

COMMISSIONER DURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 96

November 25, 1935.

1. REPORT OF THE COMMITTEE ON UNIFORM LAW

-to-

NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS

Held at Hotel Biltmore, New York City, Thursday,
November 14, 1935.

Investigation into the laws of the various States pertaining to liquor control discloses tremendous diversities. These diversities have given rise to considerable agitation for the establishment of nationally uniform laws on the subject.

When dealing with the ordinary fields of commercial law, there is no question that industry is furthered, litigation diminished and good feeling augmented if the merchant of one State knows that the laws applicable to a given transaction therein are substantially uniform throughout the States. Uniform laws of negotiable instruments, partnerships and sales have been an inestimable boon to our business communities. It is apparent, however, that in these matters no principles involving narrow prejudices and ethical predilections are present. Thus, the subject of domestic relations presents an entirely different situation. That the State of South Carolina still persists in denying its citizens the right to divorce; that the State of New York, despite its cosmopolitan complexion in metropolitan districts permits divorce only on a single ground; that here and there, according to the temper of the people, rigid, lax or even ridiculous laws have been adopted on this subject furnishes no basis for the enactment, as has been frequently urged, of a law imposing a uniform basis for divorce upon all of the people of the United States, irrespective of their wishes, their creeds, and their prejudices. Here uniformity would run counter to feeling and would create evils greater than those sought to be avoided.

There can be little doubt that liquor legislation falls within the same class. Each State has its own peculiar history and traditions and its people have their individual habits. It may appear troublesome that in one State a single license will permit the sale of all types of alcoholic beverages; that in another distinct licenses are necessary and that in a third only one type of alcoholic beverages may be sold for public consumption. Such distinctions may lead to confusion in the industry and in the minds of the widely travelled public, but they doubtless reflect more or less accurately the feelings of the majority of the communities for which they are enacted, and by thus reflecting those feelings stand so much the better chance of serious enforcement and observance. The late era of Prohibition is a classic example of the futility of imposing upon communities laws out of harmony with their sentiments.

We believe, therefore, that any proposed uniform law seeking to regulate the entire subject of liquor control, would be and should be destined to failure. It is our belief that uniformity should be confined to fields substantially devoid of local prejudices. In those fields it should be intensely sought. Within

this classification may fall subjects such as: (1) interstate shipments; (2) labeling of containers of alcoholic beverages; (3) standards of fill of containers of alcoholic beverages; and (4) standards of purity. In addition, a certain amount of uniformity may be achieved in fields such as: (5) the sales of warehouse receipts covering alcoholic beverages; and (6) advertising of alcoholic beverages.

1. (a) There seems to be no reason why a through shipment from Maine to Florida or California should not be dealt with in identical fashion by all States through which the shipment passes, except the States of origin and destination. Such through shipments may safely be permitted without any restriction provided they are accompanied by proper waybills.

(b) Importations by individuals of limited quantities for personal consumption should receive similar treatment. No uniformity is presently found.

(c) The problem of shipments by foreign dealers to licensed dealers within a State has thus far received a wide difference of treatment. The industry has been justifiably clamoring for some uniformity in this field.

2. The suggestion that labeling requirements should be uniform has provoked no dissent. It would be intolerable to require that manufacturers, doing interstate business, comply with different labeling standards in every State to which their merchandise is shipped.

3. It is generally agreed that the sale of undersized containers is undesirable and uniformity in this field should be readily attainable.

4. Cooperative action with respect to standards of purity will not encounter any insurmountable obstacles since the ultimate desires of all States in this regard are identical. Here, the provisions of the Pure Food and Drug Act must, of course, receive consideration.

5. Certain States treat the sales of warehouse receipts covering alcoholic beverages as security transactions; others treat them as sales of the beverages themselves; others require separate licenses; and still others exercise no control. Since most warehouse receipt transactions extend beyond State laws, the subject should receive special consideration with a view towards uniformity.

6. The subject of advertising has been troublesome to Control Boards. Complaints are received that present liquor advertising is excessive and a bill was introduced in Congress curbing severely all interstate liquor advertising. The subject may be a difficult one on which to attain cooperative action because of the diverse sentiments of the communities of the respective States. Despite this difficulty, however, the importance of the problem suggests the desirability of attempting cooperative action in this field.

