

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

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DISCUSSION OF AND RULINGS UPON AMENDMENTS TO ACT CONCERNING
ALCOHOLIC BEVERAGES PERTAINING TO MUNICIPALITIES.

Governor Moore signed Assembly Bill 304 on April 13, 1934. It is effective immediately except where otherwise expressly stated to the contrary.

1. The following amendments pertaining to municipalities should be carefully studied and followed by municipal issuing officials which term is ruled henceforth to include the Common Pleas Judges of Ocean and Cape May Counties.

2. Section 2 was amended to read as follows:

"2. It shall be unlawful to manufacture, sell, transport, warehouse, rectify, blend, treat, fortify, mix, process, bottle, or distribute alcoholic beverages in this State, except in accordance with this act; provided, however, that any drink actually intended for immediate personal consumption may be mixed by any person, and provided further, that alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle to the extent of, not exceeding one-half (1/2) barrel, or two (2) cases containing not in excess of twenty-four (24) quarts in all, of beer, ale, or porter, and five (5) gallons of wine and twelve (12) quarts of other alcoholic beverages within any consecutive period of twenty-four (24) hours. If any person or persons desire to transport alcoholic beverages intended only for personal consumption in quantities in excess of those above mentioned, an application may be made to the commissioner who may, upon being satisfied of the good faith of the applicant, and upon payment of a fee of five dollars (\$5.00) issue a special permit limited by such conditions as the commissioner may impose, authorizing such transportation of alcoholic beverages in quantities in excess of those above mentioned."

This eliminates the former wide open, enforcement-paralyzing exception relating to personal consumption, and substitutes generous maximum quantities which may be transported in any vehicle without license if intended in good faith to be used solely for personal consumption.

It also provides for special permits at reasonable cost when it is desired to transport quantities larger than the allowable maximum. This amendment constitutes the first major step toward control of the transportation of alcoholic beverages.

3. Section 5 was amended to read as follows:

"5. Each municipality having a population of fifteen thousand (15,000) or more, as determined by the last federal census, is hereby authorized to establish in and for such municipality, by resolution or ordinance of the governing board or body now established by law in respect to said municipality, a municipal board of alcoholic beverage control, which shall consist of three persons, no more than two of whom shall be of the same political party, who shall be chosen and appointed by said governing board

or body of said municipality, for a term of three years; pro-
vided, however, that one of the initial appointments shall be
for one year, another for two years, and the third for three
years; provided, further, that in the case of any vacancy
occurring before the expiration of any term, the appointment
to fill such vacancy shall be only for the unexpired term. The
members of such municipal board shall receive no salaries and
shall be removable by the appointing authority for cause. Such
members shall not be subject to the civil service act and may be
members of said governing board or body of said municipality."

This enables municipalities to appoint excise boards with-
out salaries. Local excise boards so constituted henceforth
must consist of three persons, no more than two of whom shall
be of the same political party.

4. Old Section 6 was repealed thus eliminating the authority
previously conferred on municipal boards to appoint and pay in-
spectors, investigators and agents. All such appointments and
employments heretofore made thus come to an end.
5. New Section 6 provides: "Anything hereinbefore or herein-
after to the contrary notwithstanding, in all counties of the
sixthclass, all the powers conferred and all the duties imposed
upon issuing officials in and for each municipality in said
county by this act and the rules and regulations made pursuant
thereto, in respect to all the several classes of retail licens-
es for the sale and for the distribution of alcoholic beverages,
shall reside in and be imposed upon and performed by the judge
of the court of common pleas of such county."

Specific instructions have been issued to all municipal
issuing officials in Ocean and Cape May Counties.

6. Section 13 was amended as respects Plenary Retail Consump-
tion Licenses to read as follows:

"13. Class C licenses shall be subdivided and classified as
follows:

"(1) Plenary retail consumption license. The holder of
this license shall be entitled, subject to rules and regula-
tions, to sell for consumption on the licensed premises any
alcoholic beverages by the glass or other open receptacle, and
also to sell to all alcoholic beverages in original containers
for consumption off the licensed premises; provided, however,
that on and after July first, one thousand nine hundred and thir-
ty-four, this license shall not be issued to permit the sale
of alcoholic beverages in or upon any premises in which a gro-
cery, delicatessen, drug store or other mercantile business
(except the keeping of a hotel or restaurant, or the sale of
cigars and cigarettes at retail as an accommodation to patrons,
or the retail sale of nonalcoholic beverages as accessory bever-
ages to alcoholic beverages) is carried on. The fee for this
license shall be fixed by the governing board or body of the
municipality in which the licensed premises are situated, by
resolution or ordinance, at not less than two hundred dollars
(\$200.00) and not more than two thousand dollars (\$2,000.00)."

7. The new proviso in the plenary retail consumption license
is designed to forbid drinking upon any premises in which a gro-
cery, delicatessen, drug store or other mercantile business is
carried on, excepting, however, hotels, restaurants, etc. It
does not become effective, however, until July 1st. Hence, the

present forms of these licenses will suffice until July 1st. In respect to all such licenses to be issued for the period beginning July 1, 1934, a new form will be devised by the Commissioner and promulgated in the Bulletin in due course. So also a new form of application. It is not merely the forms, however, to which your attention is invited but rather the law forbidding municipal issuing officials to grant licenses for the proscribed purposes.

