

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

BULLETIN NUMBER 207

OCTOBER 14, 1937

1.

ADDRESS OF

D. FREDERICK BURNETT, STATE COMMISSIONER OF
ALCOHOLIC BEVERAGE CONTROL FOR NEW JERSEY
AT 44th ANNUAL CONFERENCE OF THE INTERNATIONAL
ASSOCIATION OF CHIEFS OF POLICE AT BALTIMORE,
ON WEDNESDAY, OCTOBER 6, 1937.

- - -

POLICE AND REPEAL

The last time I had the pleasure of addressing your Association was at your Convention at Atlantic City on a sweltering hot day in the summer of 1935. One of my illustrations was that of an iceberg and, because of the temperature, I'm inclined to think that the generous attention you paid was due more to the cooling reference than to my heated rhetoric.

The iceberg still holds. All one can see is merely the top ninth. The other eight-ninths is submerged, and that is where the danger lies. All beverage laws fall into two main classes, viz.: (1) where sales are made by stores owned and operated by the State, and (2) where the sales are made by individual operators licensed by the State. Whatever the form, the plan is common in that it is both permissive and prohibitive: permissive in that it permits or allows certain persons at designated places to manufacture and to sell; prohibitive in that it denies to everybody else the right to engage in the liquor traffic. The top ninth of the iceberg is permissive; the unseen eight-ninths prohibitive. The top ninth is represented by the licensed tavern or the state-owned store and their several suppliers -- the licensed breweries, the distilleries, the vintners. Everyone may see what goes on in these places, particularly the neighborhood tavern or the state-owned store, and the public at large is naturally prone to base its whole judgment on that which it sees and of which it has first hand knowledge. Yet, just like the iceberg, it is the submerged eight-ninths which raises the major problems of control, namely, the racketeer, the bootlegger, the speakeasy.

But then you say -- if people can drink as often as they please, as much as they please, why is it that we have any bootleggers after Repeal. The answer lies in the tax. Alcohol itself is a very cheap commodity. To produce a whole gallon costs only eighteen and two-fifths cents -- call it, for short, twenty cents a gallon. On that the Federal Government loads a tax of \$2.00 per gallon, and then come most of the states with an additional tax of \$1.00 per gallon, thus making a total tax of \$3.00 on a twenty cent article, or 1500% tax on the cost of production. That's why we have bootleggers! That's why we are always going to have bootleggers until the tax is radically slashed and the dangling temptation removed.

When to this initial \$3.20, we add \$1.27 per gallon to represent a ten per cent profit for the distiller, the wholesaler and the retailer, plus their respective costs of distribution, we have the minimum cost of tax paid legitimate alcohol at \$4.47 per gallon. Against this the bootlegger will sell you all you desire at \$2.50 a gallon. No honest licensee can cope with this kind of competition. No salesmanship, no merchandising ability can overcome the

differential between tax-paid legitimate alcohol and illicit alcohol which goes scot-free of all taxes. So long as the present high tax exists, the major problem confronting you and me will persist. Control will not be an accomplished fact until the liquor outlaw is mopped up.

But what do you mean -- "control"?

Sometimes it is easier to tell what a thing is not, rather than attempt to define what it is.

Illustrative is the story told of General Logan, the celebrated Indian fighter. He was camped one night on western foothills in dangerous Indian country. After posting sentries, he retired to his tent for a well-earned sleep, from which he was rudely awakened, an hour later, by cries of "Help! Help!!"

The General called out, "What's the matter?"

The sentry shouted: "I've captured an Indian."

"Oh, well, then bring him in!"

"He won't let me!!!!"

Now that is not my concept of control. What control really means is enforcement of the law as it is written. Anything short of that is not control. Anything outside of that is out of control. Prohibition failed because it did not achieve control. So will Repeal unless control is accomplished.

The first lesson is that the law was made to be obeyed. Control is Government itself.

The second lesson is like unto the first: Laws should not be put on the books unless they are meant to be obeyed, are capable of enforcement and are going to be enforced. Noble declarations in statutory language mean nothing and accomplish nothing unless they are translated into hard-fisted action. Empty, idle words -- flossy rhetoric and fancy gestures -- which are flouted or winked at bring disrespect for all law.

Important as is the selection of worthy licensees or the intelligent placing of state stores, the major problem of control is to stop everybody else from doing those things which only licensees or state stores may lawfully do; to arrest, indict and convict those who trespass in forbidden fields; to exterminate the bootlegger; to vindicate the law.

