

COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 32

July 11, 1935

1. SOLICITORS' PERMITS - PERSONS CHARGED WITH LAW ENFORCEMENT - INCLUDE MEMBERS OF MUNICIPAL GOVERNING BODY WHETHER SEPARATE EXCISE BOARD HAS BEEN CREATED OR NOT

Re: Ballantine Brewing Company

June 25, 1935

Dear Sir:

One of the Members of the Township Committee in the Township of Hillside is employed by Ballantine Brewing Company.

In the Township of Hillside we have a Beverage Board, which Board performs the usual duties of issuing licenses, etc. I understand that you have recently ruled that under the Statute no member of a Governing Body may continue in such capacity if he is connected with a Brewing Company. It seems to me that this may be so where there is no Beverage Board to handle the issuance of licenses.

I would appreciate it if you would advise me as to whether or not it is your opinion that there is anything incompatible with this member of the Township Committee continuing to serve in that capacity while employed by the Brewing Company.

Respectfully yours,
S. A. EMERSON
HILLSIDE TOWNSHIP ATTORNEY

June 27, 1935

Sigurd A. Emerson, Esq.,
Elizabeth, N. J.

Dear Mr. Emerson:

I have yours of the 25th.

Rule 8 governing solicitors' permits (Bulletin 81, Item 2), provides:

"8. No Solicitor's Permit may be issued to any member of a municipal governing body or municipal issuing authority or to any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever."

This rule applies although a separate Excise Board has been constituted as the license issuing authority.

In the first place, it is enough to say that the local Excise Board is appointed by the municipal governing body. What one does through another, he does himself.

Moreover, it is the municipal governing body and not the Excise Board which fixes the amount of the respective license fees,

New Jersey State Library

enacts the ordinances governing liquor control, determines what kinds of licenses shall be issued in the particular municipality and whether more than one retail license may be granted to any one person. These matters should be decided by men who have no financial interest in the brewing industry.

It is, therefore, clearly incompatible for a member of a Township Committee to continue to serve in that capacity while employed by a brewing company.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

2. SOLICITORS' PERMITS - PERSONS CHARGED WITH LAW ENFORCEMENT - APPLIES TO MEMBER OF MUNICIPAL GOVERNING BODY ALTHOUGH MAJORITY OF SALES ARE MADE OUTSIDE OF MUNICIPALITY.

June 27, 1935

Dear Commissioner:

We represent the Borough of North Arlington, which Borough is governed by a Councilmanic form of government.

Mr. John D. Reese, who is one of the Councilmen and also Chairman of the Police Committee, is presently employed by the Camden Brewery as a salesman and collector and has recently conferred with us concerning the probabilities of his obtaining a salesman's or agent's license to continue in its employ after July 1, 1935, in view of your most recent ruling. Mr. Reese has brought to our attention the fact that probably 20% of the sales which he negotiates is made within the Borough limits and the remainder in Newark and surrounding territory. He has requested us to determine from you whether it would not be possible for him to obtain an agent's license with the modification, however, that he shall not be permitted to negotiate sales for alcoholic beverages within the Borough limits.

He is most anxious to retain both his position as Police Commissioner and also as an employee for the said brewery and he would appreciate greatly your working out some plan whereby the retention of both these positions by him could be made possible.

Very truly yours,
BRUCK & BIGEL

June 29, 1935

Bruck and Bigel,
Newark, N. J.

Re: John D. Reese

Gentlemen:

I have yours of the 27th.

While I note the major portion of his territory is outside his Borough, still he candidly admits that 20% of his sales

are made to licensees within the Borough. Hence, since he is a member of the municipal governing body which fixes the respective license fees, enacts ordinances governing liquor control, determines what kinds of licenses shall be issued in North Arlington, and whether more than one retail license may be granted to any one person, he will not be able to get a solicitor's permit unless he resigns as a Councilman, for these matters must be decided by men who have no financial interest in the brewing industry.

This case is even stronger than Re: Ballantine Brewing Co., Bulletin 82, Item 1, because the governing body of North Arlington also determines who shall be licensees.

