

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

BULLETIN NUMBER 171.

APRIL 21, 1937

1. LICENSEES - SUNDAY DELIVERIES - RETAIL LICENSEE MAY NOT DELIVER ALCOHOLIC BEVERAGES ON SUNDAY IN MUNICIPALITY WHERE SUNDAY SALES HAVE BEEN PROHIBITED BY REFERENDUM.

Dear Sir:

I wish to inquire whether or not it is permissible under the New Jersey Alcohol Act to make deliveries in the City of East Orange on Sundays. The Municipal ordinance of said City does not allow Liquor Stores to be open on that day. Therefore I would like to be informed whether or not there is a violation on our part if we make deliveries to our charge account customers, it is our intention not to accept any cash for same.

Very truly yours,
Weston & Co., Inc.
Alfred Eisen,
President.

April 14, 1937

Weston and Company, Incorporated,
Newark, N. J.

Att: Mr. Alfred Eisen.

Gentlemen:

Although a retail licensee's activities are, in general, confined to the licensed premises, he is authorized by Section 25 to "deliver alcoholic beverages" in his own vehicle bearing proper insignia. The Commissioner has heretofore ruled that this authority to deliver is State-wide. See Bulletin 33, Item 5. This ruling, however, must be subject to the qualification that the delivery does not result in the violation of any independent provision of the Act. Cf. Bulletin 82, Item 15.

Under general principles of the law of sales where delivery is essential to complete the transaction, the place of sale is the place of delivery. See State v. Kind, 80 N. J. L. 176 (Sup.Ct.1910), aff'd 80 N. J. L. 466 (E. & A. 1910). The time of payment of the purchase price is not material. Cf. 4 C. S., p. 4652. Consequently, where one of your customers makes a purchase of alcoholic beverages upon the understanding that you will deliver the purchased beverages to his home, the sale is not legally complete until delivery is effected. And since the City of East Orange has, by referendum, prohibited the retail sale of alcoholic beverages on Sunday, such delivery to one of your charge-customers in East Orange on Sunday would constitute a sale within its territorial limits in violation of Section 44.

Accordingly, you are advised that you may not make such deliveries of alcoholic beverages to East Orange on Sundays so long as Sunday sales therein are prohibited by law.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

2. REFERENDUM - SUNDAY SALES - REFERENDUM BARRING SUNDAY SALES PROHIBITS SALES BUT NOT SERVICE OF LIQUOR - LICENSEES, HOWEVER, MAY NEITHER SELL NOR SERVE.

Dear Mr. Burnett:

It has been called to my attention by Rev. E. Kooistra, Minister of the Christian Reformed Church, that on April 18th, there will be a wedding at the Old Town Hall, opposite his Church, expecting in the neighborhood of 400 guests, including two orchestras.

As this Borough has passed a referendum that no alcoholic beverages shall be sold or served on Sunday, would it be a violation if alcoholic beverages were served at this wedding. The building in which the affair is to be held is owned by the Odd Fellows Association and is rented out by them to private individuals.

Very truly yours,
Orie Van Dyke,
Chief of Police,
Borough of Midland Park.

April 15, 1937

Orie Van Dyke, Chief of Police,
Midland Park, New Jersey.

My dear Chief:

My records show that the referendum re Sunday sales which was held in Midland Park on November 6, 1934, was on the question: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" The vote, as certified to me by the Clerk, was 'Yes' 471, 'No' 805.

The referendum, therefore, prohibits all sales of alcoholic beverages on Sunday or the service or delivery of any alcoholic beverages by a licensee which, in the contemplation of the Control Act, is considered a sale. It also prohibits the delivery of any alcoholic beverage in Midland Park on Sunday pursuant to special social permit for that also would constitute a sale.

It does not, however, prohibit the gratuitous serving or delivery of alcoholic beverages by a person not holding a license to his friends or guests at a private social affair. That is not a sale. Consequently, the serving of alcoholic beverages free of charge at a private wedding would not be barred.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. LICENSED PREMISES - REDUCTION - PROCEDURE.

