

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

BULLETIN NUMBER 196

JULY 20, 1937

1. PLENARY RETAIL CONSUMPTION LICENSEES - DRAUGHT BEER MAY BE SOLD IN OPEN CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES.

PLENARY RETAIL CONSUMPTION LICENSEES - NO OBJECTION TO THE USE OF REFILL SPEARS.

CARDS - GAMBLING - CARD GAMES AND CARD PARTIES ARE NOT PROHIBITED ON LICENSED PREMISES SO LONG AS THERE IS NO GAMBLING.

ROCK AND RYE - SIZE OF CONTAINERS - ROCK AND RYE IS A CORDIAL AS TO WHICH THE MINIMUM STANDARD OF FILL IS EIGHT OUNCES.

July 13, 1937

John J. Crowley, Secretary,
Camden Suburban Liquor Dealers' Ass'n,
Lindenwold, N. J.

Dear Mr. Crowley:

(1) With the exception of draught beer, no alcoholic beverages of any nature whatsoever may be sold in open containers for off-premises consumption. Other than beer, the law permits sales by retail licensees for off-premises consumption only in the original sealed container in which the liquor was purchased. Draught beer may be sold to take out by the pail or in metal, paper or similar open cartons or containers. See re Simandl, Bulletin 27, Item 2, copy enclosed.

(2) Refill spears I understand to be tubes used when filling containers with draught beer for the purpose of allowing the gas with which the beer is carbonated to escape, thus to enable the bartender to fill the container with beer and not all head. There is no objection to the use of refill spears.

(3) The news item you enclosed refers to the ruling made re Bingo, Bulletin 153, Item 10. A copy of the ruling, together with the rule which has been promulgated and now is Rule 16 of the State Rules Concerning Conduct of Licensees, are enclosed. It applies to Bingo and similar games, prohibiting licensees from allowing them to be played in any room on the licensed premises where there is a bar or from selling, serving or permitting alcoholic beverages to be consumed in the room in which the game is played while it is in progress. It does not apply to card games or card parties. Card parties may be held anywhere on licensed premises provided there is no gambling, in which event it would be in violation of Rule #7 of the State Rules Concerning Conduct of Licensees and cause for the suspension or revocation of the license.

(4) Rock and rye, I find, has been classified by the Federal Department as a cordial or liqueur because, having sugar or dextrose or both in an amount not less than two and a half per cent by weight, it falls within the Federal definition, viz.:

"Cordials and liqueurs are products obtained by mixing or distilling neutral spirits, brandy, gin, or other distilled spirits with or over pure juices from fruits, flowers, plants or other natural flavoring materials, or with extracts derived from infusion, percolation or maceration of such materials, and to which sugar or dextrose or both have been added in an amount not less than 2½% by weight of the finished product."

New Jersey State Library

Hence, according to Rule 1-d of the State Rules Concerning Size of Containers of Alcoholic Beverages (copy also enclosed) the minimum standard of fill is one-half pint or eight fluid ounces. Rock and rye may be sold in the original container for off-premises consumption provided the container is half-pint size or greater.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. LICENSEES - MANUFACTURERS AND WHOLESALERS - GIFTS - THE STATE LAW DOES NOT PROHIBIT LICENSED MANUFACTURERS OR WHOLESALERS FROM GIVING ALCOHOLIC BEVERAGES TO LICENSED RETAILERS.

Dear Commissioner:

Will you please advise this association if it is permissible or legal for a brewer or wholesaler to give away free beer with particular reference to licensed retailers.

To cite an instance: A wholesaler, in order to stimulate the sale of his products, will offer to his trade one case of beer free with every ten purchased, or a brewer will give a tap room a half or two of beer to try without charge.

Yours very truly,
New Jersey Wholesale Beverage
Distributors Association.
A. Louis Schlesinger,
Secretary.

July 13, 1937

A. Louis Schlesinger, Secretary,
N. J. Wholesale Beverage Distributors' Ass'n,
Atlantic City, New Jersey.

Dear Mr. Schlesinger:

So far as the State law is concerned, licensed manufacturers and wholesalers may give alcoholic beverages to licensed retailers. Whether they sell or give away their products is up to them. Gifts by licensees are, however, in the contemplation of the Control Act, considered to be sales. Hence, gifts as well as sales may be made only in the manner that the law and the license allow. Both must be reported on the monthly report of sales made to the State Tax Department.

