Commissioner Burnett

Sent to Regular Mailing List

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

BULLETIN NUMBER 115. April 22, 1936.

1. RULES GOVERNING ADVERTISING - NO PROHIBITION AGAINST MANUFACTURERS OR WHOLESALERS ADVERTISING IN A PUBLICATION ISSUED BY A LICENSEE - THE ONLY RESTRICTION IS ON THE AMOUNT OF SUCH ADVERTISING.

April 7, 1936.

Dear Mr. Burnett:

On the 4th, 5th and 6th of June the Open Championship of the United States Golf Association, known as the National Open, will be held at Baltusrol.

It isn't our tournament but the Associations.

We had asked some of the liquor Importers to advertise in the program and one advised us that the State Laws did not permit of advertising in a publication issued by a licensee.

In this instance the Club provides the facilities for the Nations tournament and the program is not advertising the Club. We divide the receipts for the advertising with the U.S.G.A. both they and us secure the advertising space.

We do not want to lose all the available liquor advertisements, on the other hand we are not going to disobey the law.

Would you kindly advise us on the subject.

Yours very truly,

Baltusrol Golf Club

April 8, 1936.

Baltusrol Golf Club,
Springfield, N. J.

Gentlemen:

I have yours of the 7th.

There is no law or regulation which prohibits liquor importers from advertising in a publication issued by a licensee. The only restriction is on the amount of such advertising which is limited to $100. per licensee.

Rule 1 governing signs and other advertising matter reads:

"1. No manufacturer or wholesaler shall, in any one license year, furnish or deliver to any retail licensee, directly or indirectly, by sale, loan, gift or otherwise, any signs or other advertising matter, the aggregate cost or reasonable value of which exceeds $100.00 with respect to each licensed premises, and no retail licensee shall permit or suffer the display of any signs or other advertising matter furnished or delivered in violation of this regulation."

Your Club and each manufacturer or wholesaler who advertises in your publication will be wholly within the law by complying with the foregoing rule. The current license year began July 1, 1935 and will end on June 30, 1936.

Very truly yours,
D. Frederick Burnett
Commissioner

2. MUNICIPAL OFFICIALS - DISQUALIFICATION - MUNICIPAL OFFICIALS MAY NOT VOTE ON RESTAURANT LICENSES IF THE POSSESSION OF A RESTAURANT LICENSE IS A CONDITION PRECEDENT TO OBTAINING A LIQUOR LICENSE.

April 8, 1936.

Major Joseph Caccavajo, Editor,
North Jersey Times,
Clifton, N. J.

Dear Sir:

I have yours of April 8th re Andrew Graham.

There is nothing in the Control Act or rules pertaining thereto which prohibits a member of a municipal governing board from holding a position with a manufacturer, wholesaler or retailer of alcoholic beverages. However, I have ruled that a public official so interested is disqualified from passing on the applications for alcoholic beverage licenses; and disqualified from taking part in any matters concerning alcoholic beverages which might come before the municipal governing board; and that any resolutions concerning same taken by a municipal governing board in which such public official took part were invalidated.

On January 20, 1936, I approved an ordinance of Wayne Township which read in part: "No such license (meaning a liquor license) shall be granted for any building or premise not operated as an established restaurant or dining place." At that time I believed such regulation reasonable and I am of the same opinion today. An ordinance to license and regulate restaurants also was forwarded to me by the Wayne Township Committee, but this was not considered for approval because outside of my jurisdiction. Nevertheless, Mr. Graham has no right to vote on the granting of restaurant licenses because thereby he could by indirection affect the issuance of liquor licenses. What he cannot do directly, he cannot do indirectly.

If any person without a Solicitor's Permit solicits customers and potential customers and uses his influence to get them to buy a certain brand of ale and beer, he needs such permit else he is guilty of a misdemeanor. Please furnish me specific facts.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

3. LICENSES - EMPLOYEES - DISQUALIFICATION - A BARTENDER MAY NOT ALSO BE A CONSTABLE.

April 9, 1936.

Commissioner T. C. Schepis,
Rochelle Park, New Jersey

My dear Commissioner:

I have before me your letter of April 2nd asking if it

is permissible for a constable to serve as a bartender in his home town.

