amended nor supplemented the December 13, 1933 resolution, nor did it advert to the earlier resolution in any way. It raised the plenary retail distribution license fee. Hence, it would appear that licenses are now issued pursuant to the later resolution. Yet there seems to be nothing making them subject to Rule 6. It is, therefore, extremely doubtful whether Rule 6 has any present effect.

It then goes on to provide that the holders of licenses issued thereunder may sell for consumption on or off the premises. You have provided for and issued both consumption and distribution licenses. There is no power in the municipality to give distribution licensees the option of selling for consumption on the premises. The type of business each licensee may conduct

is expressly provided by the statute. If you will revise, using the wording in Re Franco, Bulletin 231, Item 5, this defect will be remedied.

In conclusion, the rule provides:

"During all other hours all shades, screens and other obstructions whatsoever must be removed so as to permit a clear view of the bar in said licensed premises."

A clear view of the bar from where? Unless your regulation covers such matters, there is no way to tell whether the licensee is complying or to enforce it. Similar regulations have come before me from other municipalities. I have approved them where proper. Perhaps something like this will do. I offer for your consideration:

"During the hours herein fixed when sales are prohibited, all shades, screens and other obstructions whatsoever must be removed so as to permit a clear view of the bar from the public thoroughfare or from adjacent rooms to which the public is freely admitted."

I have already reviewed the other sections of the resolution of December 13, 1933 and have written to you about them. See my letter of December 11, 1934. It is my suggestion that at earliest convenience the Board of Commissioners review the North Bergen regulations and re-enact them in accordance with the suggestions I have made. When you do so, consider also, in addition to the comments in my letter of December 11, 1934, the following:

From Section 7 of resolution of December 13, 1933, third and fourth lines, strike out "for the past five years" and in place thereof insert "for at least five years immediately prior to the filing of the application." The past five years would be the five years preceding December 13, 1933, the date of adoption of the resolution. As worded, only those who were residents of New Jersey during that time could qualify. What the statute requires, however, is that applicants be residents for the five years preceding the date of filing of the application.

Section 9 of the resolution of December 13, 1933 prohibits the possession on licensed premises of any distilled, fortified, rectified or blended alcoholic beverages in bulk. There is no limit under the State law or State regulations as to the maximum size of the containers of alcoholic beverages retailers may sell. See Re Federal Wine & Liquor Company, Bulletin 198, Item 7. For the Rules Concerning Size of Containers presently in effect see Regulations No. 23, Pamphlet Rules, page 65. I suggest that Section 9 be excised.

I shall be glad to go over any revision that you may prepare, prior to formal introduction, to offer whatever comments or suggestions appear necessary.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

4. LIMITATION OF LICENSES - MINIMUM DISTANCE BETWEEN LICENSED PREMISES - EFFECT OF EXEMPTING ALL RENEWALS WITHOUT QUALIFICATION.

LICENSED PREMISES - MINIMUM DISTANCE BETWEEN - MEASUREMENTS USING ADJACENT PREMISES AS CENTER OF CIRCLE - NECESSITY FOR FIXING EXACT POINT.

RETAIL LICENSES - DEATH OF LICENSEE - EXTENSION MUST BE MADE TO PERSONAL REPRESENTATIVE AND NOT MERELY TO MEMBER OF FAMILY.

LIMITATION OF LICENSES - RENEWALS - REQUIREMENT THAT APPLICATION BE MADE WITHIN FIFTEEN DAYS OF EXPIRATION OF PREVIOUS LICENSE, APPROVED.

LIMITATION OF LICENSES - EXCEPTION ALLOWING THE ISSUANCE OF ADDITIONAL PLENARY RETAIL CONSUMPTION LICENSES TO THE HOLDERS OF CLUB LICENSES - THE CLASS TO WHICH THE EXCEPTION APPLIES MUST BE CLEARLY DESCRIBED.

May 16, 1938.

Walter Beisch,  
Township Clerk,  
North Bergen, N. J.

My dear Mr. Beisch:

I have before me ordinance limiting the number of plenary retail consumption, plenary retail distribution and limited retail distribution licenses in North Bergen, adopted by the Board of Commissioners on January 5, 1938.

According to R.S. 33:1-40 (Control Act, Sec. 37), my approval is required only of municipal regulations dealing with the conduct of licensed businesses and the nature and condition of licensed premises.