Assuming that the consumption demand is practically constant, it follows that if that demand is gratified by purchase from licensed places, the State gets the revenue, whereas, if bought from the liquor outlaw, the State is defrauded of the tax. Every still captured, every cracking plant demolished, every arrest made, dries up the outlaw's supply, makes it more onerous for him to operate, and diverts the public thirst into legitimate channels so to bring increased revenue to our common treasury. The better the work of enforcement, the greater the revenue, and the less burdensome our own individual taxes.

While the major objective of banishing the liquor outlaw is revenue, there are also matters of prime interest in direct relation to the health and the safety of the citizen. For instance, - poisoned liquor. This alcohol is reclaimed from denatured or wood

alcohol -- ordinary radiator mixtures or rat killer -- by a so-called cracking process, whereby it is treated with chloroform or ether, which causes much of the poisonous ingredients to fall to the bottom of the tank. The residue is then washed with caustic soda. Even if the work is carefully done, traces of the poison remain, which eat into, and with repeated doses, will eventually destroy human organs. If the work is sloppily done with an eye single to greedy and quick profits, then you have major disasters like that which happened in Gloversville -- paralysis, blindness, creeping death -- victims dying in piteous agony. Now, don't tell the children that bootleg liquor is poison and will kill them, for, with youth's venturesome spirit, they will test it and when they find nothing happens will accuse you of calling "Wolf, Wolf!" Now, frankly, most bootleg liquor is not poisonous. What it lacks is mainly age -- and a revenue stamp! It is overplaying the hand to say that bootleg liquor is harmful just because it is bootleg. Broad unfounded claims like that cause heavy discount of statements that really should be heeded. And when the wolf finally comes, then there is terrible sorrow. Rather tell the children that some bootleg liquor is made from poisoned alcohol, that it bears no skull and crossbones or other warning label, that it is dressed up to look like the genuine, that if some day they unwittingly drink this stuff, there is no doctor, there is no hospital, there is nothing known to medical science which can save the victim from blinding, agonizing, convulsive death.

You ask -- Who buys this illicit stuff? Do they know it is bootleg? Who runs these illicit stills and where are they? If you know they exist, why don't you go get them? How do you know that there are illicit stills?

If I knew just where in my State these stills were, it is needless to say that we would seize them pronto. We know that there are such stills because day after day we raid and seize them. Month after month we capture 20, 30, 40 of them. The information comes to us by telephone tip-off, by anonymous letter, by the disgruntled squealer, by trailing trucks loaded with molasses or sugar to their destination, by running down suspicious circumstances and clues observed and reported to us by local Chiefs of Police.

The figures of the Internal Revenue Department as to hard liquor sold since Repeal according to taxpaid withdrawals arrest attention. They are:

| | |
|--|----------------------|
| For the seven months ending June 30/34 - | 38 million gallons; |
| For the year ending June 30/35 - | 75 million gallons; |
| For the year ending June 30/36 - | 100 million gallons; |
| For the year ending June 30/37 - (estimated) | 110 million gallons. |

When those who do not know what this rising barometer really means, they naturally view it with alarm and it often breaks out in the form of editorials deploring the great increase in sales of intoxicating liquor. I read one this summer by a well-intentioned editor who noticed the increase in liquor taxes taken in by his municipality with consequent easing of the financial burden under which it was struggling for which he was duly grateful, but he was worried lest eventually the whole town should join in a community effort to drink itself out of debt! He frankly admitted that he hadn't seen any such evidence with his own eyes but knew it must be so because the increase in taxes told what he thought was the story!