These gifts by licensees do not impress me favorably. If kept within reasonable bounds, I see no objection, but once out of hand they clearly will lead to abuse. While I am not inclined to impose regulations upon the trade other than those reasonably necessary to effectuate proper control, I am mindful of my responsibility to promulgate regulations regarding practices designed unduly to increase the consumption of alcoholic beverages and concerning gifts of equipment, products and things of value. If it becomes necessary in the public interest to make such rules, I shall unhesitatingly do so. My advice to licensees is that in the meantime they do nothing in their zealously to attract customers that would call for the issuance of such rules.

As regards the provisions of the Federal Law affecting the subject matter of your inquiry and its interpretation, I suggest

that you write direct to Hon. Wilford S. Alexander, Administrator, Federal Alcohol Administration, Washington, D. C.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. MUNICIPAL ORDINANCES - PURCHASES BY MINORS - MISREPRESENTATION OF AGE - MUNICIPAL REGULATIONS PROHIBITING SUCH CONDUCT CANNOT BE GROUNDED IN THE CONTROL ACT - UNLESS THE AUTHORITY TO ENACT SAME IS CONFERRED BY SOME OTHER PERTINENT STATUTE APPLICABLE TO THE MUNICIPALITY, SUCH OFFENSES SHOULD BE PROSECUTED DIRECTLY UNDER CHAPTER 135, P. L. 1937, SUPPLEMENTING THE CONTROL ACT (BULLETIN 185, ITEM 5).

July 13, 1937

Wm. P. Stephenson,
Clerk of Parsippany-Troy Hills,
Tabor, New Jersey.

My dear Mr. Stephenson:

I have before me the ordinance to regulate the licensing for sale and sale of alcoholic beverages in the Township of Parsippany-Troy Hills, adopted by the Township Committee June 28, 1937.

* * * * *

Section 10 provides that any person under the age of twenty-one years who shall misrepresent his age for the purpose of inducing the sale or service of alcoholic beverages to him shall be deemed disorderly and subject to conviction and the penalty thereafter set forth.

The conduct which the section purports to prohibit is the misrepresentation of his age by a person purchasing alcoholic beverages. The authority for enacting the section cannot be derived from the Control Act. Section 37 of the Act confers upon municipalities the power only to limit the number of licenses, establish hours of sale, prohibit retail sales on Sundays, regulate the conduct of licensed businesses and the nature and condition of licensed premises and make, enforce, amend and repeal 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.

As there would seem to be nothing in the Control Act conferring the authority to enact your Section 10, its validity will depend on the powers which may be conferred by other pertinent statutes applicable to your municipality. It is a question of general municipal law as to which the Township Attorney should advise.

Unless you are convinced that Section 10 is within your power to enact, it may be the better policy to repeal it entirely and prosecute minors who misrepresent their age directly under Chapter 135, P. L. 1937, a supplement to the Control Act approved June 2, 1937 (see Bulletin 185, Item 5), which makes such conduct punishable by fine not exceeding \$200, prosecution to be had by summary proceeding before a Police Magistrate or Recorder.

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Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. LICENSES - APPLICATIONS - THE REQUIRED FEDERAL TAX STAMPS OR SATISFACTORY EVIDENCE OF THEIR POSSESSION IN LIEU THEREOF MUST ACCOMPANY THE LICENSE APPLICATION.

July 13, 1937

Mrs. Ann M. Baumgartner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Camden, New Jersey.

My dear Mrs. Baumgartner:

I have before me the resolution adopted by the Board on June 30, 1937 authorizing the issuance of plenary retail consumption license to Herbert Marker and Thomas Mayers, 229 Market Street, and club licenses to Camden Post #980 V. F. W., 308 Broadway, 13th Ward Italian American Democratic Club, 1334 Decatur Street, and Societa Operaia di Mutua Assistenza of Camden, New Jersey, 410 Line Street, all subject to special condition requiring "production of the Federal Revenue Stamp and the City Clerk is not to issue the said licenses until notified by the Secretary of the said Board that the Federal Revenue Stamp has been produced and the number thereof inserted in the application."

The Control Act requires that the Federal Tax Stamp be submitted with the license application. Section 22 provides:

"A photostatic copy of all federal licenses, permits and/or stamps necessary to the lawful conduct of the business for which a State license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the commissioner, must accompany the license application,....."

This provision is mandatory and may not be waived. The Board has no power to grant licenses subject to the above condition. Jackson v. Mt. Ephraim, Bulletin 169, Item 7; Radich v. Woodbridge, Bulletin 88, Item 4; Andreach v. Keansburg, Bulletin 73, Item 14.