Sections 1, 2 and 3, which limit the number of licenses, do not, therefore, need my approval in the first instance in order to be effective. See Bulletin 43, Item 2. They are, instead, as provided in R.S. 33:1-41 (Control Act, Sec. 38) subject to review on appeal.

I have heretofore tentatively approved municipal regulations establishing minimum distance between licensed premises, somewhat similar to those set forth in your Sections 4 and 5. See Re Lee, Bulletin 232, Item 8. Cf. Re Deull, Bulletin 234, Item 7.

I take it, however, that the renewals referred to in the first sentence of Sections 4 and 5 means renewals for the same premises as had theretofore been licensed. If it meant all renewals, and as presently worded I believe that it does, it would substantially nullify the regulations because it would permit anyone who had a consumption or distribution license last year to locate at a new premises within 750 feet of an existing premises merely by virtue of its being a renewal, and for that reason coming within the exception.

The sections further provide that the prohibited area is to be indicated by describing a circle having a radius of 750 feet with the existing licensed premises as the center. Does

that mean that the center of the circle is to be the center of the licensed premises or the point on the licensed premises nearest to the premises sought to be licensed? Some licensed premises are large and it would make a difference. As it now stands, there is no specific point established from which the measurement is to be taken.

I suggest that Sections 4 and 5 be amended in both respects at earliest moment.

Section 6 declares that in the case of the death of a licensee, the Board of Commissioners may, after petition and application, grant the continuance or renewal of same to a member of the immediate family of the deceased.

There being a Municipal Board of Alcoholic Beverage Control in North Bergen, the authority to extend licenses in situations such as Section 6 contemplates is vested in the Municipal Board, not in the Board of Commissioners. Moreover, according to the Act (R.S. 33:1-26; Control Act, Sec. 23), such extensions, if made at all, must be made to the executor, administrator, trustee, receiver or other person upon whom the license has devolved by operation of law. That may be a member of the family of the deceased or it may not. At any rate, it is not the degree of family relationship to the deceased that authorizes the extension, but the legal relationship, as, for example, the fact that the petitioner is the personal representative. See Re Lipsey, Bulletin 192, Item 7; Re Loog, Bulletin 81, Item 3. Cf. Re Brennan, Bulletin 113, Item 1.

Your Section 6 is wholly unnecessary. So far as extension of license to the personal representative of the deceased licensee is concerned, the matter is wholly controlled by Section 23 of the statute. The continuance of such licenses after extension, by someone other than the personal representative, is fully provided for by your exception from the limitation permitting transfers from person to person. Section 6 is inaccurate as it stands and should, therefore, be rescinded.

Section 7, which defines "renewals" as licenses for which application is made by the same person for the same type of license within fifteen days from the expiration of the old license, for the reasons given in Re Bayonne, Bulletin 216, Item 3, I deem to be wholly proper.

Section 9 provides:

"The provisions of this ordinance shall not apply to club licenses which are issued and outstanding on the passage of this ordinance. Any club licensee may apply for and secure a plenary retail consumption license, notwithstanding the restriction included in this ordinance."

As it now reads, Section 9 exempts club licenses which were issued and outstanding upon the adoption of the ordinance from all of the provisions of the ordinance. I take it that what the Board of Commissioners intended was to exempt them only from the provisions of Sections 1, 2 and 3. Furthermore, whereas the first sentence says that the ordinance shall not apply to club licenses issued and outstanding when the ordinance was adopted, the second sentence says that any club licensee may apply for and secure a plenary retail consumption license notwithstanding the limitation. Which is it to be - the club licenses outstanding when the ordinance was adopted, or all club licenses when-

ever issued? If the Board wishes to make an exception to the limitation of plenary retail consumption licenses, permitting their issuance to club licensees, it may do so, but Section 9 should be amended to express clearly and specifically to whom the exception is to apply and what the exception shall be.

I shall be glad to go over any revision or amendment that you may prepare, prior to formal introduction, to offer whatever comments or suggestions appear necessary.

The approvals herein given are subject, of course, as with all ex parte approvals, to review on appeal. See Re Hauck & Felter, Bulletin 130, Item 3, and the items cited therein.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

5. SIGNS - A ROOF SIGN IS AN EXTERIOR SIGN WITHIN THE MEANING OF THE STATE RULES EVEN THOUGH PROTECTED BY GLASS IN FRONT AND ROOFING PAPER IN BACK, AND IF ADVERTISING THE NAME, BRAND OR TRADE-MARK OF ANY MANUFACTURER OR WHOLESALER OF ALCOHOLIC BEVERAGES, IS PROHIBITED - HEREIN OF BEER SIGNS IN A PENTHOUSE.

