Sent to Regular Mailing List

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

BULLETIN NUMBER 153 DECEMBER 17, 1936.

1. ADVERTISING - NO OBJECTION TO NEWSPAPERS OR MAIL CIRCULARS BUT HOUSE TO HOUSE SOLICITATION PERSONALLY OR BY TELEPHONE IS PROHIBITED - HEREIN OF ADVICE TO LICENSEES TO AVOID OFFENSE TO NEIGHBORING DRY COMMUNITIES

December 7, 1936.

Dear Commissioner:

Kindly inform me as soon as possible if it is permissible to advertise liquors and wines on our circular.

Awaiting your immediate reply as this is urgent, I am,

Very truly yours,

NATHAN OSTROV

December 9, 1936

Mr. Nathan Ostrov,
2912 Mt. Ephraim Avenue,
West Collingswood, N. J.

Dear Mr. Ostrov:

There is no barrier to advertising by a licensee in newspapers or by circulars through the mail. He must not, however, directly or indirectly, solicit from house to house, personally or by telephone, or permit such solicitation.

If you are going to continue this correspondence course with me, it might be well if you chose a post office address other than Collingswood. For, after I wrote you about the liquor, the pickles and the jam (Bulletin 149, Item 13), Mr. R. S. Wigfield, Borough Clerk of Collingswood, complained (and I think justly) that my reply addressed to you at West Collingswood was somewhat misleading in view that the voters there, in November 1935, nearly five to one, barred the sale of any alcoholic beverages in that municipality. Your license is issued by Haddon Township. Yet your letterhead with accompanying mention of fancy groceries, poultry and imported liquors, pins your address on West Collingswood.

I have already apologized to Mr. Wigfield and now suggest it would be a gracious act on your part to remove all trace of offense by deleting the name of that municipality from your stationery, or, if you have no other postal facilities, at least indicate clearly that it is your Post Office address and not your place of business.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SALES FOR ON-PREMISES CONSUMPTION - MAY BE MADE ANYWHERE ON THE LICENSED PREMISES - THE LICENSE APPLICATION INDICATES WHAT CONSTITUTES THE LICENSED PREMISES.

TRANSPORTATION LICENSES - THERE IS NO LIMITED TRANSPORTATION LICENSE.

Dear Sir:

Would it be permissible for a licensee to serve a consumer a glass of beer while the latter is standing outside of the building at an open window? This is sometimes the case when the premises of a licensee are outside on an open road.

Will you kindly inform us what a limited transportation license means. If it is something new, what is the fee?

Yours very truly,

SAVOY BEVERAGE COMPANY, INC.

December 9, 1936.

Savoy Beverage Company, Inc.,
Vineland, New Jersey.

Gentlemen:

Licensees may sell alcoholic beverages anywhere on the licensed premises. But their sales must be confined to the licensed premises. None may be made off the licensed premises. Hence, any licensee whose license permits him to sell alcoholic beverages for consumption on the licensed premises may sell a glass of beer either inside or outside of his building so long as where he sells it is on the licensed premises.

Applying the foregoing principles to your case, the question of fact to be determined is whether the place where the consumer stands outside of the building is a part of the licensed premises or not. If it is, the sale and delivery at such place is proper. If not, it is a violation.

In order to determine what constitutes the license premises, you should look at the description of the premises as set forth in the application for the license. If the place falls within such description, it is therefore part of the licensed premises; otherwise, not.

There are no limited transportation licenses. There is only one kind. It permits the holder to transport all alcoholic beverages into, out of, through and within the State of New Jersey and to maintain a warehouse. The fee for such a license is $200 per annum.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - REVIEW - CERTIORARI

MEMO TO: COMMISSIONER BURNETT

Re: Roy J. Walsh vs. Township Committee of the Township of Egg Harbor

In the above entitled matter an application for plenary retail consumption license had been denied by Egg Harbor Township. An appeal to this Department was duly taken and on October 31, 1936 you rendered your Conclusions affirming the action on the ground that the Township had established and abided by a uniform policy against the issuance of any licenses in the portion of the Township known as West Atlantic City and that such policy justified the denial of the application.

On November 25, 1936, counsel for Roy J. Walsh applied for and obtained from Mr. Justice Perskie a Rule to Show Cause, returnable December 5, 1936 at his chambers at Atlantic City, why a Writ of Certiorari should not be issued to review the Township's denial of the application and your affirmance of its action.

On the return day of the Rule to Show Cause I appeared before Mr. Justice Perskie at Atlantic City in opposition to the application for a Writ of Certiorari. A brief was submitted on behalf of the Department and after hearing the arguments of the respective counsel, the Justice denied the application.

