

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 59

January 10, 1935

APPELLATE DECISIONS - ROYAL LIQUOR STORES VS. TRENTON

1. ROYAL LIQUOR STORES, LTD., )  
Appellant, )

-vs-

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF TRENTON, )  
Respondent )

ON APPEAL  
CONCLUSIONS

-----  
N. Louis Paladeau, Esq., Attorney for Appellant  
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license for premises located at 84 E. State Street, Trenton.

Appellant complied with all the formal prerequisites pertaining to its application. The character of the persons interested in appellant corporation, and the suitability of the premises, aside from their location, are unquestioned.

Respondent contends that the application was properly denied because it had adopted a policy not to issue any licenses for the sale of alcoholic beverages in the retail shopping district of Trenton, consisting of five blocks along State Street and three blocks along Broad Street, except to hotels and restaurants. Appellant's premises are within this district. The reason respondent adopted this policy is that it believed the sale of alcoholic beverages in the retail shopping district of Trenton would lower the tone of the neighborhood.

It has been held that a municipal issuing authority may properly refuse to grant more than one retail distribution license at the principal intersection of a municipality. Schulte vs. Perth Amboy, Bulletin #58, Item #13. In the instant case, however, respondent's alleged policy is not confined to the principal intersection, but embraces eight complete blocks. The proscribed area is entirely business in character. A number of licenses have been issued therein to hotels and restaurants. One of these restaurants is almost directly across the street from appellant's premises and makes a constant public display of alcoholic beverages in its show window. Business neighborhoods are eminently proper for the sale of alcoholic beverages. Where application for a license for premises located therein is filed, the application may be denied only for very good reason. The propriety of the policy alleged to have been adopted by respondent may be questioned. Assuming it to be valid, however, the public display and sale of alcoholic beverages by a restaurant is as much within the reason of the policy as is the existence of a distribution store. Since respondent has not applied its alleged policy to all situations embraced by the philosophy underlying it, respondent has unreasonably discriminated against appellant. Respondent's contention cannot, therefore, be sustained.

Respondent further contends that the application was properly denied because it was informed and believed that one of the officers and directors of appellant corporation is indirectly interested in a wholesale liquor business so as to come within the prohibition of Section 40 of the Control Act. Respondent introduced no evidence, however, to show such interest existed in fact. Mere suspicion does not justify the denial of a license application.

The action of respondent Board is reversed.

Dated: December 19, 1934

D. FREDERICK BURNETT,  
Commissioner

2. 200 FOOT RULE - HOTELS - HOTELS IN RECEIVERSHIP

December 21, 1934

Mr. Thomas G. Ogilvie,  
Editor, South Jersey Democrat,  
Sea Isle City, N. J.

Dear Sir:-

A marked copy of your issue of December 7th, containing an open letter addressed to Commissioner Burnett, has been brought to his attention.

An investigation by the Department discloses that receivers were appointed on November 14, 1930, for the Knights of Columbus Hotel; that since such time, they have operated the hotel under the direction of the New Jersey Court of Chancery; that license #C-81 has been issued by the Board of Commissioners of Atlantic City to Charles I. Lafferty, Receiver of the Knights of Columbus Hotel; and that the hotel is located within 200 feet from the Olivette Presbyterian Church and the St. Nicholas Parochial School.

Although section 76 of the Control Act prohibits the issuance of licenses for premises located within 200 feet of a church or school, it contains an express exemption in favor of "hotels", clubs or fraternal organizations which owned or were in possession of the licensed premises on December 6, 1933. The exemption clearly contemplates that the sale of alcoholic beverages in a hotel located within 200 feet of a church or school may be authorized if the hotel was in existence on December 6, 1933. Consequently, if no receiver had been appointed for the Knights of Columbus Hotel, there would be no question ~~that~~ a license could properly issue for its premises.

Hotels as such, however, are not legal entities and licenses are not issued to hotels, but are issued to the individuals or corporations which operate them. When a receiver is appointed by the New Jersey Court of Chancery for a corporation operating a hotel, he becomes vested with its rights and privileges and stands substantially in its position. See N. J. Corporation Act, Section 68. To deprive a receiver of the exemption contained in section 76, would, in large part, frustrate the purposes of the receivership with consequent economic detriment to creditors and stockholders. Neither the spirit nor the letter of section 76 of the Control Act warrants this conclusion.