Since the printed forms of applications for solicitors' permits did not arrive until June 27th, I have extended until July 15th the time that permits are necessary. No further extension of time will be granted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

3. APPEALS - INTERIM RESTRAINT - WHEN INTERIM RESTRAINT WILL BE DENIED

RAFFAELE CELENTANO,)	
Appellant,)	
-vs-)	ON APPEAL
)	ON APPLICATION FOR INTERIM
MAYOR AND CITY COUNCIL OF)	RESTRAINT
THE CITY OF CLIFTON,)	CONCLUSIONS
Respondents.)	

I have read the Notice and Petition of Appeal from the refusal of respondent to issue a renewal license and the accompanying affidavit. It appears that the appellant has been convicted on four occasions but not under the Alcoholic Beverage Control Act - one for violation of the Hobart Act and three for disorderly conduct, all of which his affidavit seeks to explain away. Whether those convictions involve moral turpitude, I do not now know nor will until the appeal is tried out. Because of those convictions, admitted by appellant, I will not grant ad interim relief pending the appeal until the preliminary question is first threshed out as to whether they involve moral turpitude.

It does appear from appellant's affidavit that he has spent \$3,000 in improvements to the licensed premises and that he has conducted a decent, respectable and law-abiding place of business and believed that his license would be renewed and expended money on the faith thereof.

Under all the circumstances, I will grant an order to show cause, returnable at a short date, to wit: Monday morning, July 1, 1935, at 10 a.m., directed to the question whether or not the license should be extended pending the appeal so that

the question of moral turpitude may be determined. No restraint is awarded in the meantime. Until further order is made, the appellant must therefore cease and desist from all alcoholic beverage activity at midnight on Sunday, June 30, 1935, at which time his present license will expire.

D. FREDERICK BURNETT,
Commissioner

Dated: June 28, 1935

4. SPECIAL RULING - MORAL TURPITUDE AND OTHER QUESTIONS OF QUALIFICATION OF PERSONS SEEKING EMPLOYMENT WITH LICENSES - TO BE DETERMINED BY LOCAL ISSUING AUTHORITY SUBJECT TO APPEAL.

July 1, 1935

Dear Madam: Re: Blank.

Section 23 of the Control Act provides:

"No person who would fail to qualify as a licensee under this act shall be knowingly employed by or connected in any business capacity whatsoever with the licensee."

The answer to your inquiry will therefore depend upon whether Mr. Blank would fail to qualify as a licensee under the Control Act.

Section 22 of the Act in setting forth the qualifications of applicants for licenses states:

"No license of any class shall be issued * * * to any person who has been convicted of a crime involving moral turpitude."

If the crime of which your husband was convicted involved moral turpitude then he is disqualified from receiving a license under the Act; if the crime does not involve moral turpitude it does not constitute a disqualification.

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. 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.

Ordinarily a conviction for larceny would involve moral turpitude. However, the circumstances surrounding the commission of the offense may alter this conclusion. It is, therefore, necessary that all these surrounding circumstances be presented so that a definite determination can be made.

We now come to the problem of who shall pass upon the question of whether or not a particular person who has been convicted of a crime is disqualified from being employed by a

licensee. There is no mechanism set up in the Control Act for determining whether or not a particular individual is qualified to receive a license except in connection with an application for a license. The question may incidentally arise also in connection with the revocation of a license on the ground that the licensee or one of his employees is personally disqualified. This, however, is unsatisfactory because it means that a person must act at his peril in solving a difficult and delicate question involving legal complexity and upon which the minds of men may well differ. There ought to be some way in which a person may find out whether he is personally qualified so that he may seek employment without endangering the license of his prospective employer.

Under Section 36 of the Control Act the Commissioner is authorized and empowered to make special rulings and findings upon matters necessary to the fair, impartial, stringent and comprehensive administration of the act. The situation raised by

5/2/37

This ruling is permissive and not mandatory. It may be handled direct by the State Department. See re Turpitude, Bulletin 173, Item 15.

In view of the foregoing ruling, I would suggest that you immediately file a petition with Judge Way, asking for a formal determination as to whether or not Mr. Blank may be employed in connection with a licensed business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. APPELLATE DECISIONS - THORMAN VS. HADDON TOWNSHIP

GEORGE E. THORMAN,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF)	
HADDON TOWNSHIP (CAMDEN)	
COUNTY),)	
Respondent)	

Joseph S. Low, Esq., Attorney for Appellant.