The proper procedure for the Board to have followed would have been to advise the respective applicants at the time their applications were filed, that unless they were accompanied by the required Federal Tax Stamps or satisfactory evidence of their possession in lieu thereof (see Rules, Page 21), the applications could not be entertained. If filed without the Tax Stamps or such satisfactory evidence of possession, the Board would have no alternative but to deny them, refunding ninety per cent of the deposited fee. In order to get licenses, it would thereupon have become necessary for the applicants to reapply, submitting the full fee and required stamp with the application, and readvertise in the manner prescribed by the rules.

That, strictly speaking, is the way it should have been done. I am not, however, inclined to put the applicants to all this trouble at this late date and hold up their licenses further while they readvertise and reapply because of the failure of the Board to take the means necessary to see that the requirements of the statute were complied with.

I shall, therefore, allow the issuance of the licenses to stand this time provided the stamps are duly submitted as required by the Board's resolution. I wish that hereafter you would see to it that the terms of the statute are strictly obeyed and the required stamps or satisfactory evidence of their possession in lieu thereof accompany the license application.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. PLENARY RETAIL DISTRIBUTION LICENSES - COUPONS - COUPONS HAVING A SPECIFIC REDEMPTION VALUE ARE NOT PROHIBITED - WHERE THERE IS LOCAL ORDINANCE PROHIBITING DISTRIBUTION LICENSEES FROM CONDUCTING ON LICENSED PREMISES ANY MERCANTILE BUSINESS OTHER THAN THE SALE OF ALCOHOLIC BEVERAGES, COUPONS MAY NOT BE REDEEMED IN MERCHANDISE OTHER THAN ALCOHOLIC BEVERAGES.

July 13, 1937

Sussex County Drug Co.,
Newton, New Jersey.

Gentlemen:

The distribution by plenary retail distribution licensees of coupons having a specific redemption value in liquor or other commodities, with each sale of liquor, while not to be encouraged, is not prohibited by the Alcoholic Beverage Control Act or by the State rules and regulations.

The Newton Town Committee, on July 2, 1935, adopted an ordinance prohibiting the issuance of plenary retail distribution licenses for premises upon which any mercantile business, other than the sale of alcoholic beverages, is carried on. While the giving of coupons with liquor purchases would not constitute the transaction of other mercantile business, the redemption of such coupons at the licensed premises in merchandise other than alcoholic beverages would. Because of this local ordinance, you may not redeem coupons in merchandise other than alcoholic beverages on the licensed premises.

All risks incident to such redemption are, of course, to be borne by you. Therefore, beware of minors, intoxicated persons, and the law and regulations generally.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. PLENARY RETAIL CONSUMPTION LICENSEES - PLENARY RETAIL DISTRIBUTION LICENSEES - COUPONS - COUPONS MAY NOT BE REDEEMED IN MERCHANDISE OTHER THAN ALCOHOLIC BEVERAGES BY PLENARY RETAIL CONSUMPTION LICENSEES, OR BY PLENARY RETAIL DISTRIBUTION LICENSEES IF THE LOCAL ORDINANCE PROHIBITS DISTRIBUTION LICENSEES FROM CONDUCTING OTHER MERCANTILE BUSINESS ON THE LICENSED PREMISES.

July 13, 1937

Mr. Max Weiss,
Passaic, New Jersey.

Dear Mr. Weiss:

According to my records, you hold a plenary retail consumption license.

There is nothing at present in the Alcoholic Beverage Control Act or in the State regulations which would prohibit you from distributing with each purchase, premium coupons redeemable in merchandise at a specific predetermined value. But as you hold a plenary retail consumption license, these coupons may not be redeemable in merchandise other than alcoholic beverages at your licensed premises. The distribution of such articles would be contrary to the statute, which prohibits the conduct of other mercantile business by consumption licensees. See re Simandl, Bulletin

123, Item 10. While the giving of coupons with liquor purchases would not constitute the transaction of other mercantile business, the redemption of such coupons at the licensed premises in merchandise other than alcoholic beverages, would. Re Sussex County Drug Co., Bulletin 196, Item 5.

Plenary retail distribution licensees may conduct other mercantile business on their licensed premises unless the municipal governing body has, by ordinance, prohibited it. The Board of Commissioners of Passaic has adopted such an ordinance. Consequently, in Passaic, plenary retail consumption and plenary retail distribution licensees may redeem premium coupons on their premises only in alcoholic beverages. For the holder to obtain other merchandise, the coupons will have to be redeemable elsewhere.