Dear Commissioner:

I have a restaurant and road stand on Galloping Hill Road. Many people want to drink beer with their meals and in order to give them what they want, I have taken out a full liquor license even though I do not sell liquor - only beer.

I only do business in the summer time. When I close in the winter, I take down all my screens and store them away, putting up wooden shutters instead. Several years ago, I built an addition on the roof of my place to hold these shutters. When I was building it, I thought it would be a good idea to make the front of glass so that I could put a big sign in the window. This I did, and placed in the window a neon sign reading "Ballantine's" since this beer was popular in my neighborhood and was good advertising for my place.

This must have got some of my competitors sore, or else some other brewery sore, because last year some of your inspectors came and told me that I would have to take the sign down or cover it because it was against the law. In all my life I have never broken a law so I did what they told me, and when Ballantine's salesman came, I told him about it. He said he didn't believe it was against the law, but that he would look into it.

I would appreciate it if you would give me your views as to whether I am breaking the law by using this inside sign. I don't want any exceptions made in my favor and I won't break the law, but I do believe there has been some mistake made because according to everybody I have talked with, they don't think I am breaking the law.

Please let me know if I can use this sign.

Very truly yours,

Detmer Petersen

May 17, 1938.

Mr. Detmer Petersen,  
Union, N. J.

My dear Mr. Petersen:

Staff reports indicate that the sign about which you inquire is a neon sign 11'6" long, comprised of 7" and 5" letters, and advertising "Ballantine's On Tap." It is situated in a protrusion located on the roof of your building, inaccessible from the interior, which I understand was originally erected to house an ice cream sign but now contains the beer sign, and behind the sign a storage space where you store your shutters and screens.

Except for the fact that it can be lighted, from the road it appears to be nothing more than a regular roof sign similar to the "Gallopig Hill Grove" and the "Hot Roast Beef, Hamburger and Chicken and Turkey Sandwiches" signs that are its pole-sitting companions.

It is obviously an exterior sign. Merely protecting a sign with glass in front and roofing paper in back does not make it an interior sign if, in fact, it is not inside of the building. You can't get to your penthouse except by crawling over the roof.

The sign is in violation of State Regulations No. 21, Rule 2 (Pamphlet Rules, page 64) and must be removed at once.

If you will take the name and trade-mark of the brewer off the sign, there is no objection to your advertising that you have beer on tap.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

6. RETAIL LICENSES - NOTHING TO PREVENT A LICENSEE FROM HOLDING A LICENSE IN MORE THAN ONE MUNICIPALITY.

LICENSES - APPLICATION - NOT NECESSARY THAT APPLICATION FORM BE FILLED OUT BY A LAWYER - THE IMPORTANT THING IS THAT THE ANSWERS BE COMPLETE AND TRUTHFUL.

May 17th, 1938.

Mr. A. J. Tobias,  
Perth Amboy, N. J.

My dear Mr. Tobias:

There is nothing in the Alcoholic Beverage Law or the State Regulations which would prevent you from holding a retail liquor license in more than one municipality. So far as the State law is concerned, you may apply for liquor licenses in as many municipalities as you wish.

It is not necessary to have your application form filled out by a lawyer. You may answer the questions yourself, and then sign it and swear to the truth of the answers before a

notary public or any officer authorized to administer oaths. The important thing, no matter who actually fills out the form, is that the answers be complete and truthful.

If you wish to open on June 15th, it will be necessary to make application for a 1937-38 license for the period June 15 to June 30, 1938, and then make a new application for a new license for the year 1938-39 commencing July 1st. It is not possible to operate from June 15th to June 30th merely by paying a fee in addition to the annual fee for the period July 1, 1938 to June 30, 1939.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

7. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

May 16th, 1938.

Re: Case No. 221

Applicant's fingerprint records disclosed that he had been arrested in 1932 on charges of assault and battery, rioting and arson.

At a hearing duly held, applicant testified that he was tried on one or all of the above charges and acquitted. The records of the County Prosecutor's Office show that the three charges arose out of a single transaction when some young men were accused of rioting and burning an automobile during the course of a strike; that applicant was acquitted on the rioting charge, and that the other two charges are still pending. At the hearing, applicant testified that he was not in the State at the time he was accused of committing the aforesaid crimes. Whatever the facts may be, it appears that he has never been convicted of committing any of the three crimes.