Mark Marritz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for the approaching new period, July 1, 1935, for premises located at #12-14 Haddon Avenue, Westmont, Haddon Township.

Respondent contends the application was properly denied under its resolution of May 28th, 1935, which reads:

"WHEREAS, it is the consensus of opinion of the Township Committee of the Township of Haddon, in the County of Camden and State of New Jersey, that there are at the present time sufficient establishments for the sale and distribution of Alcoholic beverages to comply with the requirements of the people of the Township of Haddon, and

"WHEREAS, the present licenses will expire by operation of law at midnight, June 30th, 1935.

"BE IT THEREFORE RESOLVED by the Township Committee of the Township of Haddon, in the County of Camden and State of New Jersey, that no license shall be granted for the license year 1935-1936 other than for premises now licensed for the sale of alcoholic beverages within the Township of Haddon, provided, however, that the applicant for the license shall have complied with the requirements of the State and Local regulations and shall be acceptable in all other respect to the Township Committee for the purposes of the application."

This resolution creates a preference in favor of existing licensed places without regard to whether the applicant himself had a prior license. The distinction and significance is illustrated by the fact that, after appellant's application for premises which had not been licensed was denied, respondent issued licenses to new applicants for premises which had been licensed during the present period expiring June 30, 1935.

The question is whether such a resolution is reasonable.

Prior to Prohibition, the statutes of New Jersey governing the issuance of licenses made exceptions in favor of "old places." See P. L. 1906, p. 199, 3 C. S. 2908, Section 84, which provides that - -

"No license shall be granted to sell * * * liquors * * * in any new place within two hundred feet of the curtilage of a church * * *."
(Italics mine).

The courts consistently enforced such statutory preferences. Wright vs. Board of Excise, 75 N. J. L. 28; Eckersly vs. Abbott, 79 N. J. L. 157; Parnes vs. Board of Excise, 82 N. J. L. 285.

A similar preference is found in Section 76 of our present Alcoholic Beverage Control Act, which provides that the prohibition against the issuance of a license for premises within 200 feet of any church or school

"*** shall not apply * * * to the issuance and/or renewal of any license where such premises have been heretofore licensed for the sale of alcoholic beverages or intoxicating liquors, and such church or school

house was constructed and/or established during the time said premises were operated under said previous license."

Under this provision the Commissioner has ordered the issuance of licenses for premises within two hundred feet of a school where it appeared that said school was constructed or established during the time said premises were operated under a license. Berlangieri vs. Newark, Bulletin #38, Item #16; Barbuto vs. Trenton, Bulletin #56, Item #5.

In Londa vs. Kling, 83 N. J. L. 405, the local issuing authority had adopted a resolution reading:

"WHEREAS, The number of licensed liquor places in this city is more than sufficient for the present needs of the city, and

"WHEREAS, There is a predominant sentiment prevailing among our citizens which is strongly against the granting of any more new licenses to sell liquors of any kind; therefore, be it

"RESOLVED, That no new licenses be granted for the term of office of the present board which expires January 1st, 1913."

After the adoption of this resolution a license was issued in respect to premises which had theretofore been licensed. The court construed the resolution to mean that no licenses would be issued to "new places" and held that since the license in question had been issued to an "old place" the issuance thereof was not in violation of the resolution and was valid. Thus, the court recognized the validity of a resolution prohibiting the issuance of licenses except to old places.

Even in the absence of statutory and judicial precedent, respondent's resolution is reasonable. Presumably, the original licenses were issued with careful regard to the neighborhoods in which the proposed licensed premises were located, so that there would be a proper distribution of places throughout the Township. The resolution perpetuates such proper distribution.

Respondent has issued 16 plenary retail consumption licenses and 5 plenary retail distribution licenses in Haddon Township, which has a population of approximately 10,000. This number of licensed places, properly distributed throughout the Township, is adequate to supply all reasonable demands.