Now let us get the true story. I ask you to make but one assumption of fact, and that is that the consumption of liquor today is at least as great as it was before Prohibition. Personally, I believe such assumption to be extremely conservative - a great under-statement of the actual situation, for not only has there been a tremendous growth in population in the last twenty years, but it is also obvious that the consumption of liquor by women, like that of cigarettes, has greatly increased. All I ask you to assume, then, is simply that as much liquor is consumed today as was in 1919. In that year the official records show that 165 million gallons of hard liquor were sold. If, to keep very conservative, we say that that year was abnormal in that everyone knew that Prohibition was coming and therefore were stocking up for the long drought, let us take the average consumption for the five years immediately preceding Repeal. We find it to be 130 million gallons per annum. Now compare that with the rising tide of legitimate consumption - 75 million, 100 million, 110 million, and still, after nearly four years of Repeal, way under the average of 130 million for the last five years before Prohibition. It is obvious if our initial assumption is correct, that the bootlegger is still in our midst. If that assumption was, as I believe, ultra-conservative, it follows that so far from being defunct, he is defiant. What the figures really show is a steady increase in the sales of legitimate liquor. And that means that the consumption of bootleg is dwindling. What the editor really proved was that, like most people, he didn't know how to interpret the barometer. He could read the figures, of course, but didn't know what they meant. He couldn't tell what had happened or what was coming. What that barometer really means is that the pressure has become so great, policing work so better done, enforcement so strict, that the stills and speakeasies are being shut up and the demand for liquor diverted into legitimate, tax-paid channels. So far from meaning that the American public is drinking itself to death, it signifies that enforcement is in the ascendancy, that control is in the saddle, that the Police and the enforcement agencies have done their work increasingly well.

I must hurry with the answers to the other questions. Who buys this illicit liquor? Do they know it is illicit? Some buyers know and don't care. With them it is only a matter of price. If they can buy for twenty-five cents a pint of 48 hour old alcohol with burnt sugar or prune juice to give it the color of rye, they are not going to pay a dollar for a pint of legitimate liquor. They ask no questions. They are not interested whether the taxes are paid or not. Their only concern is in saving money. When those people are not able to buy hooch, they will go legitimate out of necessity and thereby contribute willy nilly to the tax which everybody else must pay. On the other hand there is a large army who would not voluntarily buy bootleg. They suppose and are led to believe that what they buy is tax-paid. The sad fact, however, is that time and again it is a licensee who refills his bottles with bootleg and then sells the spurious refill to an unsuspecting public. You ask for Old Crow, or Peter Rabbit, or any old brand of scamper juice you please, and you will be handed a bottle over the bar with the very name you asked for on it -- a legitimate bottle with genuine manufacturer's label and a strip tax stamp as well, but the refilled contents time and again are nothing but home-made hooch. And the bottle is refilled over and again until the label gets so dirty from the thumb marks on it that the cheating tavernkeeper deems it expedient to order a fresh bottle of legitimate to start all over again. That's why we test, as often as possible, every open bottle in each tavern with hydrometers to compare the actual alcoholic content with that represented by the label. That is how we detect a cheating licensee and put him on the

spot for revocation or suspension of his license. If the manufacturer's label shows 90 proof and the contents are but 82 proof, it shows that the liquor is not genuine but has been adulterated with water. On the other hand, if it shows a proof of 98 it proves once again that the liquor is spurious only this time high-powered alcohol has been added. Frequently we find these bottles contain acetone and isopropyl -- things which the undertaker uses for embalming fluid and which the ladies use as a solvent for their fingernail polish. The quantities are small - deaths infrequent, and most people drink hard liquor without tasting it anyway, pouring it down with one heroic convulsive swallow as if it contained a dose of quinine and thereupon prattle, with contorted faces belying their words, how "good" it is, or call attention to the film on the glass or other remarks designed to impress the auditor with a fine sense of discrimination, little realizing, what every bootlegger knows, that a little glycerine goes a great way to make a film, with incidental ease on a raw throat. Thus do the gullible gulp! All this will go into tax-paid channels when the bootlegger is finally driven out.

Let us turn and briefly consider some of the problems concerning the licensed place which daily confront you and me, for instance, sales on Sunday or after the closing hour or before the time fixed for opening; sales to minors and to persons actually or apparently intoxicated; slot machines, lotteries and gambling; solicitation by avowed prostitutes; and what is even more insidious, the modern so-called "hostess" employed by the house to induce men to buy drinks on which she gets a commission; obscene advertising; downright lewd and indecent performances such as the strip-tease in the flesh and the filthy films shown on a screen. Absolute violations of this type must be stamped out unflinchingly without fear or favor. There is no excuse for violating the law or the rules or for making a dive out of what ought to be a decent place. Respectable licensees have no use for this kind of thing. If you see it going on, it is your duty to squelch it. There are some problems, however, which are not so easy, as for instance, noise. Here the question is relative. Of course there must be some noise. The question is how much noise makes a nuisance. The problem grows with the constant irritation of the neighbors who sit in the gloom, or pass sleepless hours because of the shouts, the giggles and the screams, and what is charitably called "music" emanating from a more or less harmonic band, or shall I say, battery, in the brilliantly-lighted tavern where raucous mirth and gaiety released from all inhibitions reigns supreme. That is not the kind of a problem which should be saddled on the police. There is no absolute standard; there is no dispositive objective test. It is the kind of problem that licensing boards should take over themselves. A license, after all, is nothing but a privilege. If the privilege is abused, it should be taken away by those who granted it in the first place.

