

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

BULLETIN 288

DECEMBER 19, 1938.

1. RETAIL LICENSEES - THE DANGERS OF PERMITTING PATRONS TO BRING THEIR OWN LIQUOR AND CONSUME IT ON LICENSED PREMISES DURING HOURS WHEN SALES ARE PROHIBITED.

UNLICENSED RESTAURANTS - THE PRACTICE OF FURNISHING SET-UPS AND ACCESSORIES AND PERMITTING PATRONS TO CONSUME THEIR OWN LIQUOR CONDEMNED.

A PURPOSED REGULATION AND SOME PROPOSED LEGISLATION.

Dear Sir:

I am writing you to secure your opinion relative to a peculiar situation which has arisen in this town at a place where alcoholic beverages are sold. The licensee has a public dining room which they have had open on Sundays serving meals only.

On a recent Sunday a party of four people entered the dining room and ordered their meal, being informed before being served that no beverages could be served with the meal. They advised the proprietor that they had their own beverages with them and asked for containers in which to place same. They were advised that it would be impossible for them to drink this beverage in their place. An argument started and they stated that this being a public dining room, they were entitled to consume the beverages which they had in their possession. The proprietor, desiring to stay within the bounds of the regulations, again refused them this privilege, at which time they left the restaurant.

The question at issue was to the effect that should investigators from your Department enter the place while these people were consuming their own beverages, naturally would lead them to believe that these were served by the licensee. Will you therefore kindly advise me just what action I should inform any licensee they should take should occasions of this character again present themselves.

Very truly yours,
Harvey G. Wismer,
Town Clerk.

December 13, 1938

Harvey G. Wismer, Town Clerk,
Phillipsburg, N. J.

My dear Mr. Wismer:

Technically, your licensed restaurants may permit customers to bring their own liquor on the premises and consume the same with their Sunday meal. It is only sale on Sunday that your referendum prohibits. If the restaurant keeper does not sell alcoholic beverages, he is, strictly speaking, within the law. He may therefore permit such drinking, if he chooses, and may even supply the glasses, provided he does not in any way mix or serve the liquor. See Re Trenton Chamber of Commerce, Bulletin 231, Item 10.

Situations similar to that of which you write have frequently arisen. I have, however, consistently advised licensees,

despite their technical legal rights, to refuse to sell set-ups or furnish accessories or permit liquor to be consumed on the premises except such as is purchased from them. Re Meyers, Bulletin 155, Item 2; Re Rollka, Bulletin 142, Item 4. The same advice, and for the same reasons, is equally applicable where restaurant or dining room patrons seek to drink their own beverages on the licensed premises in the face of a Sunday sales prohibition.

If the restaurateur allows his patrons to bring liquor on the premises and consume the same when sales are prohibited, he is very apt to get into trouble. He may find himself under the embarrassing necessity of convincing local police or investigators from this Department that there had been no sale (Re Davidow, Bulletin 159, Item 11), or of explaining away the presence of illicit liquor which may have been brought on. Re Meyers, supra.

The licensee is master of his establishment. Since he is held strictly responsible for its conduct he has the right to decide for himself what behavior therein he will permit. The restaurant proprietor who stands his ground and refuses to cater to those few customers who insist upon "bringing their own" - whether it be on Sunday when sales are prohibited or any other time, deserves to be commended.

I earnestly advise all other licensees to follow in his footsteps. If, however, licensees do not have the foresight or the courage to set their own houses in order, and to stop practices which give the appearance of flagrantly flaunting the law, I shall promulgate a rule forbidding the consumption of alcoholic beverages on any licensed premises during the hours when sale or service is forbidden by resolution, ordinance or referendum. That will break up the practice instantly so far as licensed premises are concerned.

The main complaints, however, have been about unlicensed premises. Such was the situation I had to deal with in Re Trenton Chamber of Commerce, supra.

I have always been opposed to the consumption of liquor on unlicensed public or quasi-public premises. Unlicensed restaurant keepers have no moral right to allow any drinking on their premises, which is a privilege for which licensees have to pay heavily. The whole practice is against the interest of sound liquor enforcement. What is there to prevent any speakeasy from claiming, when raided, "These fellows brought their own. All poor little innocent I did was to furnish the ginger ale and the corkscrew!"

