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

BULLETIN NUMBER 70 April 17, 1935

1. MUNICIPAL ORDINANCES - EXEMPTION OF HOTELS FROM SCREEN REGULATIONS GOVERNING CONSUMPTION LICENSES ARE NOT UNREASONABLE DESPITE EXEMPTION OF HOTELS

RETAIL LIQUOR DEALERS ASSOCIATION OF THE PLAINFIELDS, a corporation of New Jersey,
Petitioner
-vs-
MAYOR AND COMMON COUNCIL OF THE CITY OF PLAINFIELD,
Respondent

ON PETITION
CONCLUSIONS

- - - - - - - - - - - - - - - - - - -

Max D. Reiss, Esq., Attorney for Petitioner
William Newcorn, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is a petition to review the validity of Section 15 of an ordinance adopted by the Common Council of the City of Plainfield on September 4, 1934 and approved by the Mayor on September 7, 1934.

The ordinance is entitled "An Ordinance To Regulate The Sale Of Alcoholic Beverages In The City Of Plainfield". Section 15 provides:

> "Every person licensed to sell alcoholic beverages at retail for consumption on the premises, except licensed clubs, shall so arrange the doors, windows and partitions of the premises licensed for the sale of alcoholic beverages, so that an unobstructed view of the interior thereof may be had from the street, doors or windows, or both, and no window blind, screen, partition, curtain or other article shall be so left or placed as to prevent an unobstructed view of the interior of the premises licensed as aforesaid. In case of hotels, the bar rooms shall be so located so that an unobstructed view can be had from the lobby or other public room of the hotel."

Pursuant to Section 37 of the Control Act the ordinance was submitted by respondent to the Commissioner who approved Section 15 saying:

> "There may be room for question of Section 15 on ground of discriminating between members of the same license class by reason of the exception in favor of licensed clubs and hotels. This, because clubs are excepted regardless of the class of license held and because hotels as a group are distinguished from those similarly licensed. However, the situation is analogous to that in Bulletin #43, Item 11, and for the reasons therein stated, this regulation is likewise approved."

Bulletin 43, Item 11, captioned "CERTAIN REGULATIONS, ALTHOUGH POSSIBLY DISCRIMINATORY, NOT DISAPPROVED", reads in part:

"The Commissioner repeatedly ruled that, while different regulations may be applied to different classes of licensees, all those within the same license class must be treated alike. See Bulletin 7, item 1, Bulletin 19, item 7.

"However, regulations have been adopted which except from the application of a screen ordinance the sale or service of alcoholic beverages in guest rooms or public and private dining rooms in hotels and clubs, or which prohibit the sale of alcoholic beverages on Sundays except at hotels or restaurants with meals. Such may be construed to carry out a public purpose, and being limited in their operation, do affect alike all persons similarly situated."

The Commissioner's approval, however, like all ex parte approvals of municipal regulations governing the conduct of licensed business was expressly subject to the principle set forth in Bulletin #43, Item 12, reading as follows:

"Whenever an approval is ex parte and persons who may be aggrieved thereby may not have been afforded an opportunity of being heard, such approval is given upon the understanding that any redetermination, resulting from any petition or application which may hereafter be filed to review such approval, may be made and is reserved."

Petitioner thereafter filed this petition to review said approval.

Respondent challenges the standing of petitioner as an association to attack this ordinance. It may be that the Retail Liquor Dealers Association might not have a right to prosecute certiorari. But in this proceeding, while perhaps the petitioner as an association is not technically aggrieved by the ordinance, each of its members may be. The Association purports to represent its members. In effect this petition is an informal bill of peace. The only question involved is a mere matter of convenience. The question is fairly presented and I shall therefore proceed to consider the matter on the merits.

The attack upon the validity of the ordinance is based upon the contention that by excepting hotel premises from the screen regulation respondent has unreasonably discriminated against other licensees in the same class. No claim is made that the requiremeent that licensed premises be open to public view is in itself unconstitutional. Cf. Thorne vs. Kearny, 100 N.J.L. 228 (Sup. Ct. 1924) aff'd sub. nom. Thorne vs. Casale, 101 N.J.L. 418 (E. & A. 1925). Counsel for both parties concede that the dispositive question in the instant case is whether the exemption referred to constitutes an unreasonable discrimination.