One of the encouraging signs is the changed attitude of the great bulk of retail licensees. They have no sympathy for the cheater who abuses his privileges or panders to the lowest instincts in order to make a dirty dollar. They realize full well that the salvation of the liquor traffic lies in strict enforcement. Therefore, instead of applauding authorities who truckle to the delinquent, they demand strict enforcement; they deplore the action of the judge who merely fines the bootlegger instead of sending him to jail where he belongs; they condemn the supine milksops on excise boards who fail to do their duty by revoking the license outright or by inflicting a long term suspension. Instead of looking on the police and enforcement agencies as blood enemies, they regard honest chiefs and administrators as their sworn friends.

The great mistake of Prohibition was to cold-shoulder the police, assume they were universally crooked, and whole-hog the show to the Prohibition Agents who, all too often, wore no halos themselves except what they bought for self-crowning at the 5 and 10. The result was that the police did little or nothing because they knew they were not expected to do it -- they knew they were not wanted. No wonder the attitude grew -- police and citizens alike: "It's not my business. It doesn't affect me. Let the Prohibition Agents do it." No wonder the Federal governmental machinery fell into disrepute, and disrespect for law was created. But that is all changed now. The industry is now legitimate. It yields a heavy revenue. It's money coming in. It is your business. It is the primary responsibility of the police. We cannot, however, expect the police to round up gangsters and racketeers if personal or political influences are to release them, kill the tickets, glorify the malefactor and make a monkey out of the police officer. A good cop doesn't have to be "let down" more than once before his vision is dimmed, his ears waxed and his morale broken. If a cop is going to be demoted to a beat in the sticks just because he did his duty, enforcement stops at the point where disrespect for those in authority begins.

I feel a strong and growing fraternity with the Police. I have intense sympathy for the work you perform and the conditions under which you must do it. I now know what a clumsy and often futile thing a search warrant is. The double crossing and the tipping off, which is so easy under our search warrant procedure, might well discourage anyone except the stoutest hearted optimist. Again, I realize full well the inherent difficulty of any honest blue-coat getting evidence of sales to minors, or of indecent dances, or evidence of things amounting to a nuisance. Naturally, the moment a uniformed man enters the premises, the sales stop, the dance abates, the shouting and the tumult die. To get such evidence requires plainclothesmen, and, in the smaller communities, people who are not even known to their fellow townsmen. Incidentally, I don't believe a man in uniform should ever enter a saloon except to raid it. If he is honest, his presence is effective only so long as he is actually there. If he is weak and dishonest, you establish a contact, cemented by free lunch and free beer, which breaks down enforcement at the very point where it ought to be strongest. You Chiefs should deliver your men from temptation. When you are trying to get necessary evidence, you should make avail of the resources of the state administration. I do not think that any state department should be the exclusive enforcing agency. On the other hand, I think it is a mistake not to have a strong centralized state administration. Why do I say this? Because crime does not obey municipal lines nor county lines, nor even state lines. When you have an illicit distillery in one county and its outlets in another, it is impracticable for the municipal police to handle such a case. It seems to me that there is where the state agencies, with their centralized authority and their ability to operate all over the state, are of immense value. In every state, however thickly it may be populated, there is a great wide "no man's land" where there are no local police whatsoever. How then should state departments coordinate with the police? Put them on the spot, alibi ourselves out! Do what they did in Prohibition -- assume that the police are crooked and let it go at that! Oh, yes, sure, there are crooked police, and I suppose there are also crooked state enforcement agencies. I presume the crooks, like the poor, will always be with us, but that doesn't mean the rank and file of the police. All they want to know is, "what do you want," and then "do you mean it?" When we treat the police as we would like to be treated ourselves, we have gone a long way toward harnessing them into this team play.

Laws cannot make men honest or decent or clean but they can stop a man from cheating or from being indecent or foul. People speak of the liquor traffic as if it were something which must necessarily defy regulation. Of course, you can't make a man temperate by law. You can't save him from making a fool out of himself if he insists. Self-control is to be caught rather than taught. But so far as the law is concerned, I have no hesitancy in saying that the liquor traffic can be controlled. It is not a matter of method, it is only a matter of men. It is not so much a matter of what men say - it is rather whether or not they mean it.