I have no power to regulate the conduct of unlicensed premises but have in active mind to ask the Legislature to make it a misdemeanor for any unlicensed restaurant, hotel or place where food is sold or served to the public, to permit, suffer or allow consumption of alcoholic beverages on such premises at any time. That goes straight to the point instead of mulling around, as was tried in Prohibition times, with making the sale of innocuous accessories, such as ginger ale or soda, unlawful.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - FAIR TRADE --SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against
 PAUL DAVID RAPPAPORT,
 205 Madison Street,
 Passaic, New Jersey,
 Holder of Plenary Retail Consumption License C-99, issued by the Board of Commissioners of the City of Passaic.

CONCLUSIONS AND ORDER

Betz and Stein, Esqs., Attorneys for the Licensee.

BY THE COMMISSIONER:

The licensee having pleaded guilty to the charges of selling liquor at his licensed premises on November 19th and November 21st, 1938, at prices below the minimum retail price in violation of Rule 6 of State Regulations No. 30; and also of permitting gambling on his licensed premises on November 19th, 1938 in violation of Rule 7 of State Regulations No. 20,

It is, on this 13th day of December, 1938,

ORDERED that Plenary Retail Consumption License C-99, heretofore issued to Paul David Rappaport by the Board of Commissioners of the City of Passaic, be and the same is hereby suspended for a period of ten (10) days commencing December 13th, 1938, at midnight.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

3. TRANSPORTATION - RETAIL LICENSEES - DELIVERY VEHICLES NOT REQUIRED BY ALCOHOLIC BEVERAGE LAW TO BEAR NAME OF LICENSEE.

RETAIL DISTRIBUTION LICENSEES - HEREIN OF LIMITATIONS IMPOSED UPON SOLICITATION AND DELIVERY.

December 13, 1938

Cousins Co., Inc.,
Princeton, N. J.

Gentlemen:

There is nothing in either the Alcoholic Beverage law or the State Regulations which requires cars or trucks used to deliver liquor to have printed on the side the name of the licensee.

Solicitation of trade, just because it is solicitation, is not against the law. If it were, then all advertising would be out of order, for the whole object of advertising is to solicit trade. There is, therefore, nothing wrong in the Trenton firm desiring to contact persons throwing a party. Certain forms of solicitation, however, are prohibited. Thus, any direct or indirect

solicitation from house to house, either personally or by telephone, is prohibited. Regulations 20, Rule 3. For the reasons which led to this rule, see Re Advertising Distributors of America, Inc., Bulletin 173, Item 17; Re Satterthwaite, Bulletin 257, Item 7. See also Re Moskowitz, Bulletin 48, Item 13; Re Ostrov, Bulletin 153, Item 1.

While it is true that no sales may be made by a plenary retail distribution licensee except on the licensed premises (Re Galsworthy, Bulletin 64, Item 4; Re Boyce, Bulletin 133, Item 12; Re Quality Liquor Co., Bulletin 189, Item 12), deliveries may be made anywhere in the State. Re O'Kane, Bulletin 33, Item 5. And this is true whether the sale is made for cash, or on credit, or C. O. D. Re Merritt, Bulletin 16, Item 3. This is the general rule. The exceptions pertain to cases where there are local ordinances against delivery on special occasions such as a Sunday (Re Woodruff, Bulletin 82, Item 15; In Re Sacca, Bulletin 190, Item 5), or where Sunday sales have been prohibited by referendum (Re Weston, Bulletin 171, Item 1; Re Lewis, Bulletin 235, Item 17).

It follows from the foregoing that there is nothing improper about mere delivery in Princeton by a Trenton house if that is the only point involved. You have as much right to deliver in Trenton or elsewhere, goods which you sell in Princeton.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. RETAIL LICENSEES - ADVERTISING NOVELTIES - DISTRIBUTION OF CORKSCREW COSTING $2\frac{1}{2}\phi$, WITH NAME AND ADDRESS OF LICENSEE, PERMISSIBLE.

December 13, 1938

Ritz Wine & Liquor Store, Inc.,
Newark, N. J.

Gentlemen:

I have before me yours inquiring if you may give away during the holiday season an ordinary wooden-handled corkscrew bearing the name and address set forth above.

