

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 30.

May 23, 1934

1. LICENSES - NEW TYPES - SALE OF BEER ONLY.

May 20, 1934.

Thomas Coburn, Township Clerk,  
Burlington, N. J.

Dear Mr. Coburn:

I have your letter inquiring as to whether there are any new licenses provided for by the new legislation which enables the licensee to sell beer only.

There is a new license, effective immediately, which permits the sale of malt beverages only. This license is known as a Limited Retail Distribution License. See Bulletin 21, items 20 to 24, both inclusive, which gives you the text of the new law and the Commissioner's comments and rulings.

See also Bulletin 22, item 13, which is the prescribed form of application for this license.

See also Bulletin 22, items 11 and 12, which gives you the prescribed form of such license and the manner in which it is to be issued and accounted for.

There is also another new license, called "State Beverage Distributor's License", which enables the licensee to distribute and sell bottled, unchilled beer and other malt beverages only in quantities of not less than 144 fluid ounces both to licensed retailers and to consumers. This license, however, being a State license, is issued by the Commissioner and not by the municipality and costs \$500. per annum. This last mentioned license may not be issued until July 1, 1934. While you as a municipal official will thus have no duties with respect to this license, it is one for the sale of malt beverages only and comes within your question as asked and is therefore mentioned herein so that you can give complete information on the subject to all applicants.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

2. LICENSEES - ALIENS - WHO ARE-HOLDERS OF FIRST PAPERS NOT CITIZENS.

May 16, 1934.

Dear Sir:

I have yours of May 7th re L.P., who operates a delicatessen store at -----, Maplewood.

You say that Mr. P. possesses a retail liquor license in his name, and his wife has been helping him in the store in the sale of groceries and sandwiches, but does not sell alcoholic beverages; that she has applied for her citizenship papers

and will receive her final papers within the next four months; that the Maplewood Police Department has informed Mr. P. that his wife cannot sell sandwiches or any other merchandise in the store.

Mrs. P. would fail to qualify as a licensee because she is an alien (Sec. 22). Section 23 provides that no person who would fail to qualify as a licensee shall be knowingly employed by or connected in any business capacity whatsoever with the licensee. The underscored words govern the situation. Mrs. P. is connected with her husband in a business capacity when she sells merchandise in the store which has a liquor license. The Maplewood Police have informed Mr. P. correctly.

It is your duty to immediately notify your client so that the unlawful practice be stopped forthwith.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

### 3. LICENSEES - ALIENS - WHO ARE HOLDERS OF FIRST PAPERS NOT CITIZENS

May 21, 1934.

Dear Sir:

We have yours of May 14th in which you inquire as to whether a person who has applied for and obtained his first citizenship papers and is now waiting for the final document, would be eligible to act as a bartender for his brother, who is duly licensed to conduct a retail liquor business.

If the person you refer to has been before the Court and his petition for final papers has been acted upon and he has been formally admitted to citizenship and is merely awaiting delivery of the certificate or physical evidence of his naturalization, then he is a citizen and would be qualified, under the Act, to be employed as a bartender.

The mere filing of his petition for his final papers does not make him a citizen.

An alien is not eligible to be a bartender. See Bulletin 30, Item 2.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

By Geo. M. Mitchell, Jr.  
Inspector-in-Chief

### 4. SPECIAL PERMITS - PLENARY CONSUMPTION LICENSES - WHEN NOT ISSUABLE.

May 21, 1934

Charles Nemser, Executive Director,  
Jewish Community Center,  
604 Bergen Avenue,  
Jersey City, N. J.

Dear Mr. Nemser:

I have before me the application of May 18th of

Jewish Community Center for a Special Permit to sell alcoholic beverages at the Bazaar-Frolic for the whole week beginning tonight.

In these matters I have to take two main factors into consideration, to wit, the person and the place.

So far as your personnel is concerned, there is no question as to any of the high type men and women in your splendid organization, or as to the worthiness of their project. No question of sobriety is involved. The first point is therefore entirely satisfactory.

As regards the place, however, serious difficulties confront me. You tell me that one of the purposes of the Center is to promote educational activities for the youth of Jersey City, and I learn on independent inquiry that in pursuance of this laudable object, you conduct a school and classes for the youth in that building. I do not think it right that alcoholic beverages should be sold in a building devoted in whole or in part to the education of our youth. Moreover, inquiry discloses that the Center is located in a strictly residential neighborhood and that there is a church in the immediate vicinity, probably within 200 feet.

Again, the permit is sought for a whole week including Sunday evening, May 27th. A Temporary Permit for a single evening is one thing, but a permit which continues for a whole week may well raise the question as to whether it is fair to the licensees who pay the full license fee. If this special license were given to your organization for a whole week, what ground would I have to refuse a license to another worthy organization to whom you might sublet the hall for the following week? Carrying this to its logical conclusion, the result would be, in effect, the granting of a plenary retail consumption license without investigation or check-up by either State or Municipal authorities, without the requisite advertisement or opportunity to anyone to object and without any hearing. If I could do it for you, I must do it for everyone else. So-called temporary licenses for a week would ripen into virtual permanent licenses week after week.