One cannot turn the pages of your Convention program without realizing the wide gamut of crime, of traffic, of safety and of public disorder to which your Association has set its face and purposes to study and master. Laws can come and laws may go but so long as organized society exists, police power is incapable of repeal for it is that great power, inherent in all independent sovereign governments, which deals with the lives, the safety, the health and the morals of the people, and their general welfare. There is no definition, no limit, no out of bounds. Police power is government itself.

2. SOLICITORS' PERMITS - SO FAR AS THE LAW IS CONCERNED A SOLICITOR MAY REPRESENT AS MANY LINES OR HOUSES AS HE PLEASES - A REGULATION OF A UNION TO WHICH HE BELONGS REQUIRING THAT HE SHALL WORK FOR BUT ONE WHOLESALER IS NOT IN CONFLICT WITH THE LAW BECAUSE SUCH MEMBERSHIP IS WHOLLY VOLUNTARY.

Dear Mr. Burnett:

I am confronted with a matter that I think should be decided by you as the controlling factor of the Alcoholic Beverage Control of the State of New Jersey.

There has been organized, as you know, a Union known as the Wholesale Licensed Alcoholic Beverage Salesmen's Union, of which I am a member in good standing. At the last meeting a decision was reached to limit salesmen to only one wholesaler which I admit has its complications but is also very unfair to the honest salesman.

As for myself the reason I am working for two Wholesalers is because at present one isn't sufficient for the needs of my family and myself and does not conflict with either wholesaler as they have different lines. I joined the Union primarily to better my financial condition and this decision not only makes it hard for me to choose which Wholesaler I want, but will cause me a loss of income, thereby losing the object of becoming a Union member and also to my mind reflects on your Department which has issued me a permit which cost me Five Dollars cash, thereby causing me another loss, and also the right to solicit orders for my respective Wholesalers regardless of your permit.

I would appreciate your interest not only in my behalf, but for all other honest salesmen in the same predicament.

Very truly yours,

October 2, 1937.

Dear Mr. - - - - -:

The object of licensing solicitors for sale of alcoholic beverages is to insure compliance with the Control Act. Once that is accomplished, it is immaterial how many lines or houses you represent. The requirements and the fee are the same whether one or more. All are governed by the same law. Hence it makes no difference in what other business you engage or to what organizations you belong.

It follows that if you work for an employer who, instead of paying you commission on such sales as you make, gives you a full-time salary but insists on exclusive representation, that is your private contract - your business, not mine. So, if you belong to a Union, its rules are not my concern unless they conflict with the law. In neither case is there any conflict because the employment in the one case and the membership in the other are wholly voluntary. If you don't like the arrangements or the conditions, you can quit the service or resign your membership, but the decision whether to eat the cake or to keep it is up to you.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. SPECIAL CONDITIONS - THAT ALL REQUIREMENTS OF THE ACT BE COMPLIED WITH - SUPERFLUOUS.

October 7, 1937.

Mr. M. A. Fitzsimmons,
Village Clerk,
South Orange, New Jersey.

My dear Mr. Fitzsimmons:

I have before me the resolution adopted by the Board of Trustees authorizing the transfer of plenary retail consumption license from George Shipp to Robert Stuhre, subject to the special condition "that all legal requirements of the State Alcoholic Beverage Act have been complied with."

Of course, such a special condition is really superfluous, for the law itself requires just that. I have no objection, however, if the Trustees wish to say it out loud but submit that the preferable practice is to omit what the law itself supplies anyway.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. BINGO - SERVING OF LIQUOR DURING RECESS PROHIBITED.

My dear Commissioner:

Our Board requires your assistance in order to properly inform an inquirer concerning the conducting of Bingo parties on his licensed premises.

In referring to your Bulletin 158, Sheet 8, we find your ruling to the effect no drinks are to be sold, served or consumed while the games are in progress.

Considering the fact an occasional recess is declared throughout the evening, at which time the games are not actually in progress, prompts us to seek your further comment.

Is it permissible to sell and serve drinks to be consumed in the room during the time such parties are in a state of recess?

Very truly yours,

A. E. LUTHENAUER, Sec'y.,
Board of A.B.C.,
Hillside, N. J.

October 7, 1937.