Special Committees have been appointed by this Conference to deal with most of the specific subjects above mentioned. In view of the opinions hereinbefore expressed on the adoption of a uniform law covering the entire subject of liquor control and the existence of such special Committees, no proposed uniform provisions are being submitted herewith. We do, however, wish to suggest the

following procedure as an aid to the attainment of uniformity in fields where it is considered desirable:

A central committee composed of a representative of the Federal Alcohol Administration and several representatives of the States should be created. This committee should have adequate secretarial and financial facilities for the receipt and distribution of complete information from and to all of the various States and the Federal authority pertaining not only to existing statutes, rules and regulations but also to proposed statutes, rules and regulations. This committee would compile and disseminate necessary information and would directly aid in the attainment of uniformity. If the State of New York, for example, were considering a regulation concerning shipments into New York, New Jersey, Connecticut, etc. would be vitally interested. New York would advise the central committee of its contemplated action and the committee would, in turn, notify the other States. A meeting of representatives of the States concerned would then be called to discuss the proposed action. Furthermore, the committee would keep in constant touch with the Federal Alcohol Administration; would present to the Federal Administrator the views of the States to the end that such Federal regulations as are adopted will have given due consideration thereto; and would suggest to the States, for their uniform adoption, such Federal regulations as are appropriate. Finally, the Committee would serve as a useful instrumentality in translating into action recommendations made by Special Committees and adopted by the National Conference.

In lieu of an independent committee, all of the foregoing might be accomplished by a modification of the purposes of the existing Committee on Uniform Forms and Systems and interchange of Information between States. If the individual States do not sincerely desire to cooperate in the attainment of uniformity in particular fields, then all the committees in the world will be of no avail. If they do, the suggested committee would serve a useful purpose if it did no more than to bring together neighboring States on a particular problem in advance of action taken thereon by such States.

Respectfully submitted,

JOSEPH M. RYAN, NEW YORK
O. O. NATWICK, WYOMING
W. J. LINDBERG, WASHINGTON,
GEORGE EPPLEY, OHIO
CHAIRMAN, D. FREDERICK BURNETT, NEW JERSEY

Dated:
November 13, 1935

2. RULES GOVERNING TRANSPORTATION OF ALCOHOLIC BEVERAGES BY RAILROAD CARRIERS

1. No railroad carrier shall transport alcoholic beverages into, through or out of New Jersey without a transportation license, except as follows:

(a) Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported through this State without such license where no delivery is made therein, provided that the carrier shall furnish to the Commissioner, on demand, a waybill or copy thereof or similar document stating the names and addresses of the consignor and consignee and the nature and quantity of the alcoholic beverages being transported.

(b) Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported (1) from a licensed public warehouse or the licensed premises, warehouse, salesroom or office of a licensed New Jersey manufacturer or export wholesaler to a point outside this State, and (2) between piers of import located within this State and points outside this State, without such license, provided that the railroad carrier is the holder of a special permit issued by the Commissioner authorizing such transportation and shall furnish to the Commissioner, on demand, a waybill or copy thereof or similar document stating the names and addresses of the consignor and consignee and the nature and quantity of the alcoholic beverages being transported.

2. Railroad carriers holding transportation licenses may transport alcoholic beverages into, through and out of New Jersey in vehicles controlled and operated by them, provided, however, that each of said vehicles transporting alcoholic beverages, except railroad cars, shall bear a proper transportation insignia.

3. No transportation license held by a railroad carrier shall authorize the transportation of alcoholic beverages in vehicles not controlled and operated by such carrier, even though operated by an independent contractor under exclusive contract to transport and deliver for such carrier; provided, however, that carriers holding special permits, in addition to transportation licenses, may use such vehicles in connection with their door to door deliveries to the extent and in the manner allowed by the special permits.

4. Railroad carriers holding transportation licenses may transport alcoholic beverages from a point outside this State to a point within this State in the following cases, but not otherwise:

(a) Where the consignor or consignee of the alcoholic beverages is the holder of a New Jersey manufacturer's or wholesaler's license or a special permit issued by the Commissioner; or

(b) Where the carrier has mailed to the Commissioner from a point not in excess of two hundred and fifty (250) miles from Newark, New Jersey, at at least forty-eight (48) hours prior to the delivery of the alcoholic beverages, a statement of the shipment, including the names and addresses of the consignor and consignee and the nature and quantity of the alcoholic beverages being transported, the shipment may be completed unless otherwise specifically directed by the Department; provided, however, that in lieu of such statement the carrier may furnish the aforesaid information by telephone or telegraph at least twelve (12) hours previous to the completion of the shipment.

5. Nothing herein contained shall prohibit the holders of retail transit licenses from bringing alcoholic beverages into this State in connection with such licenses as heretofore.

6. These rules are effective immediately.

D. FREDERICK BURNETT
Commissioner

Dated: November 13, 1935.

3. MUNICIPAL ORDINANCES - PROHIBITING CASHING OF CHECKS OVER BARS
TENTATIVELY APPROVED.

November 12th, 1935.

Mr. William B. Dunn,
City Recorder,
Salem, New Jersey.

