

COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 87

August 9, 1935

1. CONSUMPTION LICENSEES - MIXING OF COCKTAILS IN ADVANCE OF SALE -
WHEN LAWFUL

August 6, 1935

Dear Sir:

Will you kindly give us your opinion on the following matter.

Due to the rush of Saturday business we would find it very convenient if we could mix quantities of cocktails in advance. Is it permissible for us to do this provided we do not store it in whiskey bottles that have already been emptied of their original contents? In other words if there is no objection we could mix a batch in a few gallon jugs in advance.

Yours very truly,
BERKELEY-CARTERET HOTEL, INC.
H. J. Kenny,
Comptroller.

August 8, 1935

Berkeley-Carteret Hotel, Inc.,
Asbury Park, N.J.

Gentlemen:

I have yours of August 6th.

In Bulletin #60, Item #6, I ruled on the question whether it is permissible for licensed hotels to fill ounce and a half decanters with alcoholic beverages in advance of orders so to serve them during rush hours:

"The answer turns on Section 78 of the Control Act which makes it a misdemeanor for a retail licensee to bottle alcoholic beverages for sale or resale.

"The salutary rule concerning rebottling must not be weakened or indirectly frittered away. Hence, if the decanter has a stopper or other top of any kind, it is a form of rebottling and therefore prohibited.

"On the other hand, if the decanter is of the open type, without stopper or top of any kind, and is used solely for the purpose of facilitating retail service, it is in substance a mere form of open container. The holder of a consumption license has the right to sell for on-premises consumption alcoholic beverages 'by the glass or other open receptacle'. It is necessary to pour the drink into something to send it to room or table. The open decanter may be used for this purpose as well as any other open glass or container."

This ruling applies to your case providing that the cocktails so mixed in advance are placed in open decanters. It will not permit you to mix a batch of cocktails and store them in any kind of bottle or jug. The ruling applies only to the extent above quoted.

New Jersey State Library

Mixing cocktails for immediate service and consumption is radically different from mixing quantities in advance for consumption at an indeterminate time and, awaiting that time, storing them in bottles or jugs for that constitutes rectification and there is no feasible way in which enforcement officers may determine whether the ingredients are tax-paid or not.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. SALES - DELIVERY OF ALCOHOLIC BEVERAGES WITH MEALS IN RESTAURANT NOT LICENSED TO SELL SAME PROHIBITED - SUCH DELIVERY CONSTITUTES SALE AND IS CAUSE FOR ARREST

August 8, 1935

Miss Mary E. Vaccaro,
Acting City Clerk,
Asbury Park, N. J.

Dear Miss Vaccaro:

Your letter of August 1st quotes from Chief Byram's letter as follows:

"Please advise me if it is lawful for a waiter or other employees of a restaurant, which has no license to sell liquor, and is requested by a patron or patrons to serve beer with the meal and is given the money by a patron to go to a licensed place across the street and does so without any profit.

"In your opinion in such a case is the proprietor liable for prosecution or is the waiter or other employers."

Section 2 of the Control Act forbids - among other things the sale of alcoholic beverages without a license. Section 48 makes such sale a misdemeanor.

Section 1 (v) defines "Sale" as follows:

"Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including deliveries by any person without this State intended for shipment by carrier or otherwise into this State and brought within this State, or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee."

Note particularly the underscored words.

Clearly, therefore, from a reading of the above, when a waiter in a restaurant holding no liquor license takes an order for an alcoholic beverage and serves same with a meal he commits a violation of Sections 2 and 48 of the Control Act and is subject to arrest.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. ENFORCEMENT - RULES CONCERNING CONDUCT OF LICENSEES AND USE OF
LICENSED PREMISES - PROSTITUTES AND SALES TO MINORS

MUNICIPAL ORDINANCES - EMPLOYMENT OF AND SALES AND SERVICE TO
FEMALES

August 8, 1935

Captain A. H. Schlunsen,
Police Department,
Piscataway Township,
New Market, New Jersey.

Dear Sir:

There is no provision in the Alcoholic Beverage Control Act, nor has the Commissioner as yet adopted any state-wide regulation prohibiting females from working in or patronizing licensed premises. There may, however, be local regulations which control.