Albert E. Luthenauer, Secretary,
Municipal Board of Alcoholic Beverage Control,
Hillside, N. J.

My dear Mr. Luthenauer:

The Rule concerning Bingo provides that Bingo may be played on licensed premises only if (1) there is no bar in the room where the games are played, and (2) no alcoholic beverages are sold or served or consumed in that room while the games are in progress. Rules Concerning Conduct of Licensees, Rule 16.

It means that no alcoholic beverages may be consumed in the room from the time the first game starts until the last game of the evening is finished. No recess for the purpose of serving liquor in the room is permissible. If I were to allow that, there would soon be a recess between every game or after every ten numbers called, or even five, and then what becomes of the rule?

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. CONSUMPTION LICENSEES - A LICENSEE MAY REFUSE TO ALLOW DELIVERY OF LIQUOR BROUGHT ONTO HIS PREMISES BY OTHERS.

Dear Sir:

We are often called upon to deliver packages to hotels with liquor licenses. Does the hotel management have the right to refuse delivery to the rooms.

Very truly yours,

Seashore Liquor Store

October 7, 1937.

Seashore Liquor Store,
Atlantic City,
New Jersey.

Gentlemen:

Licensees have the right to run their businesses and premises as they see fit, provided, of course, they do not violate the law.

There is nothing in the Alcoholic Beverage Control Act which would prevent a licensee from refusing to serve or allow delivery of liquor brought on to his premises by others. In fact, I wholly approve such refusals. Cf. Re Meyers Inc., Bulletin 155, Item 2.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. MUNICIPAL ORDINANCES - PROPOSED LOCAL REQUIREMENT OF 3 YEARS' RESIDENCE IN THE MUNICIPALITY - EXCEPTION AS TO RENEWAL OF EXISTING LICENSES.

October 7, 1937.

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

My dear Mr. Haney:

I have before me the ordinance adopted by the Council on September 1st, supplementing the ordinance concerning alcoholic beverages passed June 24, 1936, as to which you request my approval.

According to Section 37 of the Control Act, my approval is required only of municipal regulations dealing with the conduct of licensed businesses and the nature and condition of licensed premises.

The ordinance provides:

"50. No license shall be issued to any natural person unless he shall have been a resident of the City of Trenton for at least three years continuously immediately preceding his application for such a license."

A number of municipalities have adopted local regulations requiring residence in the municipality of individual applicants for retail licenses. Two have already come before me. Iamello v. Rumson, Bulletin 77, Item 9; McHugh v. West Deptford, Bulletin 106, Item 1. The former required one year's residence in the municipality. The regulation in the latter case required two. On appeal, I found both to be reasonable.

None requiring three years' residence has yet been litigated. Hence, opinion as to whether or not it is reasonable is expressly reserved pending appeal, when both sides can have the opportunity of presenting briefs and I can have the benefit of argument both pro and con.

I do suggest, however, that in anticipation of the issuance of licenses for the ensuing year, you give thought to the effect the regulation will have upon renewals. As now worded, it flatly prohibits the issuance of any licenses to natural persons unless they have had the three years' residence. It is possible that some of the present licensees may not be able to qualify. Still, it is doubtful that on that score alone they could be refused renewals. I therefore recommend that you amend it to exempt renewals of licenses presently outstanding.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. LICENSES - CONSIDERATIONS APPLICABLE WHERE LICENSED PREMISES LIE IN TWO MUNICIPALITIES AND THE LIMIT OF THE NUMBER OF LICENSES TO BE ISSUED IN ONE OF THE MUNICIPALITIES HAS ALREADY BEEN REACHED.

September 14, 1937

Dear Sir:

As Solicitor for both the Borough of Penns Grove and Township of Upper Penns Neck, I have been confronted with a situation where a person desires to file an application for license for premises through which the boundary line between the two municipalities runs. Pending an actual survey by the municipal engineer, it is my belief that the line runs through the building for which the applicant desires a license.

If this were the only situation involved, I could invoke the provisions of Section 80 of the Control Act for a distribution of the license fee. However, the limitations in the two municipalities on the number of licenses to be issued enters into the picture, in that there are no vacancies in the Borough of Penns Grove and there is one vacancy in the Township of Upper Penns Neck.

Would you please advise me what, if anything, can be done with this situation.