I have already ruled that neither a licensee nor a bartender may also be a policeman. See re Wyckoff and re Emerson, Bulletin 109, Items 5 and 6, copies enclosed. The same principle applies to constables for they also are policemen and are entrusted with the enforcement of the laws. So also to a Justice of the Peace. Re Bruers, Bulletin 113, Item 9.

Because of the potential conflict between self-interest and public duty, the two jobs cannot stand together. If the constable wants the job as barkeeper, he will have to resign as constable. If, on the other hand, he wants to serve the public as a constable, he must forego the bartender job. Sound public policy demands that those entrusted with the enforcement of the liquor law shall not have personal or financial interest in the liquor trade.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. SPECIAL PERMITS - REQUIRED WHERE DELIVERY OF ALCOHOLIC BEVERAGES CONSTITUTES A SALE EVEN THOUGH INDIRECTLY.

April 2, 1936.

Gerhart Renner,
McKees City, Station,
New Jersey.

Dear Sir:

Replying to yours of March 18th by which I note that the Young Democrats of Atlantic County are to hold a social affair on April 7th. I also note your inquiry "Can we sell sandwiches and give beer away with them free?"

The answer is in the negative because such a transaction would constitute an indirect sale of the beer. Nobody would get a beer unless he bought sandwiches. Hence, the beer is included in the price of the sandwich. That makes it an indirect sale of the beer.

It follows that if you wish to do this, you must obtain a special permit from the State Department.

Application for the permit must be made on the enclosed form directly to this Department by the organization sponsoring the affair and must contain the approvals of the Chief of Police and the Municipal Clerk of the municipality in which the affair is to be held. The fee for the permit will be $10.00 and must accompany the application.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Maurice E. Ash,
Senior Inspector

5. REVOCATION PROCEEDINGS - RE-HEARING IMPROPER AFTER CASE HAS BEEN FINALLY ADJUDICATED BY ISSUING AUTHORITY - PROPER PROCEDURE IS APPEAL TO COMMISSIONER.

April 6, 1936.

Dear Sir:

I am writing you at this time with regards to the matter of the license of Augusta Norman which was revoked by the Hoboken City Commission at a meeting held on Tuesday, March 31, 1936, in which she was alleged to have sold her place of business.

Mrs. Norman, on appearing before the City Commission did not fully understand the matters in difference and upon being requested as to her plea to the charges, she stated that she did not know that she had to have a transfer or license for her bartender. Mrs. Norman was taken sick in the month of January, 1936, due to the damp condition of the licensed premises and was compelled to remain away from the business in order to properly protect her health. Upon going out of the premises she still remained the owner and placed her brother in law in charge to manage the business and pay the running expenses out of the receipts and turn over the profits, if any to her. He was to receive a salary for this service and upon her complete recovery she was to manage the place herself. She further advises me that she at no time sold or transferred the business in question to her brother in law Ben Vancoverbeurg and she is still the owner and was unaware of the fact that he had represented himself or attempted to represent himself as the owner.

I am writing to inquire whether or not your office would consent to a reinstatement of the license in question and permit a hearing, if the same is agreeable to the governing body of the City of Hoboken, with regards to the facts above, as I feel that the circumstances presented to me as outlined above, Mrs. Norman did not understand the situation surrounding her plea and that at no time was she wilfully guilty of the violation of the Alcoholic Beverage Control Act as she never had transferred or sold her business to anyone, she still remaining the owner.

I am writing you at this time with regards to the above in order to facilitate matters and thereby save any great deal of expense on behalf of Mrs. Norman in proceeding to a formal appeal and additional litigation in this matter.

Trusting that you will advise me within the next few days as to the feasibility of this proceeding so that I can take the necessary steps to make application to the governing body of the City of Hoboken for a reconsideration of their action upon the proper consent by your office.

Very truly yours,

E. NORMAN WILSON

April 9, 1936.

E. Norman Wilson, Esq.,
Hoboken, N. J.

Dear Mr. Wilson:

I have yours of April 6th referring to the revocation

of license of Augusta Norman by the Board of Commissioners of Hoboken after she had entered a plea of "guilty" to charges that had been preferred against her.

You request my consent to a re-instatement of the license to the end that a re-hearing may be had before the Board of Commissioners of Hoboken provided that Board consents. You assert that Mrs. Norman at no time was wilfully guilty of the violation of the Alcoholic Beverage Control Act charged against her; in effect your contention is that she did not realize the import of her plea.