Appellant also argues that the resolution could not apply to his application because it was adopted after the application was filed. This point has heretofore been adjudicated and held invalid. Franklin Stores Co. vs. Elizabeth, Bulletin #61, Item #1; Bunball vs. Bernardsville, Bulletin #66, Item #9; Krause vs. Freehold, Bulletin #76, Item #8; Zdenek vs. Freehold, Bulletin #76, Item #9.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 29, 1935.

6. APPEALS - INTERIM RESTRAINT - FORM OF ORDER EXTENDING TERM PENDING APPEAL

THE GREAT ATLANTIC AND PACIFIC)
 TEA COMPANY, a corporation of)
 the State of New Jersey,)
 Appellant,) ORDER EXTENDING THE TERM
 vs.) OF APPELLANT'S LICENSE
) PENDING THE DETERMINATION
) OF APPEAL

THE BOROUGH OF MANASQUAN, in)
 the County of Monmouth and State)
 of New Jersey,)
 Respondent.)

This matter coming on to be heard before D. Frederick Burnett, Commissioner of Alcoholic Beverage Control, in the presence of Pitney, Hardin & Skinner, Esqs., attorneys for the appellant and it appearing to the Commissioner that the appellant is the holder and possessor of Plenary Retail Distribution License #D 1, expiring Jun 30, 1935, issued by the Borough of Manasquan, and it further appearing that the said appellant has filed its appeal from the denial of its application for a renewal of its said license, and it further appearing that no complaint or objection has ever been made against appellant or against its conduct and operation of its store located at 181 Main Street, Manasquan, for which the aforesaid license was issued, and it further appearing that irreparable injury to the appellant would otherwise result, and it further appearing that the said respondent by its attorney has filed with the Commissioner of Alcoholic Beverage Control its consent to the entry of this order and good cause appearing therefor,

It is on this 2nd day of July, 1935, ORDERED that the term of the Plenary Retail Distribution License #D 1, expiring June 30, 1935, issued by the said respondent to the appellant be and the same is hereby extended pending the determination of appellant's appeal and the further order of the Commissioner of Alcoholic Beverage Control, and

It is FURTHER ORDERED that in the event that a Plenary Retail Distribution License is hereafter issued by respondent to appellant, the entire license fee accompanying appellant's application shall be retained by respondent, but in the event respondent's action appealed from herein is sustained, said respondent shall retain in addition to the statutory investigation fee, the pro-rate portion of the license fee for the period during which this extension of license remains in effect.

D. Frederick Burnett,
 Commissioner.

7. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - RULE 3 - ADVERTISMENT OF "CUT RATES" PROHIBITED - NO PROHIBITION AGAINST ADVERTISING DELIVERY OF PURCHASES.

June 28, 1935

Trent Wine & Liquor Stores,
 Trenton, N. J.

Gentlemen:

Rule #3 of the rules governing signs and other advertising matter provides that no licensee authorized to sell alcoholic

beverages at retail for consumption on the licensed premises shall, directly or indirectly, advertise, or permit or suffer the advertising of, the price of any alcoholic beverage or size of the container thereof, on the exterior of the licensed premises, or in the show-window or door thereof, or in the interior thereof when visible from the street.

Under this regulation signs advertising that the licensee sells alcoholic beverages at "cut rates" are prohibited.

There is no prohibition, however, against a sign advertising that the licensee delivers purchases to the home.

Very truly yours,
D. Frederick Burnett,
Commissioner.
By: Mortimer J. Shapiro,
Attorney

8. MERCANTILE BUSINESS - SALES OF COMBINATION PACKAGES

May 24, 1935.

"May a 'combination package', consisting of a variety of liqueurs and a tea table or lawn table, be sold as one sale at one price?

If such a sale is prohibited in retail package stores, may this type of sale be made by licensed retailers such as department stores, grocery stores, etc.

Very truly yours,
LORD & THOMAS

June 28, 1935.

Messrs. Lord & Thomas,
New York City.

Gentlemen:

Section 13 (1) of the Control Act prohibits the issuance of a plenary retail consumption license for premises in which any other mercantile business except a hotel or restaurant, etc. is carried on. The sale of tea tables or lawn tables in connection with liqueurs constitutes a sale of the tables and is therefore prohibited under this type of license.