Dear Sir:

Section 5 of your Council's resolution regulating the sale of alcoholic beverages prohibits the cashing of checks over bars or in the rooms in which alcoholic beverages are dispensed. I take it that this regulation was designed to prevent the pernicious practice of drinking up the weekly pay check every Friday night. While undoubtedly commendable in that respect, the question arises as to whether or not, in order to combat one evil, the prohibition of all cashing of checks is warranted. The use of bank checks is, today, common commercial procedure. It could be argued, and not unreasonably, that the cashing of a twenty dollar check was to all intents and purposes no different than the cashing of a twenty dollar bill and that, therefore, to prohibit merely the cashing of checks would not provide the proper remedy. Nevertheless, I shall tentatively approve your Section 5 as an exercise of the authority conferred upon municipalities by Section 37 of the Act to regulate the conduct of licensed retail businesses, and leave its actual application to concrete situations which may arise in the future. If anyone considers himself aggrieved thereby and makes an appeal therefrom, the matter can be taken up on hearing when all parties will be given full opportunity to be heard and the issue fully threshed out.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

4. MUNICIPAL ORDINANCES - PROVISIONS GOVERNING TRANSFERS
SUPERSEDED BY STATE ACT

TRANSFERS OF LICENSES - DOES NOT REQUIRE SURRENDER OF OLD
AND ISSUANCE OF NEW LICENSE - CANNOT BE DENIED SOLELY ON
GROUND THAT PREVIOUS TRANSFER HAD BEEN MADE WITHIN SIX MONTHS.

November 12th, 1935.

Mr. Harvey G. Wisner,
Town Clerk,
Phillipsburg, New Jersey.

Dear Sir:

I have before me the resolution fixing plenary retail consumption, distribution and club license fees, limiting the number of licenses and regulating transfers passed by the Board of Commissioners pursuant to the Alcoholic Beverage Control Act as amended and supplemented.

It is approved as submitted except insofar as Section 2 limits the number of plenary retail consumption, distribution and club licenses. In this respect, for the reasons stated in Bulletin #43, item 2, it does not need the Commissioner's approval in the first instance in order to be effective. Besides limiting the number of licenses to twenty plenary retail consumption, three plenary retail distribution and seven club, there is exception made in favor of renewals of existing licenses. This exception in favor of present license holders is but fair provided the licensees themselves are worthy and fully qualified. It is, therefore, approved. Cf. re: Teaneck, Bulletin #79, item 3.

I take it that the concluding proviso of Section 2 and Section 3 were intended to enable a licensee to dispose of his business and the purchaser thereof to obtain a new license in spite of the limitation of the number of licenses fixed in Section 2. Section 2 concludes: "provided further that any premises now licensed may be licensed, upon surrender of license if such premises shall not have been without a license for more than sixty days." Section 3 provides: "that upon the sale or transfer of a business and application for transfer of license, a license may be issued to the purchaser or transferee of such licensed beverage business provided, however, that not more than one transfer of a license shall be granted within a period of six months." We need not question at the present time the propriety of this solution because amendment to the statute, enacted after the adoption of your resolution, will enable you to solve the problem more simply. On June 8, 1935, Chapter 257, P. L. 1935 became effective amending Section 23 specifically to provide for the transfer of a license from one person to another in accordance with the conditions and requirements set forth therein. Such transfer does not involve the surrender of the old license or the issuance of a new one. Instead, it is accomplished, after the completion of the requirements, by endorsing the old license over to the person to whom the transfer is being made. See Bulletin #83, item 1, paragraph 9 in which the amendment is set forth, and the Rules Governing Transfers of Licenses, Bulletin #87, item 6 in which the procedure is explained. It is no longer necessary, as your Section 2 would infer, in order to effect the transfer that the original license actually be surrendered and a new license for the same premises issued. Therefore, I suggest that the concluding proviso of Section 2 and Section 3, above quoted, be excised and that in place of the former, Section 2 be amended to conclude: "provided further that nothing herein contained shall be construed to prevent the transfer of a license from one person to another in accordance with Section 23 of the abovementioned Act."

One more point concerning Section 3 as it now stands: I do not think that there is any power conferred upon a license issuing authority to limit the number of transfers of any particular license to not more than one in a period of six months. The statute, Section 23, as amended, sets forth the express conditions and requirements with which compliance must be had in order to transfer a license. There is no time limit or restriction included. And I have grave doubts that a transfer could legally be refused solely on the ground that a previous transfer of the license had been made within the preceding six months. That alone could not constitute a disqualification. That part of Section 3 is, therefore, disapproved. The rest, as above pointed out, would be cured by the suggested amendment to Section 2.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

5. RULES AND REGULATIONS GOVERNING WINE PERMITS FOR PERSONAL CONSUMPTION.

1. Wine for personal consumption may only be manufactured under the provisions of a Special Wine Permit which authorizes the manufacture within homes or other premises used in connection therewith, and during the permit period, of wine in quantities of not more than two hundred (200) gallons. Wine manufactured under the authority of such permit must not be sold. The fee for this Permit is one dollar (\$1.00).
2. No such permit shall be issued to the holder of any alcoholic beverage license.
3. No such permit shall be issued for the manufacture of wine on premises licensed for the retailing, wholesaling or manufacturing of alcoholic beverages.
4. No such permit shall be issued to any person under legal age.
5. Not more than one permit shall be issued to any individual during the fiscal year.
6. Special Wine Permits are not transferable from person to person and transfer from premises to premises may only be made upon the permission of the Commissioner.
7. No such permit shall be issued unless all Federal requirements pertaining thereto have been complied with.
8. Violation of the provisions of such permit shall be grounds for revocation.