I have had the subject of coupons under consideration for some time. Without doubt, they are designed to increase the sale and consumption of alcoholic beverages. Otherwise, there would be no point in giving them away. I have, therefore, looked upon them with disfavor. But their use is wide in other mercantile lines. No ruling has yet been made because it is not yet clear that they can fairly be said to "unduly" increase consumption. That is what must appear to give me jurisdiction. Once shown to be necessary in the public interest, regulations will be issued forthwith. I cordially suggest that in the meantime you do nothing in your desire to stimulate sales which would call for their issuance.

Coupons or cards where the bonus or discount or price advantage is concealed are prohibited. They are essentially lotteries. See Re Shinn, Bulletin 120, Item 8.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. MUNICIPAL ORDINANCES - SUNDAY SALES - HEREIN OF SO-CALLED BONA FIDE MEALS AND ECHOES OF THE RAINES LAW.

MUNICIPAL ORDINANCES - PROHIBITION OF WOMEN "FREQUENTING" BARROOMS DISAPPROVED BECAUSE OF INDEFINITENESS.

July 14, 1937

Thomas J. Raber,
Borough Clerk,
Hampton, N. J.

My dear Mr. Raber:

I have before me the resolution adopted by the Council on May 10, 1937 for the fiscal year 1937-38 which fixes the plenary retail consumption license fee at \$200, establishes hours of sale, prohibits sales on Sundays except with bona fide meals and forbids women from frequenting barrooms or drinking at bars.

According to Section 37 of the Control Act my approval is required only of municipal regulations dealing with the conduct of licensed businesses or the nature and condition of licensed premises. Exception is made with respect to regulations limiting hours of sale. See Bulletin 43, Item 2.

I am, therefore, considering the resolution for approval only to the extent that it prohibits sales of alcoholic beverages on Sundays except with bona fide meals and forbids women from frequenting barrooms or drinking at the bars. So far as it fixes fees

and limits hours of sale, it does not need approval in order to be effective. So long as duly enacted in accordance with the statutes, it becomes legally operative without it.

As regards Sundays, the resolution provides:

"On Sundays, the hours of sale shall be from 12 o'clock noon, until eight o'clock P. M., when alcoholic beverages may be sold only with bona fide meals. No alcoholic beverages shall be sold in the Bar rooms on Sundays."

For the reasons given in re Bowers, Bulletin 170, Item 11, I cannot approve the qualification "with bona fide meals." What is or what is not a bona fide meal is quite impossible to define in these caloric days of reducing diets and anti-gustatory achievement. As I indicated in the Bowers ruling, however, I will approve your regulation if it is revised to read: "in bona fide hotels and restaurants with meals."

The resolution further provides:

"...that the practice of women frequenting bar rooms and drinking at bars is prohibited."

In the first place, whatever duties may be imposed under the rule should be imposed on the licensees, not on the women. Your Council has the authority under the Control Act to regulate the conduct of businesses licensed to sell alcoholic beverages at retail. That power does not extend to imposing rules of conduct on the general public. If the rule prohibited licensees from allowing women in barrooms or at bars, the license could be suspended or revoked for violation. As it now stands, it is doubtful that licensees could be punished for any infractions.

Furthermore, how often does a woman have to be in a barroom to have it said that she is "frequenting it?" Does it mean a few or several or many visits or must she habitually haunt the place? The eternal question will take on new significance if you adopt any indefinite rule like this. Bear in mind you are not dealing with the radio. You can't determine frequencies in these matters in terms of kilocycles or by turning on a dial. The resolution is, therefore, disapproved.

If what the Council wanted was to keep women entirely out of barrooms and to stop them from drinking at bars, why not say so, directly and simply, e.g.:

"BE IT FURTHER RESOLVED: No licensee shall allow, permit or suffer any women in the barroom. No licensee shall allow, permit or suffer the sale, service or delivery of any alcoholic beverage to any woman directly over a bar."

So far as the policy of such a regulation is concerned, I express no official opinion or comment one way or the other. Whether or not women should be allowed in barrooms or served at bars rests wholly in the judgment and discretion of your Common Council as the chosen representatives of your community sentiment. The regulation is within your legal power and if amended as above suggested, will be approved as submitted. See in this connection re Orange, Bulletin 105, Item 7, re Orange, Bulletin 107, Item 7.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. LICENSES - SPECIAL CONDITIONS - GENERAL REGULATIONS APPLICABLE TO ALL LICENSEES MAY LAWFULLY BE IMPOSED AFTER LICENSES ARE ISSUED - SPECIAL CONDITIONS APPLICABLE TO PARTICULAR LICENSES, WHETHER PRECEDENT OR SUBSEQUENT, MUST BE IMPOSED BEFORE THE LICENSE IS GRANTED.