The City Clerk of Hoboken has certified that the license was revoked on March 31, 1936 after Mrs. Norman pleaded guilty to a charge,

> "That she, as holder of the Plenary Retail Consumption License C-233 for premises 328 River Street, Hoboken, N.J., did permit the said premises to be operated under the sole control of a person other than herself as a licensee, without first having properly transferred said license, in violation of Section 23 and 31 of "An Act Concerning Alcoholic Beverages", as amended and supplemented, rules and regulations promulgated thereunder, and in violation of the terms of her license."

Your proper remedy is an appeal.

I have already ruled that, except on questions of mitigation of penalty imposed, a municipal governing body or local excise board has no power to grant a re-hearing after it had once adjudicated facts, or guilt or innocence of a licensee. Re - Bischoff, Bulletin 53, Item 5; Robinson v. Newark, Bulletin 54, Item 2; Re - Macleod, Bulletin 112, Item 4.

Section 28 of the Control Act sets forth the sole method of review under said Act in revocation proceedings in the following language:

> "In the event of any suspension or revocation of any license by the other issuing authority, the licensee may, within thirty (30) days after the date of service or of mailing of said notice of suspension or of revocation, appeal to the commissioner from the action of the other issuing authority in suspending or revoking such license which appeal shall act as a stay of such suspension or revocation pending the determination thereof unless the commissioner shall otherwise order."

Also, since there is no express provision therefor in the Control Act itself, no rehearing is permissible under well accepted principles announced by our Courts in cases cited in my ruling in Re: Hendrickson, Bulletin 47, Item 10. The question there involved the right of a municipality to grant a rehearing after it had denied a license to an applicant. The principles therein enunciated I conceive to be applicable to your problem. The syllabus of case of Gulnan v. Board of Chosen Freeholders, 74 N.J.L. 543 (E & A 1906) (one of the cases cited) is as follows:

> "The right of a deliberative body to reconsider its

action on a matter of a judicial or quasi judicial character ceases when a final determination has been reached."

Based upon Section 28 (supra) I am perfectly willing to entertain an appeal and to take testimony on the question of whether or not your client has been deprived of any of her legal rights. With the consent of the Board of Commissioners of the City of Hoboken testimony might also be taken at such a hearing on the question of the guilt or innocence of the licensee on the charges to which she has already pleaded guilty if by any chance it should appear that her guilty plea had been improvidently entered. If the appeal is filed I shall set the matter down for as early a date as is possible. However, in view of the plea of guilty now on the record, the order of revocation would remain in full force and effect until final determination.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. REVOCATION PROCEEDINGS - TOMAR HOLDING COMPANY - FAILURE TO KEEP PROPER BOOKS AND MAKE NECESSARY REPORTS.

In the Matter of the Proceedings to revoke or suspend Plenary Retail Consumption License No. C-1036 issued to Tomar Holding Company, 982 Broad Street, Newark, New Jersey, and William J. Brennan, Jr., Trustee, 744 Broad Street, Newark, New Jersey.	CONCLUSIONS AND ORDER

These proceedings were instituted April 6th upon request of the Beverage Tax Division of the State Tax Department.

It appears that a copy of charges preferred against Tomar Holding Company and notice of hearing thereon were duly sent by registered mail addressed to it at the licensed premises but returned by the Post Office Department with notation "Defunct". The charges and notice were also served upon William J. Brennan, Jr., Trustee in Bankruptcy of Tomar Holding Company.

The Tomar Holding Co. obtained its Plenary Consumption License from the City of Newark on October 23rd, 1935, and thereafter conducted a Night Club which lasted until after the Christmas holidays and New Year's Eve, but then closed down and was thrown into bankruptcy on January 6th, 1936. The Trustee in bankruptcy, after diligent search, declares that all its officers have disappeared; that he has been utterly unable to find any records of alcoholic beverages purchased and sold, as required by law; that he has had no information upon which to base any report; and that he has not been able, since appointment, to contact any-

one associated with the Company. The records of the State Tax Department show that no report was filed showing the amount of alcoholic beverages purchased and sold during December, 1935.

The Company is, therefore, guilty of violating Sections 501 and 502 of the Alcoholic Beverage Tax Act, which requires the keeping and maintenance of proper records and the making of necessary reports.