You will be interested to note that our records disclose that you have heretofore decided 594 appeals from municipal action pertaining to retail licenses - on only five occasions have applications to the Supreme Court been made to review your determinations - two of these applications were abandoned and the remaining three were denied.

N. L. JACOBS
Counsel

Dated: December 9th, 1936.

4. FORFEITURE PROCEEDINGS - COLLATERAL ATTACK - REPLEVIN.

MEMO TO: COMMISSIONER BURNETT

Re: Joseph Arrico vs. Department of Alcoholic Beverage Control of the State of New Jersey, Sidney B. White, Asher Kantor, Harold Miller and Charles DiPietro

On August 7th, 1936, plaintiff instituted the above entitled action in replevin in the Essex County Circuit Court, seeking to recover certain property seized by investigators of this Department and ordered forfeited to the State of New Jersey after hearing held pursuant to the Control Act, together with damages in the sum of $2500.00 for detention of the property. Thereafter a petition that the writ be quashed on the following grounds, among others, was duly filed on behalf of the Department:

(1) That the goods sought to be recovered were in the custody of the law and were not repleviable;

(2) That the procedure for the recovery of the property seized for violation of P. L. 1934, c. 84, as amended by P. L. 1935, c. 255, as set forth therein, was exclusive and consequently an action in replevin was not maintainable;

(3) That the order of forfeiture constituted an adjudication in rem which could not be collaterally attacked in a replevin action.

An Order to Show Cause on the basis of the petition was entered by Circuit Court Judge William A. Smith. Depositions were duly taken pursuant to the Order to Show Cause and counsel for the plaintiff was advised that the matter would be brought on for argument.

The plaintiff has concluded to abandon his replevin action and a stipulation of discontinuance, duly signed and dated December 7, 1936 has been filed with the Essex County Circuit Court.

Dated: December 9th, 1936 -

N. L. JACOBS
COUNSEL

5. RESTAURANTS - MIXING OR SERVICE OF DRINKS BY UNLICENSED RESTAURANT PROPRIETOR OR HIS EMPLOYEES FOR CUSTOMERS WHO CARRY THEIR OWN IS A MISDEMEANOR - UNLICENSED RESTAURANTS MAY NOT COMPETE IN LIQUOR SERVICE WITH LICENSEES WHO PAY FOR THE PRIVILEGE.

December 11, 1936.

Lieut. John E. Murnane,
New Jersey State Police,
Trenton, N. J.

My dear Lt. Muranane:

I have your question by teletype:

> "Can a restaurant proprietor with no liquor license serve dinner groups cocktails prepared by his help from liquor brought in by the guests; likewise beer and mixed drinks?"

The answer is NO.

The reason is: Section 2 of the Control Act makes it unlawful to mix, process or distribute alcoholic beverages except pursuant to a license. The proviso that "any drink actually intended for immediate personal consumption may be mixed by any person" applies only in favor of consumers. It does not afford any privilege to a restaurant proprietor or his employees to dabble in liquor. If he wants to do that, he will be obliged, in fairness to licensees who pay for the privilege of serving liquor to their customers, to take out a license.

The same ruling applies to beer and all other liquor brought in by patrons who carry their own.

Service of liquor in a restaurant run for profit is a misdemeanor unless the premises are licensed for the purpose. The law is not to be frittered away by subterfuge or indirection.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. DISCIPLINARY PROCEEDINGS - REPEATED DISMISSALS IN THE FACE OF FACTS APPARENTLY DEMANDING A FINDING OF GUILT CREATE INFERENCE OF DESIRE TO ABDICATE THE ADMINISTRATION OF DISCIPLINE.

December 12, 1936.

Harry S. Reichenstein, Secretary,
Municipal Board of Alcoholic Beverage Control,
Newark, N. J.

Dear Sir:

I have before me staff report of Attorney Jerome B. McKenna of December 9th of proceedings before your Board.

Enclosed is a copy.

It appears that of the twelve cases referred, eight have been disposed of and decision reserved in four.

Of the eight cases decided, only one licensee was found guilty (case #8 in enclosed report). His offense was possession of illicit alcoholic beverages. The report shows that with the illicit liquor there was found a bottle of Juniper flavoring, a hydrometer, a bottle of glycerine, a quart of caramel coloring, and cans of straight alcohol - badges of bootleg! Yet for this major offense - an indictable crime for which the licensee has already been arrested - all your Board does is to give a seven day suspension! It is not only a milksop penalty, but it is contrary to the 30 day minimum which I have prescribed and of which your Board is well aware through repeated adjudications in the official Bulletins.

As regards the other seven cases, the charges in each were dismissed in spite of facts apparently demanding a finding of guilt.