The cost of the corkscrew being $2\frac{1}{2}\phi$, I deem it to be of nominal value within the contemplation of the Rules. Regulations No. 20, Rule 20, Pamphlet Rules, page 63.

Its distribution is permissible.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. ADVERTISING - ANNIVERSARY BOOKLET OF RETAIL LICENSEE - ACCEPTANCE OF ADVERTISEMENTS FROM MANUFACTURERS AND WHOLESALERS AND OTHERS.

December 13, 1938

Mr. John H. Yauch, Jr.,
Newark, N.J.

My dear Mr. Yauch:

There is no objection to your holding an anniversary dinner, provided, if you are going to serve alcoholic beverages, which I presume you are, it is held on your licensed premises. Licensees may sell or serve alcoholic beverages only on the licensed premises. If it is to be held elsewhere, you must first, in accordance with rulings in Re Leimer, Bulletin 131, Item 6, and Re Zogg, Bulletin 132, Item 10, obtain a special permit.

Nor is there any objection to the publication of the anniversary booklet and the acceptance of advertising from manufacturers and wholesalers of alcoholic beverages, provided it does not cause the aggregate cost or reasonable value of signs and other advertising matter furnished you by each manufacturer or wholesaler to exceed the allowable \$50.00 per year. State Regulations No. 21, Rule 1 (Pamphlet Rules, page 64).

There is no limit in the Regulations on the amount of advertising you may accept from your grocer or butcher or the candlestick maker.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. LICENSED PREMISES - USE DONATED FOR CHRISTMAS PARTY FOR CHILDREN - APPROVED.

Dear Sir:

The Lake Telemark residents are making plans to sponsor a Christmas party for their children. It was at first believed such a party could be held at the Lake Telemark club house, but because of the fact the club house is unheated, this would not be very acceptable.

In conjunction with my tavern at Lake Telemark, I have a spacious dance hall, separated from the tavern and entirely a room by itself. Two doors lead from the tavern into the dance hall.

Would you grant me permission to donate the use of this hall to the Lake Telemark residents to hold this Christmas Party for the children? During the party the doors leading to the hall from the tavern would be closed and locked and absolutely no drinks would be served in the hall during the party.

Very truly yours,
Hallvard Bergdøl.

December 14, 1938

Mr. Hallvard Bergdol,
Lake Telemark,
Rockaway, N. J. (R.F.D.)

My dear Mr. Bergdol:

I have yours of the 10th, and in view of your promise that during the party the doors will be locked and no drinks served in the hall — that means not even adults — I gladly grant the requested permission.

My qualms about the association of children with taverns become academic in the face of practical, bona fide plans designed exclusively for their innocent entertainment under auspices intrinsically harmless.

I hope the good folks of Lake Telemark will enjoy a grand party with their children and that the spirit of the Christ Child will be in their midst.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

7. REFERENDUM - A REFERENDUM ON A QUESTION NOT PROVIDED FOR BY THE STATUTE IS MERELY ADVISORY AND HAS NO BINDING EFFECT.

December 14, 1938

William E. Scott, Clerk,
Wyckoff, N. J.

My dear Mr. Scott:

I have before me yours of December 6th, certifying that at the general election held in Wyckoff Township on November 8th last, there was submitted on referendum the question "Shall the Resolution of the Township of Wyckoff, covering Plenary Retail Consumption Licenses, be changed so as to permit five such Licenses?" and that the vote on the question was "Yes" 297, and "No" 912.

I note that a majority voted in the negative and that consequently the referendum does not purport to alter or amend Section 2(a) of the resolution adopted by the Township Committee on June 26, 1934, limiting the number of plenary retail consumption licenses to three.

There is no provision in the Alcoholic Beverage Law for referenda on any questions other than those expressly provided for in Sections 41, 42, 43, 44 and *44A (R. S. 33:1-44-47.1). Hence, even if voted in the affirmative, your question, because it is not in compliance with the statute, would have no binding effect.

The referendum is merely advisory. It changes none of your existing regulations. It compels no action on the part of the Township Committee. It does not prevent the Township Committee from changing the limitation by duly enacted ordinance see (Re Sahl, Bulletin 198, Item 11) at any time. It is a straw vote, a poll of public sentiment, nothing more. Re Landshof, Bulletin 63, Item 1; Re Turner, Bulletin 98, Item 1; Re Schlosser, Bulletin 98, Item 15.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. LICENSEES - COLLECTION OF DEBTS - IRREGULAR PROCEDURE.