APPROVED AND EFFECTIVE

Nov 5, 1935.

DFB.

6. WINE PERMITS - FOR PERSONAL CONSUMPTION - NOT ISSUABLE TO HOLDER OF ANY ALCOHOLIC BEVERAGE LICENSE.

November 12th, 1935

Mr. Eugino Porcoro,
138 Monroe St.,
Garfield, N. J.

Dear Sir:

I have your letter of October 16th referring to your request for a Special Permit to manufacture wine for personal consumption.

Our file verified the information in your letter that you hold a Plenary Retail Consumption License for premises at 129-30-31 Monroe Street. Under the provisions of this license, you are entitled to sell for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle or to sell alcoholic beverages in

original containers only for consumption off the licensed premises. The license, therefore, confines itself to the privileges set forth above.

No retail licensee is given the privilege to manufacture alcoholic beverages. The fact that the beverages manufactured are not to be sold has little bearing in the matter.

It would hardly be consonant with effective control to allow a retail licensee to manufacture wine for personal consumption on premises which are licensed for the sale of alcoholic beverages. Such a condition would undoubtedly present a situation difficult for enforcement officers in the checking up of licensed premises and place the licensee in a precarious position. To permit wines to be manufactured on licensed premises, of which the sale is prohibited, would be contradictory to effective control.

The fact that your physician has prescribed that both you and your wife drink this type of wine does not warrant the issuance of such permit. In prohibiting you from obtaining a Wine Permit, there is no unreasonable deprivation of your rights since you may purchase the necessary wine through proper channels.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By: ERWIN B. HOCK,
Deputy Commissioner

7. LICENSEES - EMPLOYMENT IN STATE HIGHWAY DEPARTMENT IS NO CAUSE FOR SURRENDER OF LICENSE OR OF SEVERANCE OF PARTNERSHIP IN LICENSED BUSINESS.

November 14, 1935.

Mr. John F. Martin,
14 Third Street
Bordentown, N. J.

Dear Sir:

Your letter of November 11th referring to your severance of partnership because of your employment by the State Highway Department has been referred to me for reply and verification of telegram of November 13th.

There is nothing in either the State Alcoholic Beverage Control Act or in rules and regulations pertaining thereto which would require the severance of your partnership in the retail liquor business because you have accepted employment in the State Highway Department. It is true that certain government officials are prohibited from obtaining Solicitor's Permits for the sale of alcoholic beverages, but this is only because their capacity as salesmen of such beverages might conflict with their official duties in either the control of the alcoholic beverage industry or in the enforcement of laws pertaining thereto.

In your case, the question of conflicting interest does not arise because in your position you are not connected, directly or indirectly, with either control or enforcement in the liquor

industry. Under certain conditions even municipal officials may obtain liquor licenses as provided in Section 18 A of the Control Act.

Therefore, there is no reason why you should not continue in partnership in the liquor business and accept employment by the State Highway Department, if the situation is satisfactory to that Department.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By Erwin B. Hock,
Deputy Commissioner.

8. REFERENDA - SUNDAY SALES - LEGAL EFFECT AND DUTIES IMPOSED.

November 20, 1935.

Lewis Wildrick
Township Clerk
Oxford, New Jersey

Dear Sir:

I have your letter of November 14th.

I take it that in Oxford Township there was submitted on referendum at the general election held on November 5th last, the question "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" and that the majority voting thereon voted "No." The statute says that if that question is submitted and a majority vote "No", the clerk of the governing body shall forthwith in writing notify the Commissioner of the question submitted and the vote thereon and immediately upon such notification, it shall become unlawful for any person to sell alcoholic beverages in that municipality on Sundays and such sale shall thenceforward constitute a violation of the Act.

For the purpose of the required statutory notification, I shall consider your letter sufficient. The referendum, therefore, is effective at once and supersedes your ordinance so far as the ordinance may have permitted Sunday sales. It is, therefore, now unlawful for any person to sell alcoholic beverages in Oxford Township on Sundays. Any such sale is in violation of the Act and a misdemeanor, subject to the fine or imprisonment set forth in the Act. Arrests should be made as in other cases of misdemeanors.