July 14, 1937

Wm. C. Armstrong, Jr.,
Clerk of Frelinghuysen Township,
R. D. 1, Blairstown, N. J.

My dear Mr. Armstrong:

I have before me certifications reporting the issuance of six plenary retail consumption licenses in Frelinghuysen Township for the current fiscal year and note that the licenses were issued subject to such special conditions "as the committee may at any time hereafter subsequently lawfully impose."

Municipal license issuing authorities may impose special conditions at the issuance of licenses. The power to do so is expressly conferred by Section 29 of the Act. These conditions may require that something be done before the license can issue or they may prescribe a course of conduct to be followed after issuance, i. e., either a condition precedent or a condition subsequent. Failure to comply with a condition precedent means that the license will never be issued. Failure to comply with a condition subsequent means cause for revocation of the license that has been issued.

Whether conditions are precedent or subsequent, they must be imposed before the license is granted. The applicant is entitled to the election of accepting the conditional license or withdrawing his application and forfeiting the ten per cent investigation fee.

Your Township Committee may not lawfully impose special conditions once the licenses have been issued.

The special conditions imposed in the six cases above mentioned are void because of indefiniteness. After all, they were merely an attempt to reserve the right to impose them later. Actually, none were imposed at all at the time of issuance. We shall have to treat the licenses, therefore, as not being issued subject to any condition. This, however, will not be of real moment to the Township Committee for the reason stated in the following paragraph.

The Committee is not precluded from later adopting further general regulations applicable to all licensees in the class. The rights and privileges licensees get with their licenses are subject always to the paramount interest of the public at large. Licenses, by their terms, are subject to the provisions of all ordinances and/or resolutions of the municipality which have been or shall have been approved (where, of course, under the law such approval is necessary) by the State Commissioner.

General regulations applicable to all licensees may lawfully be imposed after licenses are issued. Special conditions applicable to particular licenses may not.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. PLENARY RETAIL DISTRIBUTION LICENSES - PACKAGE SALES WITH KNOWLEDGE THAT THEY ARE TO BE CONSUMED IN ADJACENT POOLROOM ALSO OPERATED BY LICENSEE IS AGAINST THE SPIRIT OF THE LAW - RULES WILL BE MADE TO BREAK THE PRACTICE IF NECESSARY.

Dear Sir:

On my premises where I conduct my retail liquor store, I also have a poolroom and cigar store, however the liquor store is in a glass compartment and separated from my other business. What I would like to ascertain is this: If a patron should purchase beer or liquor in the store and leave same, walking back into the poolroom, is it permissible for him to open same if he so desires while in the poolroom, providing he is a responsible person, and I care to allow it.

Yours very truly,
William C. Hullings.

July 15, 1937

Mr. William C. Hullings,
Riverside, New Jersey.

Dear Mr. Hullings:

Our records show that you hold a plenary retail distribution license.

As you say that your liquor store is separated from your other business, I take it that your poolroom is not included in the description of your licensed premises as set forth in the application for license. If it is not, then technically there would be nothing to prevent a customer from buying alcoholic beverages in the original container in the liquor store and taking same off the licensed premises, for instance, into the poolroom, and consuming them there. Strictly speaking, so long as the bottle was not opened nor any liquor consumed in the liquor store, there would be no violation.

But even though it is technically legal, I cordially suggest that you not allow your patrons to purchase liquor in your liquor store and then consume it in the pool room. As I understand it, your liquor store and pool room are adjacent. It appears that there is direct access between the two. If you permit liquor to be consumed in the poolroom, it will look as if you were attempting to run a consumption place on a distribution license, regardless of any protestations which you may make to the contrary. It would be mighty hard to explain away if you were arrested for a violation. It would look mighty like a subtle, studied evasion. If the practice develops, I shall make rules to break it up. I prefer to have your word that it will not occur. May I?

Of course, if the liquor store and poolroom are both included in your licensed premises, then the answer is clear. The premises being licensed only for the sale of package goods, it would be illegal to allow the consumption of any alcoholic beverages thereon.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

July 16, 1937.

Re: Case #64

Applicant, in obtaining a solicitor's permit for the term expiring June 30, 1937, stated that he had never been convicted of a crime. Subsequent investigation of his fingerprint record disclosed that he had been convicted in 1932 for violation of the National Prohibition Act. A hearing was accordingly held to determine whether solicitor's permit should be revoked or other action taken. In the meanwhile, applicant's permit for 1936-1937 has expired, and his application for a renewal is on file awaiting the determination of this proceeding.