April 15, 1937

Mr. Daniel F. Daly,
New Brunswick, New Jersey.

My dear Mr. Daly:

New Jersey State Liquor

I understand that your license application describes the licensed premises as both the first and second floors of 51 Codwise

Avenue and that, since you have subsequently leased the second floor to a tenant for a private residence, you wish to confine your licensed premises to the first floor.

The request, while unusual, is wholly reasonable. As the case is one of first impression, it becomes necessary to formulate the procedure.

In order to extend a licensed premises, it is necessary that the licensee obtain either a new license for the additional premises or the transfer of his old license to cover both. Re Campanello, Bulletin 114, Item 8; Re Cohen, Bulletin 89, Item 7; Re Johnson, Bulletin 170, Item 14.

Where, however, the object is to constrict the licensed premises rather than to extend it, there is no reason for requiring a formal transfer. Upon the initial issuance of the license, the premises as a whole, and each part thereof, were approved.

As the license you now hold was issued by the New Brunswick Board of Commissioners, you should address to that Board a petition requesting that your application for license be amended to describe your licensed premises as the first floor of 51 Codwise Avenue and that the second floor heretofore included, be stricken out. On receipt of the petition, it thereupon will become the duty of the Board to determine whether or not the premises as so reduced is suitable to be licensed. If the Board finds that the premises as so reduced or constricted is not suitable, the petition should be denied. If, on the contrary, the reduced premises is acceptable, the petition should be granted and the Clerk directed to amend the application in accordance therewith.

It may be that the original premises was also described specifically on the license. In such case, the license also must bear a record of the change. This may be done by endorsing on the face of the original license "This license, subject to the original terms and conditions thereof, is hereby continued for premises comprising (insert description of the premises as reduced)", dated and duly acknowledged by the proper municipal official.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. EDUCATIONAL CAMPAIGN.

April 16, 1937

To: Commissioner Burnett

From: E. W. Garrett

The speaking engagements arranged to date are as follows:

WEEK BEGINNING APRIL 11, 1937

Thur. April 15	Original Tavern Owners Assn, Douglas Hotel, Newark.	Deputy Comm'r E. B. Hock
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WEEK BEGINNING APRIL 18, 1937

Thur. April 22	Young Men's Christian Association, Perth Amboy, N. J. - 8:00 P. M.	Inspector D. J. H. Murray
Thur. April 22	Court Jersey City, No.3, Foresters of America, Central Hall, 574 Newark Avenue, Jersey City, N.J. - 9:15 P.M.	Inspector Edw. Lurie

WEEK BEGINNING APRIL 25, 1937

Mon. April 26	Passaic Bar Assn, Paterson, N.J.	Commissioner D. Frederick Burnett
Tues. April 27	Newark Tavern Association, Inc., Krueger's Auditorium, Newark - 8:00 P. M.	Deputy Comm'r E. B. Hock
Thur. April 29	Penns Grove Rotary Club, duPont-Penns Grove Country Club, Penns Grove - 12:30 P. M.	Inspector F.M. Middleton

WEEK BEGINNING MAY 9, 1937

Fri. May 14	W.C.T.U., at Y-for-All, cor. Main & Passaic Streets, Hackensack, N.J. - 1:00 P. M.	Deputy Comm'r E. W. Garrett
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WEEK BEGINNING MAY 23, 1937

Thur. May 27	Ophir Lodge #186, F.&A.M. of East Orange, East Orange - 9:30 P.M.	Commissioner D. Frederick Burnett
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WEEK BEGINNING MAY 30, 1937

Thur. June 3	Kiwanis Club, Millville, N. J., 12:15 P. M.	Inspector F.M. Middleton
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E. W. Garrett,
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - PERMANENT DISQUALIFICATION FOR ANY LIQUOR LICENSE FOLLOWS ADJUDICATION OF SECOND VIOLATION OF THE CONTROL ACT.