It is the ruling of the Commissioner that a license may

properly issue to the receiver of a hotel located with 200 feet of a church or school where the hotel premises were owned by or were in possession of the corporation operating the hotel or its receiver on December 6, 1933.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

3. SPECIAL PERMIT WILL NOT BE ISSUED TO FACILITATE EVASION OF NEW YORK CONTROL BOARD'S REGULATION

December 18, 1934

State Alcoholic Beverage Control Board,  
New York City.

Gentlemen:

Under the rules of this Department consumers may not import, from foreign countries, alcoholic beverages into New Jersey except under special permits.

Several New York consumers have applied for such permits to import beverages through New Jersey and to their respective residences in the State of New York. They have arranged for the importation to New Jersey rather than to New York because of their understanding that they cannot import from foreign countries directly to their residences unless they hold proper New York licenses.

Will you be good enough to advise me whether your Board wishes to comment upon or voice any objection to the foregoing practice? An expression of your policy will be of assistance to the Commissioner in his consideration of the pending applications.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

December 22, 1934

State of New Jersey,  
Department of Alcoholic Beverage Control,  
Newark, N. J.

Gentlemen:

Due to Mr. Ruttenberg's absence from the office because of illness, your letter of December 18 has been referred to me for reply.

The New York State law prohibits the sale of any alcoholic beverage in the State of New York by any person who is not duly licensed by the State Liquor Authority.

The word "sale" is defined in the law to "include the delivery of any alcoholic beverage in the State." Further provision is made in the law under Section 102 as follows:

"C" No liquors and/or wines shall be shipped into the state, unless the same shall be consigned to a person duly licensed hereunder to traffic in liquors and/or wines, as the case may be."

"D" No common carrier or other person shall bring or carry into the state any liquors and/or wines, unless the same shall be consigned to a person duly licensed hereunder to traffic in liquors and/or wines, as the case may be."

As you state in your letter, the purpose of the applications filed by the New York consumers is evidently to circumvent both the aforesaid provisions and the customs regulations promulgated by the Department of Internal Revenue during the early part of this year, which prohibited the release from customs of any alcoholic beverages for delivery into New York State, unless the same were consigned to a licensee of New York. The shipment therefore of any alcoholic beverages into this State from the State of New Jersey by a consumer who is not duly licensed in this State would constitute a violation of the law of New York.

Thanking you for your cooperation in this matter, I am

Very truly yours,  
NELSON RUTTENBERG,  
Counsel  
By: L. H. Schreiber

December 26, 1934

State Alcoholic Beverage Control Board,  
New York City.

Gentlemen:

I have your letter of December 22d.

This Department desires, of course, to extend its fullest cooperation in the enforcement of your law and regulations, and will not afford the privileges of its offices for evasions thereof.

Accordingly, the Commissioner has denied the applications by New York consumers for permits to import beverages through New Jersey and to their respective residences in the State of New York.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

4. RULES GOVERNING TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO  
NEW JERSEY - INTERSTATE SHIPMENTS - TRANSPORTATION UNDER  
SPECIAL PERMITS BETWEEN IMPORT PIERS AND POINTS OUTSIDE THE  
STATE

January 3, 1935

Daniels & Kennedy, Inc.,  
New York City.

Gentlemen:

I have your letter inquiring whether alcoholic beverages may be transported without a transportation license between New York City warehouses and piers of import in Hoboken and Jersey City.

When the rules governing the transportation of alcoholic beverages into New Jersey were adopted, it was contemplated that bona fide interstate shipments should not be unduly restricted. See Bulletin #39, Item #1. Accordingly, exception #2 thereof provides:

"Alcoholic beverages not intended for sale or use in New Jersey may be transported through this State in any vehicle, provided no delivery is made in New Jersey."

This exception was intended to cover shipments from a point outside the State to another point outside the State. It was not intended to relate to shipments between New Jersey piers and points outside the State.