Dear Sir:

I would like to know the ruling on whether a saloon keeper can carry a concealed weapon such as a gun and a blackjack in a saloon without a special permit. Also in a case of disputed bill, does it allow a saloon keeper to take the law into his own hands and administer a beating to one of his patrons for failure to pay a bill of thirty cents.

Also if a saloon keeper is allowed to possess a gun, would he be permitted to fire it at a patron who was running away from the fight.

I personally witnessed such a fight and would like to know the ruling on the gun end of it as I think it was a very dangerous episode.

I have read many of your rulings on retail consumption licenses and arrived at the conclusion that you know the law on the liquor business.

December 15, 1938

My dear Mr. _____:

It does not require overmuch knowledge of law to say that imprisonment for debt has long since been abolished and that assault and battery to persuade the payment of honest obligations is likewise passé. A gun-and-blackjack-toting licensee who beats a patron for failure to pay a thirty cent bill and takes a pot shot at him on retreat, will certainly bear investigation. Please send in at once name, address and full detail. Your own name will not be used.

There is nothing at present in the regulations prohibiting a licensee from housing a gun, blackjack or - if he goes in for that kind of thing - a sword. Despite the current concern about our unpreparedness, I have cautioned against keeping such affirmatively defensive armament upon licensed premises, believing that a bungstarter strategically displayed usually suffices. Re Tokarski, Bulletin 112, Item 13. Possession of lethal weapons makes dangerous episodes possible. After all, licensees are not the Militia.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES -
HEREIN OF THE CONSTITUTIONALITY OF THE LEGISLATION.

In the Matter of Proceedings)
to revoke or suspend plenary)
retail distribution license)
#D-1 issued to)

JOHN GAINE,)
104 Hillside Avenue,)
Neptune City, N. J.)
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CONCLUSIONS
AND ORDER

Samuel B. Helfand, Esq., Attorney for the Department.
William F. Hanlon, Esq. and John J. Quinn, Esq., Attorneys for
John Gaine, Licensee.

BY THE COMMISSIONER:

Charges and notices to show cause why plenary retail dis-
tribution license D-1, issued to John Gaine, 104 Hillside Avenue,
Neptune City, New Jersey, should not be suspended or revoked on the
ground that he had sold, in violation of Regulations No. 30, alco-
holic beverages below the minimum resale prices which had been fixed
by fair trade contracts and duly published were served upon the li-
censee. Upon the return day of the notices, hearing was held, tes-
timony was taken and the licensee was afforded full opportunity to
be heard.

The undisputed evidence establishes that on November 10,
1938, a fifth of Grant's Liqueur Scotch was sold by the licensee's
wife at the licensed premises and with the approval of the licensee
for the sum of \$2.50, whereas the minimum resale price was \$3.29.
On November 16, 1938, the licensee sold to Inspector Lurie a fifth
of the same brand of Scotch for \$2.50 and on the same day his wife
sold to Investigator Carlin a fifth of Black & White Scotch Whiskey
for \$2.50 at the licensed premises. The minimum resale price of the
last mentioned product was \$3.25. After the Department's repre-
sentatives had consummated their purchases and disclosed their iden-
tities, the licensee acknowledged to them that he had received
copies of the Department's bulletins and pamphlet which set forth
minimum resale prices and stated that he would thereafter observe
them fully. Nevertheless violations at the licensed premises con-
tinued, as evidenced by the sale on November 22, 1938, of a pint
bottle of Wilson "That's All" Whiskey for the sum of 90 cents
whereas the minimum price therefor was \$1.16.

The licensee did not testify nor was any evidence intro-
duced on his behalf. Instead, he rests upon the contention that
Regulations No. 30 and the statutory authority therefor are invalid
on the ground that there has been (a) an unconstitutional delegation
of power to the Commissioner, and (b) a deprivation of the licensee's
property without due process of law.

In considering the licensee's contention, it would not be
amiss to review briefly the pertinent history.