April 19, 1937

Harvey G. Wismer, Esq.,
Town Clerk,
Phillipsburg, N. J.

Dear Mr. Wismer:

I have report of the proceedings before the Board of Commissioners of Phillipsburg against Anna Gerencer, charged with possession of illicit alcoholic beverages, and note that she was adjudicated guilty and her license suspended for the balance of its term.

Expressing no opinion on the merits of the case because it may come before me by way of appeal, I wish again to thank your Board for their effective enforcement.

My records indicate that Anna Gerencer was found guilty on a previous occasion for the same offense and her license suspended for the balance of its then term.

Since she has been adjudicated guilty of having committed two violations of the Control Act, she may never again obtain any liquor license either in Phillipsburg or elsewhere in this State. Section 22 of the Control Act so provides. This is the most virile section in the whole Act. It will eventually operate to purge the industry of those who apparently can't learn that the law was made to be obeyed.

Permanent notation to that effect should be made at once on your records.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. LICENSES - RENEWAL - PRINCIPLES APPLICABLE.

April 17, 1937

Hon. John Hinchcliffe,
Mayor,
Paterson, N. J.

My dear Mr. Hinchcliffe:

At our luncheon last week, you inquired my view about renewals and the official bulletin citations thereof.

Here they are:

I believe that the only proper test which can be applied in determining who shall be given renewals is to judge each licensee on his record. The object of the licensing system is to choose the best. This means the best in character, in conduct and in obedience to the law. Denials based on violations give the licensee no just cause for complaint because it is the result of his own misconduct. The essential thing is to adopt a fair and uniform policy, give due notice thereof to all and then follow it impartially and without fear or favor. It is substantially the procedure I have heretofore outlined in connection with municipal policies designed to reduce the number of licenses outstanding. Cf. re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Trenton, Bulletin 119, Item 9. Through rigid enforcement of your rule, I believe you will eventually have in your City a group of licensees who will obey the law, keep good order and will be a credit to the City and a vindication of such policy.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. MUNICIPAL ORDINANCES - LIMITATION OF NUMBER OF LICENSEES - ALL QUESTIONS RELATING TO VALIDITY OF SUCH ORDINANCE AND THE REGULARITY OF ITS ENACTMENT ARE RESERVED FOR DETERMINATION ON APPEAL.

April 17, 1937

Edward DuPree, City Clerk,
Paterson, N. J.

Dear Mr. DuPree:

I duly received yours of April 6th enclosing copy of ordinance restricting the number of plenary retail consumption licenses which may be issued in the City of Paterson.

It does not need my approval to be effective. Section 37 of the Act requires my approval only of regulations of the conduct of licensed businesses or the nature and condition of licensed premises. Limitations of the number of licenses, however, are, as provided in Section 38, subject to review on appeal, upon which they may be set aside, amended, or otherwise modified.

I note that the Ordinance is not approved by the Mayor, also your certification reading:

"The foregoing ordinance was presented to the Mayor on March 16th, for his approval, and the same, being returned to this Board with the disapproval of the Mayor, said ordinance was passed over the veto of the Mayor on April 5, 1937."

All questions relating to the validity of the Ordinance and the regularity of its enactment are reserved for determination

when, as and if appeal shall be taken by any person aggrieved thereby.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - GARDNER v. SEA BRIGHT.

WILBUR C. GARDNER,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
BOROUGH COUNCIL OF THE)	
BOROUGH OF SEA BRIGHT,)	
)	
Respondent)	

Milton A. Bennett, Esq., Attorney for Appellant.
Leon Reussille, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license.

Respondent contended that there are already sufficient licensed places in the community. Sea Bright is principally a summer resort with a small permanent population of approximately 600 but with a summer time population many times that number - a daily influx during the season of many thousands. There are now eleven consumption licenses in the Borough, three of which are operated during the winter months.