In Meehan vs. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906) aff'd 75 N.J.L. 557 (E. & A. 1907) the Court had before it the question of the validity of a resolution adopted pursuant to P.L. 1906 p. 199. Said Act provided in part that the clear interior view of the whole of any room used for the sale of alcoholic beverages shall be in no wise obstructed but excepted from the operation of this provision inns, taverns and hotels having at least ten spare rooms and beds, restaurants, picnic or recreation grounds, buildings containing bowling alleys, and buildings entirely occupied by a regularly organized club.

These exceptions create much greater discrimination than the municipal ordinance now under review. Yet they were sustained by the Supreme Court and affirmed by our court of last resort. Mr. Justice Fort, speaking for the Supreme Court, at the beginning of the opinion said:

> "The contention is that these exceptions result in a practical discrimination between saloon licenses and inn or hotel licenses, as well as between saloons and licensed restaurants of the excepted class where meals are regularly furnished. This seems to be the clear effect of the statute. It also distinguishes between saloons and picnic grounds and also between saloons with and without bowling alleys.
>
> "The reason for this classification is not for the court to endeavor to discover or to attempt to reconcile with what may or may not be deemed the policy of the state as to granting, restricting or withholding licenses. With these questions the court has nothing to do. The legislature, so long as it keeps within its constitutional prerogatives, is upon such questions, supreme. If the legislation is objectionable on questions of political policy the Legislature must be looked to to remedy it. That is not within the province of the court. We can only inquire as to the legislative power under the constitution."

The Legislature, by the Control Act of 1933, delegated the power to each issuing authority subject to the approval of the Commissioner first obtained, to regulate the conduct of any business licensed to sell alcoholic beverages at retail, and the nature and condition of the premises upon which any such business is to be conducted. The instant ordinance has been approved by the Commissioner under the legislative power so delegated. If the policies of the Commissioner are objectionable or do not properly translate the standards of the Legislature into action, the Legislature may remedy them. Until so remedied, they are the legislative will expressed in terms of law.

The Commissioner has recognized time and again that hotels, although holding the same class of license as other consumption licensees, nevertheless are in a quite different situati

Thus in Re Corona, Bulletin #29, Item #5 in considering what constituted an hotel the Commissioner said:

> "An hotel is not to be arbitrarily defined by the number of rooms it contains, but rather by the purposes which it serves.
>
> "The term as used in Sec. 76 contemplates a public house for the lodging and entertainment of travelers or wayfarers for a compensation. In short, an inn of the better class. It is to be distinguished from a tavern or a house of public entertainment that does not provide lodging, and from a boarding house which, while it provides lodging, is not a public house. The boarding house keeper may refuse accommodations to anyone he chooses. The innkeeper must entertain all travelers or wayfarers who are of good conduct and ready to pay the proper charges."

So, in Di Bono vs. Bridgeton, Bulletin #30, Item #9, the respondent was upheld in denying a license to appellant because he was not in the restaurant business for one year prior to the submission of the application. The Commissioner said:

> "Confining consumption licenses to hotels and restaurants in order to control the enforcement of the liquor law is not unreasonable. Neither is the probationary period of one year which must pass before any hotel or restaurant may qualify for a license."

Again, in Barber vs. Bridgeton, Bulletin #31, Item #1 the Commissioner said:

> "The Courts have gone to great lengths in sustaining restrictive regulations which were limited, in their application, to the sale of alcoholic beverages. See Meehan vs. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906) aff'd. 75 N.J.L. 557 (E. & A. 1907). Compare, however, Haskell vs. Howell, 269 Ill. 550, 109 N.E. 992 (1915).
>
> "Our Courts have declared that liquor regulations stand on a footing of their own and are sui generis. In Paul vs. Gloucester County, 50 N.J.L. 585, (E. & A. 1888), our court of last resort declared: 'The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied.' Bul. 20, Item #4.
>
> "Confining consumption licenses to hotels and restaurants in order to control the enforcement of the liquor law is not unreasonable. Neither is the probationary period of one year which must pass before any hotel or restaurant may qualify for a license. Di Bono vs. Bridgeton, Bul. 30, Item #9."