Nothing is to be gained by extending time to the Trustee of this drifting derelict, as he does not desire to run the Night Club. So far as its license to sell liquor is concerned, it should be sunk without trace.

It is, therefore, on this 16th day of April, 1936, ORDERED that Plenary Retail Consumption License No. C-1036, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Tomar Holding Company, for premises located at 982 Broad Street, Newark, be and the same is hereby revoked, effective immediately.

D. FREDERICK BURNETT,
Commissioner.

7. COOPERATION - STATE AND FEDERAL.

Hon. D. Frederick Burnett,
Commissioner,
Department of Alcoholic Beverage Control,
Newark, New Jersey.

My dear Commissioner:

On Tuesday, April 14, 1936, Judge Avis imposed sentences ranging from three years and $1400 to a year and a day upon five of the persons arrested at the large distillery and cracking plant seized on July 1, 1935, by your investigators at Glassboro, N. J. After the seizure we were called into the case and it was turned over to us for investigation and prosecution.

The two principals, Whitcomb and Turnia, who were arrested after months of intensive investigation, have been interested in cracking plants and distilleries since 1927, but this is the first time that they were convicted for their operations.

This is but an example of what cooperation between our organizations can accomplish.

I know that you will be greatly pleased to hear of the outcome of this case.

Yours very truly,
W. L. RAY,
District Supervisor.

April 15, 1936.

April 17, 1936.

W. L. Ray, District Supervisor,
Newark, New Jersey.

My dear Major:

Thanks so much for yours of the 15th re Glassboro. The stiff penalties imposed by Judge Avis are, as you surmised, heartening.

I was proud of my men at the time when they captured the cracking plant and the prisoners, and put an end to the poisonous liquor there produced, and it now becomes a keen pleasure to congratulate you and your men on tracking down the principals and securing their convictions.

Our joint policy of intensive cooperation will be maintained at all times.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

8. LICENSES - GROUNDS OF DENIAL - MAY BE DENIED IN ABSENCE OF NUMERICAL LIMITATION IF SUFFICIENT NUMBER EXISTS.

LICENSES - LIMITATION - SHOULD BE EFFECTED BY FORMAL RESOLUTION OR ORDINANCE.

April 6, 1936.

Dear Sir:

I have an application for a Plenary Retail Consumption License and the Members of the Council think that we have enough licenses issued and are apt to vote it down at the next Council Meeting Friday April 10th.

We have no ordinance enacted limiting the number of licenses to be issued.

Will you advise me if they can turn it down for this cause alone.

Yours truly,

CHAS. E. RENTON,
Borough Clerk.

April 9, 1936.

Charles E. Renton, Borough Clerk,
Roselle Park, N.J.

Dear Sir:

I have your letter of April 6th.

A municipality may, even in the absence of a formal limitation of the number of licenses to be issued, refuse to issue licenses where a sufficient number has been issued in the municipality. This principle was held valid and applied in a number of cases where denials of applications were appealed to the Commissioner. See Sussex County Drug Co. v. Newton, Bulletin #47, Item #3; Redfern v. Keansburg, Bulletin #81, Item #7; Cutinelle v. Hightstown, Bulletin #100, Item #13;

Haycock v. Roxbury, Bulletin #101, Item #3. It is the very point of the New Jersey Supreme Court decision of Bumball v. Burnett, 115 N. J. L. 254, Bulletin #79, Item 9.

The determination that there are enough licenses issued in the municipality must, however, in order to be valid, be made in the light of all the circumstances, e.g., the number of licenses actually issued, the population of the municipality, the character of the municipality, the character of the applicant, the density of the population, etc. Where the determination is reasonably made and is done in good faith and is sustained by the evidence, the action of the municipality in denying further applications will be sustained on appeal.

It is highly desirable to avoid any possible charge of discrimination that the Borough Council formally enact by express resolution its policy not to issue any additional licenses before applications are considered, so that it clearly appears that it is not an excuse or alibi for turning down a specific application but rather a general principle to be lived up to irrespective of who makes the application and to continue in full force and effect until time and experience shows that the limitation should be changed. When the time for such change does arrive, then it likewise should be duly enacted by express resolution or preferably by ordinance so that full notice is given and opportunity to be heard afforded everybody.