It is well settled that a municipality may deny an application when the granting thereof would result in the existence of too many licensed premises in the community. Bumball v. Burnett, 115 N. J. L. 254 (Sup. Ct. 1935); Levitt v. Liberty, Bulletin 169, Item 4, and cases there cited. It appears, however, that the three licensed premises which are open all year are located in the main business section of the Borough, the closest of which is at least an eighth of a mile south of appellant's premises. These three places do not cater primarily to restaurant trade although sandwiches may be procured. Appellant proposes to operate a high type restaurant during the entire year. He is an experienced restaurant man and has operated several other high-class restaurants in Monmouth County. He has developed a considerable following throughout the shore section and has a reputation for specializing in excellent foods.

Appellant's premises are in a district zoned for business and are located so as to attract a type of trade entirely different from that which other licensees have. His premises are situated along the Shrewsbury River at the junction of the main Shore Highway with the Rumson Road. This is the only location in Sea Bright having facilities where customers from the River may tie up their boats and be served with meals.

Witnesses produced by appellant testified that there is a considerable demand for an establishment of the type which he proposes to operate and that his establishment would not take away any trade from the licensees now operating saloons, since he caters to a different type of trade. The owner of the premises testified that frequently he has been obliged to direct transients to other restaurants selling liquor in nearby towns because there was none available in the vicinity.

The only person who appeared at the hearing to testify on behalf of the respondent Council was one of its members, Mr. Eilenberger. He gave as his reason for being opposed to the issuance of the license that he felt there should be some limit to the number issued and enough had been issued. He admitted, however, that he would favor the granting of the license if the trade which was obliged to go elsewhere because there was no restaurant selling liquor in the vicinity, could be held in the Borough. Outside of the generalities there is nothing in the record to support the denial. No objection is made either to the person or the place of appellant.

Under the circumstances, I find that appellant has sustained the burden of showing that he should be granted a license. The testimony establishes that public convenience will be served by the type of place which he proposes to run.

There is another and even more fundamental reason why the action of the respondent must be reversed. It appears from the testimony that the only other member of the Council, besides Mr. Eilenberger, who voted to reject the application is the landlord of one of the present licensees. A member of a municipal issuing authority who owns premises leased by a retail licensee is disqualified from voting on any matter involving alcoholic beverage control. His judgment in determining who may or may not hold any licenses must not be warped by financial interest in the alcoholic beverage industry. Re Asbury Park, Bulletin 39, Item 2; Re Simmill, Bulletin 76, Item 2; Re Schulz, Bulletin 80, Item 12; Re Brundage, Bulletin 84, Item 17. This member's participation in the meeting and his voting upon the application taints the action of respondent with illegality. Petrusha v. Mine Hill, Bulletin 146, Item 8.

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

D. FREDERICK BURNETT,
Commissioner.

Dated: April 18, 1937.

10. APPELLATE DECISIONS - PECK v. WEST ORANGE.

MORRIS PECK,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
BOARD OF COMMISSIONERS OF THE)	
TOWN OF WEST ORANGE,)	
)	
Respondent.)	

Abraham I. Harkavy, Esq., (William Ryan and John J. Meehan, Esqs., on Brief), Attorney for Appellant.
Alfred J. Grosso, Esq., Attorney for Respondent.
Frederic M. P. Pearse, Esq., Attorney for National Retail Beverage Dealers Ass'n and certain retail consumption licensees.

BY THE COMMISSIONER:

In a prior appeal, entitled Peck v. West Orange, Bulletin 147, Item 1, an ordinance adopted by respondent on July 7, 1936 was disapproved because of arbitrary and discriminatory exceptions made in favor of certain restaurants and clubs provided they were equipped to serve at least one hundred persons at one time. The proviso was the cause of the disapproval.

On December 15, 1936, respondent adopted a new ordinance which enacts in Section 3 that every licensed place, except restaurants, shall be closed between the hours of 3 A. M. and 1 P. M.

on Sundays, and between the hours of 2 A. M. and 7 A. M. on weekdays.