Thus, Case No. 1:

Charges: (1) Selling liquor on Sunday during closed hours, contrary to your own City ordinance; (2) Failing to have beer taps properly marked, in violation of State rule. Notwithstanding what amounted to an admission of guilt on both counts, the charges were dismissed.

Case No. 2:

Club license - selling to non-members. Notwithstanding direct testimony of my investigators, admittedly non-members, that they were both served beer, the charges were dismissed.

Case No. 3:

Possession of illicit alcoholic beverage. The bartender, brother-in-law of licensee, declared the jug belonged to him so the charge was dismissed. Even the brother-in-law ran out by pinning it on his wife, who, he said had purchased the alcohol from an unknown person. Asked by your Board as to his absence when his premises were inspected, the licensee stated that he was at the City Hall to see about having his license transferred to his sister, the wife, who purchased the "hooch" (alcohol, water and coloring matter) from the mysterious stranger.

Case No. 4:

Possession of illicit alcoholic beverages. Charge dismissed notwithstanding evidence that open bottle behind bar marked "straight" whiskey was found on analysis to contain alcohol, water and coloring, and to be 15 points below proof shown on the label. The report also disloses that a bottle taken from the kitchen labeled "a blend 90 proof" proved on analysis to be straight whiskey 102.30 proof - clear evidence of refills of legitimate bottles with bootleg liquor! The licensee's "out" was that his brother had left the bottles after a confirmation party.

Case No. 5:

Possession of illicit alcoholic beverages. Here the wife of the licensee "took the rap", stating that she inherited the bottles from her parents - now deceased.

Case No. 6:

Possession of illicit alcoholic beverages - five open bottles of refilled "hooch". Licensee declared he had been the target for abuse and indignities by a group of dissatisfied customers (I should think they would be) who were responsible for all his troubles, and that his porter must have tampered with the whiskey because he was friendly with the customer-enemies. Still he kept the porter in his employ!

Case No. 7:

Falsified application for license and posing as a "front" and failure to disclose the true owner. Testimony of attempt to hand my investigator $10.00. Charges dismissed and transfer granted.

In each of the first six cases your record declares "the charges were dismissed and warned that a reoccurrence of this violation may result in the immediate revocation of his license." The Board therefore must have reached the conclusion that the licensees were guilty. Why, then, were the charges dismissed? Why should a licensee be warned if he is innocent?

It occasions no surprise to find repeated charges of possession of bootleg by licensees in Newark. The wholesale dismissals of such charges encourage just such trifling. Licensees are led to believe that even though they transgress nothing will happen. Warnings are impotent. Suspensions or revocations are eloquent. Of what use is all the work my staff does in securing evidence, preparing reports, attending hearings, when all that results is frustration by the very Board on whom the law casts the primary duty to enforce the law?

As I dictate, certification is handed in of the action of your Board yesterday on charges against the Club Royal of permitting females to act as hostesses. I recognize the boiler plate notation: "the charges were dismissed due to lack of evidence and warned that a reocurrence of this violation may result in the immediate revocation of his license." Of what use is it for the police to do their duty if your Board is repeatedly going to let them down? How can your Board expect to maintain respect for the law when violation is rampant but charge after charge is dismissed?

If your Board desires to abdicate the administration of discipline, I prefer they make a direct request rather than force me to take it over by their own action, or rather, lack of action. I shall accommodate in either event.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. APPELLATE DECISIONS - GURAL and TOPLOVICH vs. ELIZABETH.

STANLISLAW GURAL and MIKE TOPLOVICH, Appellants	)	ON APPEAL
-vs-	)	CONCLUSIONS
THE MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF ELIZABETH, Respondent.	)	

Harry J. Weiner, Esq., by Irving Weiner, Esq., Attorney for Appellants.

Edward Nugent, Esq., by John J. Griffin, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at 709 South Front Street, Elizabeth.

Respondent contends the application was properly denied by virtue of its resolution of October 23, 1935 prohibiting the issuance of any licenses except renewals within 1500 feet of an existing licensed place. On November 6, 1935, the City Council of Elizabeth adopted an identical resolution.

These resolutions were submitted to the Commissioner and were approved on November 18th, 1935.

Appellants do not question the validity of these resolutions but contend that appellants' application is for a renewal and not a new license.

Stanislaw Gural, one of the appellants, individually held a license for these premises until June 30, 1935. He attempted to renew, but being unable to raise the license fee, filed no formal application. Throughout the year, on various occasions, he spoke with the Secretary of respondent Board with reference to obtaining a license for these premises, but at no time was an application filed. The present application was filed in the partnership name on June 30, 1936. The premises sought to be licensed are within 1500 feet of an existing place.