8. It will be noted that the old maximum and minimum fees for this license, of \$1500. and \$350. are changed to \$2000. and \$200. respectively. This part of the amendment is effective immediately, and therefore may be availed of by municipalities at once to lower or to increase the fee for such class of license, effective as soon as the requisite ordinance or resolution is enacted.
9. The Commissioner rules, however, that no increase in the fee which has heretofore been fixed by any municipality may be made except as to licenses issued after such resolution or ordinance shall have been adopted in such municipalities. Where a license has heretofore been issued at the old fee, and on the faith of such permit, the licensee has incurred expenditures, made commitments or otherwise changed his position, then, in the absence of fraud or deceit in obtaining the license, a vested right has been acquired which ought not to be disturbed by subsequent legislation. On the other hand, there is nothing to prevent a municipality from lowering the fee so that it operates retroactively via rebate in favor of persons previously licensed, provided that all are treated alike, and further provided that there is nothing in the law under which any particular municipality is organized to prevent such rebate.
10. Whether the fee is to be lowered or raised is a matter of policy for each municipality to decide for itself. If the governing board or body of any municipality desires to make avail of the legislative permission, the resolution or ordinance may fix the new fee to be operative at once or at some future date, e.g. July 1, 1934.
11. Section 13 was also amended to provide for a new form of license, thus:-

"(2) Seasonal retail consumption license. The holder of such license shall be entitled, subject to rules and regulations, to sell, during the summer season from May fifteenth until September fifteenth inclusive, or during the winter season from November fifteenth until April fifteenth inclusive, for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle, and also to sell all alcoholic beverages in original containers for consumption off the licensed premises. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by resolution or ordinance, at seventy-five per centum of the fee fixed by said board or body for plenary retail consumption licenses."
12. The seasonal retail consumption license is a new provision entirely. Before any such license may be issued the fee must first be fixed by the governing board or body of the municipality either by resolution or by ordinance, but it is mandatory that

the fee be 75% of whatever fee is fixed by said board or body for plenary retail consumption licenses. This requires affirmative action by the governing board or body, notwithstanding the fixed proportional fee, not only because the statute expressly requires that the fee "shall be fixed" but also because such boards or bodies have the right to change the fee as above noted in item 8 and they may perhaps do so. Hence the necessity for express resolution or ordinance to fix the fee for the seasonal license.

13. The fee for either winter or summer seasonal license must be the same although one covers more months than the other. The law so states.
14. It will be noted that there is nothing in the text of the act concerning seasonal retail consumption licenses which forbids drinking on the premises in which other business is conducted. Such, however, was the plain intention of the Legislature. The only difference between plenary and seasonal consumption licenses is the term and the fee. Otherwise they are symmetrical. There was no intention to distinguish between the two except in those respects. Both were designed to afford the same kind of privilege. The plenary retail consumption license is incorporated by reference in the seasonal retail consumption license expressly so far as the fee is concerned. The proviso in the former, added by Senate amendment after the bill in its original form had passed the House, is held by the Commissioner to be incorporated in the latter by fair implication. It is so ruled. The fixing of July 1st, 1934, as the effective date of the prohibition against drinking in places other than those specially devoted thereto was for the sole purpose of preventing hardship to the licensees whose licenses had already been granted for a period expiring July 1st. The Commissioner therefore rules that effective immediately, no seasonal retail consumption licenses shall be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on.
15. A form of seasonal retail consumption licenses is now being devised by the Commissioner and will be promulgated forthwith. No such license shall be issued except in the form prescribed by the Commissioner.
16. Section 13 was also amended in respect to Plenary retail distribution licenses to read as follows:

"(3) Plenary retail distribution license. The holder of this license shall be entitled, subject to rules and regulations to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers; provided, however, that the governing board or body of each municipality may, by ordinance, enact that on and after July first, one thousand nine hundred and thirty-four, this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on. The fee for this license shall be fixed by the governing board or body or other controlling authority of the municipality in which the licensed premises are situated by resolution or ordinance at not less than one hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000.00)."