"Restaurants" are defined in Section 4 of the new ordinance to include either "an establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing and cooking and serving of foods, in which no other business except as is incidental to such establishment is conducted; or as a club which could qualify for a club license pursuant to the State rules and regulations and which has a regular, bona fide, dues-paying membership, and which has an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods and not conducted primarily for gain."

There is no provision in the new ordinance as to the number of persons the restaurant or club must be equipped to serve.

"Restaurants" may not sell alcoholic beverages during the hours set forth above, but their premises need not be closed.

Appellant, who conducts a delicatessen store in West Orange, contends that the ordinance is arbitrary and unreasonably discriminatory and therefore should be disapproved.

The general rule is laid down in Peck v. West Orange, supra, as follows:

"In general, licensees of the same class must be treated alike. Classifications may not be arbitrary, fanciful or illusory. Re Teaneck, Bulletin 125, Item 8. Classifications based upon significant factual distinctions, however, are sustainable. Thus, various regulations imposing restrictions on all licensees, except hotels and restaurants, have been approved. See generally Bulletin 43, Item 11, Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1; Re Mullica Township, Bulletin 109, Item 4; Re Pine Hill, Bulletin 115, Item 13. Similarly, the Courts have sustained statutes and ordinances which establish separate classifications and impose restrictions applicable to all within a single class although not to all classes. Thus, in Meehan v. Excise Commissioners, 73 N. J. L. 382 (Sup. Ct. 1906), affirmed 75 N. J. L. 757 (E.&A. 1907), legislation exempting restaurants, clubs, etc. from a requirement that the place of business be exposed to public view was held to be constitutional, the Court saying:

"Class legislation, whether within or without the police power, discriminating against some and favoring others, is prohibited, but legislation carrying out a public purpose, although limited in its application, if, within the sphere of its operation, it affects alike all similarly situated, is not interdicted by the fourteenth amendment."

The gist of appellant's argument is that the ordinance discriminates in favor of restaurants and clubs by allowing them to keep open during the hours that other licensees must remain closed. The hours during which sales of liquor are permitted are the same for all licensees. The only question to decide, therefore, is whether the different closing requirements are based upon significant and sufficient factual distinctions.

The principal objective of restaurants and clubs is to render a service as distinguished from selling a commodity. The

sale of alcoholic beverages is a mere, and usually a minor, incident to the operation of a restaurant or club, whereas it is a part of the main business of other liquor licensees, if not their whole existence. It is common throughout our country, however strict the local observance of Sunday, to permit hotels and restaurants and clubs to remain open as a matter of public convenience when all other places of business are forced to remain closed. The very distinction between hotels and restaurants on the one hand and grocery, delicatessen, drug store or other mercantile business on the other is recognized by the Alcoholic Beverage Control Act itself. Sec. 13(1). What the Legislature has ordained as a line of cleavage to carry out a public purpose, may be made avail of by a municipality in formulating its local regulations.

So, too, a club license has been provided by the Legislature, Section 13(5), conferring different privileges and issued at a lesser fee and hence recognizing the factual distinction between clubs and other licensees.

I conclude that there is reasonable basis for distinguishing or classifying restaurants and clubs apart from the general run of other licensees. Hence, an ordinance which compels all licensees not only to stop all sales of liquor during certain hours but also to close up shop during those hours but which permits restaurants and clubs to remain open for purposes other than the sale or service of liquor is not arbitrary or unreasonably discriminatory.

This ordinance, unlike its predecessor which was condemned (Bulletin 147, Item 1) because it applied arbitrarily only to some restaurants and clubs, affects all alike within the classification of restaurants and clubs as defined by the Control Act.

A recent illustration of the same distinction is found in Re Bowers, Bulletin 170, Item 11.

If citizens wish to sell liquor in conjunction with their other mercantile business, they will have to conform the whole enterprise to municipal regulations governing the liquor business or else abandon the desire. Re Toegel, Bulletin 161, Item 6.

