STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 46. October 2, 1934

1. SPECIAL PERMITS - APPLICATION FEE

No application for special permit will be considered unless accompanied by an application fee of $10.00.

If the application is granted, applicant will be advised of the permit fee and the foregoing sum of $10.00 will be credited towards said fee.

If denied, the fee, less proper service charges to be determined by the Commissioner, will be returned to the applicant.

2. MUNICIPAL RESOLUTIONS - APPROVAL BY COMMISSIONER - PREFERABLE PROCEDURE

September 15, 1934

I. Arthur Weiss, Esq.,
136 Washington St.,
Paterson, N. J.

Dear Sir:-

I have yours of the 14th. The answer to your question as to whether it is necessary to submit an ordinance concerning liquor licenses and rules and regulations for approval before it can be passed upon by the Borough Council is technically in the negative. In other words, the municipality has the power to enact the ordinance before it is submitted to the Commissioner for approval. But it is not expedient to do so because, if disapproved, the expense of advertising has to be incurred a second time. Hence, I have offered to examine and pass on these ordinances in advance of enactment so that changes can be made, if necessary, without expense.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

3. MORAL TURPITUDE - HABITUAL OFFENDERS - REPEATED CONVICTIONS UNDER REPEALED NATIONAL PROHIBITION ACT.

September 15, 1934

Dear Sir:-

On January 24th, I had the unpleasant duty of refusing your application for a license because (1) of material discrepancies between your sworn application and the actual record, and (2) because that record showed convictions for violation by you of the National Prohibition Act in 1922, 1923 and 1929, for which you were fined $75., $200. and $1,000. respectively.

I now have before me your application for a State Beverage Distributors license. Our investigation shows that since

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the aforesaid convictions, you have lived a quite exemplary life and as far as we can determine have not been involved in any violations of the law. The discrepancies in your original application were, subsequently to January 24th, satisfactorily explained, but I considered then that the three convictions under the National Prohibition Act constituted you an habitual offender, and therefore denied your application.

The same question again arises in respect to your new application. It has been pending several weeks, because I have experienced great difficulty in reaching a conclusion as to what is the just decision to make.

In the meantime, the original records in the court files have been examined to see if there was anything in the facts which in anywise involved moral turpitude. I am happy to say that there was nothing of that kind. I do find that the law as it then stood was violated on three different occasions. The question is whethe the three convictions under a law, which has since been repealed, make you, irrespective of the absence of moral turpitude, an unfit person to have a license and therefore barred for all time from any license despite the repeal of the law itself. I doubt it. Habitual violations weigh heavily in most cases. But the Prohibitio period was extraordinary. Many otherwise law-abiding persons either directly or indirectly violated the law or condoned the pratice. Since my severe decision of January 24th, the Supreme Court of the United States has dismissed indictments for violations of the former National Prohibition Act pending either in the lower courts or on appeal, on the ground that the law was no longer in effect. By Repeal, organized society reversed its previous attitude as to what the law should be. Since the Prohibition Law no longer exists on which to convict, it follows that convictions bas on it, if not involving moral turpitude, should not continue to operate and thereby effect permanent disqualification. Your punishm has been completed.

I believe you intend to go straight from now on. If you violate the present law which gives you the opportunity legitimate to engage in your chosen business, do not look for mercy here. If you scrupulously obey the law, you have nothing to fear.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

4. APPELLATE DECISIONS - SCHWARTZ VS. TOWNSHIP OF MILLSTONE

SAMUEL SCHWARTZ,
Appellant

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MILLSTONE,
Respondent.

ON APPEAL
CONCLUSIONS

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John H. Kafes, Esq., Attorney for Appellant
Messrs. McDermott & Finegold, by Max Finegold, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail distribution license for premises located in the Village of Perrineville, Township of Millstone, N. J. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied because appellant had improperly conducted his business while operating under a prior license. At the hearing it appeared that on May 2, 1934, while appellant was operating under a plenary retail distribution license, two investigators of the Bureau of Internal Revenue inspected appellant's premises and found a quantity of illicit alcoholic beverages thereon. Appellant failed to testify at the hearing and no satisfactory explanation for the presence of the illicit beverages was established. Such possession of illicit beverages upon the licensed premises reasonably sustains respondent's contention. See <u>Orofino</u> vs. <u>Millburn</u>, Bulletin #45, Item #15.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: September 15, 1934.