17. The fees for plenary retail distribution licenses have been changed by lowering the minimum from \$200. to \$100. What was said above (Items 8, 9, and 10) in reference to action of governing boards or bodies of municipalities in changing the local fee and also in respect to rebates, if desired, applies equally to this form of license.
18. Whether the option afforded by the proviso is to be exercised is a matter of policy for each municipality to decide for itself. It can be done only by ordinance thereby assuring full publicity and opportunity to be heard. In no event can such ordinance be effective except in respect to licenses issued for the period after July 1, 1934.
19. The present form of such license will suffice as the restrictive provisions in the proviso are not effective until July 1st. A form of such license for the period beginning July 1st next is being devised and will be promulgated in ample time.
20. Section 13 was also amended to provide for another new form of license, thus:-
- "(3-A) Limited retail distribution license. The holder of this license, subject to rules and regulations, shall be permitted to sell for consumption off the licensed premises, but only in original containers, any unchilled brewed malt alcoholic beverages in quantities of not less than seventy-two (72) fluid ounces. The fee for this license shall be fixed by the governing body or board of the municipality in which the licensed premises are situated, by resolution or ordinance at not less than \$25.00 or more than \$50.00; provided, however, that the governing board or body of each municipality may, by ordinance, enact that no limited retail distribution license shall be granted within its respective municipality; and further provided, that such governing board or body may by ordinance enact that no more than one such license may be granted to any person, corporation, partnership, limited partnership, or association in each municipality, and said license shall cover only the licensed premises."
21. The limited retail distribution license is a new provision entirely. Before any such license may be issued the fee must first be fixed by the governing board or body of the municipality either by resolution or by ordinance.
22. Whether the options afforded by the provisos are to be exercised one or both are matters of policy for each municipality to decide for itself. They can be made avail of only by ordinance (subject to Item 23 infra) thereby assuring full publicity and opportunity to be heard.
23. As this license is effective immediately, the fee may be fixed forthwith either by ordinance or resolution and the provisos one or both may be forthwith enacted by ordinance. The failure or refusal of a municipality to fix the fee is necessarily equivalent in legal effect to exercise of the option contained in the first proviso, notwithstanding the formal express declaration of local municipal policy is required to be made by ordinance.
24. A form of such license is now being devised by the Commissioner and will be promulgated forthwith. No such license shall be issued except in the form prescribed by the Commissioner.

25. Section 13 was also amended to provide for another new form of license, thus:-

"(5) Club license. The holder of this license shall be entitled, subject to rules and regulations, to sell, only to bona fide club members and their guests, alcoholic beverages intended for immediate consumption on the licensed premises. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by resolution or ordinance, at not less than fifty dollars (\$50.00) and not more than one hundred and fifty dollars (\$150.00) provided, however, that the governing board or body of each municipality may, by ordinance, enact that no club licenses shall be granted within its respective municipality. Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and comply with all conditions which, subject to rules and regulations, may be imposed by the commissioner."

26. Before this new license may be issued, the fee must first be fixed by the governing board or body of the municipality either by resolution or by ordinance. It is competent for any governing board or body to enact by ordinance that no club licenses shall be granted within its respective municipality. Failure or refusal of a governing board or body to fix the fee for a club license will have the same effect as an ordinance that no club licenses shall be granted.

27. As to those municipalities which desire to issue club licenses, it should be noted that they must comply with all conditions, rules and regulations which may be imposed by the Commissioner.

28. To determine what conditions and rules should be imposed, an open meeting will be held at the Down Town Club, 744 Broad Street, Newark, N. J., Friday, April 20th, 1934, at 2:30 p.m. sharp. Officers and members of all bona fide clubs, municipal officials and the public generally are cordially invited to attend.

The objective will be to include within the benefit of this new low priced license all bona fide clubs and to exclude therefrom mushroom and spurious organizations. The honest plenary retail consumption licensee who pays the full fee must be protected against unfair competition. Municipalities are not to be deprived of revenue to which they are really entitled. The Pennsylvania precedent of using or resurrecting club charters for purely commercial enterprises is not to be repeated in this state.

It is confidently believed that bona fide organizations, municipal officials and public-minded citizens generally will cooperate in suggesting reasonably stringent conditions and rules to distinguish legitimate clubs from neo-speakeasies.

29. No club license shall be issued except in the form to be prescribed by the Commissioner. The form will be duly promulgated as soon as possible after the above mentioned convention has been held.

30. Section 22 was amended to provide that no license shall be issued to any person who has committed two or more violations of the act. The word "committed" takes the place of the possibly inept term "convicted".

Plans will be devised to insure complete centralized recording of the adjudicated commissions of violations available to all municipal issuing officials.

31. Section 23 was amended to provide a fee of Five Dollars (\$5.00) in respect to transfers. The provision now reads:-
"On application made therefor setting 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, and after publication of notice of intention to apply for transfer, in the same manner as is required in case of an application for license as to said premises, the commissioner or other issuing authority may transfer, upon payment of a fee of five dollars (\$5.00), any license issued by him or it respectively to a different place of business than that specified therein, by endorsing permission upon such license."

This amendment will compensate municipalities for the administration work incident to transfers.

32. Such transfer fees shall be accounted for by municipal issuing officials as are license and investigation fees.

33. Section 25, which permits licensees to deliver alcoholic beverages in their own vehicles solely, however, for their own respective business in connection with and as defined in their respective licenses without possessing a transportation license, provided, however, that the vehicles while so used shall be marked in the manner prescribed for all vehicles authorized to transport alcoholic beverages under a transportation license, has been amended by adding the further proviso that one such transportation insignia shall be furnished by the Commissioner without cost, and that each additional vehicle so used shall bear a separate insignia to be furnished by the Commissioner at a fee of Two Dollars (\$2.00) each.

This amendment will help to defray the expense to which the State is put in furnishing lithographed decalcomania to be attached to the windshield of each motor vehicle authorized to transport alcoholic beverages and without which the driver is subject to arrest and the vehicle to confiscation. Each licensee, except warehouses, is entitled to one such insignia without cost. For each additional vehicle, however, it is but fair that the particular licensee should pay a fee commensurate with the cost to the State.