The ordinance is approved.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 19, 1937.

11. DENATURED ALCOHOL - KEROSENE AS DENATURANT - ADVISABILITY OF EXPLAINING TO STOREKEEPERS THE USE INTENDED TO BE MADE.

March 31, 1937

Gentlemen:

About two weeks ago I purchased some denatured alcohol at a neighbourhood drug store. I desired to use this alcohol to dissolve some shellac. Upon using it I found that it was diluted with something that smelled like kerosene.

I thereupon purchased in another store genuine denatured alcohol and mixed the diluted alcohol therewith. The first purchase immediately clouded the genuine alcohol.

I would appreciate your advising me as to whether anything can be done to prevent other purchasers from being victimized in this same manner.

Sincerely yours,
Mary Ada Hughes.

April 19, 1937

Mary Ada Hughes,
Jersey City, New Jersey.

Dear Madam:

The Commissioner has referred to me your letter of March 31st.

You state that you purchased at a drug store some denatured alcohol which was diluted with something that smelled like kerosene.

As a matter of fact, the Bureau of Internal Revenue of the Federal Government has approved a number of different formulas for denatured alcohol. Formula No. 15 contains a quantity of kerosene. It may be legitimately handled by drug stores and has certain restricted uses. Unless you specifically designated the type of denatured alcohol you wished to purchase, it is quite possible that you secured a bottle of Formula No. 15. The addition of Formula No. 15 to a clear denatured alcohol would naturally result in a cloudy mixture.

I recommend, in all future purchases of denatured alcohol, that you explain in detail to your storekeeper the use you intend to make of it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: E. W. Garrett,
Deputy Commissioner.

12. SIGNS - LICENSED MANUFACTURERS AND WHOLESALERS MAY DISPLAY SIGNS BEARING NAME, BRAND, OR TRADE-MARK ON EXTERIOR OF LICENSED PREMISES - HEREIN OF CAUTION AS TO ANY ABUSE OF THE PRIVILEGE.

Dear Commissioner:

Is it permissible to paint a sign on the inside of our windows advertising that we are agents for a brand of whiskey.

Also is it permissible to have a sign on the outside of our building.

Yours very truly,
Essex Distributing Corp.

April 19, 1937

Essex Distributing Corporation,
Newark, New Jersey.

Gentlemen:

It is permissible for you to paint a sign on the inside of your windows advertising that you are agents for particular brands of whiskey.

It is also permissible for you to have a sign on the outside of your building.

The present State Rules Governing Signs (compiled Rules, Regulations and Instructions, Page 57) apply, so far as they deal with the displaying of signs, only to retail licensees. As you are a wholesaler, they do not apply in that respect to you.

There is nothing in the State law or the State rules at the present time restricting the manner in which a manufacturer or wholesaler may display signs. On the whole, the manufacturers and wholesalers have used this freedom in a sensible and enlightened manner. It has not yet been necessary to extend the rules to them. Therefore, keep whatever signs you wish to erect within reasonable and proper bounds.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. SPECIAL PERMITS - WHEN REQUIRED - MUTUAL PURCHASES.

Dear Sir:

About one hundred workmen, who have common employment, are desirous of having a get-together meeting at which they intend to have food and about two halves of beer. No tickets are to be issued for this affair but a little colored slip will be given to a man so that he may enter the convention hall, which paper is simply for identification to those having charge of admission and who do not know the members personally. There is to be no profit going to any person whatsoever and no sales. These men constituting members of this group are donating \$1.00 each for the purchase of food and the halves of beer from the brewery. There is no person to receive any profit whatsoever and the entire amount collected is to be turned into food and beer.

In other words, the situation is analogous to that of a man who goes to a brewery and orders some beer delivered to his home and to his grocer and likewise makes purchases with the instructions to deliver them to his home. Instead of these goods being delivered to each individual's home, they are delivered in bulk to a banquet hall.