Our records indicate that Section 18 of the ordinance adopted by Piscataway Township Committee on December 18, 1934, as amended June 18, 1935, provides:

"The right of females to serve, sell or in any manner engage in the actual dispensing of alcoholic beverages shall be limited to the licensee or members of the immediate family of the licensee, over the age of twenty-one years."

And that Section 19 of the same ordinance provides:

"No women shall be served with alcoholic beverages directly over any bar."

A violation of either of the foregoing provisions of the local ordinance subjects the licensee not only to prosecution before the local magistrate for a violation of the ordinance but also constitutes ground for revocation of the license. In all such cases, therefore, you should not only file a complaint under the ordinance with the local magistrate, but also immediately notify the Township Committee of the Township of Piscataway, which issued the license, so that they may take the proper steps to institute revocation proceedings.

The sale of alcoholic beverages to minors is prohibited by Section 77 of the Act, which reads:

"Any one who sells any alcoholic beverages to a minor shall be guilty of a misdemeanor and punished accordingly."

In addition, Rule #1 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises, Bulletin #48, Item #1, reads:

"No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

And Re: Distribution Licensees, Bulletin #16, Item #1:

"....no alcoholic beverages shall be sold to any person under the age of twenty-one (21) years, or to any person actually or apparently intoxicated."

A licensee who sells to a minor violates not only the Contro Act but also the Commissioner's rules and regulations. He should, of course, be charged with the criminal violation which constitutes a misdemeanor and the Township Committee should also be notified so that, as in the case of the violation of the local ordinance, revocation proceedings may be instituted.

Rule #4 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises, a copy of which is enclosed, prohibits a licensee from allowing, permitting, or suffering in or upon the licensed premises any prostitutes or other persons of ill repute. A violation of this rule is not a crime, but does constitute ground for revocation. Here again you should report the matter immediately to the Township Committee for revocation proceedings.

The foregoing answers the legal questions you raise. The matter of enforcement so as to eliminate these violations, as well as all other violations, and to apprehend offenders, involves, as you know, constant and careful alertness. All complaints and suspicious transactions should be fully investigated and licensees constantly kept under strict observation. The problem is essentially one for the local police, who will be able, by courageous and vigorous action to detect violations and prosecute. The salutary example resulting from a single such prosecution should effectively operate to deter other licensees from engaging in prohibited practices.

Your cooperation in instructing your force to use the utmost diligence to keep all persons within the law, apprehend violator of the Act and notify the Township Committee of violations of the Commissioner's, as well as the local rules and regulations, will be greatly appreciated.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. VIOLATIONS - MAY BE PROSECUTED BOTH UNDER MUNICIPAL ORDINANCE
AND STATE LAW - NOT DOUBLE JEOPARDY

MUNICIPAL ORDINANCES - MAY PUNISH FOR VIOLATIONS DECLARED OFFENSE
BY THE STATUTE

Dear Commissioner Burnett:

Will you advise me how your Law Department looks on the question of prosecution for sale of liquor at retail, without a license. The question is whether this should be the subject of a penalty under the licensing ordinance in a Municipality, or whether it is an offense against the Act.

If it is made an offense by the provisions of the 1933 and 1934 statutes, then I suppose a Municipality should not legislate upon the subject. I have so considered it, and have not drawn ordinances imposing a penalty in the Municipality, for the sale of liquor without a license. In one Borough which I represent, the Recorder thinks that the penalty should be imposed locally for unlicensed sales, whereas it is my opinion that the penalty should be imposed under the State Act by the County Courts.

Very truly yours,
WALTER G. WINNE

August 8, 1935

Winne & Banta, Esqs.,
Hackensack, New Jersey.

Attention: Walter G. Winne, Esq.

Gentlemen:

The sale of alcoholic beverages without a license is a misdemeanor subjecting the offender to indictment and trial by jury. This fact, however, does not necessarily dispose of the question of whether or not a municipality may or should adopt an ordinance prohibiting unlawful alcoholic beverage activity.

An ordinance, prohibiting an act proscribed by statute, is legally sound where the act is not only against the peace and dignity of the state but also subversive of, or dangerous to the peace, good order, safety or health of the municipality. Howe vs. Plainfield, 37 N. J. L. 145 (Sup. 1874); Briarcliff vs. Zellers, 100 N.J.L. 33 (Sup. 1924). These cases firmly establish the principle that the same act may constitute an offense both against the State and the municipality and constitutionally may be punished both by the state and municipality.