There is no similar prohibition with reference to plenary retail distribution licenses except that each municipality may, by ordinance, so enact. Where such an ordinance has been adopted in any particular municipality the sale of tables on licensed premises either separately or in conjunction with liquor is prohibited. In the absence thereof, however, the sale of a combination package consisting of a variety of liqueurs and a tea table or lawn table is not prohibited.

Very truly yours,
D. Frederick Burnett,
Commissioner
By: Mortimer J. Shapiro,
Attorney

9. RULES GOVERNING IDENTIFICATION OF STATE LICENSEES AND THEIR EMPLOYEES - QUESTIONNAIRES NOT REQUIRED FOR SALESMEN EMPLOYED EXCLUSIVELY OUTSIDE OF THIS STATE.

Dear Sir:

With regard to the filing of identification questionnaires of employees in the liquor industry, the question arises as to whether or not salesmen, who are employed in the industry but who do not solicit in the State of New Jersey, are required to file such statement.

Very truly yours,
 POPPER-MORSON COMPANY, Inc.
 (Signed) Joseph Kanengiser, President

July 2, 1935.

Popper-Morson Company,
 Jersey City, N. J.

Gentlemen:

The rules governing identification of State Licensees are designed to furnish to this Department identification of those persons actually engaged in the liquor business (except retail) in this State. Salesmen who occupy no executive positions and do not sell or solicit in this State but are employed exclusively outside this State come neither within the letter nor the spirit of the regulation.

Accordingly, it is the Commissioner's ruling that questionnaires need not ~~to~~ be furnished by such salesmen.

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

10. RULES AND REGULATIONS GOVERNING THE EMPLOYMENT BY LICENSEES OF PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE OR CITIZENSHIP

1. No person who would fail to qualify as a licensee shall be knowingly employed by or connected in any business capacity whatsoever with a licensee except that persons failing to qualify as to age or residence or citizenship may be so employed, subject to these rules and regulations, provided that a permit from the State Commissioner of Alcoholic Beverage Control shall have first been obtained.

2. No person to whom such permit shall have been issued shall in any manner whatsoever serve or handle or sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage.

3. No licensee shall allow, permit or suffer any individual in his employ to whom such permit shall have been issued to serve or handle or sell or solicit or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage in any manner whatsoever.

4. Every applicant for such permit shall submit a questionnaire, Form 115, which questionnaire shall contain such information and details with respect to the employee as are required therein and shall be accompanied by two identical photographs of the person therein described, each of which shall be 2" x 2" and shall have been taken not more than thirty days prior to the date of the questionnaire.

5. The operation of each such permit is confined to the premises and to the employment designated therein and is not transferable as to employer or employee or employment.

6. Whenever any change shall occur in any of the facts set forth in the application for such permit both the employer and the employee shall file with the Commissioner a notice in writing of such change within ten days after its occurrence.

7. Upon the termination of any employment for which such permit has been granted or upon the qualification by the employee as to age, residence or citizenship, whichever shall first occur, the employer shall file with the Commissioner within ten days thereafter a notice in writing of such termination or qualification and shall surrender the permit to the Commissioner for cancellation.

8. The foregoing rules and regulations are subject to amendment or supplement from time to time at the discretion of the Commissioner.

9. Applications for such permits and the required questionnaires will be furnished on request by the State Commissioner.

10. Violation of any of the foregoing rules and regulations shall be cause for revocation of the permit or the license or both. The statute requiring this permission to employ persons failing to qualify as to age or residence or citizenship provides:

"49. Any person who shall knowingly violate any of the other provisions of this act shall be guilty of a misdemeanor and punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred fifty dollars (\$250.00) or imprisonment for not less than ten days and not more than ninety days, or by both such fine and imprisonment, in the discretion of the court."

11. These rules and regulations are promulgated today, effective August 1, 1935.

D. Frederick Burnett
Commissioner

DATED: July 5, 1935.

11. LICENSES - APPLICATION - NO POWER IN MUNICIPALITY TO RECONSIDER AFTER FINAL DETERMINATION.

APPEALS - PROCEDURE - WHEN MUNICIPALITY DETERMINES NOT TO CONTEST.