5. ALCOHOLIC BEVERAGES - TRANSPORTATION - IMPORTATION - SPECIAL PERMIT DENIED

August 31, 1934

Gentlemen:

The petition sets forth that the petitioner is a retail licensee and operates a chain of stores throughout the State; that it is likewise the holder of two transportation licenses; that the rules governing the transportation of alcoholic beverages into New Jersey, promulgated on July 2, 1934 and effective July 9, 1934, prohibit it from importing alcoholic beverages into this State; that the alcoholic beverages sought to be imported are not owned at present by the licensee; that they will be purchased from time to time in the future from persons unknown at present; that consequently the dates of shipment cannot be definitely stated; that a period of six months will be required to import the amounts stated below; and prays for a special permit to import 50,000 gallons of beer, 12,500 gallons of liquors, 7,500 gallons of still wines and 800 gallons of sparkling wines.

Previous to their promulgation, the rules governing the transportation of alcoholic beverages into New Jersey received considerable study by this Department and were discussed at a public conference attended by all branches of the industry. In the interests of effective control and in order to insure the payment of taxes, they were adopted.

Paragraph 5 thereof, which authorizes the importation of alcoholic beverages under special permits, was designed to enable specific and limited importation, otherwise prohibited, where special cause therefor appeared. The petition does not present such a situation. In effect it prays that for a period of six months the petitioner be excluded from the operation of the rule.

If such relief were to be granted to all retail licensees, then the rule would be rendered meaningless. And it would obviously be improper to discriminate in favor of one retail licensee by excluding it from the operation of the rule and, at the same time, apply the rule to the remaining retail licensees.

Accordingly, the Commissioner has denied the petition without prejudice to the filing of another petition praying for a special permit to import on a certain day, or during a certain limited period of days, alcoholic beverages, definitely described, specified in amount, and owned by the licensee or purchased from specified persons.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner

6. MUNICIPAL RESOLUTIONS - AMENDMENTS - EFFECTIVE DATE - RETROACTIVE EFFECT

September 21, 1934

Arthur L. Joseph, Esq.,
Vineland, N. J.

Dear Mr. Joseph:

I have yours of the 18th advising that because of the large number of licensees now in the Township of Landis, many of whom have come from without, the Township Committee purposes to amend their resolution regarding licenses to the effect that "An applicant for a license must be a resident of the Township of Landis for one (or two) year (or years)", and inquiring if it will be legal to do so at this time, or whether the amendment could be made only at the end of the fiscal year.

The Township Committee may amend their resolution at any time, to be effective immediately, and not wait until the end of the fiscal year. As was said in Bulletin 44, Item 13, in respect to a purposed rescission of a municipal resolution limiting the number of retail consumption licenses to two for a period of one year: "The right to enact it in the first place was founded on general, underlying police power. So is the right to rescind it. The resolution neither constituted a contract with those two licensees nor a representation on which they had a right to rely because the resolution was not enacted for their benefit but in what was at the time supposed to be the best common interest of the public at large. If experience shows that sound public policy requires that the resolution should be amended or rescinded outright, there is nothing in the law to prevent."

Whether any amendment that your Township Committee may make will have a retroactive effect on existing licensees, is, of course, an entirely different question. It does not arise in the instant case because I understand that your proposed amendatory resolution by its terms is to apply only to future applicants.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

7. LICENSE FEES - APPLICATION, DISPOSITION AND PRORATION

An accountant auditing the accounts of an issuing authority inquired:

"1. Bulletin 35, item 16, states clearly that license fees are to be computed from the date of application and not from the date of issue. Although clear, this is so extraordinary and will work an injustice in so many cases, that I am led to ask for advice on the following examples:

"(a) On August 13, A and B each apply for plenary retail consumption licenses which cost $350 for the full year. As of August 13, the prorated fee is $300. A deposits $300 with his application, B, $350. If both are granted, should not B be refunded $50 even though 'no refund shall be made of any portion of a license fee after issuance of a license. (Section 28)'? It is clear that the extra $50 is not in any sense a license fee but is a fund deposited with the issuing authority which does and always would belong to the applicant. Since it does not constitute part of the proper fee it is returnable at any time. Is this correct?

"(b) If A's license is issued on August 23, the correct period for which the license runs is August 23 to June 30 (Section 23). Fee for that period is approximately $290. He has deposited $300. Since the fee is a definite sum of $290 is not the other $10 an extra deposit and not a part of the fee? If so, it is not a fee in the sense of Section 28, but is a fund deposited with the issuing authority which belongs to the applicant and is returnable to him at any time. If this is not so, the applicant is being charged with the period of investigation, and that might be short or long depending in part upon the efficiency of the issuing authority. One applicant might have to pay for five days of forced idleness; another for thirty. Which is the correct interpretation here?

"(c) If A were refused a license on August 23, I presume it would be correct to charge his 10% forfeit against the deposit from August 23, the date of application. This is upon the assumption that the ten-day interval was used for an investigation which was prolonged by the applicant's own ineligibility. Is this correct?