In MacCracken vs. Belvidere, Bulletin #38, Item #18, the Commissioner overruled appellant's contention that a resolution limiting "retail consumption licenses to be issued only to those persons or places conducting a general hotel and restaurant business; premises to contain at least 15 rooms for the accommodation of the traveling public" was unreasonable or discriminatory, saying:

> "Section 37 of the Control Act confers express powers upon the issuing authority of the municipality to regulate the conduct of any business licensed to sell alcoholic beverages at retail, and the nature and condition of the premises upon which any such business is to be conducted. Bulletin 16, Item 8. Confining consumption licenses to hotels and restaurants in order to control the enforcement of the liquor law is not unreasonable. DiBono vs. City Council of Bridgeton, Bulletin 30, Item 9. To confine it to a hotel with a restaurant is properly within the police power as much as to confine it to a hotel or a restaurant."

A similar contention was overruled for the same reason in Gamble vs. Avon-by-the-Sea, Bulletin #45, Item #11. In Platnick vs. Belmar, Bulletin #45, Item #16, a municipal policy not to issue any licenses for premises in a certain area except to hotels was

held to be reasonable and valid even though not formally announced by resolution or ordinance for the stated reasons that:

> "Under Section 37 of the Control Act, a municipal issuing authority may regulate the nature of the premises to be licensed for the sale of alcoholic beverages. It has been held that under this provision a uniform policy confining the issuance of licenses to hotels is valid. MacCracken vs. Belvidere, Bulletin #38, Item #18. It has also been held that a valid municipal policy governing the issuance of licenses may be applied, even though not announced by resolution or ordinance. Dann vs. Manasquan, Bulletin #37, Item #12."

On the other hand, the denial of an application of an hotel for a consumption license upon the ground that a sufficient number of licensed premises existed in the municipality even though no limitation of numbers had ever been adopted was overruled in A.B.C.Holding Co. Inc. vs. Newton, Bulletin #58, Item #11. In the course of his opinion the Commissioner said:

> "Hotels, as such, must be distinguished from ordinary liquor stores. Hotels are vested with a quasi-public function. They are charged with the duty of accepting all proper persons as guests and of furnishing them with accommodations so far as the capacity of the hotel permits. See Watkins vs. Cope, 84 N.J.L. 143 (Sup. Ct. 1913); see also Re Corona, Bulletin #29, Item #5; They discharge a public function. They are, therefore, not to be classed as ordinary drinking places. It is not fair to discriminate against a hotel unless good cause exists.
>
> "In the instant case, no numerical limitation of licensees was ever adopted by respondent. In fact, none was even under contemplation until after appellant's application was filed. In view of the public nature of appellant's hotel, the interests of the community would be best served by the issuance of a license to it."

Finally, in Re Polhemus, Bulletin #69, Item #4, the Commissioner approved a municipal regulation prohibiting the employment of females or the sale of alcoholic beverages to females at bars except in bona fide hotels and restaurants, although pointing out that:

> "This exception must be strictly enforced and shall apply only to bona fide hotels and restaurants where the sale of alcoholic beverages is a mere incidental business."

It is apparent from the above review that there is reasonable basis for distinguishing or classifying hotels apart from the general run of consumption licensees.

Appellant further contends that the ordinance violates the Fourteenth Amendment to the Federal Constitution. This is the same contention that was made and adversely decided in the Meehan case supra. The Supreme Court there in overruling the contention that the statute unreasonably discriminated between licensees of the same class said:

> "It is not our intention, of course, to affirm that, under the police power, notwithstanding the fourteenth

amendment, the state may, by arbitrary, fanciful or illusory action, discriminate between citizens holding licenses. After the license is granted, all who are similarly situated are entitled to equal privileges as licensees. 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 persons similarly situated, is not interdicted by the fourteenth amendment. Soon Hing v. Crowley, 113 U.S. 703; Barbier v. Connolly, Id. 27, 32; Hayes v. Missouri, 120 Id. 68; Jones v. Brim, 165 Id. 180.

"In the legislation under review, we think the legislature has clearly classified the licensees so that those who are required to expose their places of business to view are distinguished from other licensees by palpable differences in the conditions under which the liquor is to be sold, and those differences appearing as shown by the analysis of the statute at the beginning of this opinion, the court will not interfere with the conclusion of the legislature that they afford a proper basis for the discrimination exercised." 73 N.J.L. 382, 388.