In fairness to the existing licensees in your Township, they should be at once formally served by you with notice of the result of the referendum and of the legal effect thereof as above outlined. While this is not legally necessary, it is a gracious act of courtesy to the licensees and at the same time it will promote a strict enforcement by utterly destroying any attempted defense to the effect that the licensee did not know or was not aware of the result or effect of the referendum. Proof of service should be made and kept in your files showing just what notice you did serve and upon whom it was served and where and when. A copy of such proof of service will be appreciated if filed in my office as well.

New Jersey State Library

From now on it becomes the duty of your Township Committee to enforce the wishes of the majority of the electorate as shown by the referendum.

Kindly certify to me the exact question which was submitted at the referendum, together with the number of votes recorded both for and against so that my records will be accurate and complete.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

9. LICENSEES - EMPLOYMENT OF MINORS - MINIMUM AGE LIMIT SET AT FIFTEEN YEARS.

November 20, 1935.

Mr. Nicholas J. De Vita,
Sandyston,
P. O. Hainesville,
New Jersey.

Dear Sir:

I have your application seeking the employment of your three sons, 14, 13 and 12 years of age respectively, as musicians in your licensed tavern.

The employment of minors in liquor establishments presents a serious problem. Anyone who sells any alcoholic beverage to a minor is guilty of a misdemeanor. (Section 77). A license may not be issued to any person under legal age. (Section 22). Nevertheless, a person under age may, with the approval of the State Commissioner, be employed by a licensee on condition that he shall not sell or participate in the manufacture, processing or bottling of any alcoholic beverage. (Section 23).

I have heretofore refrained from fixing a minimum age in order to ascertain by experience what that age should be. In the meantime, an application for the employment of a child of seven years as a mind reader was unhesitatingly denied. So also an application for the employment of a child of ten years as a dancer. The question of my approval must now be decided in respect to your three sons of varying ages.

Other laws indicate the public policy of this State respecting the employment of children.

The School Act provides that children up to fourteen years of age must attend school regularly. A certificate is issuable, however, for the employment of children under sixteen providing that the employment is confined to the selling of newspapers, blacking shoes, running errands or other light employments otherwise not prohibited by law for children under sixteen.

The Act to Protect Children from Neglect and Cruelty (P.L. 1880, Page 124) provides that any person having the care or control of any minor child under the age of fifteen years "who shall in any manner, sell, apprentice, give away or permit such child to sing, dance, act or in any manner exhibit in any

dance-house whatever, or in any concert saloon, theater or place of entertainment where wines or spirituous or malt liquors are sold or given away, or with which any place for the sale of wines or spirituous or malt liquors is directly or indirectly connected by any passageway or entrance and any proprietor of any dance-house whatever, or any such concert saloon, theater or place of entertainment so employing any such child, shall be guilty of a misdemeanor* * *".

I therefore rule that no minor under the age of 15 years may be employed in any manner whatsoever by any consumption licensee.

The regulations will be amended accordingly.

I must therefore deny your present application without prejudice, however, to re-application as your boys severally become of age.

Yours very truly,

D. FREDERICK BURNETT
Commissioner

10. SOLICITOR'S PERMIT - MORAL TURPITUDE - WHAT CONSTITUTES

November 21st, 1935.

Mr. _____

Dear Sir:

RE: Blank

Receipt is acknowledged of your request for answer to the following question:

"Can a person previously convicted under federal laws for income tax evasion, and also under the 18th amendment convicted of 'bootlegging', apply for and obtain a liquor salesman's license?"

Without knowing the circumstances surrounding the convictions, it would be impossible to answer the question. A person might have been convicted for "income tax evasion" because of an erroneous interpretation of the income tax law and, if it appeared that the person merely made an honest mistake, there would be no turpitude involved. On the other hand, a conviction for "income tax evasion" might show such a flagrant disregard of the law that turpitude would be involved. A conviction for "bootlegging" might have resulted in one case from a single violation of the Prohibition Act and, in another case, from wholesale illegal liquor operations. Moral turpitude probably would not be involved in the first case, whereas it might appear in the other case.

As a practical matter, if an applicant for a solicitor's permit should admit in his questionnaire the two convictions mentioned in your question, the matter would be investigated independently by the Department and a hearing would be granted to the applicant so that all the facts concerning the convictions might be ascertained. The Commissioner, after considering the evidence, would determine the question as to whether either of these convictions involved moral turpitude.

If his decision was that moral turpitude was involved in either of the convictions, then the application for solicitor's permit would be refused. If he decided that there was no moral turpitude involved in either conviction, then the application for solicitor's permit would be granted, provided the applicant was otherwise qualified to receive a permit.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

By: Edward J. Dorton,
Attorney-in-Chief.