The work of attaching the decalcomania is now under way under the direction of inspectors of the State Department. Municipal officials will please comply promptly with all requests for cooperation in order that no licensee is deprived of the transit insignia, one or more, to which he may justly be entitled upon payment of the necessary fee, if any, to the Commissioner.

As soon as the work has been completed, drivers and operators of vehicles transporting alcoholic beverages not having the official decalcomania affixed to the vehicle will be arrested and the vehicle and contents confiscated.

This work constitutes the second major step toward control of the transportation of alcoholic beverages. Cf. Item 2, supra.

Municipal clerks and issuing officials will please cause prompt and adequate notice to be given forthwith of the foregoing to all licensees if such notice has not heretofore been given.

34. Section 26 relating to druggists and pharmacists has been amended to confer power upon the Commissioner to "have and exercise the same powers of investigation and of prescribing rules and regulations with regard to the alcoholic beverages purchased, used, mixed, compounded or dispensed pursuant to this section as are by this act accorded to him in connection with the sale, distribution, rectification, blending, treating, fortifying, mixing, processing, warehousing and transportation of all alcoholic beverages."
35. Otherwise, Section 26 remains as before. It permits duly registered druggists and pharmacists, upon their respective registered premises, without license, to purchase and use alcoholic beverages for the compounding of physicians' prescriptions, and for the preparation of mixtures and medicines unfit for use as beverages and to sell the same after being so compounded or prepared "provided, however, that they may not sell alcoholic beverages otherwise than as aforesaid and particularly shall not sell the same in either original containers or by glass or other open containers, except under a license obtained under this act permitting the same."
- The above proviso, as originally enacted, amounts to a restriction against the sale of alcoholic beverages for consumption either off or on the premises except under a license, i.e. either under a distribution license or under a consumption license. The objective was to break down the subterfuge, deplored by honest physicians and pharmacists alike, of effecting the sale of liquor for merely beverage purposes under the guise of filling a doctor's prescription. If drug stores are to compete with other retail licensees in the beverage business, they too must be licensed.
36. Since, however, the provision for all retail consumption licenses has been amended to provide that on and after July 1, 1934, such licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a drug store is carried on (see Item 6, supra), the Commissioner now rules that in respect to the period beginning on and after July 1, 1934, no plenary retail consumption license may be issued by any municipality to any druggist or pharmacist.
37. As regards plenary retail consumption licenses previously issued to druggists and pharmacists and which until July 1, 1934, may still be issued to them for the period expiring June 30, 1934, see item 7 to 10, both inclusive, supra.
38. The Commissioner further rules that effective immediately no seasonal retail consumption license shall be issued to any druggist or pharmacist. For reasons, see item 14, supra.
39. Plenary retail distribution licenses may, however, continue to be issued to druggists and pharmacists upon payment of the proper fee, subject, however, to the provisions of Section 13 as amended, (Item 16 supra) which confers permissive authority upon each municipality to enact by ordinance that on and after July 1, 1934, such license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other business is carried on. See items 16 to 19, both inclusive, supra

40. As to plenary retail distribution licenses heretofore issued to druggists and pharmacists, see items 8, 9, 10 and 17, 18, and 19 supra.

41. Section 27 has been amended to read as follows:

"27. This act is not designed to prohibit sales of denatured alcohol and alcoholic mixtures or composition or articles of commerce containing alcohol which are unfit for use as beverages without license hereunder. 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:

"(a) Denatured alcohol produced and used pursuant to acts of Congress and regulations promulgated thereunder.

"(b) Patent, proprietary, medicinal, pharmaceutical, anti-septic and toilet preparations.

"(c) Flavoring extracts, syrups and food products.

"(d) Scientific, chemical, mechanical and industrial products.

"Any person who shall knowingly sell, use or transport any of the products enumerated in paragraphs (a), (b), (c) or (d) for beverage purposes, or who shall use, sell or transport any of the same under circumstances from which he might reasonably deduce the intention of the purchaser or consignee to use them for such purposes shall be guilty of a misdemeanor and punished accordingly.

"The Commissioner shall have the power to investigate the sale, purchase, use and transportation of industrial alcohol as set forth above to the extent reasonably necessary to prevent conversion into alcoholic beverages fit for consumption."

Rules and regulations will be issued after thorough investigation has been made of the very large field covered by this section which embraces some 6000 different industries using alcohol for industrial as distinguished from beverage purposes. Specific rulings will be made from time to time upon request upon any particular subject matter coming within the content of the section. In the meanwhile, the Commissioner calls especial attention to and places emphasis upon the following operative phrases in the amended act, viz:- "which are unfit for use as beverages"; again, "intended for and actually used in the manufacture and sale of any of the following when they are unfit in fact for beverage purposes." Misdemeanors are not created by regulations nor excused by absence thereof. The amendment is effective immediately and so is enforcement.

42. Section 28 has been amended to provide that any license issued by municipal issuing officials may be suspended or revoked by the Commissioner. This extends the power of the Commissioner to the end that by his own direct action, violation of rules and regulations promulgated by him may be directly and swiftly punished and the law upheld by revocation of the license of the offender without the necessity of intervention of the municipal officials who originally issued the license, and without the delay incident to convening such body, certifications, and counter certifications. Formerly revocation could be effected only by

the authority which originally issued the license. This extension which puts real teeth into enforcement of rules and regulations in nowise repeals the power of municipal issuing authorities themselves to suspend or revoke any license for cause. Their cooperation in taking the initiative in all proper cases will be in the public interest.