In affirming this decision the Court of Errors and Appeals said:

"The limitation of the sales to a single room and the requirement of a clear interior view of such room are manifestly intended to prevent secrecy in the conduct of the business and to render the bar-room easy of inspection by the police. The provision that the bar must be upon the ground floor or basement, and the provision requiring an open view from the street at times when the sale of liquors is prohibited by law, and at other times in the discretion of the court, excise board or other body charged with the granting of licenses, are likewise contrived with a view of rendering police inspection easy and efficacious.

"Police regulations of this character must, in the absence of clear evidence to the contrary, be deemed to be based upon facts within the possession of the legislature rendering such legislation proper, if not necessary. See Hopper vs. Stack, 40 Vroom, 562.

"The exemption of the larger taverns and hotels, of restaurants occupying more than a single story, of recreation grounds, of bowling-alley buildings, and of clubhouses, from the like restrictions is explainable on the ground that the legislature presumably deemed the restrictions to be either impracticable or unnecessary as to these establishments.

"**********

"Upon careful consideration, we are unable to say that the discrimination established by section 4 of the act between the two classes of liquor dealers therein defined are either arbitrary or unreasonable, nor that they unduly interfere with the rights of citizens." 75 N.J.L. 557, 561-563.

I conclude that this ordinance which excepts hotels from the screen provisions does discriminate in favor of hotels but that the discrimination is reasonable and proper.

Accordingly the petition is dismissed and the original approval made of Section 15 of the ordinance under review is confirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: April 12, 1935

2. TURPITUDE - WHAT CONSTITUTES - VARIOUS CRIMES CONSIDERED

April 3, 1935

Hon. D. Frederick Burnett, Comm.

Dear Sir:

Under section 22 of the A.B.C. Act reads as follows any person who has been convicted of a Crime involving moral turpitude, kindly advise me if any of the following crime in your opinion are in violation of this section, Grand Larceny, Embezzlement, Assault and Battery, Non-Support, Forgery, Receiving stolen goods, Gaming, Slot Machine, Federal Drug Act, and conspiracy to steal the U.S.Mail.

Would appreciate a list of all crime which involve moral turpitude.

Very truly yours,
ROBERT ULHICH
Captain of Police

April 10, 1935

Robert Ulhich, Captain of Police,
Bergenfield, Bergen County, N. J.

Dear Sir:-

I have your letter of April 3d.

The courts have generally defined a crime involving moral turpitude as something immoral in itself, regardless of the fact that it is punished by law. In many instances, the matter will rest in the considered judgment of the issuing authority for determination under certain guiding principles which are well set forth in Rudolph vs. United States, 6 F. (2nd) 487 (App.D. C.1925) where the court said:

> "There is no hard and fast rule as to what constitutes moral turpitude. It cannot be measured by the nature or character of the offense, unless, of course it be an offense, inherently criminal, the very commission of which implies a base and depraved nature. The circumstances attendant upon the commission of the offense usually furnish the best guide. For example, an assault and battery may involve moral turpitude on the part of the assailant in one case and not in another. Intent, malice, knowledge of the gravity of the offense, and the provocation, are all elements to be considered."

Certain of the crimes listed in your letter almost invar-

iably involve moral turpitude, e.g. grand larceny, Jones vs. Brinkley, 93 S.E. 372 (N.C. 1917); embezzlement, In Re Cruickshank, 190 Pac. 1038 (Cal. 1920); receiving stolen goods, In Re Thompson, 174 Pac. 86 (Cal. 1918); Bulletin #17, Item #1; forgery United States vs. Day, 51 F. (2d) 1022 (C.C.A. (2d) 1931); assault with intent to kill, United States vs. Warden, 45 F. (2d) 204, (D.Pa. 1930); conspiracy to steal the United States mail, commercialized gambling and peddling of narcotics in violation of law. Cf. Bulletin #2, Item #8, where other crimes are enumerated. Simple assault, possession of slot machines, gambling other than commercialized gambling, abandonment and violations of Pure Food and Drug Act may or may not be crimes involving moral turpitude, depending upon the circumstances surrounding the commission of the offense. Cf. Bulletin 15, Item #5.