Applicant is 39 years of age and unmarried.

Applicant was arrested in February, 1932, by Federal agents for violation of the national liquor laws in connection with a restaurant in Camden which was also vending alcoholic beverages to its patrons. Applicant claims that a sale of liquor was made to the Federal agents who immediately closed up the place, and that applicant, although not the owner of the business, "took the rap."

He pleaded guilty to charges against him for illegal possession and sale of liquor and for maintaining a nuisance where liquor was sold, and was sentenced to 15 days in jail and \$200 fine.

The crime of illegal possession and sale of liquor during the Prohibition era is not per se a crime involving moral turpitude. In re Hearing #143, Bulletin #166, item #8. Since no aggravating circumstances appear, applicant's crime does not involve moral turpitude.

However, there still remains the fact that applicant, in his questionnaire and in his application for a solicitor's permit for the last term and for the present term, falsely swore that he had never been convicted of any crime. His explanation is that he did not believe the question whether he had ever been convicted of a crime related to liquor violations during the Prohibition era. This explanation does not strike home as an adequate excuse for his false answer under oath.

Applicant's renewal application has been on file since the beginning of the present term. It is recommended that applicant be declared eligible for a renewal permit, but that issuance thereof be further withheld until August 2, 1937, in punishment for applicant's false oath.

Nathan Davis,
Attorney.

APPROVED

D. FREDERICK BURNETT
Commissioner

11. DISCIPLINARY PROCEEDINGS - LOTTERY - 10 DAY PENALTY COMMANDS RESPECT.

July 17, 1937.

John J. Reilly, Secretary
Municipal Board of Alcoholic
Beverage Control
Elizabeth, New Jersey

Dear Mr. Reilly:

I have staff report of the proceeding before the Municipal Board of Alcoholic Beverage Control of Elizabeth against Michael J. Humphries, t/a Liberty Tavern, charged with having allowed a lottery to be conducted on the licensed premises.

I note he entered a plea of non vult and that his license was suspended for a period of ten (10) days.

That is a real penalty and should go a long way to teach Elizabeth licensees that your Board is in dead earnest. It is not a matter of whether gambling is right or wrong but rather that the law declares a lottery to be illegal.

The action of your Board commands respect.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. APPELLATE DECISIONS - LEEDS & LIPPINCOTT CO. vs. ATLANTIC CITY

LEEDS & LIPPINCOTT CO., a :
corporation of the State of :
New Jersey, and its Trustees, :

Appellants,:

-vs-

ON APPEAL

BOARD OF COMMISSIONERS OF THE :
CITY OF ATLANTIC CITY and :
LOUIS FOXWELL, trading as :
HOLLYWOOD CAFE, :

Respondents.:

.....

Cole & Cole, Esqs., by C. L. Cole, Sr., Esq.,
Attorney for Appellants.

No Appearance for Board of Commissioners of the City of
Atlantic City.

Emerson Richards, Esq., Attorney for Louis Foxwell, trading as
Hollywood Cafe.

BY THE COMMISSIONER:

Appellants appeal from renewal of a plenary retail con-

sumption license for the present fiscal year to respondent Louis Foxwell for premises located at 122-126 South South Carolina Avenue, Atlantic City.

The petition of appeal alleges that "the action of the Commissioners in renewing said license was erroneous in view of the conviction which stamped the said Foxwell as an unfit person to obtain a license."

The "conviction" referred to consists of a judgment entered on December 4, 1936 in a disciplinary proceeding instituted by the Board of Commissioners of the City of Atlantic City against Louis Foxwell. In said judgment the licensee was found guilty of the charges lodged against him in the complaint, namely:

"with causing and permitting the licensed premises to be conducted in such manner as to constitute a nuisance; with violating the ordinance of the City of Atlantic City in that he permitted women to be served with alcoholic beverages over the bar; and further with selling alcoholic beverages to persons under the age of twenty-one years."

As a result of its finding, the Board of Commissioners suspended the Foxwell license for a period of five days.

The petition of appeal likewise sets forth that since said judgment the licensee has repeated the same violations of which he was convicted. Appellants offered no evidence, however, to substantiate the latter allegation. They merely offered in evidence a copy of the judgment entered on December 4, 1936 and rested.