43. Section 28 has been further amended to provide that if any licensee, except seasonal retail consumption licensee, shall voluntarily surrender his license, there shall be returned to him, after deducting as a surrender fee twenty-five per centum of the license fee paid by him, if the surrender is made prior to July first, one thousand nine hundred and thirty-four, and fifty per centum if made thereafter, the pro rated fee for the unexpired term; provided, further, that such licensee shall not have committed any violation of this act or of any rule or regulation or done anything which in the fair discretion of the commissioner or other issuing authority, as the case may be, should bar or preclude such licensee from making such claim for refund and that all taxes and other set-offs or counterclaims which shall have accrued and shall have become due and payable to the State of New Jersey and/or any municipality have been paid. Such proration shall be made as of the date of the approval of such surrender. Surrenders of retail licenses shall be promptly certified by the issuing authority to the commissioner. Surrender fees shall be accounted for as are investigation fees.
44. Regulations governing rebates and refunds have heretofore been promulgated and apply to Section 28 as amended. See Bulletin 11, item 4.
45. Surrenders of retail licenses must be certified by the issuing authority to the Commissioner as soon as the surrender is made, to the end that in the central state control office there is at all times an up-to-the-minute, complete and accurate record of every licensee, whose license is subsisting in full force and effect, unrevoked and not suspended or surrendered, available instantly not only to all enforcement agencies throughout the state, but also to all state licensees who have no right to sell to any person in this state except a duly qualified actual and presently subsisting licensee. This notice must therefore be certified as aforesaid immediately upon the physical surrender of the license which act constitutes a condition precedent to any rebate or refund obtainable under this section. It follows that the certification to be made by the issuing authority to the Commissioner of a surrender must be made as soon as the license is physically surrendered and without awaiting the calculation of the refund, determination of refundability or actual payment of the rebate.
46. Section 28 has been further amended to provide that appeal in the event of suspension or revocation of any license by municipal issuing authorities is henceforth to be made to the Commissioner instead of the Board of Alcoholic Beverage Appeals.
47. Section 29 has been amended to read:
- "29. Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this act and secure compliance with the provisions hereof, and all such

licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violations thereof."

48. This means that municipal issuing authorities may not impose conditions to issuance of licenses until the resolution imposing the same is first submitted to and the approval of the Commissioner obtained thereto. Resolutions so submitted should be duly certified to the Commissioner and prompt service will be rendered in passing upon same. Proposed resolutions may be submitted, if desired, to the Commissioner in advance of the actual enactment thereof by the municipality and, if approved and subsequently enacted in the same form as previously approved then duly certified to the Commissioner for pro forma automatic approval and notation on the records of the control office. The latter alternative is earnestly recommended. It saves the necessity of later rescission if the resolution should perchance be disapproved and makes for more mutually sympathetic and cordial relations with all municipal issuing officials which is the ideal of this department to foster and develop.

The Common Pleas Judges of Cape May and Ocean counties may proceed under this section by informal but personally signed letters instead of formal resolutions or tentative drafts thereof.

49. Section 30 has been extended to provide that no license shall be issued to any person to whom a license shall have been issued under the Alcoholic Beverage Control Act, and who shall have failed to pay to the State of New Jersey or to any municipality of this state any tax, license fee or penalty which shall have accrued pursuant to the provisions of said act or of the old Beer Act, and also of the present tax act upon sale of alcoholic beverages, unless such person shall have posted with the State Tax Commissioner or the municipality as the case may be a cash deposit or bond in an amount satisfactory to the State Tax Commissioner or the municipality, as the case may be, to secure the payment of said tax, license fee or penalty.

50. Section 32 has been amended to widen the power of investigation confided to all issuing authorities to include inspection not only of premises for which license is sought, but for which license has been issued. It also extends the power of all issuing authorities in respect to examination under oath and subpoena not only for the purpose of any investigation, examination or inspection, but also for the purpose of revocation, rule to show cause, and every other proceeding authorized under the act or appropriate for its enforcement. It is also provided that "The above enumerations of purposes and powers shall not be construed as exclusive and shall not limit such power to investigate, examine and subpoena for any purpose consonant with the administration and enforcement of this act."

51. Section 34 has been made more flexible, so as to meet different situations, by changing the state fee of One Dollar (\$1.00) for authenticating any copy of any act, rule, regulation, order or decision made by the Commissioner, or of any paper or papers filed in his offices, under his official seal, to such fee as shall be fixed by the Commissioner commensurate with the reasonable cost of the services rendered.

52. Section 35 abolishes the Alcoholic Beverage Appeals Board and makes it the duty of the Commissioner to hear and decide all appeals provided for by the act.

Arrangements are being made to effect the physical transmission of all appeals heretofore filed with the State Board. Rules governing procedure are being formulated and will be duly promulgated.

Hearing on appeals heretofore filed with the State Board will commence as soon as the papers have been forwarded from Trenton, the court calendar set up, and all parties concerned in each appeal given reasonable notice.