I am heartily in favor of limitation of licenses when done locally to fit the needs of a particular municipality and not based on some arbitrary state-wide proposition without reference to the needs and wishes of the particular community.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. SPECIAL PERMITS - WHEN SOUGHT TO BE HELD ON PREMISES, THE LICENSE FOR WHICH HAS BEEN SUSPENDED - CONSIDERATIONS APPLICABLE.

April 17, 1936.

Adele McDermott, Borough Clerk,
Ridgefield, New Jersey.

Dear Miss McDermott:

I have your letters of April 17th re the applications for Special Permits by Regular Democratic Club of Palisades Park, and by the Bergen County Court Officers Association, for the dispensing of alcoholic beverages at Light's Inn, Ridgefield, N. J. for social affairs to be conducted by these organizations tonight and tomorrow night respectively.

The license of Dorothy Light was suspended by the Mayor and Council of Ridgefield, by their order of March 27th, 1936, for a period of three months on the ground that illicit beverages and slot machines were possessed on the licensed premises. On March 28, 1936, she duly filed Notice of Appeal from the Order of Suspension. On April 1st, I entered an order denying a stay of suspension pending the determination of the appeal. The suspension is now, therefore, in full force and effect.

In the Matter of the Wagon Wheel Inn, Bulletin 66, Item 10, I ruled that premises on which dealings in illicit liquor have been conducted were not eligible for special permits for social affairs.

In Great Notch Villa vs. Clifton, Bulletin 92, Item 14, the Retail Consumption License of the Villa had been suspended for a period of twelve days. The American Legion Post of Paterson had, previously to the suspension, made all arrangements for its Annual Dinner to be held at the Villa at a time during the term of the suspension, but all arrangements had been made before the order of suspension had been entered. The affair had been widely advertised and 200 persons had made arrangements to attend. Each of these persons and the Post itself would be seriously inconvenienced if the dinner could not take place according to schedule. I therefore ruled that, in view of this unnecessary hardship upon a large group of innocent persons, the dinner of the American Legion could take place as planned on condition that the order of suspension be extended one day in order to make up for the dispensation then granted.

In the instant applications, each of the applicants had consummated contracts to conduct their respective affairs at Light's Inn prior to the suspension of the license; tickets have been sold; the affairs have been widely advertised and all arrangements have been completed. In both cases, the applicants declare that Light's Inn is to have nothing whatsoever to do with the sale or dispensing of alcoholic beverages, but that all such beverages will be sold and dispensed only by members of the applicant organizations. All that is desired is to use the Inn as a place for the holding of their respective affairs.

In view of these facts, and because your Mayor and Council, not wishing to penalize the innocent, have approved the respective applications on condition that each respective applicant is held fully responsible for dispensing alcoholic beverages at the premises in question, I have granted each application subject to said condition and without extension of the time of the suspension.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. MUNICIPAL ORDINANCES - LICENSES - OTHER MERCANTILE BUSINESS

PLENARY RETAIL DISTRIBUTION LICENSES - STATUTORY OPTION TO EXCLUDE SUCH LICENSEES FROM TRANSACTING ANY OTHER MERCANTILE BUSINESS MUST BE EXERCISED IF AT ALL BY ORDINANCE.

LIMITED RETAIL DISTRIBUTION LICENSES - NO OPTION TO EXCLUDE SUCH LICENSEES FROM TRANSACTING OTHER MERCANTILE BUSINESS.

April 9th, 1936.

John Gaunt,
Borough Clerk,
Runnemede, New Jersey.

Dear Sir:

* * * * *

Section XX of your resolution adopted June 6, 1935 requires that the licensed premises be separated from any other

business by substantial partition and have an independent entrance, except in the case of cafes, lunchrooms and restaurants. As worded, it applies to all classes of licenses the issuance of which the resolution authorizes.

So far as Section XX applies to plenary retail consumption licenses, well and good. The statute, Section 13, sub. 1, prohibits in the first instance the issuance of such licenses for premises upon which any mercantile business other than the sale of alcoholic beverages is carried on. But the section, as it now stands, cannot affect either plenary or limited retail distribution licenses. Section 13, sub. 3a of the Act authorizes the governing body of each municipality to enact that plenary retail distribution licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, but requires that the restriction be adopted by ordinance. Mere resolution will not suffice. To be legally effective, it must be enacted by ordinance. And, furthermore, so far as limited retail distribution licenses are concerned, the option to restrict their issuance to premises selling alcoholic beverages exclusively does not exist. There is no provision for it in the Act. And in the absence thereof, it cannot be done. Hence, Section XX is effective only so far as it applies to plenary retail consumption licenses. It should, therefore, be amended so that by its terms it expressly applies only to plenary retail consumption licenses.