A person who has committed two or more violations of the Control Act is not eligible for a license. Re Wismer, Bulletin #171, Item 5. Section 22 of the Control Act, however, contemplates an adjudication of guilt followed by punishment, and then, still unregenerate, a subsequent violation. Re Case No. 63, Bulletin #195, Item 1. Applying the principles of this decision to the instant case, Foxwell has been found guilty of one violation of the Control Act. That is one strike. But that is all there is against his record. Hence he is not disqualified by the statute. While even one violation might well sustain a denial of a renewal application, nevertheless, it was within said respondent's discretion to determine that the licensee had been sufficiently punished for his violation and to grant his application for renewal.

Appellant has failed to show that the action of the Board of Commissioners was an abuse of discretion.

The action of the Board of Commissioners of the City of Atlantic City in renewing the plenary retail consumption license of Louis Foxwell is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: July 19, 1937.

13. MUNICIPAL ORDINANCES - SIMULATION OF TRADE NAMES OR TRADE-MARKS -
POWER TO REGULATE LIQUOR BUSINESS DOES NOT EXTEND TO PRIVATE
CONTROVERSIES BETWEEN COMPETITORS OR COVER TRADE ETHICS.

July 17, 1937.

Charles F. Lynch, Esq.,
City Counsel,
City Hall, Paterson, N. J.

My dear Mr. Lynch:

I have before me your letter of June 26th and draft of resolution proposed to be enacted by the Board of Aldermen of Paterson reading:

"WHEREAS certain retail consumption licensees in the City of Paterson have adopted trade names, signs and insignias (excluding corporate names) by which such retail licensed premises are known and;

"WHEREAS in the adoption of such trade names, signs and insignias the general public are induced to rely on the fact that such licensed premises are conducted by established licensees and;

"WHEREAS in certain instances, other retail consumption licensees have adopted and have attempted to adopt identical and/or similar trade names, signs or insignias so that the general public is often misled as to the true owner of such licensed premises and;

"WHEREAS such practices tend to create unfair competition and are designed to deceive the general public;

"NOW THEREFORE BE IT RESOLVED and it is hereby declared the policy of the Board of Aldermen of the City of Paterson that on and after July 1st, 1937, no licensee or licensed premise shall use a trade name, sign or insignia (excluding corporate names) in and about licensed premises or in front thereof, that is identical, similar or simulates a trade name, sign or insignia already in use.

"BE IT FURTHER RESOLVED that this resolution is intended to give to the Board of Aldermen of the City of Paterson, closer supervision and regulation of all licensed premises in accordance with the statutes in such case made and provided."

While I am heartily in sympathy with all efforts to effect a healthier business atmosphere and am against all trade practices that tend to create unfair competition or mislead or deceive the public, the proposed resolution raises the following reactions:

- 1 - If individuals are to be governed by this resolution, so should corporations. Coined corporate names are counterfeited at least as often as those of natural persons.
- 2 - The term "trade name, sign or insignia already in use" is too vague and indefinite. In use WHERE? In Paterson, or New Jersey, or anywhere? If there is a Pickwick Inn now in London, then, if this resolution were valid, there could be no tavern of such a name in Paterson. Yet who would be hurt? Why should not harmless local fancy and initiative have full play?
- 3 - The resolution has no teeth. If violated by a licensee, no penalty is imposed. Nothing is gained by putting rules on the books which cannot be enforced.
- 4 - The unfair simulation of trade names or trade-marks is a matter properly cognizable in the equity courts which can deal with these tricks adequately whenever the facts warrant. A meeting of a Board of Aldermen is not a proper forum for the determination of civil injuries such as these.
- 5 - There is no jurisdiction in municipalities under the Control Act to warrant enactment of such a resolution. The power to regulate the conduct of the licensed liquor business does not extend to the decision of private controversies between competitors therein or cover matters of trade ethics and general economics.

I regret, therefore, that I cannot approve the foregoing resolution.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. ILLEGAL CONTRACTS - TIED HOUSES - AGREEMENTS FOR EXCLUSIVE SALE OF BREWERY PRODUCTS PROHIBITED.

July 19, 1937.

Mr. Martin T. Hogan
Trenton, New Jersey

My dear Mr. Hogan:

You ask: "Is it permissible, under the Beverage Control Act, for one saloon-keeper to enter into an agreement with certain brewery concerns to prohibit these concerns to sell their products to a competitive saloon-keeper?"

Section 40 of the Control Act expressly prohibits any manufacturer or wholesaler from being interested directly or indirectly in the retailing of alcoholic beverages, and any retailer from being interested in a manufacturer or wholesaler. The objective is to divorce completely the manufacturing and wholesaling of alcoholic beverages from the retail trade and thus prevent the recurrence of "tied houses" which prior to Prohibition were a source of much social and economic abuse.