If, after considering all of the circumstances, the issuing authority concludes that the offense involves something immoral in itself, regardless of its legal significance, then it must conclude that the particular crime under consideration was a crime involving moral turpitude; otherwise, it must reach a contrary conclusion.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

3. MUNICIPAL ORDINANCES - VALIDITY - ORDINANCES ENACTED PRIOR TO CONTROL ACT
MUNICIPAL ORDINANCES - CITIES OF THE THIRD CLASS - DISPOSITION OF FINES

March 26, 1935

Dear Commissioner:

Will you kindly advise if it is permissible under any circumstances for a minor to be employed as bartender in a licensed retail saloon? I am under the impression this is a distinct violation of the last paragraph in Sec.23 of the Control Act.

I should also be obliged for your opinion as to whether a Municipal Ordinance enacted here in 1885 forbidding the possession and sale of intoxicants without a license is still in effect or has same been repealed by the Control Act of 1933?

Can you give me the names of a municipality or two, particularly a city of the third class such as this, which have passed ordinances in compliance with the Control Act? Where such exist, or in the case of a defendant waiving indictment by the Grand Jury and trial by a Petit Jury to whom is the fine or penalty payable?

Kindly accept, in advance, my thanks for answers to any or all of the foregoing queries.

Respectfully yours,
JOHN P. NORRIS
Recorder
Lambertville, N. J.

April 5, 1935

John P. Norris, Recorder,
Lambertville, N. J.

I have your letter of March 26th.

Section 23 prohibits the employment of a minor as a bartender in a licensed place of business.

I am enclosing herewith ruling of the Commissioner in Bulletin #64, Item #3, which pertains to your second inquiry. In the same connection you might refer to the following decisions: Roche vs. Mayor, 40 N.J.L. 257 (Sup. Ct. 1878); Harrington Sons Co. vs. Jersey City, 78 N.J.L. 610 (E. & A. 1910); Smith vs. Hightstown, 71 N.J.L. 276, affirmed 71 N.J.L. 536 (1905); Haines vs. Cape May, 52 N.J.L. 180 (E. & A. 1889).

Bordentown and Egg Harbor City are cities of the third class which have adopted ordinances pursuant to the Control Act. The matter of disposition of fines is governed by statutes and reference should be made to the statutes governing the particular court in question. See, for example, P. L. 1908, p. 303, sec. 79, as amended by P.L. 1927, p. 45, 1 C.S. 1199; P. L. 1897, p. 46, sec. 85, 1 C.S. 1297; P.L. 1885, p. 326, sec. 86, as amended by P.L. 1886, p. 66, 2 C.S. 2541; P.L. 1914, p. 236, sec. 4, supplementing P.L. 1908, p. 486. Fines imposed in police courts for violations of local ordinances and for criminal offenses, triable upon waiver of indictment, are ordinarily retained by the respective municipalities pursuant to statutory provisions.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

4. MUNICIPAL ORDINANCES - ZONING ORDINANCES - ORDINANCES PROHIBITING AS DISTINGUISHED FROM REGULATING SALE OF LIQUOR WILL NOT BE APPROVED BY STATE COMMISSIONER BECAUSE OF LACK OF JURISDICTION

April 13, 1935

Robert H. Adams, Clerk,
Borough of Interlaken,
Asbury Park, N. J.

Dear Sir:-

I have before me the ordinance entitled "An Ordinance to Provide for the Protection of Property and the Prosperity and Safety of the Borough of Interlaken and its Inhabitants, and to Preserve the same for the Future by Regulating the Erection and Construction of Buildings within certain Territorial Limits of said Borough and Restricting the Location of Trades and Industries within certain Territorial Limits of said Borough" adopted by your Borough Council on May 26, 1930.

Sections 1 and 2, in effect, prohibit respectively the sale of alcoholic beverages and the use of any building or structure for that purpose within the Borough.

The ordinance, however, was not passed pursuant to the Alcoholic Beverage Control Act. Even if it were, for the reasons set forth in Miller vs. Greenwich, Bulletin 57, item 9, I would have no jurisdiction to approve or to disapprove insofar

as it prohibited the sale of alcoholic beverages.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

5. LICENSES - APPLICATION FOR RETAIL LICENSE MUST BE MADE TO THE COMMISSIONER WHEN PREMISES SOUGHT TO BE LICENSED ARE OWNED BY MEMBER OF A LOCAL ISSUING AUTHORITY - DISQUALIFICATION OF SUCH MEMBER THEREAFTER TO VOTE ON ANY MATTER INVOLVING ALCOHOLIC BEVERAGE CONTROL

April 11, 1935

Harold L. Bailey, Township Clerk,
Downe Township,
Dividing Creek, N. J.