I would like to know whether it is required that any permit be given in order to enable these men to conduct this banquet and distribute the food and beer which they will have purchased for themselves from the grocer and brewery respectively. I was in doubt about the necessity of a state permit because neither a sale nor profit is contemplated nor is anybody to be served anything except that which belongs to himself since he has originally paid for his proportionate share.

May I be advised by you as to whether, in conformity with your practice, such a permit is required? Thanking you, I am

Very truly yours,
Walter D. Cogle.

April 19, 1937

Walter D. Cogle, Esq.,
Trenton, New Jersey.

My dear Mr. Cogle:

I note that the members of the group on whose behalf you write will be assessed one dollar each for the purpose of providing food and beer at the affair.

So long as a fee is charged or general assessment made, it cannot be said that the beer is to be actually given away free. Hence, a special permit is required. Herewith re Berry, Bulletin 121, Item 2, which will give you the reasons. The result is the same regardless of whether or not the tickets are issued. The

point is that no one could get into the hall or get a beer unless he paid the dollar fee.

The situation is not comparable to one where the individual himself goes to a store and orders beer sent home. It is not the individual or each member of the group as an individual who is making the purchase. The group is buying the beer and assessing the members.

It is an indirect sale. The price of the beer is included in the assessment. Absence of profit motive makes no difference. A license or special permit must first be obtained.

I am enclosing an application for a special permit. It must be filled out by the organization intending to make the sales, signed by the Municipal Clerk and the Chief of Police of the municipality in which the affair will be held and returned to this office. The fee for the permit is \$10.00 and must accompany the application.

Yours very truly,
D. FREDERICK BURNETT,
Commissioner.

14. SPECIAL PERMITS - WHEN REQUIRED - MUTUAL PURCHASES.

April 19, 1937

Joseph P. Stonicker,
Chief of Police, Lawrence Township,
New Jersey.

My dear Chief:

I give you the answers to your questions as follows:

"Can any organization or club of any description take up a collection after a meeting for beer that is served after the meeting, or can they take up a collection to buy beer to be served among the members after the meeting?"

Whether or not the taking up of a collection makes the transaction a sale is sometimes difficult to determine. Organizations often refer to what actually is a sale as being a "mere chip-in or collection" in order to evade taking out the necessary permit. The simplest rule that I can give you is that if there is any fee which must be paid, directly or indirectly, by way of a general assessment being made or an admission charged or tickets sold or food or other merchandise purchased, then it is a sale within the meaning of the Control Act and a license or special permit must first be obtained. In other words, if a guest is compelled to pay something before he could get a beer, then the beer is not actually given away free, the point being that he could not get the beer unless he made the payment.

Herewith copy of ruling made in re Berry, Bulletin 121, Item 2, and copy of letter of even date to Walter D. Cogle, Esq., Broad Street Bank Building, Trenton (Bulletin 171, Item 13), which will give you the underlying principles.

"Can a club or organization serve beer or liquor at a supper where tickets are sold for the supper and floor show but the beer is given away free of charge before or after the supper or during the affair?"

No, not unless the club or organization first gets a special permit. The price of the beer and liquor is included in the

price of the tickets sold for the supper and floor show. As indicated in the answer to your first question, it is an indirect sale and must be duly licensed.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

15. LICENSED PREMISES - AMUSEMENT DEVICES - WURLITZER AUTOMATIC PHONOGRAPH PERMISSIBLE.

Dear Sir:

Could you please tell me if a Wurlitzer Phonograph Machine is allowed in a tavern. This machine operates upon the insertion of a coin and is an amusement that is not played against the house.

Philip Bongiovanni.

April 19, 1937

Mr. Philip Bongiovanni,
Jersey City, N. J.

Dear Sir:

You inquire whether or not Wurlitzer Automatic Phonographs may be installed and maintained on licensed premises.

The Ace Vending Co., 446 Clinton Avenue, Newark, the local distributor, has satisfactorily explained to me the manner in which the phonograph operates.