July 5, 1935

Charles H. Writer, Esq.,
Borough Clerk,
Sussex, N. J.

Re: Emma Maurer vs. Borough of Sussex

Dear Mr. Writer:

I have yours of July 3rd and note that at a special meeting of the Mayor and Council of the Borough of Sussex held July 3rd, its action in denying the application of Emma Maurer for a Plenary Retail Consumption license for the new fiscal year beginning July 1, 1935 for premises 19 Church St. in the Borough of Sussex was rescinded and a resolution adopted authorizing the

issuance of the license, and your certification that Mrs. Maurer's license was immediately issued and is now in good standing.

Based on her previous successful appeal, Bulletin 79, Item 10 in respect to the old fiscal year ending June 30, 1935, I presume that substantial justice has been done by the rescinding resolution, but unfortunately the law is settled that after the local issuing body has refused to grant a license, it cannot thereafter reconsider and grant the license. See re: Hendrickson, Bulletin 47, item 10, and Plager vs. Atlantic City, Bulletin 80, item 11. The latter decision which reviewed all the authorities on that point is enclosed.

Applying the principles of that decision to the instant case, the result is that the borough had no power to issue any license to Mrs. Maurer because of its previous rejection of her application and hence her only remedy is to appeal.

I therefore cordially suggest that you pick up at once and cancel the license thus improvidently issued to Mrs. Maurer.

Next - As to the procedure on her Appeal and the pending Order to Show Cause: The Appeal was filed July 2nd. Order to Show Cause was made July 2nd, why her license which expired on June 30th should not be extended pending the determination of the appeal. The Order is returnable on July 8th. It was made pursuant to P. L. 1935, Chapter 257, Section 8, which amends original Section 19 by providing for such order in the case of applications for renewal licenses and confers power upon the Commissioner to order the term of the license to be extended pending a final determination of the appeal in cases where the action of the respondent issuing authority is prima facie erroneous and irreparable injury to the appellant would otherwise result.

In view of the aforesaid rescinding resolution, I take it that there is no longer any opposition to the issuance of her license. If that premise be true, it will not be necessary for the Mayor and Council to appear upon the return of the Order to Show Cause on July 8th; otherwise, if the Mayor and Council desire to contest it.

In the event that no appearance is entered on that date, an Order will be made extending the original license until the appeal is determined.

If your Mayor and Council desire to expedite the appeal, they may do so by filing an answer stating that they have no objections to the granting of the appeal, or they may make a written stipulation with the appellant to that effect.

Very truly yours,
D. Frederick Burnett,
Commissioner.

12. STATE BEVERAGE DISTRIBUTOR - SUNDAY DELIVERIES - EFFECT OF LOCAL ORDINANCE.

Re: Spencer

Dear Sir:

Will you kindly inform me the status of a State Bever^{age}

Distributor.

It is known that this licensee delivers Beer to outside communities on Sunday, operating his business thereby, which is strictly prohibited to others holding licenses issued by the Mayor and Council in the Borough of Palmyra.

Very truly yours,
(sd) GEORGE J. SPENCER
Borough Clerk.

June 21, 1935.

Mr. George J. Spencer,
Borough Clerk,
Palmyra, New Jersey.

Dear Sir:

The holder of a State Beverage Distributor's license is entitled to sell to licensed retailers and also at retail to consumers for delivery to the consumer's home.

Section 37 of the Act, as now amended, authorizes the governing board or body of each municipality, as regards said municipality, to limit by ordinance or resolution the hours between which the sale of alcoholic beverages at retail may be made and to prohibit the retail sale of alcoholic beverages on Sunday.

Section 6 of the resolution adopted by the Mayor and Borough Council of Palmyra on December 4, 1933 reads: "Be it Resolved that establishments for the retail consumption and retail distribution of alcoholic beverages be closed to all business on Sundays." Irrespective of the fact that the resolution was passed before the Alcoholic Beverage Control Act became effective and before authority so to do existed and therefore cannot be approved by the Commissioner, the operative language of the Section will be considered for the sake of your question. All it does is to prohibit within Palmyra retail sales on Sundays. It follows that, by its own terms, it does not affect State Beverage Distributors except as to retail sales in your municipality. Hence it does not apply at all to deliveries made in other municipalities.