Dear Sir:-

I have your letter of April 8th, inquiring whether a license may be issued to an applicant for premises subleased from a member of the issuing authority.

Section 18A (P.L. 1934, c. 44) of the Control Act provides that no license shall be issued by any issuing authority to any member thereof or to any corporation, organization or association in which any member thereof is interested directly or indirectly, provided that in any such case application may be made to the State Commissioner who is authorized to issue such license. This section was designed to prevent issuing authorities from passing upon applications in which any of their members are interested in any manner whatsoever. In the light of its purpose, it must be construed liberally to require that where a person seeks a license for premises leased or subleased from a member of the issuing authority, application therefor must be made directly to the State Commissioner. Accordingly, the application in question should be made not to the municipal issuing authority but directly to this Department.

In the event that a license is issued pursuant to an application made to the Commissioner for a retail license for premises subleased from a member of the municipal issuing authority, such member will thereafter be disqualified from voting on any matter involving alcoholic beverage control under the rulings of the Commissioner in Bulletin #5, Item #4; Bulletin #7, Item #2 and Bulletin #39, Item #3.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

Supplemented by
RL Opinion
Bul 42 Item 9.

6. LICENSES - DISQUALIFICATION UNDER SECTION 40 - INTERLOCKING DIRECTORATES OF WHOLESALE AND RETAIL CORPORATIONS - HEREIN OF HOLDING COMPANIES

April 15, 1935

Osborne, Cornish & Scheck, Esqs.,
Newark, N. J.

Gentlemen:

I have your letter of April 5th, inquiring whether a wholesaler's license may be issued to a corporation whose stock is entirely owned by a holding corporation, which, in turn, has common officers, directors and stockholders with another holding corporation owning all of the stock of a retail licensee.

Section 40 of the Control Act provides that it shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation or any other person whatsoever interested in any way whatsoever in any wholesaler of alcoholic beverages to own or be directly or indirectly interested in the retailing of any alcoholic beverage. The objective of this section was to eliminate certain recognized objections to the method of distribution of liquors prior to prohibition by divorcing completely the manufacture and wholesale of alcoholic beverages from their retail trade. See Bulletin #55, Item #12. See also Reichelderfer vs. Johnson, 72 F. (2d) 552 (D.C. 1934), where the court said:

> "One of the well recognized objections to the method of sale and distribution of liquors prior to the era of prohibition was the fact that brewers and wholesalers frequently monopolized and controlled the retail trade."

While it is true that the holding companies are distinct legal entities from the retail licensee and the applicant for a wholesale license, in substance, the wholesaling and retailing of alcoholic beverages will be in the hands of common officers, directors and stockholders. The spirit as well as the letter of the statute requires that this relationship be prohibited. Any contrary conclusion would permit the emasculation of section 40 by the use of holding companies.

No opinion need be expressed with respect to your supposititious case in which the holder of a single share of stock in a retail licensee purchases on the New York Stock Exchange a single share of stock in a corporation applying for a wholesale license. Suffice it to state that in the present case the common officers and directors create a direct relationship proscribed by the statute.

Your letter suggests that the statutory disqualification might be eliminated by a condition in the wholesaler's license limiting the amount of its sales to the retail licensee. Whether such a restriction would entirely obviate the objections may be doubted; in any event, however, the Commissioner has no jurisdiction to modify the terms of section 40 in such manner.

It is the ruling of the Commissioner that a wholesaler's license may not be issued to a corporation whose stock is entirely owned by a holding corporation, which, in turn, has common offi-

cers, directors and stockholders with another holding corporation owning all of the stock of a retail licensee.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

7. MUNICIPAL ORDINANCES - SALES PERMITTED ONLY IN SEPARATE BUILDINGS DEVOTED TO SUCH PURPOSE EXCLUSIVELY - REASONABLE AS A LOCAL CONTROL MEASURE - BUT MAY NOT DISCRIMINATE AGAINST HOTELS AND RESTAURANTS

April 15, 1935

Albert W. Dunk, Clerk of Logan Township,
Bridgeport, N. J.