It may well be urged, however, that the immunity afforded by exception #2 to ordinary interstate shipments should be extended to apply to shipments between piers of import in New Jersey and points outside the State. Cf. Bulletin #43, Item #7. Such an extension, without restriction, would facilitate evasions and illegal transportation. Accompanied by a proper restriction, however, the interests of our neighboring States will be fully recognized as a matter of comity, and control within this State will not be interfered with.

Accordingly, the following regulation has been promulgated by the Commissioner, effective immediately:

"Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported between points outside this State and piers of import located within this State in any vehicle, provided such vehicle carries a special permit issued by the Commissioner, together with a way-bill, consular invoice, or similar document stating the names and addresses of the consignor and consignee, the nature and quantity of the alcoholic beverages being transported, the place at which they were received and the place of their destination."

Application may be made to the Commissioner for a special permit authorizing the transportation of alcoholic beverages between points outside the State and New Jersey piers of import, in the form enclosed, and must be accompanied by permit fee of \$10.00. All such special permits which are issued during the current license period will expire on June 30, 1935.

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

5. REFUNDS - WITHDRAWAL OF APPLICATION - WITHDRAWAL AFTER REVERSAL BY COMMISSIONER ON APPEAL

January 4, 1935

Mr. John L. Haney,  
City Clerk,  
Trenton, N. J.

Dear Sir:-

Re: Royal Liquor Stores, Ltd.

I have your letter of December 22d.

After an application is filed with an issuing authority, it may not, under any circumstances, be physically withdrawn. The applicant may, however, at any time prior to the issuance of the license, abandon or withdraw, in legal contemplation, the application. The Commissioner has heretofore ruled that a withdrawal of an application is, in effect, a denial thereof. (See Bulletin #57, Item #12). Upon such withdrawal, the applicant is entitled to a return of 90% of the license fee, pursuant to the provisions of section 28. After the license is issued, no such withdrawal is permissible, although the licensee may surrender his license pursuant to the provisions of section 28.

Although the Commissioner directed the issuance of a license to Royal Liquor Stores, Ltd. after hearing had been held on its appeal, no license had actually been issued at the time the applicant advised of its desire to withdraw its application. Consequently, the withdrawal was proper and the applicant is entitled to a refund of 90% of the amount deposited with the application.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

6. REVOCATIONS - PROCEDURAL FORMS - NOTICE TO LICENSEE OF CHARGES AND HEARING THEREON

The forms set forth in Bulletin #52, Items 10 to 14, both inclusive, have special reference to violations of Election Day regulations. As stated in Bulletin #52, Item 9, under the caption of "REVOCATIONS - GENERAL INSTRUCTIONS AS TO PROCEDURE", these forms are intended as general guides and must be modified, where necessary, to meet the particular situations presented. The State Department has, at the request of different municipalities, since assisted in the preparation of forms for other violations, which are herein set out. Appropriate changes in reference to the notice to the licensee and corresponding change according to the nature of the violation will, of course, have to be made in the resolution or order adjudicating guilt or punishment, the general type form for which is found in Bulletin #52, Item 12.

7. REVOCATIONS - PROCEDURAL FORMS - NOTICE TO LICENSEE OF CHARGES AND HEARING THEREON - IN CASE OF POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES WITH INTENT TO SELL - IN CASE OF POSSESSION WITH INTENT TO RECTIFY - IN CASE OF RECTIFICATION AND BOTTLING - IN CASE OF POSSESSION OF SLOT MACHINE - IN CASE OF PERMISSION OF GAMBLING ON LICENSED PREMISES

To: -----

TAKE NOTICE that the charges listed below are preferred against you for violations of the provisions of "An Act Concerning

Alcoholic Beverages" as amended and supplemented, rules and regulations promulgated thereunder, and the terms of your Retail Consumption License No. 7.

1 - That on the 16th day of November, 1934 and on divers days prior thereto you did possess with intent to sell an illicit alcoholic beverage, to wit, a ten gallon barrel of alcohol, contrary to provisions of Sections 2, 13 (sub-division 1) and 48 of the above named Act and in violation of the rights granted to you under and by virtue of your license.