Very truly yours,
D. Frederick Burnett,
Commissioner.

13. SOLICITORS' PERMITS - CORPORATE OFFICERS - OFFICERS WHO SOLICIT BUSINESS MUST OBTAIN SOLICITOR'S PERMIT.

Dear Mr. Burnett:

In reference to Senate Bill #291, which requires all solicitors of Alcoholic Beverages to be licensed by the State of New Jersey, we assume that Mr. Joseph T. Laird, who is an officer of the Corporation, and who occasionally calls on the trade, is exempt from the requirements of this law, inasmuch as the Corporation itself is licensed.

Will you kindly let us know whether or not our interpretation is correct?

Very truly yours,
LAIRD & COMPANY,
(signed) W. E. Johnston
Comptroller.

June 20, 1935.

Laird & Company,
Scobeyville, N. J.

Gentlemen:

Section 1 of Senate #291, approved by the Governor on June 8th, provides as follows:

"No individual shall offer for sale or solicit any order in the State for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without this State, unless such person shall have a solicitor's permit issued by the Commissioner hereunder; provided, however, that nothing contained in this supplement shall prohibit such offer or solicitation by any licensee himself or any employee of any retail licensee in connection with and in the course of the licensed business."

The foregoing contemplates that, aside from retail licensees and their employees, every individual who solicits the purchase or sale of alcoholic beverages must have a solicitor's permit unless such individual holds a license in his own name. Consequently, where a corporation holds a New Jersey license, any officer or employee who solicits business on its behalf in this State must first obtain a solicitor's permit.

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

14. CLUBS - BONA FIDE CLUB WHICH DOES NOT OPERATE FOR PECUNIARY PROFIT IS ELIGIBLE FOR RETAIL CONSUMPTION LICENSE, NOTWITHSTANDING ONE OF ITS MEMBERS IS DIRECTOR OF A BREWERY.

June 20, 1935

William Byrd, Esq.,
New York City.

Dear Sir:

I have carefully considered your inquiry as to whether the Short Hills Club, an association not for pecuniary profit, is disqualified from obtaining a retail consumption license because one of its members is a director of a brewery.

Section 40 of the Control Act provides that it shall be unlawful for a director of any brewery to be interested directly or indirectly in the retailing of alcoholic beverages. This provision is designed to eliminate brewery controlled saloons and has but academic application to the particular facts here presented. Since the applicant is a bona fide club incorporated and operating as an association not for pecuniary profit and the brewery director's only connection therewith is as a member, his financial interest in its retail liquor sales is so exceedingly remote as to be negligible. For all practical purposes it does not exist.

Accordingly, it is the ruling of the Commissioner that a bona fide club incorporated and operating as an association not for pecuniary profit is not disqualified from obtaining a retail consumption license by the fact that one of its members

is a director of a brewery.

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

15. STATE BEVERAGE DISTRIBUTORS - SUNDAY DELIVERIES - EFFECT OF LOCAL ORDINANCE.

Dear Commissioner:

Inquiry has been made of me as to the right of a holder of a State Beverage Distributor's license to make deliveries on Sunday, when purchases have been made during the week. From now on, during the summer, picnics will be held on Sunday and requests are being made for these Sunday deliveries.

A further question arises: If deliveries can be made on Sunday, can they be made from a municipality, where sales of alcoholic beverages on Sunday are prohibited, into a municipality where the sale is permitted?

In your opinion, could a municipality, which prohibits the sale of alcoholic beverages on Sunday, by ordinance, legally prohibit the transportation of alcoholic beverages from within its limits to a municipality where the sale of such beverages would be lawful on Sunday?

Very truly yours,
 (Signed) Albert S. Woodruff

June 25, 1935

Hon. Albert S. Woodruff,
 Merchantville, N. J.