Dear Sir:

Section 1 (c) of your resolution of June 18, 1934 reads: "Sales of such alcoholic beverages shall be permitted only, in a separate building located on separate premises devoted to that exclusive purpose."

As worded, it restricts both the plenary retail consumption and plenary retail distribution licenses which may be issued in accordance with your resolution.

The statute, in Section 13 sub. (1), imposed a compulsory restriction upon plenary retail consumption licenses. It prohibits their issuance for premises upon which any mercantile business other than the sale of alcoholic beverages, except the keeping of a hotel or restaurant, is carried on. Your regulation goes further than the statute and requires that the premises constitute a separate and distinct building, as well as being devoted to the sale of alcoholic beverages exclusively. I would approve this, since such is the local wish, as a reasonable control measure, if it were not for the fact that it prevents the conduct upon such licensed premises of restaurants and hotels. The Control Act itself expressly provides for an exception in favor of hotels and restaurants. The same public policy which recognized that exception was applied in Retail Liquor Dealers Association of the Plainfields vs. Plainfield, Bulletin 70, Item 1, where I held that a municipal ordinance concerning screens might properly except hotels from its operation and that while it did constitute discrimination within a class, it was not unreasonable but proper discrimination.

Your resolution, however, in effect although not in words, discriminates against hotels and restaurants. For the reasons advanced in the Plainfield case, supra, and because the Legislature has itself favored hotels and restaurants, I disapprove this section of your resolution. The licensing of hotels and restaurants to sell alcoholic beverages is surely as socially desirable as the licensing of saloons.

There is another objection to this section of your resolution which is also fatal to its validity. The statute, in Sectio

13, sub. (3) a, provides that each municipality may, by ordinance, enact that plenary retail distribution licenses shall not be granted to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on. Hence, Section 1 (c) of your resolution to be effective must be enacted by ordinance. Mere resolution will not suffice. It is therefore disapproved.

Now from the constructive standpoint: It follows from the foregoing that you may put your Section 1 (c) into such shape that I will approve it if:

1. You enact it by ordinance.
2. You except hotels and restaurants from its operation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

8. LICENSEES - EASTER EGG-NOG - PERMISSION FOR LIMITED TIME TENTATIVELY GRANTED

April 15, 1935

Mr. William Wellhofer,
142 South Tennessee Ave.,
Atlantic City, N. J.

My dear Mr. Wellhofer:

I have your telegram reading:

"It has been a time honored custom to mix a bowl of egg-nog at Easter the trade asks your permission to again do this for it is impractical to mix egg-nogs in individual drinks."

Permission to the trade, effective immediately and expiring April 22nd next at midnight, is granted as requested. If privilege is abused, it will be refused on future occasions. Whether the experiment becomes permanent depends upon whether the experience is pleasing.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

9. RULES CONCERNING CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES - APPLICATION TO DICE, CARDS AND BAGATELLE GAMES

April 15, 1935

Mr. A. Koch,
Gambrinus Grill,
820 Park Ave.,
Weehawken, N. J.

Dear Mr. Koch:

I have your letter reading:

"Will you be kind enough to enlighten me on the following items -

1. In a Tavern or saloon - is it permissible to roll dice on the bar to see who will pay for the drinks - is that legal?

2. Can anyone play cards to pass the time away - but not to play for money - is that legal?

3. Is it illegal to have a Bag-a-telle machine in a place to play for drinks - is that legal?

"There are many people coming in a Tavern who tell the owners that they are ----fools - and are losing all their trade - because the patrons can't roll dice - only in fun to see who will pay for their drinks.

"I want to be sure I am abiding by the law."