On December 6, 1933, the New Jersey Legislature passed the
Control Act (P. L. 1933, c. 436 - now R. S. Title 33, Chapter 1)

which preserved private initiative in the liquor industry by the creation of a licensing system subject to comprehensive supervisory powers of a State Commissioner. In Section 3 (now R.S. Sec. 33:1-3) it provided that "it shall be the duty of the Commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger." In Section 36 (now R.S. Sec. 35:1-39) it provided that the Commissioner may promulgate such rules and regulations "as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act." The same section enumerated specific subjects which might be regulated including, among others, "unfair competition" and "Practices unduly designed to increase consumption of alcoholic beverages"; and to insure that this enumeration would not be construed to exclude other subjects, the Commissioner was expressly authorized to promulgate regulations on "such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration" of the act. To insure further that the courts would not limit the broad regulatory powers intended to be conferred, the legislature, in Section 74 (now R. S. Sec. 33:1-73) provided that the act "is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

The adjudicated cases leave no room to dispute (a) the propriety of the delegation in Section 36 of authority to the Commissioner to promulgate rules and regulations; (b) the sufficiency of the accompanying legislative standards; and (c) the constitutionality of regulations governing the sale of alcoholic beverages by licensees. See Franklin Stores Co. v. Burnett, 120 N.J.L. 596 (Sup. Ct. 1938); Meehan v. Board of Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906), aff'd 75 N. J. L. 557 (E. & A. 1908). Cf. State Board of Milk Control v. Newark Milk Company, 118 N. J. Eq. 504 (E. & A. 1925); Mansfield & Swett, Inc. v. West Orange, 120 N.J.L. 145 (Sup. Ct. 1938).

From time to time, after the passage of the Control Act, regulations have been formally promulgated. Each was the result of study and experience in administration and was designed to effectuate proper control by eliminating ascertained abuses and preventing threatened abuses.

One of the abuses which arose may be described as the recurring "price war." Periodically a small group of the larger establishments operating pursuant to licenses would reduce radically their prices on nationally advertised brands, oftentimes below cost. As a result, many persons who would not have otherwise purchased liquor did so because they sensed a "bargain." Others who would, in any event, have purchased some liquor, purchased more and consumed more. On occasion there would be the disturbing sight of a long line of persons outside a licensed establishment seeking advertised bargains in liquor. There was public resentment to this. The liquor industry was ruptured rather than stabilized.

Notwithstanding the foregoing, I was reluctant to adopt any regulation dealing with prices in advance of a further explicit legislative expression. In May 1958, pursuant to my recommendation, the Legislature adopted P.L. 1938, c. 208 (supplementing the Control Act) which provides that:

"Whereas, Alcoholic beverage licensees have been unduly stimulating the sale of alcoholic beverages by indiscriminate price cutting, resulting in price wars, and by excessive advertising of bargain values and cut prices; these practices are deemed detrimental to the proper

operation of the liquor industry and contrary to the interests of temperance; the sale of alcoholic beverages is unusually susceptible to abuse, with resulting danger to the general public and should be strictly supervised and regulated to prevent undue stimulation of public demand for alcoholic beverages; therefore,

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey;

"1. The State Commissioner of Alcoholic Beverage Control is hereby vested with the following powers to be exercised in such manner as will assist in properly supervising the liquor industry and promoting temperance: The Commissioner may, in his discretion, by rule and regulation, prohibit or regulate the sale of alcoholic beverages within this State in violation of any fair trade contract entered into pursuant to the legislative sanction afforded by Revised Statutes, Title 56, chapter four."

This enactment did not delegate any price fixing powers to the Commissioner. It did contemplate that the Commissioner shall have, pursuant to explicit and unequivocal legislation, comprehensive power to adopt regulations designed to insure observance by the entire liquor trade of resale prices fixed by any private fair trade contract, the general validity of which is not here questioned. See Johnson & Johnson v. Weissbard, 121 N. J. Eq. 585 (1937). It may further be noted that the Commissioner is expressly directed to exercise his power "in such manner as will assist in properly supervising the liquor industry and promoting temperance." Even if considered apart from the Control Act itself, this independent standard is clearly adequate to sustain the constitutionality of the accompanying delegation. See Franklin Stores Co. v. Burnett, supra; State Board of Milk Control v. Newark Milk Company, supra; West Jersey and Seashore Railroad Co. v. Board of Utility Commissioners, 87 N. J. L. 170, 176; (E. & A. 1915). Cf. Coady v. Leonard, 132 Ohio State 329, 7 N.E. (2d) 649 (1937).