I find that it is an automatic phonograph with a coin operating attachment. It delivers only music - at five cents a tune - and that is all the customer gets for his money, no more, no less. There is no element of chance involved nor any "playing" feature in the machine.

Wurlitzer Automatic Phonographs may be operated on licensed premises in New Jersey.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

16. PUBLIC BUILDINGS - WHAT CONSTITUTES - A BUILDING ERECTED BY AN INDIVIDUAL ON LAND LEASED FROM A MUNICIPALITY DOES NOT NECESSARILY MAKE THE BUILDING A PUBLIC ONE.

Dear Sir:

An individual has leased from a municipality a parcel of vacant ground. He wishes to erect on the premises a building which is to be used for the sale of liquor. Will you issue a ruling on the question of the legality of the sale of liquor on ground owned by a municipality but leased to a private individual.

Very truly yours,
Sidney Kaplan.

April 20, 1937

Sidney Kaplan, Esq.,
Camden, New Jersey.

My dear Mr. Kaplan:

A municipality may issue a license for premises erected on land leased from the municipality provided (1) the applicant is fully qualified, (2) the premises is suitable and (3) if the proposed licensed premises is in a public building, the Commissioner's approval has first been obtained.

Section 39 of the Control Act (c. 436, P. L. 1933), provides that no sales of alcoholic beverages shall be made in any public building under the control of the State or any political subdivision thereof except as permitted by the Commissioner in specified cases and subject to rules and regulations. Hence, if the proposed premises is located in a public building, the application requires my approval. Re Hoffman, Bulletin 33, Item 10, copy enclosed. On the other hand, the mere fact that a building is owned by a municipality does not of itself make the building a public building. Thus, purchase by a municipality of a private building at a tax sale does not transform it into a public building and hence Section 39 has no application. Re Pierson, Bulletin 38, Item 12, copy also enclosed.

As you put the facts there is nothing to show that the building erected on land leased from the municipality is to be a public building. I take it, therefore, that irrespective of whether the building by the terms of the lease upon the expiration thereof belongs to the tenant or the municipality, the building itself while operated during the lease will be a merely private building. If so, no approval is required and there is nothing illegal about the sale of liquor therein providing, of course, a license is duly obtained.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

April 20, 1937

In re: Hearing No. 161.

After permit was issued, solicitor's fingerprint record disclosed that he had been arrested in 1934 on a charge of uttering a worthless check, had been found guilty in a criminal court and received a suspended sentence. Solicitor having denied in his application that he had ever been convicted of a crime, a hearing was held to determine whether his conviction involved moral turpitude, also to determine whether he had filed a false application.

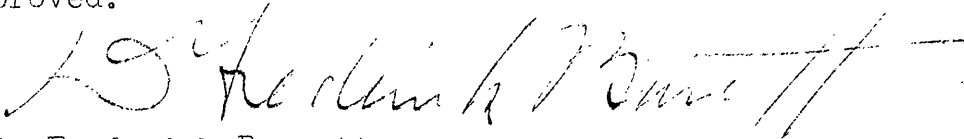
At the hearing solicitor testified that at the time of his arrest he was engaged in business, and had issued a check for \$11.60 in payment for lumber. Subsequently the check was returned marked "insufficient funds," because another check which solicitor deposited in his account was also elastic. Solicitor was brought before a Judge of a criminal court, who advised him to make his check good. He made good, as appears from a letter received from the corporation to which he issued his check. Solicitor testified that he had answered the question in good faith, and did not believe that he had been convicted at the time he appeared in the criminal court. He has been engaged in business for many years, and otherwise has a clean record.

Charges of this nature are often disposed of in the lower courts in a rather informal manner, and I believe solicitor's testimony that he did not realize he had been found guilty, but rather believed he had been ordered to make good the check. I believe, therefore, that he acted in good faith when he swore that he had never been convicted of a crime.

It is recommended that no further action be taken.

Edward J. Dorton,
Attorney-in-Chief.

Approved:



D. Frederick Burnett,
Commissioner.