11. RECTIFIERS - POWER TO SELL PRODUCTS LIMITED TO SUCH BEVERAGES AS HAVE BEEN PROCESSED UNDER ITS LICENSE IN THIS STATE AND DOES NOT EXTEND TO BEVERAGES MANUFACTURED ENTIRELY OUTSIDE THIS STATE AND NOT SUBJECTED TO ANY PROCESSING WITHIN THIS STATE.

October 31, 1935.

Dear Sir:

Re: The American Distilling Company

This is to confirm Mr. Collins' recent oral request for a reconsideration of ruling set forth in Bulletin 55, Titles 4 and 5.

Our client above stated presently holds New Jersey licenses as follows:

Rectifier & Blender License No. R-44
Plenary Export Wholesale License No. EW-22
Public Warehouse License No. X-26

A serious question has arisen as to whether under the present Control Act the Rectifier & Blender License is not sufficient for said client's purposes.

An examination of Section 11, Sub-division 4, of said Control Act, discloses that, in addition to rectifying and blending, the holder of a Rectifier & Blender License is permitted "to distribute and sell his products to wholesalers and retailers, respectively, licensed in accordance with this act and to sell and distribute without this state to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse." Our client feels that a reasonable construction of this section should permit it, as the holder of a Rectifier & Blender License, to sell "his products" regardless of whether they are rectified or blended in New Jersey or manufactured out of said state at another of its plants and by it.

We call your attention to the fact that Section 11 of the Control Act as originally enacted (P.L. 1933, C.436, p. 1180 at p.1187) authorized respective holders of licenses enumerated therein to distribute and sell "his products" excepting however holders of limited winery license and limited distillery license who were authorized only to distribute and sell "his said products". The Legislature saw fit to amend Section 11 twice. By first amendment

(P.L.1934, C. 85, p.218 at p.227) limitation to distribute and sell "his said products" under the Limited winery license was changed to "his products", while all other limitations dealing with right to distribute and sell were left unchanged. In the second amendment (P.L. 1934, C. 242, p.687) dealing only with Section 11 and declaring the present law relating to Class A licenses, the Legislature was evidently satisfied with the limitation of rights to distribute and sell, for provisions relating thereto do not differ from those in the first amendment.

The limitation "his said products" presently applying only to holders of a limited distillery license, is distinctly different from the phrase "his products" which is used in enumeration of rights and privileges obtaining under a Rectifier & Blender license. The word "said" has acquired a definite meaning in legal terminology. In 54 Corpus Juris, at page 1118, "said" is defined as follows:

"SAID. In legal terminology, above mentioned; aforementioned; aforesaid; already spoken of; before mentioned; previously mentioned, or named. It is a relative word, or a word of reference to what has been already spoken of or specified; and if there is a question as to which of the antecedent things or propositions specified is referred to, it is generally held to refer to the last of such antecedent propositions or things; or to the next antecedent; but such rule will not be strictly applied where it would result in destroying or materially altering the intention expressed in the whole context of the language under consideration; and the word will be referred to the proper antecedent."

Accordingly, since the Legislature has so carefully amended Section 11 on two different occasions within a period of less than one year, and, in its final form, the holder of a Rectifier & Blender license is entitled to distribute and sell "his products" with no reference back to limit and designate which of "his products" are to be dealt with, we feel that interpretation placed upon this portion of Section 11 by the Commissioner in Bulletin 55, Title 4, is inconsistent with the plain wording of the Statute under consideration.

Present activities of our client in New Jersey do not differ materially from those contemplated by it and set forth in our letter of November 21, 1934, addressed to the attention of Mr. Shapiro of your department.

Kindly respond hereto at your early convenience, and oblige

Very truly yours,

McDERMOTT, ENRIGHT & CARPENTER

November 8, 1935.

McDermott, Enright & Carpenter, Esqs.,
Jersey City, N. J.

Gentlemen:

Re: The American Distilling Company

I have carefully considered your letter of October 31st, requesting a modification of the rulings contained in Bulletin #55, Items #4 and #5, to the effect that a rectifier's license does not authorize the sale, within this State, of alcoholic beverages manufactured outside this State and not subjected to any processing within this State.

Each type of manufacturer's license provides that the licensee may distribute and sell "his products". I am clearly of the opinion that read in the light of their purpose and context, these words refer to products manufactured pursuant to the New Jersey license and do not refer generally to products owned by the licensee. If the result were otherwise, it might well be contended that a corporation holding a winery license in New Jersey could sell within this State distilled beverages manufactured by it in another State pursuant to a proper license.

The lack of significance of the use of the term "his said products" when dealing with the limited distillery license, is expressed in Bulletin #55, Item #4. However, in order to eliminate all possible basis for a contrary argument the legislature in P.L. 1935, c. 257, excised the word "said". The words "his products" now appear without variation in each of the separate paragraphs of section 11.