All appeals henceforth should be made directly to and filed with the Commissioner.

53. Section 37 has been amended to read:

"37. Each issuing authority, other than the commissioner, may as regards each respective municipality limit the number of licenses to sell alcoholic beverages at retail and the hours between which the sales of alcoholic beverages at retail may be made and may, subject to the approval of the commissioner first obtained, regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted. The aforesaid limitations of number of licensees and of hours of sale shall be subject respectively to appeal to the commissioner, as hereinafter provided. The governing board or body of each municipality may, by ordinance, enact that no more than one retail license shall be granted to any person, corporation, partnership, limited partnership or association in said municipality and that said license shall cover only the licensed premises; provided, however, that nothing herein contained shall operate to disqualify a guardian, executor, administrator, trustee, receiver, or any other fiduciary or court officer from obtaining or from holding more than one such license in different official capacities."

54. Municipal issuing authorities may, either by ordinance or resolution, limit the number of licenses and the hours of sale, and such limitations do not need the express approval of the Commissioner to make them legally operative. They are, however, subject to appeal to the Commissioner.

55. A municipal ordinance purporting to regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and conditions of the licensed premises is not legally operative until the approval of the Commissioner shall have first been obtained thereto. Ordinances or resolutions so submitted for approval should be duly certified to the Commissioner and prompt service will be rendered in passing upon the same. Proposed resolutions or ordinances may be submitted if desired to the Commissioner in advance of the actual enactment thereof, and if approved and subsequently enacted in the same form as previously approved and then duly certified to the Commissioner for pro forma automatic approval and notation on the records of the Control Office. The latter alternative is earnestly recommended for the reasons set forth in item 48 supra.

The Common Pleas Judges of Ocean and Cape May Counties may proceed under this section by informal but personal letters instead of formal resolutions or ordinances or tentative drafts thereof.

56. The provision that the governing board or body of each municipality may prevent any licensee from having more than one retail license in that municipality exhibits Legislative intent to confer absolute authority upon each municipality to dispose of this economic rather than control problem by ordinance and to make such authority exclusive. Comparison of this provision which omits all reference to the approval of the Commissioner and of appeals with the carefully worded provisions which precede it in the same section and which expressly subject certain other kinds of ordinances or resolutions to such approval and if not, then to appeal, evinces the intent that this provision is neither subject to the Commissioner's approval nor is there any right of appeal given. The Commissioner so rules.

57. Section 38 has been amended to read:

"38. If any person affected or who might be affected by any limitation of the number of licenses or of the hours between which sales of alcoholic beverages at retail may be made shall consider himself aggrieved thereby, he may appeal to the commissioner in respect thereto and thereupon the commissioner, after public hearing, may set aside, vacate and repeal the limitation complained of or change, alter, amend or otherwise modify the same."

58. The Commissioner rules that, notwithstanding that he may have given approval to municipal ordinances or resolutions pursuant to sections 29 and 37 of the act as amended (see items 48 and 55 supra) and although no appeal from his approval is expressly provided, he will nevertheless entertain application for a rehearing made subsequent to such approval by any person who shall consider himself aggrieved in order that such approvals may not unwittingly and unfairly prejudice any person without opportunity to be heard thereon. This may occur particularly where the municipal proceeding was by resolution and without the requisite publication, successive readings and opportunity to be heard afforded where the municipality acts by ordinance. Even though the municipal body and the Commissioner after independent thought are unanimously of opinion in favor of a proposed resolution, it should not foreclose appropriate action if facts subsequently ascertained or if situations not contemplated would have induced such action, if disclosed at the time the resolution was enacted and the approval made. So also where such resolutions or ordinances prove to be either too broad or too narrow, or where subsequent experience has shown that changes should be made to cope with changing conditions, or where for any other reason the Commissioner deems that an appeal should be entertained from his own acts.

To keep the legal situation in hand and since the function of repealing an ordinance or resolution is vested exclusively in the governing board or body of a municipality and no right is reserved to the Commissioner to order or direct the repeal or vacation of an ordinance or resolution, all approvals by the Commissioner will be made subject to revocation and until further order.

59. Section 40 has been amended to read:-

"40. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this act, and

such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler; provided, however, that prior to December sixth, one thousand nine hundred and thirty-six, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages. And it shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaler, except as provided for in this act, or with any manufacturing, wholesaling or importing interests of any kind whatsoever outside of the State. No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or product offered for sale by such brewery, winery, distillery or rectifying and blending plant or wholesaler."

Provisions which are new in the above and which behoove municipal issuing officials to study with care are:-

- (1) those which provide that the interlocking interest prohibited by statute includes payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of a brewery or winery, distillery, rectifying or blending plant or wholesaler;
- (2) the three year moratorium to the effect that the ownership of or mortgage upon or any other interest in licensed premises is not, until December 6, 1936, to be deemed any interest in the retailing of alcoholic beverages if such ownership, mortgage or interest existed on the day the original alcoholic beverage act was passed;
- (3) the last sentence declaring that ownership, loan or delivery of interior signs designed for and exclusively used for advertising the product of or product offered for sale by a manufacturer or wholesaler of alcoholic beverages does not constitute an interest in the retailing of such beverages.