In view of the several considerations above sketched, I am constrained in the exercise of what I hope you will agree is fair discretion to deny the application.

With very best wishes for the success of the Fair and sincerely regretting my inability because of the principles involved to accede to your request, I am

Sincerely yours,

D. Frederick Burnett,  
Commissioner.

5. APPELLATE DECISIONS - POWELL VS. BRIDGETON.

RAYMOND POWELL,  
Appellant

-vs-

CITY COUNCIL OF THE CITY  
OF BRIDGETON,  
Respondent.

ON APPEAL

CONCLUSIONS

-----

Samuel Iredell, Esq., Attorney for Respondent.

Raymond Powell, for himself.

BY THE COMMISSIONER:

This case was submitted by stipulation. It appears therefrom that Appellant complied with all the conditions precedent to the granting of a license; that he was born and raised in the City of Bridgeton, and has never been convicted of any violation of any Federal or State law; that no reason has been given by the municipality for the refusal of the license.

On this record, Appellant is entitled to his license. When an applicant presents a prima facie case, it may not be arbitrarily denied. To assign no reasons and then to stand mute on appeal makes the refusal appear arbitrary and unreasonable.

The action of respondent City Council in denying the application of the Appellant is therefore reversed.

D. FREDERICK BURNETT,  
Commissioner

Dated: May 21, 1934.

6. APPELLATE DECISIONS - LIPNICKI VS. TRENTON.

BENJAMIN A. LIPNICKI,

Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF TRENTON,

Respondent.

ON APPEAL

CONCLUSIONS

John H. Kafes, Esq., Attorney for Appellant.  
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, a temporary consumption license was issued to the appellant for the premises situated at #662 North Clinton Avenue, Trenton. On January 29, 1934, the application filed by appellant for a permanent license was denied. An appeal was filed from the denial of the application and has come on for hearing.

An examination by members of the Respondent Board, after a temporary license was issued, disclosed that there were no lavatory facilities within the building in which the appellant's business was to be conducted. Although a cursory examination had been conducted prior to the issuance of the temporary license, this fact had not been noticed. The sole lavatory facilities consisted of an outhouse which was described by a member of the respondent Board as unclean and generally unsanitary. There is no reason for licensing premises not equipped with modern sanitary devices in a city such as Trenton, which has an adequate

sewerage disposal system. It is therefore apparent that the respondent Board properly denied the application because of the unfitness of the premises sought to be licensed.

Appellant contends that this fact should have been ascertained prior to the issuance of the temporary license and that upon receiving the temporary license he was justified in assuming that a permanent license would later be issued. This contention misconceives the purpose and effect of temporary licenses. Section 46 of the Control Act provided for the issuance of temporary licenses, without investigation or advertisement, during the two months immediately following the passage of the Act. It was designed to enable the sale of alcoholic beverages pending investigation of applications for licenses. Clearly, therefore, the issuance of a temporary license did not require the issuance of a permanent license where, after investigation, the licensed premises were found to be unfit. (See Bulletin #18, Item #1).

The action of the respondent Board is affirmed.

Dated: May 21, 1934.

D. FREDERICK BURNETT,  
Commissioner

7. APPELLATE DECISIONS - NOBILI VS. TRENTON.

GUSTAVO NOBILI,  
Appellant  
-vs-  
MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF TRENTON,  
Respondent.  
-----

ON APPEAL  
CONCLUSIONS

Gustavo Nobili, Pro Se.  
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. After the filing of his application and until midnight, February 5, 1934, appellant conducted his business at #232 Hamilton Avenue in regular course, upon the understanding that the filing of his application and the receipt for the payment of the license fee were equivalent to a temporary license.

Although members of the respondent Board were aware that applicants who held receipts evidencing payment of their license fees were conducting their business, they took no notice thereof and acquiesced in the understanding that the applicants could continue to do business until the expiration of temporary licenses.

Appellant complied with all the formal requirements pertaining to his application. It is not suggested that his application contained any false statements. The character and

fitness of the applicant are unquestioned. The testimony established the change of position of appellant in reliance upon the understanding described above. The suitability of the premises sought to be licensed was established by the testimony and photographs introduced in evidence.

Appellant conducts a well known restaurant catering to persons of Italian origin and has been in such business in the vicinity of the premises sought to be licensed for over twenty-three years.

A member of the respondent Board testified that he was opposed to the issuance of licenses authorizing the sale of alcoholic beverages to persons conducting restaurants. He conceded, however, that the majority of the respondent Board had declined to adopt such a policy and had issued licenses to restaurants at various locations in the city. Accordingly, the suggested objection to the application on the ground that the license was sought to permit the sale of alcoholic beverages in connection with the conduct of a restaurant is without merit.

The respondent Board contends that the denial of appellant's application was justified in view of the resolution adopted on February 3, 1934 limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5, the limitation could not properly be applied to the appellant, and the action of the respondent Board in denying the application of the appellant is reversed.

D. FREDERICK BURNETT,  
Commissioner

Dated: May 21, 1934.