2 - That on the 16th day of November, 1934 and on divers days prior thereto, you did possess with intent to rectify and mix and process and blend and bottle, alcoholic beverages contrary to provisions of Sections 2, 13 (sub-division 1) and 48 of the above named Act and in violation of the rights granted to you under and by virtue of your license.

3 - That on the 16th day of November, 1934 and on divers days prior thereto you did rectify and mix and process and blend and bottle, alcoholic beverages contrary to the provisions of Sections 2, 13 (sub-division 1) and 48 of the above named Act and in violation of the rights granted to you under and by virtue of your license.

4 - That on the 16th day of November, 1934 and on divers days prior thereto you did possess and allow and permit and suffer on your licensed premises a certain slot machine which was used for the purpose of playing for money, contrary to Rule #8 concerning licensees and use of licensed premises, promulgated by the Commissioner of Alcoholic Beverage Control by virtue of authority given him under the above Act, and reading as follows:

"8. No licensee shall possess, allow, permit or suffer on or about the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing".

5 - That on the 16th day of November, 1934 and on divers days prior thereto you did allow and permit and suffer on the licensed premises two devices or machines designed for gambling and you did permit gambling on said devices and machines, contrary to Rule 7 concerning licensees and use of licensed premises, promulgated by the Commissioner of Alcoholic Beverage Control by virtue of authority given him under the above Act, and reading as follows:

"7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises".

TAKE FURTHER NOTICE that a hearing will be held at  
at . . . . . on the . . . . . day of . . . . . 193 ,  
o'clock in the . . . . . noon, at which time and place you will

be afforded full opportunity to be heard on the foregoing charges and to show cause why the above named license issued to you should not be suspended or revoked and the licensed premises declared ineligible to become the subject of any further license of any kind or class for a period of two (2) years from the effective date of revocation pursuant to the provisions of said Act.

MAYOR AND COUNCIL  
BOROUGH OF GARWOOD  
By: \_\_\_\_\_

Dated: 193 .

8. REVOCATIONS - PROCEDURAL FORMS - NOTICE TO LICENSEE OF CHARGES AND HEARING THEREON - IN CASE OF POSSESSION OF ILLICIT BEVERAGES ON WHICH FEDERAL AND STATE TAXES HAVE NOT BEEN PAID

Substitute in Item 7, or insert additionally, as the fact may be, the following charge:

That on or about the fifteenth day of November, 1934, you did purchase, receive and procure an illicit beverage, to wit, alcohol, upon which Federal and State taxes had not been paid, contrary to the provisions of sections 1 (sub-division 1), 2 and 47 of the above Act.

9. REVOCATIONS - PROCEDURAL FORMS - NOTICE TO LICENSEE OF CHARGES AND HEARING THEREON - IN CASE OF BOTTLING OF ALCOHOLIC BEVERAGES FOR SALE AND RESALE

Substitute in Item 7, or insert additionally, as the fact may be, the following charge:

That on the first day of December, 1934, and on divers days previous thereto you did bottle alcoholic beverages for sale and resale contrary to the provisions of section 78 of the above Act and in violation of the terms of your license.

10. REFUNDS - CLUB LICENSES - CONVERSION OF CONSUMPTION LICENSES INTO CLUB LICENSES

December 28, 1934

Dear Commissioner:

The local Veterans of Foreign Wars of Bridgeton, N. J., and the local Fraternal Order of Eagles of Bridgeton, N. J., have been to see me in connection with the possibility of securing a return from the City of Bridgeton a proportion of the license fee paid by each for the year ending June 30, 1934.

On January 27, 1934, the Eagles were issued license Number 3, Permanent Plenary Retail Consumption License and the City charged the Eagles the sum of \$212.16.

On February 1, 1934, the City issued the Veterans the same type license, license Number 4, and charged the sum of \$205.50. This license fee was based on a \$500.00 yearly license for retail consumption.

Both of these licensees are Clubs and sold exclusively to members.

With the change in the State Law, concerning license fee for Clubs, the fee was reduced to \$75.00.

Has there been any Ruling by your Department concerning a case such as I have above outlined? In other words, must the Municipality return to the licensee of this type license, part of the original fee after having deducted the proportionate amount of the fee up to the time the new license fee was set by the Legislature.