In 1937 applicant, as a result of a fist fight, was convicted as a disorderly person and sentenced to ninety days. Such conviction, however, is not conviction of a crime. Re Case No. 65, Bulletin 193, Item 11.

It appearing that applicant has never been convicted of a crime, it is recommended that the solicitor's permit be issued.

EDWARD J. DORTON  
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT  
Commissioner

8. RETAIL LICENSES - HOURS - FEES - NO POWER IN MUNICIPALITY TO ISSUE SPECIAL LICENSE AT ADDITIONAL FEE, ALLOWING CERTAIN LICENSEES TO SELL ALCOHOLIC BEVERAGES DURING HOURS THAT OTHERS ARE PROHIBITED FROM DOING SO.

May 16, 1938.

Walter A. Bredder,  
Borough Clerk,  
East Paterson, N. J.

My dear Mr. Bredder:

I have before me:

1. Resolution adopted by the Council on April 20, 1938 providing for a license permitting night clubs to remain open for business until 5:00 A. M. on payment of a fee of \$150.00 per annum in addition to the regular plenary retail consumption license fee.

2. Resolution adopted April 20, 1938 granting such special license to Swanee Club, Inc.

Item 1 provides:

"BE IT RESOLVED that any person having a Plenary Retail Consumption License for the sale of alcoholic beverages for consumption on the premises, which premises are used as a night club, may apply to the Mayor and Council for a license to open for business during the following hours: Weekdays 7:00 A. M. to 5:00 A. M., Sundays, 1:00 P. M. to 5:00 A. M. the next days (and 12:00 midnight to 5:00 A. M.) Upon the granting of such a license the licensee shall pay an additional fee of \$150.00 per annum for permission to do business during such hours in addition to the plenary retail consumption license fee.

"A night club shall be deemed to be any premises licensed for the sale of alcoholic beverages for consumption on the premises, at which entertainment or dance music, or both, is provided."

I take it that by "open for business" the Council means to give night clubs licensed pursuant to the resolution, the privilege of selling alcoholic beverages until 5:00 A. M., a privilege not enjoyed by your other plenary retail consumption licensees who, according to resolution adopted by the Council on September 10, 1937, must stop selling at 3:00 A. M. Some construction is necessary, because the phrase "open for business" is indefinite at best. Open for what? For dancing and entertainment, or for the sale of food, or for the sale of liquor, or for all three? A special night club license at an additional fee of \$150.00 per year would, to my mind, be no bargain unless the sale of liquor was authorized.

I have consistently held that whatever hours of sale the municipality fixes must apply to all licensees of the same class. The only exception I have allowed is in the case of municipal regulations permitting sales on Sundays in bona fide hotels and restaurants with meals. See Re Hauck & Felter, Bulletin 130, Item 3; Re Bowers, Bulletin 170, Item 11; Re Warren, Bulletin 207, Item 10. Of course, to allow some members of the license class to sell when others are prohibited from doing so is clearly discriminatory. It is justifiable, if at all, only on the ground of serving a public purpose. Allowing hotels and restaurants to sell on Sundays may carry out such a purpose. I think it is clear that permitting night clubs to sell after 3:00 A. M., to the exclusion of all others, does not. Since, subject to the one exception aforesaid, everyone must be treated alike, no special exemptions, such as your Section contemplates, may be afforded. See Re Eowers, supra and the items cited therein.

Moreover, there is no power in the Council to charge an additional fee for the extra hours. The Council can have but one fee for each class of license, and that fee must be uniform for all members of the class. Having already determined the fee to be \$250.00 per annum, in resolution of June 27, 1934, the Council cannot impose an additional \$150.00 fee on the particular group described in the April 20th resolution. If you could impose an additional fee for extra hours, it would be possible to charge

more than the statutory maximum for a license which, under the Act, you may not do. See Re Small, Bulletin 228, Item 11; Re Ostermeier, Bulletin 189, Item 1; Re Camp, Bulletin 86, Item 11; Re Wilson, Bulletin 69, Item 6; Re Shurts, Bulletin 64, Item 6; Re McNaughton, Bulletin 64, Item 3; Bulletin 5, Item 2. The Act contemplates one kind of plenary retail consumption license and a single fee, uniform throughout the entire municipality.

Furthermore, I am not approving any hours after 3:00 A. M. That is where I draw the line. Re Wayne Township, Bulletin 244, Item 3.