In re Deighan, Bulletin #141, Item #2, it was held that one of the necessary incidents to a renewal is that the new license be issued to the person who held the old. In the instant case, a partnership and not the person to whom the old license was issued, is the applicant. Re Simandl, Bulletin #54, Item #3. Therefore, the present application is not an application for a renewal. Accordingly, respondent could not issue the license applied for so long as the resolution remains in full force and effect. Gimbel v. Pennsauken, Bulletin #116, Item #6; Vrabel v. Florence, Bulletin #128, Item #4. The denial of appellant's application must therefore be affirmed.

In view of the foregoing, no opinion need be expressed upon the effect of the interval of time between the expiration of the first license and the filing of the application for the second. See Re Deighan, supra.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

December 14, 1936.

8. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF NON-RESIDENT BARTENDER - LICENSEES RESPONSIBLE FOR SAFETY OF PATRONS - LICENSE SUSPENDED FOR ATROCIOUS ASSAULT AND BATTERY ON CUSTOMER BY BARTENDER.

In the Matter of Revocation Proceedings against	)	
THOMAS A. SNYDER, State Highway #39 Atsion, Shamong Township (Burlington County), P.O. Vincentown, N. J.,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License #C-6, issued by the Township Committee of Shamong Township.	)	
. . . . .	)	

Jerome B. McKenna, Esq., Attorney for the Department of Alcoholic Beverage Control.

James A. Ruberton, Esq., Attorney for Licensee.

BY THE COMMISSIONER:

Charges and notice to show cause why plenary retail consumption license #C-6 issued to Thomas A. Snyder by the Township Committee of Shamong Township for premises located on State Highway #39 Atsion, Shamong Township, Burlington County, should not be revoked, were duly served upon the licensee.

Charge #1 alleges that on the 3rd day of August, 1936, the licensee did suffer a brawl to take place on the licensed premises in violation of Rule #5 of the State Rules Concerning Conduct of Licensees and Use of Licensed Premises, Bulletin #48, Item #1. The testimony disclosed that the altercation upon which this charge was based occurred outside the licensed premises, and that neither the licensee nor any of his employees could properly be charged with responsibility.

Charges #2 and 3 allege that one Ray Erisman, a non-resident, was knowingly engaged by the licensee as bartender, and that said Erisman, on September 6, 1936, did attack and severely wound a patron.

The evidence discloses that Erisman tended bar in the licensee's premises on week-ends during the Summer of 1936; the licensee and his head bartender each admitted knowing that Erisman lived in Philadelphia; that on the afternoon of Sunday, September 6, 1936, one Samuel Little, a youth twenty-three years old, entered the licensee's premises intoxicated and ordered a drink; that the head bartender, the licensee's son-in-law, refused to serve him; that Little then moved to the other end of the bar and ordered a drink from Erisman, who likewise refused to serve; that as Little and Erisman were talking at the end of the bar Erisman broke a beer glass on Little's head and slashed his face and throat, severing his jugular vein; that Little was immediately taken to a doctor and then to the hospital, where he remained forty-two days; that Erisman disappeared, but was arrested the next day or so and charged with atroccious assault and battery with intent to kill, and is now awaiting action by the Grand Jury.

Section 23 of the Control Act provides that no person failing to qualify for a license may be knowingly employed by or connected in any business capacity whatsoever with a licensee. Section 22 provides that no retail license shall be issued to any natural person unless he shall have been a resident of the State of New Jersey for at least five years continuously. It follows that persons who have not been residents as aforesaid may not be employed by or connected in any business capacity whatsoever with a retail licensee. This fact has been widely publicized. Re Buch, Bulletin #126, Item #8; Rules Governing Employment of Persons Failing to Qualify, Bulletin #82, Item #10; Department Pamphlet (March, 1936) Rules, Regulations and Instructions, p. 25. However, the licensee claims he did not know it or that if he did, it slipped his mind. He apparently proceeds on the theory that a lame excuse is better than none. It was his duty to know. When one accepts the extraordinary privileges of a license he holds himself out as ready, able and willing to familiarize himself with the law and the rules and to keep within them. As said in Braunstein v. Bridgeton, Bulletin #63, Item 9:

> "Licensees are not to make any assumptions. They have no right to assume that they may do everything they please unless they actually know that it is expressly forbidden. On the contrary, they are bound to make sure that whatever they do is permissible."

The licensee also claimed that Erisman was not employed by him, but merely offered to assist the bartender on week-ends; that he was not paid by anyone and refused to accept any pay. Such an explanation taxes credulity. Even if true, it affords no excuse, since, as pointed out above, the prohibition is not merely against employment, but extends as well to any business connection whatsoever.