On August 25, 1938, after public hearing duly held, Regulations No. 30 were formally adopted pursuant to the rule-making authority conferred by section 36 of the Control Act and P.L. 1938, c. 208. They provide for the filing with the Department of Alcoholic Beverage Control of fair trade contracts fixing minimum resale prices on alcoholic beverages bearing trade names, entered into between retailers and manufacturers or distributors (see Schenley Products Company v. Franklin Stores Company, 124 N.J. Eq. 100 (E. & A. 1938)), the mailing to retail licensees of price lists and the publication thereof in official bulletins of the Department. They do not "fix" prices; they merely embody an effective administrative means of maintaining fair trade liquor prices, which are admittedly enforceable by the courts. See Revlon Nail Enamel Corporation v. Charmley Drug Shop, 123 N. J. Eq. 301 (Ch. 1938). Cf. O'Gorman & Young v. Hartford Fire Insurance Co., 282 U.S. 251 (1931), aff'd 105 N. J. L. 642 (E. & A. 1929).

The regulations have succeeded in eliminating open price wars and related practices which are unduly designed to increase consumption of alcoholic beverages and constitute unfair competition. When the commodity is liquor, price cutting is an evil. The ensuing competition is not healthy but malignant and contagious. It results in greater and still greater bargains designed to lessen and overcome consumer sales resistance. Whatever does that is not in the public interest. "Bargains" in liquor are not good public

policy. While the regulations are not perfect and there are loopholes here and there to be straightened, I am satisfied that their continued operation will promote temperance and materially assist in properly supervising the liquor industry.

The licensee's argument under the due process clause was evidently based upon the wholly unfounded assumption that any price restriction governing the sale of alcoholic beverages, whether direct or indirect, would be improper. Direct price regulation governing the sale of milk has recently been sustained. See State Board of Milk Control v. Newark Milk Company, supra, and Nebbia v. New York, 291 U. S. 502 (1934), where Mr. Justice Roberts said:

"***if, as must be conceded, the industry is subject to regulation in the public interest, what constitutional principle bars the state from correcting existing maladjustments by legislation touching prices? We think there is no such principle. The due process clause makes no mention of sales or of prices any more than it speaks of business or contracts or buildings or other incidents of property. The thought seems nevertheless to have persisted that there is something peculiarly sacrosanct about the price one may charge for what he makes or sells, and that, however able to regulate other elements of manufacture or trade, with incidental effect upon price, the state is incapable of directly controlling the price itself. This view was negatived many years ago. Munn v. Illinois, 94 U. S. 113, 24 L. ed. 77."

A fortiori when the matter is alcoholic beverages - a product which is inherently dangerous, and which the courts have held to constitute a problem sui generis, is subject to severe restrictions and may be wholly proscribed - the legislature and any administrative body acting pursuant to its delegation may effect price regulation directly and, of course, indirectly. Cf. Meehan v. Board of Excise Commissioners, supra, and Franklin Stores Co. v. Burnett, supra, where Mr. Justice Donges said:

"The liquor business is one peculiarly subject to strict governmental control. 'The right to regulate the sale of intoxicating liquors by the legislature, or by municipal or other authority under legislative power given, is within the police power of the state, and is practically limitless.' Meehan v. Excise Commissioners, 73 N.J.L. 382; 75 Id. 557."

Finally, the contention was advanced on behalf of the licensee that there never was any formal investigation and public hearing by the legislature with respect to price cutting of alcoholic beverages and that consequently the legislative delegation and the Commissioner's action pursuant thereto are improper. In this connection it suffices to refer to the decisions in Townsend v. Yoeman, 301 U. S. 441 (1937); Pacific States Box & Basket Co. v. White, 296 U. S. 176 (1935); and State Board of Milk Control v. Newark Milk Company, supra. In the Townsend case, Chief Justice Hughes, speaking for the Supreme Court, said:

"Appellants contend that the legislative action was taken without investigation and hence must be considered to be arbitrary and beyond the legislative power. There is no principle of constitutional law which nullifies action

taken by a legislature, otherwise competent, in the absence of a special investigation. The result of particular legislative inquiries through commissions or otherwise may be most helpful in portraying the exigencies to which the legislative action has been addressed and in fortifying conclusions as to reasonableness. *Nebbia v. New York*, supra (291 U.S., pp. 516 et seq., 78 l. ed. 945, 54 S. Ct. 505, 89 A.L.R. 1469). But the legislature, acting within its sphere, is presumed to know the needs of the people of the State. Whether or not special inquiries should be made is a matter for the legislative discretion. Here, the existence of the industry, highly important to the State, the transactions in the tobacco markets, the necessity of protecting the growers from exorbitant warehouse charges, must be presumed to have been fully known to the members of the legislature and this presumption cannot be overthrown, as it has been sought to be overthrown, by testimony of individual legislators."