For the reasons aforesaid, the two resolutions of April 20, 1938 are without sanction in law and therefore should also be promptly repealed.

Enclosed is copy of my letter of even date to the Swanee Club, Inc., 134 Market Street, East Paterson; informing them that the permit purporting to grant additional hours is without sanction in law, and that they must stop selling, as heretofore, at 3:00 A. M.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

May 16, 1938.

Swanee Club, Inc.,  
East Paterson, N. J.

Gentlemen:

I have today ruled, in letter to Walter A. Bredder, Borough Clerk, East Paterson, copy of which is enclosed, that the two resolutions adopted by the Borough Council on April 20, 1938, providing for a special night club license and granting such license to the Swanee Club, Inc., were without legal sanction.

The permit purporting to allow you to sell until 5:00 A. M. is, therefore, of no legal effect.

It follows that you, as all other licensees in East Paterson, must conduct your business in accordance with the resolution adopted by the Council on September 10, 1937, pursuant to which all sales of alcoholic beverages are prohibited between the hours of 3:00 A. M. and 7:00 A. M. weekdays and 3:00 A. M. and 1:00 P. M. on Sundays, and during which hours all licensed premises, except bona fide hotels and restaurants, must be closed.

I shall expect you to conduct your business accordingly.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 9. ADVERTISING - BREWERY - PRIZES FOR SLOGANS IN CASH OR BEER.

Dear Sir:

On April 8, 1938 we wrote your Department as to the legality of a New Jersey brewery offering prizes of nominal amounts (about \$5 each) for slogans submitted and printed in small newspaper ads. If there is objection to a cash prize, we might award a box of beer.

Yours very truly,

FRANK PRESBREY COMPANY

May 17, 1938

Frank Presbrey Company,  
New York, N. Y.

Gentlemen:

I have your letter of April 8th.

I am not favorably impressed with your scheme. The excessive promotion of liquor is distasteful to the public at large. All contests for the purpose of advertising alcoholic beverages have therefore been disapproved. See Re Gooderham & Worts, Bulletin 156, Item 5; Re WEST, Bulletin 159, Item 12; Re Donnelley, Bulletin 161, Item 1; Re Hartman, Bulletin 172, Item 5; Re Schneider, Bulletin 198, Item 8; Re Brown Friar, Inc. Bulletin 199, Item 11, copies of which are enclosed.

The trade will do well to confine its advertising to simple statements describing its products. Unique promotional schemes, while they may push a particular product temporarily, will prove a boomerang in the end. Whether the industry will keep the privilege it now enjoys of conducting legal licensed business will depend on the continuance of its good conduct. My advice is that nothing be done that could lead to its being taken away.

The contest is disapproved.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 10. DISCIPLINARY PROCEEDINGS - FRAUD IN POSING AS FRONT - REVOCATION INDICATED AND EFFECTED - THE BEST REMEDY TO BRING TO THEIR KNEES THOSE WHO HAVE DEFIANT CONTEMPT FOR THE LAWS OF NEW JERSEY.

May 20, 1938.

Mr. James B. May,  
Borough Clerk,  
Rockaway, N. J.

Dear Mr. May:

I have staff report and your certification of the proceedings before the Borough Council of Rockaway, against

Frank Stachnik, t/a Indian Tavern, charged with (a) having misrepresented and suppressed material facts in the application for the license by failing to disclose the true owner of the business sought to be licensed and also (b) with permitting gambling on the licensed premises.

I note the licensee pleaded non vult to the charges and that the license was revoked effective May 12, 1938.

Please extend to the members of the Council my sincere appreciation for the splendid manner in which this case was carried to a logical conclusion in view of the admitted guilt on the first charge. The fraud perpetrated on your Council by reason of the failure of Stachnik to disclose that he was a "front" for two other persons who could not qualify for a liquor license called for this revocation. It is the only way in which those who seem to have naught but defiant contempt for the laws of New Jersey can be brought to their knees.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

11. LICENSES - ADVERTISING - LEGAL NEWSPAPERS - WHAT CONSTITUTES.

May 16th, 1938.

MEMO TO: COMMISSIONER BURNETT

FROM: N. L. JACOBS

I have reviewed the ruling in Bulletin 190, Item 8, the petition for reconsideration thereof by John P. Ryan and the communications with respect thereto from James Kerney, Jr., President of the New Jersey Press Association and Walter M. Dear, Treasurer of the Evening Journal Association.