Has the local licensing authority the exclusive power in this matter?

Sincerely yours,  
Douglas V. Aitken

December 29, 1934

Hon. Douglas V. Aitken,  
Bridgeton, N. J.

My dear Assemblyman:

I wish to acknowledge, in the Commissioner's absence, receipt of your letter of December 28th.

I can find no legal authority for a refund in the situation outlined in your letter. The Eagles and Veterans held consumption licenses and were required to pay the same license fees therefor as were other consumption licensees. The fact that they exercised only the privileges of club licensees does not affect this conclusion, since, as a matter of law, they were given the full privileges of consumption licensees and could have exercised them at any time during the continuance of the license period.

When the legislature enacted the provision with respect to club licenses, the Eagles and Veterans could have surrendered their consumption licenses and applied for club licenses. This procedure, however, would not have enabled any substantial refund in view of the surrender fee set forth in section 28 of the Act.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

11. REFUNDS - SURRENDER OF LICENSE - DISPOSITION OF MONEYS RECEIVED  
VIA REFUND

December 28, 1934

My dear Commissioner:

A situation has arisen within this municipality which possibly calls for an expert analysis in order that justice may properly be done.

At the present time a license is held by a woman operating a hotel property and holding a plenary retail license issued by this municipality. She wishes to retire from business because it has been unprofitable to her but desires to sell her stock and

fixtures and other privileges to another man within the Township. We have informed her that under the provisions of the act concerning intoxicating liquors a transfer or sale of the license or her interests thereunder is impossible. However, we find that under Section 28, "Revocation or suspension of license, etc.", the act states, "No refund shall be made of any portion of a license fee after issuance of a license; provided, however, that if any licensee, except a seasonal retail consumption licensee, shall voluntarily surrender his license," etc., in which case presumably a pro rata unearned portion of the license fee theretofore paid shall be refunded to the licensee.

In this particular case in question there is no doubt but that if the present licensee is permitted to insist upon a refund of the unearned portion of her license fee heretofore paid, that she in turn will turn it over to the new applicant for license for the place to pay as his proportionate share for the unexpired balance of the term to June 30th, 1935. The injustice of such a situation, as well as the apparent intent to violate the statute concerning transfers under this portion of the section as quoted, has influenced the local Township Committee to refuse both the refund, if demand for same is made by the present licensee, as also to refuse the application of the new proposed licensee if such application is received, as it would seem to be a deliberate attempt to violate the law by taking advantage of certain presumed conflicts in the wording.

I have advised the Township Committee to stand upon this ground, knowing the intent of the parties. However, the Township does not wish to involve itself in litigation nor to compel the other parties interested to seek litigation if it can be avoided. Do you feel free to give your advice at this time without the necessity of an appeal by the parties aggrieved? If so will you kindly reply directly to Edward G. Hawkins, Township Clerk, Mount Holly, N. J., so that the answer, either stating your advice or otherwise to the effect that you do not care to make an expression at this time, may be received within the course of the next few days?

H. S. Killie,  
Twp. Solicitor

December 31, 1934

Mr. Edward G. Hawkins,  
Township Clerk,  
Mount Holly, N. J.

Dear Sir:-

Mr. Killie has written to the Commissioner under date of December 28th, with the request that the reply be directed to you.

Section 23 of the Control Act prohibits the transfer of a license. Although section 28 prohibits refunds generally, it expressly permits a licensee to surrender his license, in which event a refund may be made. You will note that under the manner of calculation provided for in section 28, there can be no refund even upon surrender if the license has been in force for a period representing one-half of its entire term.

When a refund is made, the licensee is entitled to dispose of the money received in any manner. The fact that the licensee contemplates paying such money to the purchaser of his business,

who, in turn, contemplates applying for a new license, is legally immaterial and does not constitute an attempt to evade any provisions of the Control Act.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

12. LICENSED PREMISES - STRUCTURAL AND OTHER CHANGES - WHEN NEW LICENSE IS REQUIRED AND WHEN TRANSFER WOULD BE SUFFICIENT

December 17, 1934

D. Frederick Burnett, Esq.,  
Commissioner of Alcoholic Beverage Control,  
Newark, N. J.

Dear Sir:

When John Zisak applied for his license he applied for the premises which had an entrance on West Shore Avenue. He did this because he separated this store from the rest of the store premises by building a partition and closing off the rest of the store premises by closing an arch with this partition.