I find the licensee guilty of having sold alcoholic beverages in violation of Regulations No. 30 on November 10th, the 16th, and again, after warning, on November 22nd, 1938, and will suspend his license for a period of twenty (20) days.

Accordingly, it is, on this 14th day of December, 1938,

ORDERED that license D-1, issued to John Gaine, for premises located at 104 Hillside Avenue, Neptune City, be and hereby is suspended for a period of twenty (20) days, commencing 9:00 A.M. Monday, December 19th, 1938.

D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - 10 DAYS' SUSPENSION.

December 14, 1938

Elden Mills, Esq.,
Rockaway Township Attorney,
Morristown, N. J.

My dear Mr. Mills:

I have before me your letter of December 2nd re disciplinary proceedings conducted by the Township Committee on December 1st against John E. Tutty, t/a Tutty's Old Homestead, Main Road, Alan Mine, charged with sale of alcoholic beverages on General Election Day last past.

I note that after a plea of guilty, his license was suspended for ten days.

Please express to the members of the Township Committee my appreciation for their prompt handling of these proceedings and the entirely proper ten-day suspension, which exactly accords with my recommendation for Election Day violations.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - BARTENDER ON
MOTORMAN'S HOLIDAY.

December 14, 1938

Charles F. Black, Esq.,
Fair Lawn Borough Attorney,
Ridgewood, N. J.

My dear Mr. Black:

I have before me staff report and your letter of December 9th re disciplinary proceedings conducted by the Fair Lawn Borough Council against Fair Lawn Beach Tavern, Inc., 18-51 River Road, charged with sale or delivery of alcoholic beverages on General Election Day last past.

I note that although my investigators found the bartender's wife with a glass of birch and beer before her, the licensee was found not guilty and the charges dismissed.

I am at a loss to understand the dismissal of the charges. The regulations prohibit not only the sale of alcoholic beverages on Election Days but also their delivery to any consumer. It makes no difference that the consumer happens to be the wife of the bartender; she is amenable to law just as much as the rest of us. Do the Mayor and Council really believe that she carried her own birch and beer so that there was no delivery to her on the licensed premises? And why was the bartender behind the bar anyway on Election Day? Was he having a motorman's holiday?

Brusque dismissals without cause give a black eye to law enforcement.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. RETAIL LICENSEES - GIFTS - DISHWARE TO BE GIVEN AWAY WITH SALES
OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION MUST BEAR
ADVERTISING MATTER IN ORDER TO CONSTITUTE AN "ADVERTISING
NOVELTY."

RETAIL LICENSEES - GIFTS AND ADVERTISING NOVELTIES DISTINGUISHED -
HEREIN OF THE DISHES THAT FAILED TO QUALIFY AS ADVERTISING
NOVELTIES BECAUSE THEY BORE NO ADVERTISING MATTER.

December 14, 1938

Quality Liquor Co., Inc.,
Camden, N. J.

Gentlemen:

I note that you do not purpose to place any advertising matter on the novelty china dishes and cream pitchers that you contemplate distributing to your customers, "perfectly plain - no advertising."

From the standpoint of your "steady customers who look forward to some little remembrance around the Christmas holiday",

this is quite understandable, especially if they go in for entertaining. It is indeed considerate of you. Omission of the advertising matter, however, is fatal to your generous plan.

Regulations No. 20, Rule 20 prohibits retail licensees from giving any gifts with the sale of liquor for consumption off the licensed premises, with the exception of advertising novelties of nominal value.

Your dishes and pitchers, if devoid of advertising matter, are not advertising novelties, but, instead, gifts, premiums and inducements offered or furnished with the sale of packaged goods, and hence within the direct prohibition of the Rule.