It is clear that the sale of liquor is an act with such a dual aspect. Indeed, the Howe case, supra, dealt with a liquor violation.

We come then to the question of the desirability of superimposing a local prohibition by ordinance upon the State prohibition pronounced in the Control Act. On this each municipality must decide for itself. I personally believe such an ordinance is desirable and that it would be of great aid in the struggle against unlawful alcoholic beverage activity. It provides a means for quick trial and summary punishment by local magistrates, without the delay necessarily incident to holding an offender for action by a Grand Jury. Further, it subjects an offender to two prosecutions which in itself should be psychologically, a deterrent.

Notwithstanding the foregoing, doubts have been expressed as to whether such an ordinance is legally sound. The question has never been judicially determined under the Control Act. I have, however, consistently approved such ordinances, when otherwise proper, subject to future judicial determination.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. SOLICITORS' PERMITS - REFUND UPON DENIAL OR WITHDRAWAL OF APPLICATION

Chapter 256, P. L. 1935, supplementing an act entitled "An Act Concerning Alcoholic Beverages", Chapter 436, P. L. 1933, empowers the Commissioner, subject to rules and regulations, to issue solicitors' permits authorizing the permittee to offer for sale or solicit orders in the State for the purchase or sale of alcoholic beverages. The fee for such solicitors' permits is Five Dollars per annum.

If the application for such permits is denied or withdrawn, the fee, less proper service charges to be determined by the Commissioner, will be returned to the applicant.

E. B. HOCK,
Deputy Commissioner.

July 17, 1935.

6.

RULES GOVERNING TRANSFERS OF LICENSES

- (1) Any license heretofore or hereafter issued under the Control Act may be transferred either as to person or place or both in accordance with the provisions of said Act and these rules.
- (2) Applications for transfers of licenses to other premises, signed and sworn to by the licensee, must be filed with the Commissioner or other issuing authority as the case may be, at or before the first insertion of the advertisement.
- (3) Applications for transfers of licenses to other persons, or other persons and other premises, signed and sworn to by the person to whom the transfer is sought, and bearing the consent in writing to such transfer by the licensee, must be filed with the Commissioner or other issuing authority as the case may be, at or before the first insertion of the advertisement.
- (4) "Notice of "Intention" shall be published in the following form:

- NOTICE -

Take notice that application will be made to _____

(Name of

(Issuing Authority)

of _____

(Municipality)

to transfer to _____ for premises
(Name of Transferee)located at _____ the
(Address of Premises to which Transfer is Sought)_____ heretofore issued to
(Type of License and Number)_____ for premises located at
(Name of Licensee in Full)

(No. Street Municipality)

See below *, **, ***.

Objections, if any, should be made immediately in writing
to:_____ of
(Municipal Clerk)

(Municipality)

(Name of Applicant)._____
(Address of Applicant).

- * If applicant is a corporation, insert at this point the names and residences of all officers and all directors who have no other named office, and the names and residences of all stockholders holding one (1%) or more per centum of any of the stock of said corporation.
- ** If applicant is a partnership, insert at this point the name of the partnership and the names and residences of all partners.
- *** If the applicant is a club, insert at this point the names of the officers and the offices they fill respectively, and the names of the directors, trustees or other governing body.