He now proposes to take in the rest of the store by removing this partition and placing a new bar in the part of the store which faces Fort Lee Road.

It must be understood that all of this store is enclosed by the original four walls which enclosed the part of the store originally used.

He will still have the original entrance from West Shore Avenue, but in addition thereto will have another entrance from the corner of Fort Lee Road and West Shore Avenue.

The Commissioner is undecided if it is necessary for Mr. Zisak to advertise that he proposes to remove his bar to another part of the premises and have the removal endorsed on the original Plenary Retail Consumption License as provided in the Act, or if this removal is simply placing the bar in another part of the originally licensed premises.

He will now have two street numbers, #2 East Fort Lee Road for the new entrance and #127 West Shore Avenue as originally licensed.

I am directed to request that you rule on this matter, as we want to obey the Act in every particular.

If the above is not sufficiently plain for you to understand it I will be glad to supply any additional information.

Very truly yours,  
Harlan P. Ross  
Borough Clerk

December 26, 1934

Mr. Harlan P. Ross,  
Borough Clerk,  
Bogota, Bergen County, N.J.

Dear Sir:-

I have your letter of December 17th.

The application for a license contains a description of the premises where the alcoholic beverages are to be sold and this description in general determines what constitutes the licensed premises. See Bulletin #35, Item #15.

I assume that the application filed by John Zisak and the license issued pursuant thereto pertain to #127 West Shore Avenue, which consisted of a store facing West Shore Avenue and separated from the remainder of the building by a partition. In the event that the licensee desires to remove the partition and contemplates selling alcoholic beverages at #127 West Shore Avenue and #2 East Fort Lee Road, then he will require a new license for #2 East Fort Lee Road in addition to the license heretofore issued.

If, however, he merely desires to sell alcoholic beverages at #2 East Fort Lee Road and discontinue the sale thereof at #127 West Short Avenue, then he should apply for a transfer of the licensed premises pursuant to law.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

### 13. RETAIL CONSUMPTION LICENSES - OPERATION OF A BAR IN A LIQUOR STORE

Dear Sir:

Will you kindly advise me if it is possible for a person who operates under a Retail Consumption license to have, in an adjoining room, a retail liquor store? The bar is in the back of the liquor store, through which store one must pass to get to the bar.

Very truly yours,  
Herbert J. Koehler

December 21, 1934

Herbert J. Koehler, Esq.,  
Camden, N. J.

Dear Sir:-

I have your letter inquiring whether a retail consumption licensee may operate a liquor store and a bar in the rear thereof.

Section 13 of the Control Act permits the holder of a plenary retail consumption license to sell alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle and also to sell alcoholic beverages in original con-

tainers for consumption off the licensed premises. There is nothing in the Control Act nor in the rules and regulations promulgated thereunder which prohibits a retail consumption licensee from arranging the licensed premises in such manner that the front portion thereof is operated as a distribution store and the rear as a bar.

We have received various recommendations that a regulation restricting such conduct be adopted and the matter is receiving our consideration.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

14. ALCOHOL - SALE TO PHYSICIANS

December 27, 1934

Gentlemen:

We have been manufacturing pharmacists, since 1844, but have only just moved to Scotland Road, Orange, N. J.

We desire to legally sell alcohol to physicians exclusively, to be used by them exclusively for medicinal purposes.

We have not a drop of liquor of any kind, nor shall we have any and we shall sell nothing for beverage purposes.

We have a desire to know what we must do to be legally qualified in New Jersey. Please advise us.

Yours truly,  
Carroll Dunham Smith

December 31, 1934

Carroll Dunham Smith Pharmacal Company,  
Orange, N. J.

Gentlemen:

I have your letter of December 27th.

Section 27 of the Control Act provides that:

"No provision of this act shall apply to alcohol intended for and actually used in the manufacture and sale of any of the following when they are unfit in fact for beverage purposes, namely: \* \* \* patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations."