Licensees are responsible for the safety of patrons while on the licensed premises. Had the licensee exercised only ordinary care in the selection of a person to tend bar, he would have discovered that Erisman had once before been arrested in Philadelphia for atrocious assault and battery with intent to kill. He would thus have been put on guard and the altercation of September 6th and the ensuing severe injury to a patron would have been avoided. Instead he took a chance with an unqualified person with a police record. He must therefore take the consequences.

I find the licensee is guilty on charges #2 and 3.

It is, therefore, on this 14th day of December, 1936, ORDERED, that plenary retail consumption license #C-6 heretofore issued to Thomas A. Snyder by the Township Committee of Shamong Township, Burlington County, for premises located on State Highway #39 Atsion, P. O. Vincentown, N. J., be, and the same hereby is suspended for a period of forty (40) days, commencing December 17, 1936.

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - CAMPBELL'S TAVERN, INC. vs. ASBURY PARK

CAMPBELL'S TAVERN INC., a New Jersey Corporation,
Appellant,
-vs-
CITY COUNCIL OF THE CITY OF ASBURY PARK,
Respondent.

ON APPEAL

CONCLUSIONS

Tumen & Tumen, Esqs., by David H. Davis, Esq., Attorneys for Appellant.

No appearance for Respondent.
Milton T. Kamm, General Secy., for Y.M.C.A., an Objector.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at 601 Main Street, Asbury Park.

Respondent denied the application "on the grounds of the proximity of the premises to the Y.M.C.A. and that an additional liquor license is unnecessary because of the large number of licenses in the neighborhood".

Main Street runs about one mile from the southern to the northern boundary of Asbury Park, and is devoted to business purposes throughout its entire length. The premises in question are located in approximately the center of this business district.

Considering the licensing situation in the immediate vicinity, I find that during the previous fiscal year no licenses were issued in the 400, 500 and 600 blocks. Two licenses were were issued in the 700 block, namely, at 702 and 704 Main Street. Four licenses were issued in the 800 block, namely, 801, 802, 806 and 812 Main Street. The only change in this situation for the present fiscal year is that no application for renewal of the license at 812 Main Street has been made.

During the previous fiscal year one of the officers of appellant corporation conducted a restaurant licensed for the sale of alcoholic beverages in the neighboring Neptune Township known as Campbell's Tavern. Another officer was there employed. The place in Neptune Township was conducted, so far as the record shows, in a proper manner. Instead of renewing that license, the licensee and his employee organized appellant corporation to conduct a restaurant and bar at 601 Main Street, Asbury Park, the liquor license for which is the subject of this appeal.

The premises where appellant intends to conduct its business will contain twelve tables where light lunches and sandwiches will be served. The nearest restaurant of a similar character is located about four blocks away.

The determination of the question as to the number of licensed premises which should be permitted in any given vicinity is a matter confided to the sound discretion of the issuing authority. Where an attack is made upon the exercise of this discretion, the burden of proof rests upon the appellant. Kalish vs. Linden, Bulletin #71, Item 14. Where respondent has produced evidence to support its decision and appellant has failed to show any abuse of respondent's discretionary power, the action of respondent has been repeatedly affirmed. Hutchinson vs. Wyckoff, Bulletin #84, Item 3; Healey vs. Orange, Bulletin #85, Item 9; Lockett vs. Way, Bulletin #88, Item 2; Henry vs. Way, Bulletin #90, Item 9; Young vs. Pennsauken, Bulletin #114, Item 2; Lackowitz vs. Waterford, Bulletin #125, Item 12; Cascio vs. Roselle Park, Bulletin #127, Item 7; Lisi vs. Newfield, Bulletin #121, Item 9; Schick vs. Millville, Bulletin #133, Item 8.

In the instant case the respondent has made no appearance and there is no evidence in the record to support its decision. On the other hand, appellant has made a prima facie case. The premises are in the midst of a business neighborhood. Royal Liquor Stores vs. Trenton, Bulletin #59, Item 1. They are located in the 600 block, in which there are no other licensed places. There is no other restaurant of a similar character within four blocks. The issuance of a license to it will not increase the number of licenses which were outstanding in this business section during the previous fiscal year because no application was made to renew the license at 812 Main Street.