- (5) Name of "Issuing Authority" in the above form usually means the governing board or body of the municipality, whatever the name may be, for instance, the Mayor and Common Council, the Township Committee, etc., except where, pursuant to Section 5 of the Control Act, a Municipal Board of Alcoholic Beverage Control has been created, in which case such board is the Issuing Authority. In Cape May and Ocean Counties, the Issuing Authority is the Judge of the Court of Common Pleas; and the notice in those counties must state that objections be addressed to said Judge (not the municipal clerk) and must also state such other matters as may be required by said Judges respectively. If application is made pursuant to P. L. 1934, C. 44 by a member of any Issuing Authority or by a corporation, organization or association in which any member of an Issuing Authority is interested directly or indirectly, or if the license sought to be transferred was issued in the first instance by the State Commissioner of Alcoholic Beverage Control, he is the "Issuing Authority" and in that event the notice must state that objections be addressed to D. FREDERICK BURNETT, Commissioner, 744 Broad Street, Newark, N. J.
- (6) "Type of License" in the above form means the name or kind of license sought to be transferred, which must be strictly according to the statutory language. For instance, Plenary Retail Consumption License, etc.
- (7) The notice of intention, fully filled out as above, shall be published once a week, for two (2) weeks successively, in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premises are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises are located.
- (8) Each municipal clerk shall immediately upon receipt of a written objection, duly signed by a bona fide objector, transmit forthwith to the issuing authority of the particular municipality said objection and everything pertaining thereto, whereupon it shall become the immediate duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant, the licensee, and the objector of the date, hour and place thereof. In Cape May and Ocean Counties, the Judge of the Court of Common Pleas shall afford the hearing and notify the applicant, the licensee, and the objector of the date, hour and place thereof.
- (9) The date fixed for such hearing shall not be less than two (2) days after the second insertion shall have been published and should not be more than seven (7) days. For good cause, each issuing authority in the exercise of sound and fair discretion may, subject to appeal to the State Commissioner by the applicant, if he proves that he is aggrieved by the delay, fix a date for hearing later than said seven (7) days or may adjourn the hearing. This provision is made to include those cases where the issuing authorities are morally convinced but have not had time to gather the proof believed obtainable to demonstrate that the application should or might be denied.
- (10) No hearing need be held if no such objections shall be lodged (but this in nowise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to permit the transfer applied for.

- (11) Proof of publication of Notice of Intention to apply for transfer of license shall be substantially in the following form:

STATE OF NEW JERSEY } ss.
COUNTY OF

_____, of full age, being duly sworn according to law, on his oath says:

That he is a _____, employed by _____, which is a newspaper printed (Name of Newspaper) in the English language, published and circulated in _____; that a Notice of Intention, (Name of municipality or county) of which the annexed notice is a true copy, was published once a week for two (2) weeks successively in the said _____ (Name of Newspaper); and that the first insertion was on the _____ day of _____, 193__, and that the second insertion was on the _____ day of _____, 193__, making two (2) insertions in all.

Sworn and subscribed to before me this _____ day of _____, 193__.

(Signature of officer administering oath)

(Title of such officer)

- (12) Applications for transfers of licenses to other premises must set forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license as to said premises.
- (13) Applications for transfers of licenses to other persons must set forth the same matters and things with reference to the person to whom a transfer of license is sought as are required to be set forth in connection with an original application for license.
- (14) Transfers of licenses both as to person and place may be applied for simultaneously and in a single application.
- (15) Applications for transfers of licenses to other premises shall be accompanied by a photostatic copy of all Federal licenses, permits and/or stamps necessary to the lawful conduct of the business at the premises to which a transfer of license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the Commissioner, together with a fee of \$5.00, which fee shall be retained by the Commissioner or other issuing authority as the case may be, regardless of whether or not the transfer is granted, and is to be accounted for as are other license fees.

- (16) Applications for transfers of licenses to other persons shall be accompanied by a photostatic copy of all Federal licenses, permits and/or stamps necessary for the lawful conduct of the business under said license and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the Commissioner, together with ten per cent (10%) of the full annual or term license fee for said license, which fee shall be retained by the Commissioner or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees.
- (17) Applications for transfers of licenses to other premises and other persons shall be accompanied by a photostatic copy of all Federal licenses, permits and/or stamps necessary to the lawful conduct of the business under said license at the premises to which a transfer of license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the Commissioner, together with ten per cent (10%) of the full annual or term license fee for said license plus five dollars (\$5.00), which fee shall be retained by the Commissioner or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees.
- (18) Upon being satisfied that the premises to which the transfer of license is sought are suitable or that the person to whom the transfer of license is sought is fully qualified or both, and upon completion of all the statutory requirements, the Commissioner or other issuing authority may approve such transfer by written endorsement upon the face of the license in the following form:

"This license, subject to all of its terms and conditions, is hereby transferred from

_____ (Address)

to _____ (Address).

Dated: _____, 193 .