Within the limitations of the foregoing section, you may sell alcohol to physicians for use in the manufacture of medicinal preparations. No license from this Department is required for such purpose.

You may not, however, sell alcohol to physicians where

the alcohol or ultimate product is intended for beverage purposes whether prescribed medicinally or otherwise. The Control Act places upon the seller the burden of ascertaining that the alcohol is not to be used in illegal pursuits. Any person who sells such alcohol with knowledge that it is intended for use for beverage purposes in violation of the act or under circumstances from which he might reasonably deduce such intention, is guilty of a misdemeanor and subject to fine and imprisonment. You may, therefore, except in cases where it clearly appears that the alcohol will not be used for beverage purposes, find it advisable to require permits of purchasers of alcohol.

When application for such a permit is made, an investigation is conducted by this Department and a permit will issue only when the Commissioner is satisfied that the alcohol is to be used for legitimate purposes.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

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

15. LICENSES - APPLICATIONS - PETITIONS FOR OR AGAINST

FIRST METHODIST EPISCOPAL CHURCH  
Farmingdale, N.J.

January 7, 1935

Dear Commissioner Burnett:

An application has been filed by the Farmingdale Liquor Store, Inc. for a plenary retail distribution license for premises situated at 86 Main St., Farmingdale. The Mayor and Council have announced Tuesday Evening, January 15th as the time for the consideration of this application. Previously they have ruled to limit the liquor stores in town to one place selling package goods not to be consumed on the premises, and to one that permits that.

A group of the citizens of the borough expect to file a set of objections with the borough clerk within the stated time. They feel that such a place could not be conducted on a paying basis because of the population of the town. The failure of such a place as a business venture might present in the future an excuse for asking a change of license.

We understand through hearsay inference that those interested in this corporation plan to circulate a petition among the citizens soliciting the signatures of those who favor their application. We would like to know just what is the status of their petition if it should be presented to the Mayor and Council? We find no provision which states an explanation of such an action. How much cognizance would the Mayor and Council be justified in giving this petition? Have they a legal right to present such?

We would appreciate your counsel as to this issue.

Very truly yours,  
WALTER S. R. POWELL  
Minister

January 10, 1935

Rev. Walter S. R. Powell,  
Farmingdale, N. J.

Dear Mr. Powell:

I have yours of the 7th.

The Mayor and Council have the legal right to repeal or amend the local limitation of licensees at any time. The right to enact the limitation was founded on general underlying police power. So was the right to rescind or alter it. It neither constituted a contract with those to whom licenses were granted pursuant to the resolution, nor a representation on which they had a right to rely, because the resolution was not enacted for their benefit, but in, what at the time was supposed to be, the best common interest of the public at large. If experience shows that sound local policy requires that the resolution should be amended or rescinded outright, there is nothing in the law to prevent. Re Borough of Hamburg, Bulletin 44, Item 13. Of course, if the limitation was created originally by ordinance, it could not be changed by mere resolution.

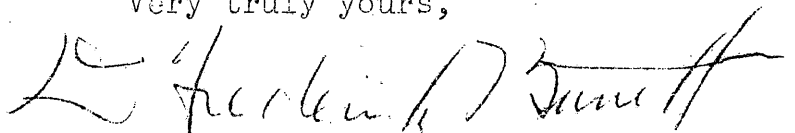
Your conclusion that a petition has no legal standing as such is correct. Such petitions may serve, when favorable, to give massed character recommendation, or show economic cause, and, when unfavorable, to serve as a vehicle of protest.

There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation without any considered thought of contents or effect or the argument on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides.

A petition is not a substitute for, nor may it in any way dispense with independent investigation to determine that the law has in all respects been complied with and that the licensee is in fact worthy. Neither does it suffice as proof of non-compliance or of unworthiness. Such matters are not proved either way by merely counting noses. If the subject matter concerns local policy, the weight to be accorded to the petition is entirely within the discretion of the Mayor and Council. It is their power and their responsibility.

If I can be of further service, do not hesitate to ask.

Very truly yours,



Commissioner