1. To roll dice for drinks violates Rule 7 concerning conduct of licensees and use of licensed premises and is cause for revocation. Re Gott, Bulletin 65, Item 10. This is because the Supreme Court of New Jersey in Brown vs. State, 49 N.J.L.61, held that playing cards for beer to be purchased and paid for by the loser was gaming. The court said: "It is just as clearly gaming to play cards for a glass of beer as it is to play for a barrel or ten barrels." I have carefully considered whether I might permit the time-honored bar custom of rolling dice to determine who is to pay for the drinks, providing the dice are used solely for that purpose. If playing cards to see who pays for the drinks is gaming, so is rolling dice. So long as the statute remains on the books, it must be obeyed by licensees. To construe it strictly and allow the use of dice for a single purpose would open the door to all purposes. The rule might then be violated and the law flouted with practical impunity. The "alibi" would always be - however many times the dice were rolled - "We were only playing dice to see who should pay for the drinks." There would be no practical regulatory test by which the police and all enforcement agencies could determine by quick inspection whether or not the law was being complied with. Other legitimate business gets along without dice. If your customers cannot determine who should be the host, they may flip a coin or draw straws. They won't do that long!

2. So playing cards under agreement that the loser shall pay for the drinks violates the law. Brown vs. State, supra. As to playing cards just "to pass the time away", that's possible but don't believe it is done if you really want to make sure of keeping your license.

3. It is illegal to play a bagatelle machine for drinks. That's gambling. Re Bernard's Inn, Bulletin 51, Item 1.

You are far-sighted in insisting that so far as your licensed premises are concerned, the law shall be obeyed strictly.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

10. SPECIAL PERMITS - SALE OF ACCESSORIES - NO PERMIT NEEDED

PUBLIC BUILDINGS - POWER TO PRESCRIBE RULES AND REGULATIONS - MANAGEMENT, POLICING AND USE OF ARMORIES IS VESTED IN QUARTER-MASTER GENERAL

April 16, 1935

Joseph A. McFadden, Secretary,
Burlington Lodge No. 996, B.P.O.Elks,
Burlington, N. J.

My dear Mr. McFadden:

I have gone over your letter of March 26th reading:

"On Easter Monday Night, April 22, 1935, we are going to hold our Annual Ball for the Benefit of our Crippled Kiddies Fund. We are contemplating on conducting this ball a little different from previous years. In other words, we are going to run it on a cabaret plan. Tables will be spread and we are figuring on selling the ginger ale and ice; also various kinds of sandwiches. We are not going to sell any kind of intoxicating beverages, it being understood that those attending are to bring their own along if they so desire to partake of such beverage.

"As stated above, all we are figuring on selling is the ginger ale and ice, and we would appreciate your advising us at your earliest convenience if it is necessary for us to have a permit on account of the whiskey being on the premises, and, if so, what would be the cost of the permit."

Also your letter of April 2nd by which I note that you are not proceeding under your club license (which is very proper since this affair is open to the public generally) but are to hold it in the Burlington Armory, and in which you state:

"It is not our intention to sell liquor or beer; but the Ball is going to be in the form of a Cabaret affair; tables to be placed around the hall and we are going to supply the ice, ginger ale and sandwiches, with the understanding that those desiring liquor or beer will have to bring same along with them. We further wish it to be understood that this is not going to be a rough house, but an elaborate affair and strict order will be kept at all times."

Since no sales of any alcoholic beverages will be made, no special permit is required. The sale of accessories is not a violation of the law in New Jersey.

Major General Toffey of the National Guard has heretofore informed me that: "Paragraph 5, Article IV, Chapter 46, Laws of New Jersey, 1925, provides that the Quartermaster General shall prescribe rules and regulations for the management, maintenance, policing, rental, and use of armories; and the attached Circular Letter is published in accordance with the provisions of that Act

The Circular Letter (#135) reads as follows:

"Cir. Letter #135. Trenton, N.J., Nov.14,1934.

1. The storage, sale and distribution of intoxicating liquors in State-owned armories, rented drill halls or on State Military Reservations are prohibited. Applications for the use of armories by non-military users should be accepted with this understanding and all future contracts for the non-military use of buildings will include this provision.

2. Post Exchanges operating under the approval of the State Military Board are restricted in their operations to members of the military organizations and their accredited guests, and are not authorized under the State law to store, distribute, or sell intoxicating liquors to non-military lessees of armories and drill halls.

Stephen H. Barlow
Brigadier General
The Quartermaster General."

I cordially advise that you at once submit for ruling your question as to whether the consumption and use of alcoholic beverages - either straight or in connection with the accessories that you propose to sell - will be permitted in the State Armory to Brigadier General Barlow, The Quartermaster General, at Trenton, N. J.

Very truly yours,

L Hardwick Smith

Commissioner