_____ (Name of Issuing Authority)

By-

_____ (Title of Office)."

OR

"This license, subject to all of its terms and conditions, is hereby transferred to

_____ for premises located (Name of Transferee)

at _____ (Address of Premises at which privileges of license are to be exercised)

Dated: _____, 193 .

_____ (Name of Issuing Authority)

By-

_____ (Title of Office)."

- (19) A similar endorsement shall be noted upon the appropriate stub in the license book.
- (20) Each endorsement shall be signed in the name of the Commissioner or other issuing authority, as the case may be, and shall bear the actual signature, at the place indicated, of such officer or agent as the Commissioner or other issuing authority as the case may be, shall have designated to execute such endorsements in his or its behalf.
- (21) No endorsement of transfer shall be executed by any person unless and until expressly directed by the Commissioner or by a special resolution of the Issuing Authority, which resolution shall among other things, (a) Specifically name the person, association, firm or corporation to whom the license shall be transferred and/or describe the premises to which the license shall be transferred, and (b) Order the execution of the endorsement of transfer by such municipal officer or agent as the Issuing Authority shall, thereby or by some previous resolution, designate to execute such endorsements on its behalf.
- (22) Each issuing authority shall make or cause to be made daily certification, in duplicate, to the State Commissioner of Alcoholic Beverage Control, 744 Broad Street, Newark, of all licenses transferred during each preceding business day, which certification shall set forth: (a) Name of licensee, (b) License number, (c) Kind of License, (d) Date of Issue, (e) Fee Charged, (f) Special Conditions, if any, (g) Name of Transferee, and (h) Address of Premises to which license was transferred.
- (23) Each such daily certification shall be accompanied by a true copy of the special resolution of the Issuing Authority directing the transfer of each such license so certified. Where licenses are issued by the governing board or body of a municipality, the copy of the resolution shall be attested as true by the municipal clerk. Where licenses are issued by a municipal board, such attestation shall be made by the person specially designated for that purpose by resolution of the municipal board.
- (24) In Cape May and Ocean Counties, the duties under those rules of the Issuing Authority shall be performed by the respective Judge of the Court of Common Pleas. Certification under the hand of said Judge, or by his duly authorized agent in that behalf, will suffice.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 9, 1935.

7.

BULLETIN ITEMS - CERTAIN ITEMS SUPERSEDED

The rulings set forth in Bulletin #71, Item #2 concerning the limits of the power of Judges of the Courts of Common Pleas in sixth class counties as issuing authorities have been substantially modified by recent legislation, and so far as said rulings are inconsistent with said legislation they are superseded by the discussion of the amendment set forth in Bulletin #83, Item #1(4).

The third paragraph of Bulletin #75, Item #16 relating to the term of summer seasonal retail consumption licenses is superseded by Bulletin #83, Item #1(7).

D. FREDERICK BURNETT,
Commissioner.

8. APPELLATE DECISIONS - COLACUORI VS. ORANGE

JOSEPH COLACUORI,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF ORANGE, NEW JERSEY,)	
Respondent)	

Goldberg & Goldberg, by Charles L. Goldberg, Esq.,
Attorneys for Appellant.
Edmond J. Dwyer, Esq., by Louis J. Goldberg, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a denial of renewal of plenary retail consumption license for premises known as 433 South Jefferson Street, Orange.

Pursuant to the provisions of Section 19 of the Control Act, as amended, the Commissioner has extended the license pending determination of the appeal herein.

It is admitted that appellant has complied with all the statutory prerequisites. It appeared from the evidence that the sole reason for denial was "the undesirability of the applicant and continuation of licensed premises under his name."

At the hearing it was agreed that the burden of going forward with the evidence as to the character and habits of appellant rested upon the respondent. The respondent introduced no evidence as to character or habits, and its attorney stated:

"After going over the facts with the Municipal Board, I know of no facts I could present whereby we could establish this person was not of good conduct or had done such acts that he wasn't entitled to this license. It is a question of the exercise of their discretionary power."

Issuing officials have a proper discretion to refuse unworthy applicants, but such power does not confer upon them an arbitrary or autocratic right to exclude applicants without cause. Bulletin #43, Item #9. See also Goodyear vs. Kruvant, 96 N. J. L. 352. No good reason has been advanced to justify the refusal to renew the license. Powell vs. Bridgeton, Bulletin #30, Item #4.