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Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. MUNICIPAL ORDINANCES - QUALIFICATIONS IMPOSED UPON APPLICANTS FOR SEASONAL RETAIL CONSUMPTION LICENSES ADDITIONAL TO THOSE FOR PLENARY RETAIL CONSUMPTION LICENSES DISAPPROVED.

April 4th, 1936.

William B. Jeffrey,
Clerk of Ocean Township,
Oakhurst, New Jersey.

Dear Sir:

I have before me the ordinance to regulate the sale of alcoholic beverages in the Township of Ocean, which was passed by the Township Committee on May 17, 1935. It is approved as submitted subject to the following comments and exceptions:

* * * * *

Section 7, in conclusion, restricts the issuance of seasonal retail consumption licenses to bona fide hotels having at least thirty rooms and which shall have been owned or operated by the applicant for a period of at least two years before application is made. The ordinance does not similarly restrict the issuance of plenary retail consumption licenses. Plenary retail consumption licenses appear to be

issuable to any applicant who qualifies under the Act. Your rule applies only to seasonal licenses. But I think I understand the purpose. I take it that it was designed to protect the small plenary retail consumption licensee, who attempts to keep his business open and running the year round, from those who would come in only for the summer season and enjoy the fruits of the good months, to the disadvantage of the yearly licensee, without sharing in the bad. But the regulation raises many questions.

In the first place, the regulation is not, as I see it, concerned with liquor control. On the contrary, it appears to be concerned solely with an economic matter with respect to which there is some doubt as to the authority of municipalities to exercise jurisdiction. The Alcoholic Beverage Control Act was designed to regulate the manufacture and sale of alcoholic beverages. It is, primarily, a control measure. As such, it does not give municipalities jurisdiction to act in any matters relating to alcoholic beverages other than control. So your regulation would not purpose, as prescribed in Section 21, to achieve the fair, impartial, stringent and comprehensive administration of the Act. Nor would it accomplish the objects of the Act (Section 29). Nor would it regulate, within the contemplation of Section 37, the conduct of licensed businesses or the nature and condition of licensed premises.

Moreover, according to the Statute, the same qualifications are required of applicants for plenary retail consumption and of applicants for seasonal retail consumption licenses. And both classes of licenses confer the same privileges. Also they serve the same purpose. The only difference between them is in the length of the license term. How then can you support such a distinction between them, if both are to be issued, either on control or economic grounds.

The regulation would permit only those hotels having at least thirty rooms and which had been owned or operated by the applicant for a period of at least two years before application was made, to qualify. These two requirements are extraneous. A bona fide hotel is a bona fide hotel regardless of the number of rooms it contains, regardless of whether it has ten rooms or thirty rooms, or three hundred rooms. And it may likewise be a bona fide hotel without having been owned or operated by the particular applicant for the license for the preceding two years. The limitation of the number of rooms to a minimum of thirty is at best an arbitrary limitation. Why thirty? Why not some other number? Both the minimum room requirement and the two-year probationary period lose whatever value they may have as control measures by virtue of the fact they would in nowise prevent the same applicant from obtaining during that same period any other class of retail license.

For these reasons, the concluding proviso of Section 7 is disapproved.

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Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. MUNICIPAL ORDINANCES - REGULATION PROHIBITING EMPLOYMENT OF FEMALES TO SELL OR DISPENSE ALCOHOLIC BEVERAGES EXCEPT IN DINING ROOMS APPROVED. SAME REGULATION WITH RESPECT TO MINORS DISAPPROVED.

MUNICIPAL ORDINANCES - JAG LIST - DISAPPROVED.

MUNICIPAL ORDINANCES - MAXIMUM QUANTITY OF ALCOHOLIC BEVERAGES WHICH MAY BE SOLD - DISAPPROVED.

April 7th, 1936.

Robert J. Pettit,
Borough Clerk,
Netcong, New Jersey.