The remaining point to be considered is the proximity of the premises to the Y.M.C.A. building on Main Street in the 600 block but across the street from the premises in question. Main Street is forty-two (42) feet wide. It has a heavy vehicular traffic. Measured in the normal way that a pedestrian would properly walk, the distance between the premises for which the license is sought, and the nearest entrance to the Y.M.C.A. on Main treet, is ninety (90) feet. While in Section 76 of the

Control Act the Legislature has forbidden licensed premises within two hundred (200) feet of a church or school, no mention is made therein of Y.M.C.A. buildings. The objection of the Y.M.C.A. was placed on moral and ethical grounds and general opposition to any liquor traffic, and not on any specific complaint against the character of appellant's officers or the suitability of their place. There are already outstanding two licenses, at 702 and 704 Main Street, both of which are on the same side of the street as the Y.M.C.A. and nearly as close thereto as 601 Main Street. The Y.M.C.A. has not lodged any complaints against the operation of those places. The presumption is that appellant will conduct its premises in a proper manner. If it does not, the license may be revoked. If it does, the presence of another licensed place on the opposite side of this busy thoroughfare should create no more moral hazards for the young men who frequent the Y.M.C.A. building than do the present licensed places on the same side.

The action of respondent is reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: December 15, 1936.

10. GAMBLING - BINGO - IRRESPECTIVE OF THE ABSENCE OF COURT ADJUDICATION THAT BINGO IS A VIOLATION OF CRIMINAL LAW IT MAY NOT BE PLAYED ON LICENSED PREMISES IN ANY ROOM WHERE THERE IS A BAR OR IN WHICH ALCOHOLIC BEVERAGES ARE SOLD, SERVED OR CONSUMED WHILE THE GAMES ARE IN PROGRESS.

December 14, 1936.

Philip Sebold, Acting Chief of Police
Newark, N. J.

Dear Sir:

I have considered with care your request for ruling - "Is it permissible for taverns and clubs to conduct Bingo or similar games on licensed premises for either cash or merchandise prizes?"

Bingo is a game of chance. Whatever its alias - Keno, Radio, Lucky, or Tango - it is a glorified form of Lotto which we used to play as children. Each player per game purchases a card bearing 25 numbers in five rows of five squares each. No two cards bear the same arrangement of numbers. Someone draws at random a marker or a slip of paper on which there is a single number and announces that number to the players. Whenever that number is the same as one of the numbers on the card held by a player, he covers that number with a disc or counter. Numbers are thus successively drawn and announced one by one. The center square is "on the house" and is covered with a marker by all players at the start of the game. The first player to cover four or more numbers all in a row or a diagonal, wins the prize. It is possible to win in twelve different ways, viz: by covering first any one of the five horizontal, the five vertical or the two diagonal rows.

Gambling on licensed premises comes within my jurisdication only so far as (1) it is a violation of existing criminal law; or (2) it affects order, sobriety and decency.

1 - What the Legislature decides is undesirable, it declares to be wrong and implements such determination by making any departure a misdemeanor. Hence to the full extent that it has declared specified actions or devices to be unlawful such as playing roulette for money, or possessing a slot machine, the law will be enforced as written. As regards its general expressions such as "any unlawful game or gambling", the question whether a particular game comes within its meaning is a problem of interpretation of criminal law which is the exclusive function of the courts. To the extent that the courts have decided that a given device or game or action is a violation, for instance, rolling dice for drinks, I shall, of course, follow the court ruling. It is not my province, however, to pioneer on new interpretiations of the criminal law. There being no express prohibition of Bingo, or similar games, and there being no court decision construing them to be within the Crimes Act, I shall not treat them as a criminal violation until the courts rule otherwise.

2 - Without trespassing on any other jurisdiction, I am clear that these games are not appropriate to be played in a room where liquor is sold or served. The gambling fever rises with the stakes. The prize is high - the entry fee low - depending, of course, upon the number of players. The urge to acquire something for comparatively nothing obsesses the grownups beyond bounds even as children are lured by lotto beyond their bedtime. Premature cries of "Bing" or "Keno" or other shout to signalize the claim to prize, whether caused by innocent misunderstanding or maudlin mistake, would necessarily cause verification with probabilities of vociferous "explanations" or pugnacious "arguments" with resultant confusion and heavy chances of rank disorder. A drunk would start a fight for less than that!

I thereforerule that Bingo and other chance games of this sort may not be played in any room on licensed remises where there is a bar, or in which alcoholic beverages are sold, served or consumed while the games are in progress.

This ruling is effective December 18, 1936. It will be immediately promulgated as a rule concerning conduct of licensees and the use of licensed premises.. Violation is cause for revocation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. PRIZES - ALCOHOLIC BEVERAGES MAY BE GIVEN AS PRIZES BY LICENSEES SUBJECT TO ALL PROVISIONS CONTROLLING SALES.

PRACTICES DESIGNED UNDULY TO INCREASE THE CONSUMPTION OF ALCOHOLIC BEVERAGES - CAUTION.