Accordingly, the action of the respondent is reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 9, 1935.

9. APPELLATE DECISIONS - JENSEN VS. MANASQUAN

CHARLES J. JENSEN,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
MAYOR AND COUNCIL OF THE)	
BOROUGH OF MANASQUAN,)	
Respondent)	

Blair and Blair, by William J. Blair, Esq.,
Attorneys for Appellant.
Halsted H. Wainright, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of an application for renewal of a plenary retail consumption license for premises known as #179 Main Street, Manasquan.

Application for renewal of this license was denied at a meeting held on June 18. The respondent voted to reconsider its action and to grant this license at a subsequent meeting held on June 25. This attempted action was irregular, Maurer vs. Sussex, Bulletin #85, Item #11, and no renewal license was issued to appellant.

Pursuant to Section 19 of the Control Act, as amended by P. L. 1935, Ch. 257, the Commissioner issued an order to show cause and extended the term of the license until the return day thereof. On the return of the order to show cause, the license was further extended pending determination of the appeal herein.

The respondent has given no reasons for rejecting the application, has filed no answer herein, and did not appear at the hearing. Under these circumstances, its action must be deemed arbitrary and unreasonable. Sciarrotta vs. Trenton, Bulletin #60, Item #12; Powell vs. Bridgeton, Bulletin #30, Item #5. This conclusion is further supported by the evidence which shows that renewal of two consumption licenses were granted at the meeting held on June 18; appellant being the only one of three such licensees operating during the previous year whose renewal was refused.

The appellant has complied with all the statutory prerequisites necessary to the granting of a license, and the suitability of the premises is unquestioned.

In view of the foregoing, the action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 9, 1935.

10. APPELLATE DECISIONS - GREAT ATLANTIC AND PACIFIC VS.
MANASQUAN

THE GREAT ATLANTIC AND PACIFIC)
TEA COMPANY,)
Appellant,)
-vs-)
ON APPEAL
CONCLUSIONS
MAYOR AND COUNCIL OF THE)
BOROUGH OF MANASQUAN,)
Respondent)

Pitney, Hardin & Skinner, by Frederick A. Frost, Esq.,
Attorneys for Appellant.
Halsted H. Wainright, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of an application for a renewal of a plenary retail distribution license for premises known as #181 Main Street, Manasquan.

Application for renewal of this license was denied at a meeting held on June 18. Respondent voted to reconsider its action and to grant this license at a subsequent meeting held on June 25. This attempted action was irregular, Maurer vs. Sussex, Bulletin #38 Item #11, and no renewal license was issued to appellant.

Pursuant to Section 19 of the Control Act, as amended by P. L. 1935, Ch. 257, the Commissioner issued an order to show cause and extended the term of the license until the return day thereof. On the return of the order to show cause, the license was further extended pending determination of the appeal herein.

The respondent has given no reasons for rejecting the application; has filed no answer herein, and did not appear at the hearing. Under these circumstances, its action must be deemed to be arbitrary and unreasonable. Jensen vs. Manasquan, decided herewith and cases cited therein. This conclusion is further supported by the fact that a renewal of a distribution license was issued to another licensee at a meeting held on June 25.

The appellant has complied with all statutory prerequisites necessary to the granting of a license, and there is no question as to the suitability of the premises.

In view of the foregoing, the action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 9, 1935.

11. MUNICIPAL ORDINANCES - VALIDITY - REGULATIONS IMPOSING DIFFERENT
HOURS OF SALES AND CLOSING FOR PLENARY RETAIL CONSUMPTION AND
CLUB LICENSEES - CONSIDERATIONS INVOLVED

August 9, 1935

Mr. Jere J. Carew,
Borough Clerk,
Rumson, New Jersey.

Dear Sir:

There is nothing in our rules which requires that all classes of licensees shall be treated alike. What I have held in

previous cases is that all those within the same license class must be treated alike, although allowing certain exceptions which may be properly based upon a reasonable exercise of police power and construed to be in the public interest. See Re Sunday Sales, Bulletin #7, Item #1, and Bulletin #19, Item #7, and Re Discriminatory Regulations, Bulletin #43, Item #11. Thus, in Retail Liquor Dealers Association vs. Plainfield, Bulletin #70, Item #1, I ruled in a case heard on appeal and fully contested that an ordinance barring screens in licensed premises may properly except hotels from its operation; that while it does discriminate between members of the same license class, it may properly do so in the case of hotels.