"(d) If B were rejected on August 23, I believe he would be entitled to recover out of his $350 first, the $50 which he originally overdeposited in error, and then 90% of the correct fee from August 13 to June 30 (90% of $300 or $270). Is this correct?

"2. If it is true that the present licensing year began July 1, 1934, is it nevertheless true that seasonal licenses began May 15, 1934? Should an applicant receiving a seasonal license as of July 15, 1934, pay 60/120 of the seasonal rate, or 60/75 of it? Or all of it?"

The Chief Deputy Commissioner replied:

"(1) Under the Commissioner's ruling in Bulletin 35, Item 16, when a license is issued, the fee thereon is computed from the date of the filing of the application to the date of the expiration of the term of the license. This result follows

from the provisions of Section 22 and 28 of the Control Act, and while it may be suggested that its consequences are harsh, the remedy lies solely with the Legislature.

"(a) When an application is filed on August 13th and the license fee payable thereon, calculated from the date of the filing of the application to the date of the expiration of the period of the license, is $300, such amount should accompany the application. If by error the sum of $350 accompanies the application, then the applicant is entitled to a return of the $50 excess deposited with the application.

"(b) Under the Commissioner's ruling in Bulletin 35, Item 16, upon the issuance of a license, the issuing authority should retain the full license fee of $300, even though the license is actually issued ten days after the date of application.

"(c) If the application is denied, pursuant to the provisions of Section 22 of the Control Act, the issuing authority should retain 10% of the $300 license fee which accompanied the application.

"(d) Consequently, if $350 accompanied the application, the issuing authority should return the excess sum of $50, plus $270, or a total of $320.

"(2) Under the Commissioner's ruling, Bulletin 35, Item 17, seasonal licenses may be issued at any time during the statutory period of such licenses, and the fee therefor must be prorated from the date of application until the date of expiration of the license. Consequently, if an application for a seasonal license is filed on July 1, 1934, the fee therefor should be 77/124 of the total fee payable for a full seasonal license from May 15th until September 15th."

8. APPELLATE DECISIONS - MC CONNELL VS. TRENTON

CHARLES MC CONNELL, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Ernest S. Glickman, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935 was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was pro-

perly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory, and unreasonable.

Respondent further contends that the application was properly denied because appellant conducts a fish and chip business upon the premises sought to be licensed, which business, it is argued, comes within the prohibition of Section 13 (1) of the Control Act. The business consists of the sale of filet of haddock and potato chips for consumption both on and off the premises. Appellant testified, however, that while occasionally orders are taken out, nevertheless the bulk of the prepared food sold by appellant is consumed on the premises. The place is essentially a restaurant. The mere fact that some persons do not consume the food on the premises does not change the character of the business.

Respondent also sets up that the application was properly denied because of the objections of neighbors. The principal objectors, however, were competitors of appellant and the objections were motivated by economic and personal reasons. While objections to the issuance of a license may properly be considered by an issuing authority, nevertheless their weight is governed by the reasons therefor. Cf. Sweeney vs. Mayor and Council of the City of Asbury Park, Bulletin #39, Item #9.

The action of respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: September 29, 1934.

9. APPELLATE DECISIONS - BABYAK VS. TRENTON

MICHAEL BABYAK,
Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent

ON APPEAL
CONCLUSIONS

William Reich, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant complied with all the formal prequisites pertaining to his application for a plenary retail consumption license. The suitability of the premises sought to be licensed is unquestioned.

Respondent contends that the application was properly denied because appellant is personally unfit to receive a license. This contention rests upon the fact that in 1925 appellant was fined for selling alcoholic beverages in viola-

tion of the National Prohibition Act. Respondent heretofore issued licenses to persons who had been similarly convicted several times. Recognizing this fact, respondent asserts that while such convictions do not necessarily mark a person as unfit, nevertheless, the fact that appellant committed the crime in a candy store frequented by children places him in a different category. It appears, however, that the sale did not take place in a candy store, but rather in a back room which children did not enter, and that after his conviction appellant entirely discontinued the sale of liquor. Inasmuch, therefore, as respondent's contention rests upon a factual misapprehension, it cannot be sustained.