The Commissioner has declined to modify the rulings contained in Bulletin #55, Items #4 and #5.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

2. LICENSES - NO LICENSE WILL PERMIT FOREIGN RETAILER TO SELL LIQUOR OUTSIDE THE STATE AND DELIVER IT TO CONSUMERS' HOMES IN NEW JERSEY.

November 8, 1935.

Dear Commissioner:

Re: Delivery of Beer in New Jersey by
N. Snellenberg & Company

N. Snellenberg & Company operates a department store in Philadelphia, Pennsylvania, and in connection with their food and grocery department, they sell beer. The store is the holder of a proper license under the laws of Pennsylvania, but they hold no form of license in New Jersey.

In the course of business, customers residing in New Jersey purchase beer from N. Snellenberg & Company in Philadelphia. In some instances, the merchandise is bought and

paid for and the sale completed in Pennsylvania. In other cases, the merchandise might be purchased in Pennsylvania, C.O.D., which would mean that it would be paid for on delivery in New Jersey.

This company desires an opinion from you as to whether or not it is necessary for it to take out a license under your department, where every detail of the sale of the alcoholic beverage is completed in Pennsylvania, but the actual delivery is made in New Jersey to the customers' homes by the trucks of the corporation.

It was my thought that you could not control the Pennsylvania sale, but you could control the transportation in New Jersey to the extent of requiring the company to take out a transportation license. In the case of a C.O.D. sale, it would seem that the situation is somewhat different and there is a possibility that such a transaction would come under the jurisdiction of your department.

Undoubtedly, this company is in the same position as the New York City department stores are in, making deliveries to North Jersey points.

I will appreciate it if you will advise me as to your requirements, and what it will be necessary for this company to do in order that your regulations may be fully met.

Very sincerely yours,

J. H. REINERS, JR.

November 18, 1935.

John Henry Reiners, Jr. Esq.,
Camden, N. J.

Dear Sir:-

I have your letter of November 8th.

Under section 2 of the Control Act, as recently amended (P.L. 1935, c. 257), a person who purchases alcoholic beverages intended in good faith to be used solely for personal consumption may bring such beverages into this State to the following extent: not exceeding one-quarter barrel or one case of beer and one gallon of wine and two quarts of other alcoholic beverages within any consecutive period of 24 hours.

The retailer located outside this State from whom the purchase is made may not, however, under the regulations of this Department, deliver any quantities of alcoholic beverages whatsoever to the consumer within this State. See Bulletin #39, Item #1, a copy of which is enclosed. There is no type of license which will enable such foreign retailer to sell liquor at its licensed premises located outside this State to New Jersey consumers and deliver it to their homes in New Jersey.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

13. ALCOHOLIC BEVERAGES - PABSTONIC - A MALT DRINK WHICH IS IN NATURE ALTHOUGH NOT NAME ORDINARY BEER FIT FOR BEVERAGE PURPOSES IS AN ALCOHOLIC BEVERAGE AND MAY NOT BE SOLD EXCEPT UNDER A LICENSE.

Dear Mr. Burnett:

Kindly enlighten us as to the status of a preparation known as "Pabstonic". This is a Malt Preparation with Iron and Sodium Glycerophosphates and is to be used solely as a tonic.

We do not have a regular liquor license nor do we have any intentions of applying for same.

We have had a great number of calls for the above named tonic and desire to know if we are within our rights as druggists to stock and sell it.

Respectfully yours,

The Irving Pharmacy Inc.
G. Cob

November 21, 1935.

The Irving Pharmacy, Inc.,
Paterson, N. J.

Gentlemen:

A report of analysis by the Treasury Department with respect to the product known as "Pabstonic" concludes as follows:

"The examination shows that this preparation contains 4.69% alcohol by volume, 3.62% alcohol by weight, 9.31 grams of extract per 100 c.c., and .34% Ash. The examination shows that the preparation is ordinary beer fit for beverage purposes and is subject to all the requirements necessary for beer containing over 3.2% alcohol by weight."

Investigation by this Department and report of analysis by the Department's chemist are in accord with the foregoing.

Accordingly, it is the Commissioner's ruling that the product known as "Pabstonic" is an alcoholic beverage within the meaning of the Control Act and may not be sold except under the authority of a license thereunder.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

14. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - APPROVED.