There is no legal objection to municipalities fixing different closing hours for club licensees on one hand and for plenary retail consumption and distribution licensees on the other hand. However, in exercising this power, the Council must be aware that it is affording special privileges to one class of licensees which are not granted to others. Serious questions at once arise.

It is a fact that clubs pay considerably less for their licenses than do consumption licensees. That, surely, is no reason why they should enjoy greater privileges. Also, there is the thought that if public policy demands that consumption licensees be closed at a certain hour, it should be carefully considered whether or not the motivating causes for that policy make it apply also to club licensees. Further, there is the possibility, if clubs are allowed to remain open while others must close, that it will merely encourage during these hours a transfer of the patrons from one class of licensee to the other, in effect leading to an abuse of the club license as a subterfuge for sales to the general public. And, incidentally, materially adding to the present difficulties inherent in the policing of such clubs.

On the other hand, I am aware that with respect to high class clubs which in good faith live up to their obligations to sell only to their actual members and bona fide guests, the situation may be entirely different than where liquor is sold to the public generally. As I said in Societa Operaia Di Mutuo Soccorso Villalba vs. Trenton, Bulletin #41, Item #5:

"Consumption and distribution licenses do not stand on the same footing as club licenses. In the former, the objective is commercial, in the latter fraternal. The Legislature has recognized this by providing a special license for benevolent, charitable, fraternal, social, religious, recreational and athletic organizations, if not operated for private gain. The club may not sell to the public generally but only to bona fide members and guests and then only for immediate consumption. As against maximum and minimum fees of \$2,000 and \$200 for consumption licenses, the respective limits for club licenses are but \$150 and \$50. The obvious purpose was to recognize these clubs as a natural outlet for man's innate desire for fellowship with his own kind and to afford them the opportunity to furnish their bona fide members and guests with alcoholic beverages for a nominal fee amidst self-regulated, decent, home-like surroundings.....The club is but an association of several citizens; the clubhouse is in the nature of a common home...."

While, therefore, the power exists to make different rules for club licenses, the policy of its exercise should be most carefully considered. If the circumstances are substantially the same and unless adequate and reasonable cause does exist for making the distinction, the most simple tests of fairness and propriety are equality and

uniformity. In any event, where a club holds a plenary retail consumption license as distinguished from a club license, it is, obviously, making a commercial business of the sale of alcoholic beverages and it must be treated like every other consumption licensee.

I am answering your question as to the power and making these comments in candid, friendly, cooperative spirit and will consider for approval any regulations you may make in accordance with the foregoing principles. But such approvals will be tentative subject to reconsideration should an appeal be made from the application of the regulation in any given instance when the rule will be tested on its merits and both sides will be given full opportunity to be heard.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. WINE PERMITS - EXPLAINED -- CONFINED SOLELY TO THE MANUFACTURE
OF WINE IN HOMES FOR PERSONAL CONSUMPTION ONLY

August 9, 1935

Delaware Valley News,
Frenchtown, New Jersey.

Attention: Gerald E. Zich, Editor-Manager.

Gentlemen:

You state that one of your readers has inquired whether it is legal for him to make wine for personal consumption, and request the answer thereto from the Commissioner.

There is a permit provided for that express purpose. A supplement to the Control Act (P. L. 1934, c. 237) which is designated as Section 75A in the Department's pamphlet of the Act, provides that the Commissioner may, subject to rules and regulations, issue special permits authorizing the manufacture within homes or other premises used in connection therewith of wines in quantities of not more than 200 gallons for personal consumption only. Application must be made to the State Commissioner at the Department's offices, 744 Broad Street, Newark. The fee for the permit is \$1.00.

The foregoing, however, relates solely to wine. There is no similar permit authorizing the manufacture of distilled spirits, beer, cider, etc., for personal consumption. It follows, therefore, that no alcoholic beverages other than wine may be manufactured for personal consumption except pursuant to a regular manufacturer's license as provided for in the Control Act.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By:
Jerome B. McKenna,
Attorney.