The ruling in Bulletin 190, Item 8, dated June 25, 1937, was to the effect that the newspaper known as "Fair Haven Chat" was not then authorized to publish notices of intention on the ground that its failure to publish two weekly issues during the first quarter of 1937 disqualified it under P.L. 1936, c.208, which provides that legal newspapers must have been "published continuously for not less than one year". Since that holding does not affect the question as to whether the Fair Haven Chat is disqualified now or hereafter, the issue is moot. However, the interested parties apparently fear that certain of the remarks in Bulletin 190, Item 8, will be taken as precedents and for that reason are urging reconsideration thereof and have advanced the following contentions:

(1) They contend that the holding to the effect that P.L. 1880, c.76, p.100, amended by P.L. 1881, c.54, p.58 and P.L. 1888, c. 130, p. 175, applied solely to suspensions which had theretofore occurred was erroneous. In my opinion that holding was sound. The preamble states that "Whereas, the publication of certain newspapers in this State has been temporarily suspended; and whereas, such temporary suspension has been considered a bar to their right to publish the State and other legal printing", and the enacting clause provides that "such temporary suspension shall not be regarded as an invalidation of

the legal age of said newspapers\*\*\*". It seems to me that the phraseology used compels the conclusion that the Legislature was referring solely to past suspensions and was not seeking to affect prospective suspensions. Furthermore, it may be noted that P. L. 1880, c. 76, p. 100, as amended, has been omitted from the Revised Statutes, presumably upon the assumption that it has no present effect.

(2) They contend that a construction of P.L. 1936, c.208, p.512 (now R. S. Sec. 35:1-2.2) to the effect that any cessation of publication, even for a day and regardless of reason, would be too strict and contrary to the legislative contemplation. With this contention I am inclined to agree. Each case must be decided upon the actual facts presented and where the only interruption is for a short period of time and results from an emergency -- e.g., a physical break-down of machinery or a sudden walkout of all employees on strike -- it should not be construed to constitute a break in the continuity of publication within the meaning of the statute. There is no express language in Bulletin 190, Item 8, which is inconsistent with the foregoing; to such extent as it leads to a contrary inference, it may be abrogated.

N. L. JACOBS  
Counsel

APPROVED as to both points for the reasons stated by Counsel.

As regards the second point, the decision in Bulletin 190, Item 8, was concerned only with a suspension of publication for two weeks caused by moving the publishing plant into a new building, which was a matter wholly within the control of the publisher. Such voluntary discontinuance is something radically different from a fire, a strike, a cessation of electric power such as occurred a year ago in Newark, or any other so-called "Act of God", which is not within the exclusive power and control of the publisher. When such a case arises, it will be determined, in fairness, on its own merits. The decision heretofore made is, therefore, hereby confined to the facts on which it rested.

D. FREDERICK BURNETT  
Commissioner

May 22, 1938.

12. DISCIPLINARY PROCEEDINGS - CLUB LICENSEES - SALES TO NON-MEMBERS - NINE DAYS' SUSPENSION.

May 23, 1938.

Mrs. Margaret E. Wermuth,  
Township Clerk of Delaware Township,  
Erlton, N. J.

Dear Mrs. Wermuth:

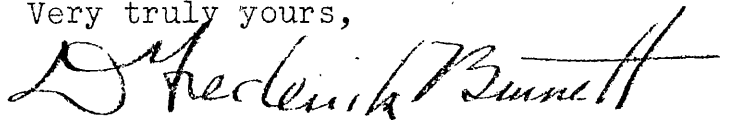
I have staff report and your certification of the proceedings before the Township Committee of Delaware Township against Ashland Fire Co. #2, charged with having sold alcoholic beverages to

non-members in violation of the terms of its club license.

I note the licensee pleaded guilty to the charge and that the license was suspended for nine days.

Please extend to the members of the Township Committee and to their solicitor, Gene R. Mariano, Esq., my sincere appreciation for their prompt and effective discharge of their unpleasant duty. Club licensees know full well that their license is expressly conditioned that no sales or service of alcoholic beverages shall be made to anyone except a member of the club or the bona fide guest of a club member. That is the reason why the fee for such a license is set at such a nominal figure. It is therefore rankly unfair competition to the holders of plenary licenses to permit a club licensee to sell to the public at large. If the Ashland Fire Co. #2 desires to do that, it will have to take out a Plenary Retail Consumption License.

Very truly yours,



Commissioner