Gentlemen:

Will you kindly advise us whether we would be violating any law by offering a prize of a bottle of liquor to the winner of billiard contest which will be staged in this city? Merchants

in other lines of business have offered such prizes as hats, gloves, and shoes to the winning contestants.

Yours truly,

BOND WINE & LIQUOR STORE

December 14, 1936

Bond Wine & Liquor Store,
Camden, New Jersey.

Gentlemen:

There is nothing in the Alcoholic Beverage Control Act or in the State rules and regulations which would prevent your offering a bottle of liquor as a prize to the winner of a billiard contest. Under your plenary retail distribution license, you have the privilege of making sales and deliveries to consumers. Whether you charge for the liquor or give it away is up to you. Whether such a prize would improve his game is for the winner to ponder.

But I cordially suggest that you keep all offers of prizes within reasonable and proper bounds. I am mindful of my responsibility to make rules and regulations against practices designed unduly to increase the consumption of alcoholic beverages and concerning gifts of equipment, products and things of value and I shall do so if it becomes necessary to exercise that power in the public interest. Be moderate in your offering of prizes and don't carry the thing to excess.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. APPELLATE DECISIONS - THE GREAT ATLANTIC AND PACIFIC TEA COMPANY vs. CONOVER

The Great Atlantic and Pacific Tea Company, a corporation, Appellant, -vs- Honorable Russell G. Conover, Judge of the Court of Common Pleas in and for the County of Ocean, in the State of New Jersey, Respondent.	ON APPEAL (6 cases) CONCLUSIONS

APPEARANCES:

J. Raymond Tiffany, Esq., Attorney for Appellant;

Ira Smith, Esq., Attorney for Respondent; Frederic M. P. Pearse, Esq., of Counsel.

BY THE COMMISSIONER:

Appellant, The Great Atlantic & Pacific Tea Company is a corporation of the State of New Jersey, operating approximately 15,000 chain stores in the sale of food products at

retail. In New Jersey it owns and operates 1115 stores, of which 19 are in Ocean County. During the previous license period expiring June 30, 1936, it held plenary retail distribution licenses for 6 of these stores in Ocean County, viz: #7 Main Street, Toms River; #71 Main Street, Toms River; #254 Second Avenue, Lakewood; #612 Arnold Avenue, Point Pleasant; #612 Boulevard, Seaside Heights; and #515 Main Street, Bayhead.

Applications for renewal of these 6 licenses were denied on the ground:

> "***I find that the company habitually sells alcoholic beverages for prices near, and in some instances below, the wholesale cost to local dealers. The effect is, that the local dealers must endeavor to meet this competition and exist with difficulty. From the point of view of public policy, it creates a situation in which the local dealers might the more easily be importuned to fall for the temptation to refill bottles, sell untaxed or bootleg liquor, inferior grades, and resort to other illegal practices. It is, therefore, for the general welfare of the trade and the public at large, that the above mentioned applications are denied."

Hence these six appeals.

Appellant introduced testimony to the effect that its prices were uniform throughout the State; that on occasion alcoholic beverages were sold at prices which were below prevailing wholesale prices but which were nevertheless above appellant's cost; that other licensees, located at Newark and elsewhere and competing with appellant's stores in Ocean County through newspaper advertising, oftentimes sold alcoholic beverages at prices lower than those maintained by appellant.

Respondent introduced testimony by competing licensees that appellant had at times sold alcoholic beverages below prevailing wholesale prices. They denied, however, as to be expected, that they had ever engaged in any illegal practices because of their inability to meet competition otherwise.

There is no proof that the purchasing ability and selling policy <u>has</u> caused the evil results which the learned judge fears. All that appears is his speculation that it <u>might</u>. The licensees of Ocean County therefore stand unimpeached on the record presented.

The only question, therefore, arising on these appeals is whether denial of license to one who keeps within the law is warranted because of the possible temptation to its rivals to violate the law in their effort to meet its economic competition.

The underlying controversy does not, in any real sense, relate peculiarly to liquor. It is the familiar dispute between the chain store and the independent operator - between "big business" and individual enterprise. The history of corporate growth in the United States discloses an ever present fear that the aggregation of wealth by corporations will result in encroachment upon individual liberties. There is a widespread belief today that a corporation operating chain stores by "furthering the concentration of wealth and of power and by promoting absentee ownership is thwarting American ideals; that it is making impossibl