13. SALE OF ACCESSORIES - ON UNLICENSED PREMISES - PERMITTED
ALCOHOLIC BEVERAGES - CONSUMPTION ON UNLICENSED PUBLIC PREMISES
DISCOURAGED

August 9, 1935

Nicholas O. Beery, Esq.,
Paterson, New Jersey.

My dear Mr. Beery:

The proposed practice whereunder Club members will bring their own alcoholic beverages to the Club and purchase ginger ale and other accessory beverages at the Club so that they can mix their own highballs is permissible within the ruling contained in Bulletin #70, Item #10, a copy of which is enclosed.

You state, however, that the members will store their liquor with the Club steward so that it will always be available to them; each member having access only to his particular bottle. While such storage may not technically violate the Act the transaction gives rise to serious difficulties from the enforcement angle and is not to be sanctioned. It opens the door wide to evasion and subterfuge and creates a situation which has all the appearances of being a violation. Under such circumstances, the enforcement officers are reasonably led to believe that a violation has been committed by the unlicensed sale of alcoholic beverages and are under a duty to make an arrest. Confronted by such a situation in Princeton, they made an arrest and the court refused to accept the explanation of the Club and its members that the liquor was not sold but was merely individually owned by the members, just as you now suggest.

I cordially suggest that you advise your client to avoid the appearance of evil, which may result in considerable expense, inconvenience and notoriety to the Club even though it be innocent, and that it forego the proposed practice. If its members want alcoholic beverages on the premises, why not take out a Club license?

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. SALES - RETURNS OF DAMAGED OR DEFECTIVE MERCHANDISE TO
MANUFACTURERS OR WHOLESALERS PERMITTED

August 9, 1935

Weisbrod and Hess Brewing Company, Inc.,
Frankford Avenue and E. Hagert St.,
Philadelphia, Pa.

Attention: Walter T. Bilson, Agent.

Dear Sir:

You ask whether or not in the case of sour or a leaky keg, it is permissible under the laws of this state to remove the beer in question and bring same back to the brewery to have it analyzed.

The Control Act does not expressly cover the question but I see no objection to a manufacturer or wholesaler accepting returns of damaged or defective merchandise. It is a normal and recognized trade practice.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. SALES - GIFTS BY LICENSEES CONSTITUTE SALES

LICENSEES PERMITTED TO MAKE GIFTS OF ALCOHOLIC BEVERAGES SUBJECT TO ALL PROVISIONS CONTROLLING SALES

PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION OF ALCOHOLIC BEVERAGES - CAUTION

August 9, 1935

Fair Wine & Liquor Stores,
530 Washington Street,
Hoboken, N.J.

Attention: Mr. A. G. Edwards.

Dear Sir:

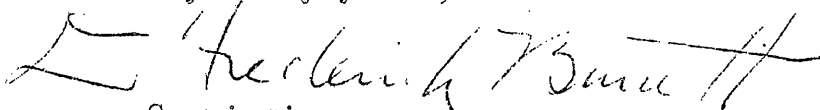
I have your letter asking if it is legal for you to give a bottle of wine free to every person who purchases Two Dollars worth of merchandise.

The answer is in the affirmative providing, however, that the particular person who makes the purchase is one to whom you have the right to sell. Neither the Alcoholic Beverage Control Act nor the present regulations of this Department prevents.

However, such deliveries by licensees, according to the definition in Section 1, sub. (v) of the Act, constitute sales and, therefore, must be reported as such and furthermore when made for consumption off the licensed premises must be in compliance with the Rules Concerning the Size of Containers of Alcoholic Beverages. See Bulletin #36, Item #5, and Bulletin #55, Items #10 and 11, copies enclosed.

I am not at all sure of the propriety of these trade practices which you describe. They are primarily matters involving economic considerations. I have no inclination to impose regulations upon the trade other than those reasonably necessary to effectuate a proper control from the public angle. On the other hand, I am mindful of the power and responsibility to make rules and regulations against practices unduly designed to increase consumption of alcoholic beverages and concerning gifts of equipment, products, and things of value. If it becomes necessary to exercise that power in the public interest, I shall do so. In the meantime I cordially advise that you do nothing in your natural desire to attract customers that will call for the issuance of such regulations.

Very truly yours,


Commissioner.

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