Don't do it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - GAMBLING - BOOK-MAKING - 15 DAYS' SUSPENSION.

December 14, 1938

Elliot W. Bragaw,
Borough Clerk of Englewood Cliffs,
Coytesville, N. J.

My dear Mr. Bragaw:

I have before me your letter of December 6th re disciplinary proceedings conducted by the Mayor and Council on November 29th against Kaburn, Inc., Palisade Avenue, the holder of plenary retail consumption license C-12.

I note that the licensee was charged with permitting book-making on the licensed premises, in violation of State Regulations 20, Rule 7 and local ordinance; that it was found guilty and its license suspended for 15 days.

No opinion on the merits is expressed, let alone entertained, because perchance the case may come before me on appeal. I have, however, no hesitation in saying that if the licensee was properly found guilty, the 15-day suspension is substantial and will quickly break up the practice of book-making so far as our taverns are concerned.

Please express to the members of the Borough Council my appreciation for having instituted these proceedings on their own initiative and the man-sized penalty imposed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 15, 1938

Re: Case #238

This is to determine whether applicant is disqualified from being employed by a liquor licensee in this State by reason of a conviction of a crime involving moral turpitude. R.S. 33:1-25, 26 (Control Act, Secs. 22, 23).

Applicant was recently convicted of selling liquor to a minor on October 7, 1937 while a bartender at a Trenton tavern. He was sentenced to nine months in the County Workhouse (where he served seven and a half months of that term) and ordered to pay costs of the criminal suit.

In explanation of the offense, applicant testified that the minor, a girl then almost 18 years old, and two men entered the serving room of the tavern at about 5:30 P.M. on the above date; that he served them a single round of whiskey, some sandwiches and nothing more. Although stating that he believed the girl to be 21 or older, he admits that he did not inquire as to her age.

The minor testified that when the round of whiskey was served, she consumed not only her own drink but also those of the two men with her; that, in addition, a man other than applicant served her two drinks of "rock and rye" while applicant was preparing the sandwiches.

The service of the drinks to the girl came to light when the police investigated her charge that the men accompanying her had raped her after they left the tavern. This charge, however, was dismissed by the Grand Jury.

Sale or service of liquor to a minor, while serious, does not involve moral turpitude per se. Re Dunn, Bulletin 206, Item 3. Cf. Re Case #188, Bulletin 212, Item 2. I do not think that sufficient aggravating circumstances are here present to inject the element of moral turpitude into applicant's crime.

However, applicant now has "one strike" against him. Another violation of the Alcoholic Beverage Control law will mandatorily disqualify him from holding a liquor license or being employed by a liquor licensee in New Jersey. R. S. 33:1-25, 26 (Control Act, Secs. 22, 23).

Applicant's fingerprint record shows that he has never been convicted or arrested on any other occasion.

It is recommended that applicant be declared eligible to be employed by a liquor licensee in this State.

NATHAN DAVIS,
Attorney.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

15. GAMBLING -- LOTTERIES -- A DRAWING FOR A WHOLLY WORTHY CHARITY MAY NOT BE CONDUCTED ON LICENSED PREMISES -- LAUDABLE OBJECTIVES DO NOT CONDONE VIOLATION OF THE LAW.

December 19, 1938.

Mr. Michael J. Conroy,
102 North Avenue,
Dunellen, N. J.

Dear Mr. Conroy:

Someone has sent in a ticket which reads that it entitles holder to share in:

"\$100.00 in Food in 3 Baskets
"Second Christmas Basket Drawing
"---Sponsored by ---
"Dunellen Welfare Milk Fund Drive
"---Drawing to be held at ---
"CONROY'S TAVERN, 100 North Ave., Dunellen
"December 22, 1938, at 10 P. M."

State Regulations 20, Rule 6, provide:

"No licensee shall allow, suffer or permit any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale, on or about the licensed premises."

The rule must be strictly obeyed. Violation will be cause for revocation or suspension of your license.

I write this reluctantly because I am heartily in sympathy with the Welfare Milk Fund but nevertheless warn you firmly that laudable objectives and high purposes do not condone violation of the law.

It is none of my business where the drawing is held provided it is not conducted on premises licensed for the sale of liquor.

Very truly yours,

Frederick B. Burnett
Commissioner