8. APPELLATE DECISIONS - LEVENSON VS. TRENTON.

HARRY LEVENSON,	}	
Appellant		
-vs-		ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,	}	CONCLUSIONS
Respondent.		
-----	)	

John H. Kafes, Esq., Attorney for Appellant.  
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. After the filing of his application and until midnight, February 5, 1934, appellant conducted his business at #214 South Warren Street in regular course, upon the understanding that the filing of his application and the receipt for the payment of the license fee were equivalent to a temporary license.

Although members of the respondent Board were aware that applicants who held receipts evidencing payment of their license fees were conducting their business, they took no notice thereof and acquiesced in the understanding that the applicants could continue to do business until the expiration of temporary licenses.

Appellant complied with all the formal requirements pertaining to his application. It is not suggested that his application contained any false statements. Although appellant's application discloses that he had been convicted of violating the National Prohibition Act, respondent does not question his fitness or character. The president of respondent Board testified favorably with respect to the appellant's personal qualifications. He further testified that the appellant had properly conducted his business under a license authorizing the sale of 3.2 beer. The testimony established the suitability of the premises sought to be licensed and the change of position of appellant in reliance upon the understanding described above.

The respondent Board contends that the denial of appellant's application was justified in view of the resolution adopted on February 3, 1934 limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5, the limitation could not properly be applied to the appellant, and the action of the respondent Board in denying the application of the appellant is reversed.

Dated: May 21, 1934.

D. FREDERICK BURNETT,  
Commissioner

9. APPELLATE DECISIONS - DI BONO VS. BRIDGETON.

SALVATORE DI BONO,	}	
Appellant		
-vs-		ON APPEAL
CITY COUNCIL OF BRIDGETON,		CONCLUSIONS
Respondent.	}	
-----		

D. Joseph Novaria, Esq., Attorney for Appellant.  
Samuel Iredell, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Application was filed by the Appellant for a Plenary Retail Consumption License for premises located at 85-87 So. Laurel St., Bridgeton, N. J.

No temporary license was ever issued to the Appellant. The Municipality passed a resolution providing that: "Plenary Retail Consumption Licenses shall be granted to hotels and restaurants only, which have been in business for a period of one

year."; also, limiting the number of Retail Consumption Licensees to six. The application of the Appellant was received as the fifth application for a Retail Consumption License. The City Council denied a license to the Appellant because he was not in the restaurant business for one year prior to the submission of the application.

Section 37 of the Control Act confers express power upon the Issuing Authority of the Municipality to limit the number of licenses to sell alcoholic beverages at retail and "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." Bul.16, Item #8.

Confining consumption licenses to hotels and restaurants in order to control the enforcement of the liquor law is not unreasonable. Neither is the probationary period of one year which must pass before any hotel or restaurant may qualify for a license.

The decision of the respondent Board is therefore affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: May 21, 1934.

10. APPELLATE DECISIONS - ROSENTHAL VS. TRENTON.

BENJAMIN ROSENTHAL,  
Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF TRENTON,  
Respondent.

ON APPEAL  
CONCLUSIONS

Sidney D. Beck, Esq., Attorney for Appellant.  
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. After the filing of his application and until midnight, February 5, 1934, appellant conducted his business at #257 Grand Street in regular course, upon the understanding that the filing of his application and the receipt for the payment of the license fee were equivalent to a temporary license.

Although members of the respondent Board were aware that applicants who held receipts evidencing payment of their license fees were conducting their business, they took no notice thereof and acquiesced in the understanding that the applicants could continue to do business until the expiration of temporary licenses.

Appellant complied with all the formal requirements pertaining to his application. It is not suggested that his

application contained any false statements. The character and fitness of the applicant are unquestioned. The testimony established the suitability of the premises sought to be licensed and the change of position of appellant in reliance upon the understanding described above.

The respondent Board contends that the denial of appellant's application was justified in view of the resolution adopted on February 3, 1934 limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5, the limitation could not properly be applied to the appellant, and the action of the respondent Board in denying the application of the appellant is reversed.

Dated: May 21, 1934.

D. FREDERICK BURNETT,  
Commissioner

11. APPELLATE DECISIONS - PILLA VS. TRENTON.

ANDREW PILLA,

Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF TRENTON,

Respondent.

ON APPEAL

CONCLUSIONS

Edward F. Craig, Esq., Attorney for Appellant.  
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant filed application for plenary retail consumption license for the premises located at #646 East State Street, Trenton. On December 21, 1933, the application was denied. An appeal was thereafter filed and has come on for hearing.

At the hearing it appeared that the appellant had no interest in the premises sought to be licensed or in the business to be conducted therein. The appellant testified that the application was filed in his name because of the illness of Mr. Terrell, the real owner of the business. Mr. Terrell has since died.

The Control Act contemplates that the application shall be filed only by the person who is the real owner of the business to be conducted under the license sought. The illness of Mr. Terrell was not a barrier to the filing of a proper application in his name and did not justify the filing of the application in the name of appellant.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,  
Commissioner

Dated: May 21, 1934.