The question, then, is: Does an agreement of the type that you suggest constitute such an interest that it will be prohibited by the statute.

You do not tell me what the retailer is bound to do. It is highly improbable that a brewery would agree not to sell to any other retailer unless it received in return a promise from the retailer not to buy from any other brewery. That is the sort of contract, I take it, with which your inquiry is concerned. Such an agreement smacks of actual domination and control by the brewery. It hog-ties the retailer. It is, therefore, against the public interest.

The statute contemplates that retailers shall be free to purchase at any time from any legitimate source of supply they choose. Agreements tending to destroy or impair that freedom of choice constitute, I believe, an indirect interest between brewery and retailer and hence are prohibited by Section 40.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

15. MUNICIPAL OFFICIALS - LICENSEES - EXTENT OF DISQUALIFICATION - MEMBERS OF MUNICIPAL GOVERNING BODIES HOLDING LICENSES MAY NOT PARTICIPATE IN ALCOHOLIC BEVERAGE MATTERS COMING BEFORE THEIR BOARDS.

MUNICIPAL OFFICIALS - OCEAN AND CAPE MAY COUNTIES - APPLICATIONS FOR LICENSES ON BEHALF OF MEMBERS OF MUNICIPAL GOVERNING BODIES SHOULD BE MADE DIRECTLY TO THE COUNTY JUDGE.

July 19, 1937.

Robert A. Lederer, Esq.,
Toms River, N. J.

My dear Mr. Lederer:

There is no question, so far as the issuance of liquor licenses to members of municipal governing bodies is concerned, as to their right to hold such licenses except if they act as police officers, magistrates or Justices of the Peace. Re Scott, Bulletin 109, Item 5; Re Bruers, Bulletin 113, Item 9.

Once having received their licenses, they are disqualified, to be sure, while they hold them, from voting upon the granting or rejecting of other liquor licenses, or taking part in hearings on revocation proceedings, or participating in the preparation or enactment of any proposed regulations, ordinances or resolutions concerning the liquor traffic. Whenever their own self-interest is involved, they must withdraw entirely from the proceedings. Re Siracusa, Bulletin 89, Item 9; Re Loog, Bulletin 39, Item 3. But the mere fact of their being members of municipal governing bodies is not a disqualification.

The real question, in such a situation, is by whom shall the license be issued.

In all counties, except Cape May and your County of Ocean, retail licenses are issued by the municipality. In order that municipal license issuing authorities may not be put in the invidious position of having to act upon an application of one of their own members, the Legislature has provided in Chapter 44, P.L. 1934 (Control Act Reprint, Section *18A) that no such license shall be issued by any municipal issuing authority, but that, in such cases, application shall be made directly to the State Commissioner. The reason for the rule, however, does not exist in Cape May and Ocean Counties, where complete jurisdiction to receive and act upon applications and to impose regulations is vested in the respective judges of the Court of Common Pleas. See Section 6 of the Control Act. The municipal governing bodies in these Counties have no such jurisdiction. There is, therefore, no reason why the applications of members of these bodies in these two counties should be made to me.

Applications for retail licenses by members of the governing body of any municipality in Cape May or Ocean County should, therefore, be made, similarly as are all other applications for retail licenses, directly to the County Judge.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

16. ADVERTISING - RADIO ADVERTISING OF LIQUOR DEPRECATED IN GENERAL.

July 19, 1937.

Mr. Angelo Elias,
Atlantic City, N. J.

Dear Mr. Elias:

I have endeavored to maintain the sale of alcoholic beverages in New Jersey on a dignified plane. That is why coarse and vulgar advertising has consistently been discouraged. Show windows plastered up with signs of "Bargain Sales" and "The Biggest Beer in Town for a Nickel" present an unsightly and distasteful spectacle, to say the least. Advertising which creates a sales appeal by playing on emotional response to pictures of women, children, Santa Claus and the like is out of order.

You want to know if you may advertise over the radio the quantity of beer you give per glass.

I am opposed to the advertising of liquor over the radio in general. It carries the message directly into the home and into the family life whether welcome or not. There are many who want to keep liquor and any influence designed to promote it out of their homes. Their wishes are entitled to consideration.

Please, then, forego your contemplated advertising over the radio. There are plenty of other advertising media available.

Very truly yours,

D. Frederick Burnett
Commissioner

New Jersey State Library

Inspected by: E. E. B. ANDERSON and found O. K.