equality of opportunity; that it is converting independent tradesmen into clerks and that it is sapping the resources, the vigor and the hope of the small cities and towns". See Brandeis, J. in Liggett v. Lee, 288 U. S. 517 (1933), at p. 568. This belief has resulted in legislative action directed against the chain stores. The constitutionality thereof has been considered. See State Board of Tax Commissioners of the State of Indiana vs. Jackson, 283 U. S. 527 (1931); Fox vs. Standard Oil Company, 294 U. S. 87 (1935); 40 Yale Law Journal 431 (1931); 31 Columbia Law Review 145 (1931). In the Jackson case the Supreme Court (with 4 Justices dissenting) sustained a State statute fixing a license fee for each store operated, increasing in amount with the number of stores. In the Fox case a tax similarly graduated was sustained as against chain gasolene stations. In the light of these cases, coupled with the police considerations peculiarly applicable to liquor (see Meehan vs. Board of Excise 73 N.J.L. 392 (Sup. Ct. 1906) aff'd 75 N.J.L. 557 (E. & A. 1908)) legislation directed against the operation of chain liquor stores by corporations would appear to be constitutional.

These considerations, however, are within the exclusive province of the Legislature both as to the existence of the power and the policy of its exercise.

Hence, no power can exist in any liquor license issuing authority to experiment with price control or chain store economics except such power has been expressly delegated by the Legislature.

Since no powers concerning prices have been delegated, I have heretofore determined that price fixing and price maintenance are none of my business. Re Petition for Price Stabilization, Bulletin 138, Item 8. By the same reasoning, no such power exists in any license issuing authority.

No express mention of chain stores by that or any equivalent name is made in the Control Act. The only delegation of power which has been made, which could possibly affect chain stores as such, is that contained in Section 37 of the Control Act which confers upon each municipality the right to provide that "no more than one retail license shall be granted to any person, corporation, partnership, limited partnership or association". By Section 6, the Judges of the Court of Common Pleas in 6th class counties, as issuing authorities, may exercise this limited power as regards each municipality within their respective counties. That is as far as our Legislature has gone. The express grant of this power by implication excludes every other power in that respect. Hence there is no power in an issuing authority to deny a license to a chain store merely because it is a chain store. In Sam Karpf Co. vs. Way, Bulletin 81, Item 15, it was sought to justify such a denial on the ground that the issuance of a license for a chain store was "socially undesirable". That is at least as strong a contention as the present one of price disturbance and potential temptation to persons other than the appellant to resort to illegal practices. The contention, however, was held untenable and the refusal to issue the applicant's license, reversed. After adverting to Sections 6 and 37 of the Control Act, I there said:

> "Thus with respect to each municipality respondent may provide that no more than one retail license shall be granted to any person, etc. No power, however, is vested

in respondent absolutely to prohibit any 'chain store' from receiving even a single license in any given municipality. The power vested in respondent by the Legislature is to prohibit the issuance of more than one and not to refuse to issue any at all."

The only remaining point is the contention of respondent's attorneys that the respondent's action must be sustained in the absence of any evidence that it was "fraudulent or corrupt". There is no such evidence at all. All I determine is that respondent was mistaken as to the extent of his powers. The contention is, nevertheless, without any solid foundation. The Control Act provides that an applicant who is denied a license may "appeal" to the Commissioner (Section 19); after hearing on the appeal, the Commissioner may order the issuance of the license if he decides that it was "improperly refused" (Section 35); and on appeal the Commissioner may "make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this act" (Section 35). The brief by counsel for respondent acknowledges that the word "improper" is broader than the word "illegal" and that the powers afforded to the Commissioner are wide. The Legislature contemplated that the Commissioner shall have broad supervisory power over all action taken by municipal issuing authorities pertaining to alcoholic beverage control and the statutory language is well adapted to accomplish that end. Acceptance of respondent's contention would nullify the clear statutory language and would, in substance, deprive interested parties of the full review so carefully provided for by the Legislature. The official bulletins are replete with cases in which the existence of authority to review municipal action entirely apart from any question of "fraud or corruption" has been declared. Cf. Retail Liquor Distributors Association vs. Atlantic City and M. E. Blatt Co., Bulletin #99, Item #4.

The action of respondent is therefore reversed.

Respondent is directed to issue plenary retail distribution licenses to appellant for the premises located at #254 Second Avenue, Lakewood; #612 Arnold Avenue, Point Pleasant; #612 Boulevard, Seaside Heights; and #515 Main Street, Bayhead. Respondent is further directed to issue such licenses to appellant for premises located at #7 Main Street, Toms River and #71 Main Street, Toms River, unless he concludes to exercise the power afforded by Section 6 to restrict the appellant to one license in Toms River. In this latter event, the appellant must be afforded an opportunity to determine which application it desires to press and the license shall be issued pursuant to that application and the other application shall be denied.

Dated: December 15th, 1936.

D. Frederick Burnett
Commissioner