The statutory disqualification, set forth in Section 40, applies, of course, to municipal as well as state licensees and is therefore set forth in this bulletin which deals only with the changes made by the amendments so far as municipal authorities are concerned. Since the amendment in this respect is effective immediately, and since amendments relate back to the date of the passage of the original bill, the section applies not only to future applicants but to all present licensees. It may, therefore, perhaps be necessary for municipal issuing officials to institute revocation proceedings in the event they shall ascertain or have the duty, because of notice or of knowledge, to ascertain that any present licensee is now so interested in manner set forth by the amendments although not so interested at the time the temporary or permanent license was issued. The initiative and the primary duty to ascertain such

violations and to institute revocation proceedings is upon the municipal officials, not the Commissioner.

60. Section 47 formerly read: "No person shall knowingly purchase, receive or procure any illicit beverage." In the performance of his duties, it may become necessary for an officer to make such purchase in order to secure legal evidence of violation. To remove the question heretofore raised that even an officer might be guilty of violating the act, thereby committing a misdemeanor, the section has been amended to read:-

"47. No person, except an officer, or other person authorized by and acting pursuant to instructions from such officer, so doing in the course of and for the purpose of enforcing this act shall knowingly purchase, receive or procure any illicit beverage."

61. Section 48 has been amended to read:-

"48. Any person who shall manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport any alcoholic beverage in violation of this act, or who shall import, own, possess, keep or store in this State alcoholic beverages with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport alcoholic beverages in violation of the provisions of this act, or who shall own, possess, keep or store in this State any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this act, or to aid or abet another in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this act, all of which shall be violations of this act, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00) or imprisonment for not less than thirty days and not more than six months, or by both such fine and imprisonment, in the discretion of the court."

The above amendment of this section should be called immediately to the attention of the Chief of Police, judges and magistrates and all other persons dealing with enforcement in each municipality. Municipal Clerks will please oblige by promptly notifying all persons who should know of this revision of the section under which complaints are made. The amendment widens the scope of effective enforcement and eliminates the technical difficulties with which judges, magistrates and police were formerly confronted.

62. Section 58 has been amended to read:-

"58. Every search warrant shall be executed and returned to the issuing magistrate within forty-eight hours after its issuance, after which time, unless executed, it shall be void."

63. Municipal clerks will please see that the text of this section as amended is likewise promptly sent to all judges, magistrates and police officials in their respective municipalities.

64. Section 64 has been amended to read:-

"64. Any officer knowing, or having reasonable cause to believe that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property, including in the case of illicit alcoholic beverages within any vehicle, the vehicle containing the same, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this act and to make complaint against such persons as in other cases of misdemeanor. All property when seized shall be under the jurisdiction of the commissioner subject to this act. Any seized property shall be returned to any person claiming the same upon execution and delivery by him to the commissioner of a bond in a form and with sureties satisfactory to the commissioner in a sum double the retail value of the property, as appraised by the commissioner, conditioned, (1) to pay to the commissioner for the use of the State the full retail value of said property in case the same shall appear to have been unlawful property, and (2) in case it shall appear that said property was not unlawful property, to pay such part of the retail value thereof as may represent the value of the outstanding right, title, interest, lien or claim of any other person, to such other person, which bond shall be enforceable, as other obligations for payment of money, by civil action in any court of competent jurisdiction, first by the commissioner, to be instituted within one year from the date thereof, and, secondly, by such other person as third party beneficiaries, at any time after final judgment in such action by the commissioner, or after the expiration of said year in case no such action shall have been instituted by the commissioner in the meantime. In lieu of such bond, the claimant to the said seized property may pay to the commissioner for the use of the State the retail value thereof in cash, as appraised by the commissioner, under protest, subject to the right of the person making the payment to recover said sum upon establishing that the property was not unlawful property by an action to be commenced within one year from the date of such payment and not thereafter, in any court of competent jurisdiction. Said claimant may, in lieu of either remedy, bring an action of replevin for the said property against the commissioner in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of said court, said action to be commenced within thirty days from the seizure of such property and not thereafter. If the commissioner shall be satisfied that property seized was not unlawful property he may return the same to the person or place from whom the same were taken. If any seized property shall not be reclaimed within thirty days, after determination by him that such property is unlawful property, and subject to rules and regulations, the commissioner shall sell the same at public sale for the use of the State; provided, however, that the commissioner may in his discretion sell, destroy, or retain for the use of hospitals and State, county and municipal institutions, all seized illicit beverages. No such sale, destruction or retention for use of hospitals and State, county and municipal institutions shall be had except after hearing, of which notice, of not less than fifteen nor more than thirty days, shall be given by mail to all persons known or believed by the commissioner to have an interest in the seized property and by publication twice in a newspaper to be designated by the commissioner and circulating in the county where the

property was seized once in each of the two consecutive calendar weeks preceding such hearing. After such hearing, the commissioner shall file his determination in the form of an order which shall be subject to review on certiorari to the Supreme Court. Service of notice of application for such writ shall operate as a stay of the commissioner's order until further order of the court or of a justice thereof. All monies received by the commissioner hereunder shall be reserved during the time allowed any person an opportunity of establishing a right thereto and shall immediately thereafter be accounted for by the commissioner as in the case of license fees received hereunder.