Dear Sir:

* * * * *

Section 4 (D) of your resolution of December 4, 1933, says that no female or minor shall be employed, hired or permitted to sell, dispense or deliver any alcoholic beverages except in a public dining room clearly visible from the street. So far as the regulation applies to females, it would be approved. And this despite the fact that it could be questioned on the ground of discriminating between members of the same license class because it excepts public dining rooms, allowing females to serve or dispense alcoholic beverages therein but in no other places. The exception in favor of dining rooms would fall within those contemplated by Bulletin 19, item 7 and Bulletin 43, item 11 and for the reasons given therein, would likewise be tentatively approved. But so far as the regulation applies to minors, it would not be approved. The statute, Section 23, prohibits the employment by licensees of anyone who would fail to qualify as a licensee and in Section 22 prohibits the issuance of any license to a minor. The only exception to the rule laid down in Section 23 is that provided in the section itself which says that minors may be employed, but only with the Commissioner's approval, provided that they not in any manner whatsoever sell or solicit the sale of alcoholic beverages. So far as the exception in favor of public dining rooms applies to minors, it would be disapproved because contrary to statute. Furthermore, so far as the regulation deals with the employment of minors in general it had better be omitted entirely because it deals with matters controlled by statute and as to which definite rules and regulations have already been promulgated. See Bulletin 82, item 10.

Section 4 (F) says that no alcoholic beverages shall be sold, dispensed, given or delivered to any habitual drunkard nor to any person whose name shall be certified to as ineligible to purchase or receive alcoholic beverages by the governing body, further providing that the names so certified shall be conspicuously displayed on the premises where alcoholic beverages are sold. Now there is no question in my mind as to the soundness and desirability of prohibiting sales of alcoholic beverages to habitual drunkards. Every right-thinking person would support such a regulation. But I have grave doubts as to the propriety of the so-called ineligible list in the form in which you have set it up. According to your regulation, all that is necessary in order to put names on this list is that the governing

body shall declare the persons ineligible. But no person is charged with keeping the list, nor is any provision made for removing names from the list, nor is any criterion set up so as to measure the particular conduct which will cause names to be included. If these and other matters of common fairness are carefully thought out and resubmitted, I will consider the regulation again. But as it now stands, I cannot approve it because it is entirely too arbitrary and unfair. Re Matawan, Bulletin 67, Item 3.

* * * * *

Section 4 (H) says that the maximum quantity of alcoholic beverages that may be sold for consumption off the licensed premises shall be not more than one quart of liquor or wine, nor more than six bottles of beer. As worded, the regulation avails you nothing so far as either temperance or control over the sale of alcoholic beverages is concerned. It does not say how often or, rather, how seldom such purchases may be made. In fact, it would permit the maximum quantity to be purchased as many times per day as the purchaser could travel in and out of the store. As it now stands, even if it could be enforced, it would be of little value. I suggest that you reconsider the regulation from a practical point of view. Consider the difficulty of its enforcement, the ease with which it could be evaded, the extent of the benefits to be gained even if it could be enforced. If, after further consideration, the Council decides that some such regulation is necessary, I suggest that it be redrafted so as to make it more definite and precise.

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Very truly yours,
D. FREDERICK BURNETT
Commissioner

13. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - SHOULD RUN FOR THE FISCAL NOT THE CALENDAR YEAR.

MUNICIPAL ORDINANCES - SCREENS - HOTELS, CLUBS AND FRATERNAL ORGANIZATIONS - HEREIN OF DISCRIMINATION BETWEEN MEMBERS OF THE SAME LICENSE CLASS.

MUNICIPAL ORDINANCES - REGULATIONS SHOULD BE SUFFICIENTLY PRECISE TO INDICATE EXACTLY THEIR APPLICATION.

April 8, 1936.

Mrs. Johanna E. Berton, Clerk
Borough of Pine Hill
R. D., Sicklerville, New Jersey.