Respondent's sole other contention is that the application was properly denied by virtue of its resolution of May 31, 1934, limiting the number of plenary retail consumption licenses to be issued in Trenton to 250, and the issuance of the allotted number. For the reasons set forth in Central Restaurant Inc. vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #44, Item #5, this contention cannot be sustained.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: September 29, 1934

10. APPELLATE DECISIONS - REDNOR VS. TRENTON

ISAAC REDNOR,
Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Katzenbach, Gildea & Rudner, Esqs., by George Gildea, Esq., Attorneys for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at #13 Front Street, in the City of Trenton. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied for the reason that appellant is personally unfit to receive a license. Respondent has the power and is under the duty to investigate the personal character of all applicants and to deny the applications of those whom they determine are unfit to receive licenses. On appeal such determination will be given great weight and, if reasonable, will be sustained, See Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #29, Item #12.

Appellant was raided numerous times for violations of

the Federal Prohibition Act, and possession of slot machines. He admitted two convictions resulting from these raids. It is also admitted that under the 3.2 Beer Act appellant, although the owner of the business, applied for a license in the name of one of his employees because he had an indictment pending at the time and did not relish any possible publicity. He thus perpetrated a deliberate fraud upon the licensing authorities.

In view of the foregoing, it cannot be said that respondent exceeded its powers in denying the application of appellant because of his past conduct. See Cohen vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #8.

The action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: September 29, 1934.

11. APPELLATE DECISIONS - TROTTO VS. TRENTON

LOUIS TROTTO,
Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

George Pellettieri, Esq., by David Kelsey, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license. The application was denied. An appeal was duly filed and has come on for hearing.

At the hearing it appeared that appellant's notice of intention referred to premises located at #400 Bridge Street, and the application so described the location of the premises. In fact, the premises sought to be licensed are known as #400 Lamberton Street, and #400 Bridge Street is located approximately one block away. The mistake was bona fide and resulted from the fact that the premises sought to be licensed are located at the corner of Lamberton and Bridge Streets and appellant honestly believed they were officially designated as #400 Bridge Street. Respondent consented, however, to waive any defense arising from this error in the advertisement.

Section 22 of the Control Act provides that every applicant for a license shall cause a notice of intention to make such application to be published in a form prescribed

by rules and regulations. The Commissioner's rules and regulations require that the notice of intention include the address of the premises sought to be licensed. The purpose of requiring the advertising of notice of intention is to make the advertisement a medium through which all bona fide objectors might be accorded a fair hearing. The disclosure of the location of the premises sought to be licensed is of the utmost importance in enabling persons residing in the vicinity to make known their objections to the issuance of a license for such premises. Failure to make such disclosure renders the advertisement fatally defective even though there was no intention to deceive on the part of appellant.

Nor can respondent waive the requirements of the Act and the rules and regulations governing the advertising of notice of intention, for such requirements are jurisdictional prerequisites to the consideration of any application. Jurisdiction to issue a license, when there has not been complete compliance with the statutory requirements pertaining to the application, cannot be acquired by consent.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: September 29, 1934

12. APPELLATE DECISIONS - TURANO VS. TRENTON

MARTIN TURANO,
Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

George Pellettieri, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at 116 North Broad St., Trenton, N. J. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied for the reason that the appellant is not the sole person interested in the application, but that his brother was also interested therein, although such interest was not disclosed in said application. It appears that the major portion of the investment made in the business, was made not by appellant but by his brother. It further appeared that appellant is presently employed and has been so employed steadily for seven years, whereas his brother is without employment. It is admitted that appellant did not intend actually to run the business, but expected his brother to manage the same and that the latter was in charge of the premises at the time of the

municipal investigation. When asked why the application was made in appellant's name instead of his own, appellant's brother replied that he could not answer the question.

In view of the foregoing facts, it is clear that appellant is not the only person interested in the business, and that the application is fatally defective for failure to indicate the true facts. Under such circumstances, the propriety of respondent's action in denying the application cannot be questioned, see Kurpiewski vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #34, Item #6.

The action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: September 29, 1934

13. APPELLATE DECISIONS - PERSI VS. TRENTON

MELINDO PERSI,
Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

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

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at 559 Emory Avenue, Trenton. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends the application was properly denied because the premises sought to be licensed are too close to a school and the adjoining playground. The distance between appellant's premises and the school is approximately 200 feet, but the school playground measured by way of the nearest cross walk, extends to within 70 feet of the appellant's premises.

The action of the respondent was proper under the case of Staciewicz vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #10, where the Commissioner said

"It may be that under a proper construction of Section 76 of the Control Act, no license may be issued where the premises sought to be licensed are within 200 feet of the school's playground. See Bulletin #3, Item #8. That issue need not, however, be determined. Section 76 expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision

was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet.

"Respondent's determination that the issuance of a license for appellant's premises, substantially adjacent to a school playground, was socially undesirable, was justified by the evidence and furnished reasonable cause for the denial of the application."

The action of the respondent Board is affirmed.

D. Frederick Burnett

Dated: September 29, 1934 Commissioner

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