Legal Department
City of Camden
New Jersey

November 15, 1935

D. Frederick Burnett, Commissioner

Dear Sir:

The Municipal Excise Board of The City of Camden is contemplating the introduction of an ordinance or rules which will provide the following:

1. No new plenary retail consumption licenses (except renewals) shall be hereafter issued unless and until the number of licenses shall be less than two hundred.
2. No new licenses shall be issued for any premises within five hundred feet of any other licensed premises.
3. Licenses may be transferred from one premises to another, providing the premises to which the transfer is sought is not within five hundred feet of a licensed premises, unless that premises is already within five hundred feet of a licensed premises.
4. Nothing herein contained shall prevent the transfer of a license from person to person as provided by Chapter 257, P.L. 1935, and said transfer shall not be affected by the limitations placed upon the issuance of new licenses.
5. Nothing herein contained shall apply to the issuance of renewals of licenses already issued or applications pending at the time of the passage of this ordinance or rules, nor to the renewal of licenses issued or transferred, in accordance herewith.

I would appreciate an expression from you as to whether these requirements are looked upon with favor by your Board, and whether these rules, in your estimation, are in compliance with the purport of the Alcoholic Beverage Control Act.

Thanking you for an immediate response, I am,

Yours very truly,

MEYER L. SAKIN
Assistant City Counsel

November 22, 1935.

Meyer L. Sakin, Esq.,
Assistant City Counsel
Camden, New Jersey

Dear Sir:

I have your letter of November 15th setting forth five proposed rules which you contemplate introducing via ordinance.

They will be approved as submitted when enacted either by ordinance or by resolution of the Board of Commissioners except in so far as Rule 1 limits the number of plenary retail consumption licenses. In that respect, for the reasons stated in Bulletin 43, item 2, the Commissioner's approval is not necessary in the first instance

in order that it be effective.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

15. MUNICIPAL EXCISE BOARDS - POWERS - EXTEND ONLY TO ADMINISTRATION OF ISSUANCE AND REVOCATION OF LICENSES - THE MUNICIPAL GOVERNING BODY IS VESTED EXCLUSIVELY WITH THE POWER TO REGULATE THE SALE OF ALCOHOLIC BEVERAGES AND ITS ORDINANCES AND RESOLUTIONS MAY NOT BE DISREGARDED OR CHANGED OR REPEALED OR AMENDED BY ANY EXCISE BOARD.

November 15, 1935.

Dear Commissioner:

This is to advise you that I am the solicitor of the New Jersey Licensed Beverage Association, Division No. 5. In my capacity I have been requested to write to you to ask your interpretation of the New Jersey Beverage Control Act with reference to the following:

The City of Camden passed an ordinance giving the Commissioners the right to regulate and control the sale of alcoholic beverages in the City of Camden. Some time after that ordinance was created a municipal board of alcoholic beverage control was organized and appointed, and said board is, at the present time, acting on applications for liquor licenses. The question has arisen as to whether or not the Excise Board has the right to make new rules and regulations with regard to regulation and control of the sale of alcoholic beverages, or if the City Commissioners still have that right. To make the matter more explicit, I cite the following example: There is no provision in the ordinance with regard to Sunday sales and of course today in the City of Camden Sunday sales are prohibited. My clients as an organization, are interested in having either the Excise Board or the City Commissioners act upon the question of Sunday sales in the City of Camden. We do not know whether to make application to the City Commissioners for them to pass an ordinance or resolution with regard to same, or whether our application should be made to the Excise Board so that they can pass a resolution or request an ordinance to be passed.

The second question that I desire to ask for your interpretation is: Can the Excise Board disregard the ordinance passed by the City of Camden and put into force and effect their own resolutions with regard to future regulation and control of the sale of alcoholic beverages in the City of Camden.

Very truly yours

(signed) Frank M. Lario

November 22, 1935

Frank M. Lario, Esq.,
Camden, New Jersey

Dear Sir:

I have before me your letter of November 15th.

You ask whether the Camden Board of Commissioners or the Municipal Board of Alcoholic Beverage Control has the power to enact new rules and regulations controlling the sale of alcoholic beverages in Camden. The power is vested exclusively in the Board of Commissioners. See Chapter 257, P. L. 1935 amending Section 37 of the Control Act, Chapter 436, P. L. 1933, which provides that the governing board or body of each municipality, may as regards said municipality, by ordinance or resolution, limit the number of licenses to sell alcoholic beverages at retail and the hours between which the sale of alcoholic beverages at retail may be made, prohibit the retail sale of alcoholic beverages on Sunday, and, 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 duty of the Municipal Board of Alcoholic Beverage Control extends only to the administration of the issuance and the suspension or revocation of licenses. The proposed rules, to be legally effective, must be adopted by the Board of Commissioners.

Your contemplated petition with respect to the hours of Sunday sales should, therefore, be addressed directly to the Board of Commissioners.

You also ask if the Municipal Board of Alcoholic Beverage Control may disregard the ordinance regulating the sale of alcoholic beverages previously adopted by the Board of Commissioners and enact, by resolution of their own, regulations controlling the sale of alcoholic beverages in the future. The answer is in the negative for the same reasons above stated.

Very truly yours,

Commissioner