Dear Madam:

* * * * *

Section 13 of your resolution adopted July 3, 1934, so far as it limits the number of plenary retail consumption and distribution licenses which may be issued, similarly as with Sections 7 and 12, for the reasons stated in Bulletin 43 item 2, does not need my approval in the first instance in order to be effective. But I note that Section 13 limits the number of licenses to be issued during any one calendar year. This would mean that once the full quota of licenses had been issued during any calendar year, no further licenses could be issued until the next calendar year. So if the full quota were issued prior to June 30th and, consequently, all expired on June 30th, no new licenses or renewals could be issued until the next January 1st, six months after the old ones expired. The calendar year is not the term during which the regulation should run. Licenses run for the course of the fiscal year from July 1st to the June 30th following, and limitations as to the number should run concurrently, for

the same period. Furthermore, the measure is not the number of licenses issued but the number of licenses outstanding and in full force and effect. The fact that licenses have been issued is not the criterion because subsequently some or even all may be surrendered or revoked. If issuance is the criterion, none could be granted to take their place because all those which the limitation allowed would already have been issued. Section 13 should be amended so that it limits the number of plenary retail consumption and distribution licenses which may be issued and outstanding at the same time during any one fiscal year.

Section 14 of the same resolution requires that curtains and screens at the windows and doors of licensed premises shall be so arranged that the interior shall be fully exposed to public view, excepting hotels, clubs and fraternal organizations, unless the place of sale therein adjoins a public highway.

I should think that if the exception excusing hotels, clubs and fraternal organizations from complying with the rule were valid at all, that it would have to apply regardless of whether or not the place of sale in the hotels, clubs and fraternal organizations adjoins the public highway. The principle underlying the exception would appear to be grounded, rather than upon the location in the building of the place of sale, upon the differences between hotels, clubs and fraternal organizations on one hand and other licensees on the other hand, which exist because of the different sort of business that each group conducts. But, granting that the distinction is warranted and that hotels, clubs and fraternal organizations may be excused from the regulation requiring adequate public view, what reason is there to segregate some of the hotels, clubs and fraternal organizations from the group and to confer upon them and not others the privileges of the exception. It does not seem to me as if there were any valid reason. At least, not merely because the place of sale is off the public highway. If there is no objection to curtains or screens which obstruct public view in hotels or clubs or fraternal organizations which are off the public highway, why should there be with respect to hotels or clubs or fraternal organizations which happen to adjoin a public highway. And the ease with which the rule could be evaded, merely by moving the place of sale to the rear of the building, defeats its very purpose. Whether or not the place of sale in or the hotel, club or fraternal organization itself adjoins a public highway does not seem to be the criterion by which to measure whether or not they should fall within the exception. It is, therefore, disapproved.

So the regulation now stands: "Curtains and screens at the windows and doors of all licensed places shall be so arranged that the interior of the place licensed shall be fully exposed to public view at all times, provided that this rule shall not apply to hotels, clubs or fraternal organizations."

The exception in favor of hotels is approved. And this despite the fact that it could be questioned on the ground of discriminating between members of the same license class because it excepts hotels from the general regulation prohibiting the sale of alcoholic beverages in any place concealed from public view. The exception in favor of hotels falls within those contemplated by Bulletin 19, item 7 and Bulletin 43, item 11, wherein certain regulations, although appearing to be discriminatory, are distinguished. Moreover, I have ruled in a case heard on appeal and fully contested that an ordinance barring screens in licensed premises may properly except hotels from its operation; that while it does discriminate between members of the same license class, it may properly do so in case of hotels. Retail Liquor Dealers Association v. Plainfield, Bulletin 70, item 1.

But so far as the exception applies to clubs and fraternal organizations holding plenary retail consumption licenses, it is not

approved. Applicants for club licenses are closely restricted by the statute and the rules and regulations in order to insure that such licenses may be issued only to bona fide clubs and in bona fide clubs the causes which give rise to screen regulations may be considered to be sufficiently remote to support omitting the screen regulation entirely. But not so with respect to clubs or fraternal organizations holding plenary retail consumption licenses. They qualify as do any commercial applicants and have the privilege of selling to the general public. The situation resulting from your regulation would be that any commercial organization merely by classifying itself as a club or fraternal body could bring itself within the exception and thereby evade the regulation. This is because there is nothing in the regulation by which to measure whether or not a licensee could be classified as a club or fraternal organization and consequently come within the exception. I think that the section should be reworded so that the exception applies only to hotels. If the Council wants to include, in addition, clubs and fraternal organizations, it should set up specifically the terms and conditions compliance with which would enable clubs and fraternal organizations to qualify for the privilege of exemption. Then you would have an adequate standard by which to measure. Cf. re Voorhees Township, Bulletin 105, item 9; re Mullica Township Bulletin 109, item 4.

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Very truly yours,

Commissioner