Yours very truly,

ALVIN R. FEATHERER

MEMO. TO: COMMISSIONER BURNETT

FROM: N. L. JACOBS

I have considered Mr. Featherer's letter dated September 14th and have examined P.L. 1934, c. 104 (Section *80, Control Act Reprint).

Prior to the enactment of Section *80, an applicant for license for premises located within two municipalities would stand substantially in the same position as though he sought licenses for two distinct premises, one in each municipality. He would require a separate license from each municipality; the regulations of each municipality would be controlling in so far as the portion of the building within its territorial limits was concerned; and if one of the municipalities had a limitation forbidding the issuance of any further licenses, the applicant could not obtain a license for the portion of the premises located within that municipality.

Section 80 was designed to alleviate somewhat the applicant's burdens incident to the licensing of a single place of business located within two municipalities. Although separate application must still be made in each municipality, only one fee is payable in lieu of the two fees theretofore payable. However, Section *80 does not appear to alter the pre-existing consequences in any other respect. As theretofore, the regulations of each municipality are controlling in so far as the portion of the building located within its territorial limits are concerned. And if one of the municipalities has a limitation forbidding the issuance of any further licenses, the applicant may not obtain a license, so long as this limitation remains in effect, for the portion of the premises located within that municipality.

I am, therefore, of the opinion that in view of the limitation in force in the Borough of Penns Grove and the exhaustion thereof, no new license may be presently issued by said Borough, notwithstanding the fact that it is for a portion of a building located partially within its limits and partially within the limits of the Township of Upper Penns Neck. This would not, however, prevent the issuance of a license, pursuant to proper application accompanied by the full prorated fee, by the Township of Upper Penns Neck, where I understand a vacancy exists within its limitation, but such license may not, in any event, authorize the sale of alcoholic beverages in the portion of the building located outside its territorial bounds.

Dated: September 21, 1937 -

APPROVED:
D. FREDERICK BURNETT
COMMISSIONER

9. ADVERTISING - LICENSEES MAY NOT ADVERTISE BY EMBROIDERING ON ATHLETIC SHIRTS OF THEIR SALESMEN THE TRADE NAME OF LIQUORS THEY SELL BUT THIS DOES NOT PREVENT THE USE OF THE EMPLOYER'S NAME ON THE UNIFORMS OR EQUIPMENT OF HIS OWN EMPLOYEES IF THEY HAVE BONA FIDELY ADOPTED THE EMPLOYER'S NAME AS THE NAME OF THEIR TEAM.

Dear Commissioner:

We shall be grateful to receive your opinion on the following:

The employees of Boller's Beverages Inc., Wholesale Liquor Dealers are entered in a Bowling League for Taverns, Breweries and Tavern Employees. The Bowling is to be rolled on alleys of a Licensed Retailer.

A distillery, for whom we are Distributors, wishes us to advertise a particular brand of whiskey on the back of each man's shirt in small lettering, besides our employer's name, Boller's Beverages, Inc.

Considering the fact that neither the Manufacturer nor the Wholesaler is giving an "ad" to a retailer, but that the Manufacturer is granting such "ad" to a Wholesaler is our reason for seeking your opinion.

Very truly yours,

Employees' Bowling Team
Boller's Beverages Inc.,
L. F. Sesselman, Captain

October 13, 1937

L. F. Sesselman, Captain,
Employees' Bowling Team,
c/o Boller's Beverages, Inc.,
Elizabeth, New Jersey.

My dear Mr. Sesselman:

I don't like to see liquor advertised by buying a player or athlete to make a billboard out of himself, do you?

Hence, the rule that manufacturers and wholesalers may not furnish uniforms bearing the advertisement of any brand of liquor. Re Koziol, Bulletin 172, Item 4, copy enclosed. This prevents embroidering on your recreation shirts the trade name of the whiskey you sell.

The principle does not interfere with the perfectly normal spirit that impels employees to team and compete, as representatives of their own house, against other teams. Naturally, they take a pride in displaying on their uniforms the name of their own house. For the purpose of the game, that name is their name; its struggles, theirs; its victories, their sweet morsels - even as the college boys compete for the cherished letters of their Alma Mater.

Employees may, therefore, use their own employer's name on their shirts in such way as identifies them as part of the business unit. But this need not be over technical. They may use, if they choose, the whole corporate name: "Boller's Beverages, Inc." but, even so, I sense no euphonic or onomatopoeic values although it might go over well as a locomotive with three long "Inc's" at the end! Why not just plain Boller!!