Dear Sir:

The holder of a State beverage distributor's license is authorized to sell at wholesale and retail within the limitations of his license. A sale by such licensee to a retail licensee or the holder of a special permit for purposes of resale is a wholesale transaction; the sale, in turn, by the retail licensee or the holder of the special permit will constitute a retail sale. The foregoing classifications may be pertinent since the prohibition of Sunday sales when effected by resolution or ordinance pursuant to section 37 of the Control Act relates only to retail sales, whereas such prohibition when effected by referendum relates to all Sunday sales.

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 vs. King, 80 N.J.L. 176 (Sup.Ct.1910), aff'd 80 N.J.L. 466 (E. & A. 1910). Consequently, it would generally be unlawful for a State beverage distributor to deliver alcoholic beverages on Sunday to a municipality where Sunday sales have been prohibited by referendum. Where Sunday sales have been prohibited by resolution or ordinance pursuant to section 37, such delivery to a retail licensee or the holder of a special permit would not be unlawful since it would constitute a wholesale transaction, but the resale on Sunday by the licensee or holder of a special permit would be unlawful.

Conversely, it would generally be lawful for a State beverage distributor to deliver alcoholic beverages on Sunday to a municipality where Sunday sales are not prohibited. This conclusion is not altered by the fact that the origin of the delivery was in "dry" territory, provided that no order for the alcoholic beverages was solicited or accepted in such "dry" territory on Sunday. This proviso is necessitated by section 1 of the Control Act which enlarges the common law definition of "sales" and specifies that the solicitation or acceptance of an order for an alcoholic beverage constitutes a sale.

The Commissioner is inclined to doubt the power of a municipality to adopt an ordinance prohibiting transportation from a point within its limits on Sunday. Section 37 authorizes the prohibition of retail sales on Sunday and makes no reference to transportation, which does not, of itself, constitute a sale. The same section authorizes the adoption of such ordinances as may be deemed necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages within the municipality in violation of the Act. This provision, however, furnishes no authority for the ordinance inquired about since transportation on Sunday is not in violation of the Act. Whatever implications may be drawn from the foregoing provisions tend to negative such power.

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

16. LICENSEES - EMPLOYMENT OF PERSONS FAILING TO QUALIFY - EMPLOYMENT AND BUSINESS CONNECTION DEFINED.

July 9, 1935.

Cyril W. O'Gorman, Counsel
 Bergen County Beverage Association
 Hackensack, New Jersey

Dear Mr. O'Gorman:

Section 23 of the Control Act as amended by P.L.1935, Chapter 257 provides:

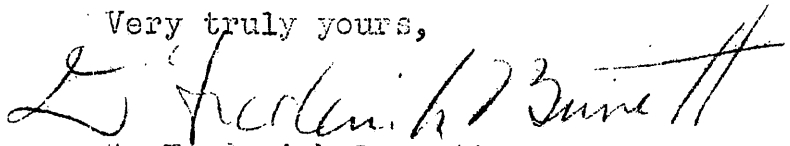
"No person who would fail to qualify as a licensee under this act shall be knowingly employed by or connected in any business capacity whatsoever with the licensee;----provided, that persons failing to qualify as to age, residence, or citizenship may, with the approval of the commissioner, and subject to rules and regulations, be employed by any licensee, but such employee shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage."

The Rules and Regulations governing such employment promulgated July 5, 1935, effective August 1st next, provide for the issuance of permits in cases that properly come under the above mentioned proviso.

A permit to employ a person failing to qualify as to age or residence or citizenship is required of all such persons who are under the control of the licensee or subject to him as master, or who are connected in any business capacity with the licensee in the alcoholic beverage business conducted upon the licensed premises. This includes, for instance, chefs, pantry men, waiters, servants, clerks, porters, bar cleaners, kitchen helpers, dish washers, janitors, check room attendants, entertainers and musicians.

Such permit is not required of persons not under the control of the licensee or subject to him as master or who are not connected in any business capacity with the licensee in the alcoholic beverage business conducted upon the licensed premises, as for instance, those belonging to servicing trades, such as contract window washers and servicers of beer pumps, or belonging to building trades, or mechanics, or salesmen of materials other than alcoholic beverages, and independent contractors and their employees.

Very truly yours,



D. Frederick Burnett,
Commissioner.