"Property seized and released shall thereafter be subject to further seizure because of ownership, possession or use thereof in connection with further unlawful alcoholic beverage activities.

"The commissioner may, upon being satisfied that a common carrier, whose vehicle has been seized under the provisions of this act, has acted in good faith and had no knowledge at the time of the seizure, that the vehicle contained illicit alcoholic beverages, order that the seized vehicle be returned to the common carrier."

65. Municipal clerks will please give immediate notice of this revised enforcement section likewise as above requested (Items 61 and 63 supra).

66. Section 67 has been repealed.

67. Section 70 has been amended to read:-

"70. To the end that local police and other enforcing agencies shall enforce this act in the interest of economy and effective control it shall be the duty of all officers to use all due diligence to detect violation of this act and to apprehend the offenders and to make a proper complaint before a magistrate. Arrests may be made as in other cases of misdemeanors."

This section as revised emphasizes the duty of local police and all other enforcing agencies to take the initiative--to act and to apprehend and enter proper complaint. The legislative fiat cannot be side stepped. In cases of dereliction of duty, it lays a stone wall foundation for indictments charging non, mis, or malfeasance as the facts in the particular case warrant.

68. Municipal clerks will please give immediate notice of this section to all judges, magistrates, police officials and also to each policeman and enforcement officer in their respective municipalities.

69. Section 75 has been amended to read:-

"75. To provide for contingencies where it would be appropriate and consonant with the spirit of this act to issue a license but the contingency has not been expressly provided for, the commissioner may for special cause shown, subject to rules and regulations, issue temporary permits the fee for which shall be determined in each case by the commissioner and shall not be less than five dollars (\$5.00) nor more than five hundred dollars (\$500.00), payable to the commissioner and to be accounted for by him as are license fees."

70. The object of this amendment was to amplify and make more flexible the power to issue temporary permits to fit emergency cases and contingencies that cannot be foreseen and to provide a scale of fees from \$5.00 to \$500.00, commensurate with the value of the permit instead of the rigid fee of \$10.00 as formerly.

71. Section 76 was amended to read:-

"76. Anything to the contrary hereinbefore notwithstanding, and for the benefit not of property but of persons attendant therein, no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or public school house or private school house not conducted for pecuniary profit, except to manufacturers, wholesalers, hotels, clubs and fraternal organizations which own or are actually in possession of the licensed premises at the time this act becomes effective; provided, however, that the protection of this section may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body on authority of such church or school, such waiver to be effective until the date of the next renewal of the license; and provided, further, that said two hundred (200) feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed.

"The prohibition contained in this section shall not apply to the renewal of any license where no such church or school house was located within two hundred (200) feet of the licensed premises as aforesaid at the time of the issuance of the license, nor to the issuance and/or renewal of any license where such premises have been heretofore licensed for the sale of alcoholic beverages or intoxicating liquors, and such church or school house was constructed and/or established during the time said premises were operated under said previous license."

The amendments to this section have embodied in the act itself previous rulings heretofore made by the Commissioner and add in the last paragraph a provision designed to ameliorate the situation where the church or schoolhouse "moves into the nuisance" so to speak. If legally licensed premises are a nuisance in fact, the licenses ought not to be granted at all.

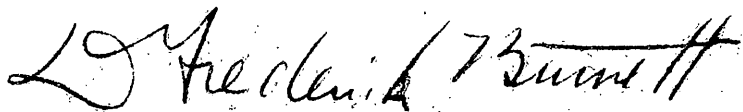
72. Section 23 was amended in respect to the last paragraph thereof which provided that no person who would fail to qualify as a licensee should be knowingly employed by or connected in any business capacity whatsoever with the licensee except as to specialized technical workers in cases where the approval of the Commissioner had first been obtained, providing that they were disqualified only as to residence or citizenship. The section as it formerly read prohibited a licensee from utilizing a minor son from making deliveries either by hand or by vehicle, or a minor daughter from doing menial work in a restaurant even though the child in question had nothing to do with the disposition of alcoholic beverages. The former included and sole test was whether a given person was connected "in any business capacity whatsoever with the licensee".

The amendment ameliorates this situation by adding a proviso reading:

"that persons failing to qualify as to age may, with the approval of the commissioner, and subject to rules and regulations, be employed by any licensee, but such employee shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage."

73. The Commissioner is prepared forthwith to approve applications from both state and also from municipal licensees seeking approval of employment of minors. Until formal rules and regulations are formulated, these applications may be entirely informal. They should set out all the facts and circumstances showing the exact nature of the duties to be performed by the minor, the times during which employed, the age of the minor and relationship, if any, to the applicant, and any other circumstances which may bear on the decision whether to approve or disapprove.

74. No employment may be made of any minor in any capacity whatsoever until written approval of the Commissioner is first obtained. There is no fee for this service and no expense attached thereto. Permit cards showing such approval will be issued to the licensee in all proper cases. No employment of any minor may be made without possession by the licensee of such a card signed by the Commissioner.



D. Frederick Burnett,
Commissioner.