With best wishes for many strikes and ever a spare.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. MUNICIPAL ORDINANCES - SUNDAY SALES - PERMISSION TO HOTELS AND RESTAURANTS TO SELL ON SUNDAYS DURING CERTAIN TIMES AND UNDER CERTAIN CONDITIONS - HEREIN OF GENERAL RULES CONTRASTED WITH DIFFERENTIATION IN REGULATION BASED ON SUBSTANTIAL DISSIMILARITIES OF FACTUAL CONDITIONS

October 13, 1937.

Edgar C. Warren,
Borough Clerk,
50 Stockton Street,
Princeton, New Jersey

Dear Mr. Warren:

I have before me the ordinance adopted by the Mayor and Council of the Borough of Princeton on October 5th amending Section 10 of the Princeton ordinance to read:

"No alcoholic beverage, as described in said Act, shall be sold, served or delivered, nor shall any licensee suffer or permit the sale, service or delivery of any alcoholic beverage, directly or indirectly, upon the licensed premises on Sunday; except that until January 15th, 1938, alcoholic beverages may be sold and served in bona fide hotels and restaurants with meals, but only in the public Dining Rooms thereof, and then only during the following hours, namely: from twelve-thirty (12:30) o'clock Noon to three (3:00) P. M. and from five-thirty (5:30) P.M. to nine (9:00) P. M.

"The Hours above mentioned shall be construed to indicate Standard Time or Daylight Time during such periods when each shall be in effect in this Municipality."

On the same day that the ordinance came in, I received a telegram from Dr. D. B. Tomkins requesting that audience be granted to a Citizens' Committee opposed to the ordinance, which request I gladly granted and notified you accordingly.

That conference was held this afternoon and the several points brought up by the Committee were fully threshed out.

Herewith my conclusions:-

Whether alcoholic beverages are to be sold in Princeton at all on Sundays, is a matter for Princeton to decide for itself. Such decision is to be made, in normal course, by the Mayor and Council as the Governing Body. That decision stands unless and until superseded by referendum. Hence I am not concerned with any question of policy in this respect.

It was charged, however, that, although hotels, restaurants, saloons and taverns each hold the same kind of retail consumption license, the ordinance, which permits hotels and restaurants to sell alcoholic beverages on Sundays under certain conditions and during certain times, unreasonably discriminates against saloons and taverns which may not sell at any time or under any conditions on Sundays.

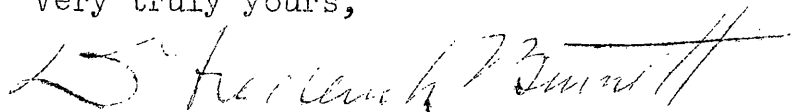
Generally speaking, all those within the same license class must be treated alike and afforded equal privileges. Re Wenzel, Bulletin 19, Item 7; re Sierszputowski, Bulletin 52, Item 4; Re Holz, Bulletin 117, Item 8; Re Harrington, Bulletin 118, Item 13; Re Teaneck, Bulletin 125, Item 8.

Where, however, differentiation in regulation is based on substantial dissimilarities of factual conditions, such distinctions, either by statute or by ordinance are valid if they affect alike all those similarly situated and carry out a public purpose. The factual difference between hotels and restaurants on the one side, and saloons and taverns on the other, is obvious. The statute itself recognizes the distinction by making an exception in favor of hotels and restaurants in the very section defining plenary retail consumption licenses. Section 13 (1). This ordinance treats all bona fide hotels and restaurants alike. It leaves it open to any consumption licensee to convert his place into a restaurant. All who come within the subdivision share the same privileges. Whether permitting hotels and restaurants to sell on Sundays serves a public purpose, is admittedly not so clear, but until that question is settled on final appeal, I conceive it my duty to uphold municipalities in their declarations of local policy.

The ordinance avoids the pitfalls pointed out in Hauck & Felter, Bulletin 130, Item 3, concerning the reappearance of "Raines Law Sandwiches", and in Re Bowers, Bulletin 170, Item 11, of the impracticability of determining the meaning of a "full course meal" in these calorie conscious days. It does not appear to be an opening wedge to making a mockery of Sunday selling or so couched as to invite all kinds of hypocritical subterfuge, or so loose as not to create a definite regulatory standard capable of enforcement.

The ordinance is therefore approved.

Very truly yours,



Commissioner