COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 86 August 6, 1935

1. RULES GOVERNING TRANSPORATION OF ALCOHOLIC BLVERAGES INTO NEW JERSEY -- STATE BEVERAGE DISTRIBUTOR --AMENDMENT OF RULE 1.

July 19, 1935

Mr. Edward G. Mack,
Westville, N.J.

Dear Sir:

Your inquiry as to whether a State beverage distributor may purchase beer outside New Jersey and bring it into this State in his own vehicle bearing a proper transportation insignia has been duly considered.

The rules of July 2d, 1934, governing the transportation of alcoholic beverages into New Jersey provide that alcoholic beverages owned by or sold to the holder of a New Jersey manufacturer's or wholesaler's license may be brought into this State by a licensed transporter. Since a State beverage distributor's license is a wholesale license, a shipment through a licensed transporter to such licensee is within the authority of the foregoing regulation. The importation in question could be effected through a licensed transporte no cause appears why it should not, therefore, be permitted through vehicles otherwise duly licensed.

Accordingly, rule #1 of the rules of July 2d, 1934, is hereby modified to read as follows:

> "Alcoholic beverages owned by or sold to the holder of a New Jersey Manufacturer's or Wholesaler's license, may be brought into this State by a licensed transporter, or in the licensee's vehicle bearing a proper transportation insignia."

Very truly yours,
D. FREDERICK BURNETT
Commissioner.

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

2. SOLICITORS' PERMITS --MAY BE ISSUED ONLY TO BONA FIDE AGENTS OR EMPLOYEES OF LICENSED NEW JERSEY MANUFACTURERS OR WHOLESALERS

Dear Sir:

It is true that for economic reasons my company has not renewed its wholesale license in the State of New Jersey. However, it has occurred to me that I would not be violating any rules or regulations if I arranged to make sales for a New Jersey wholesale dealer or distiller.

For instance: I have supplies - bottles, cartons, etc. stored at the Lord Stirling Apple Jack Distillery, Pittstown, N. J. The volume that I can sell in New Jersey of Apple Jack under my own brand is not sufficient to justify the expense of a wholesale license. Therefore, I thought perhaps I could work out an arrangement with the Lord Stirling people to sell for them my brand of Apple Jack on a commission basis to wholesale dealers in New Jersey. To carry out this plan, of course, I would have to be registered with the State as a salesman for the Lord Stirling if I am to do the selling.

Will you kindly advise if the foregoing is consistent and greatly oblige?

Very truly yours,
THEODORE G. STEIN, INC.
THEODORE G. STEIN,
President.

August 6, 1935

Theodore G. Stein, Inc.,
Philadelphia, Pennsylvania.

Dear Sir:

I have before me your letter asking if a solicitor's permit could be granted to you as a salesman employed by Lord Stirling Distilleries allowing you to sell in New Jersey your brand of applejack which Lord Stirling would bottle for you under your own name.

There are two considerations involved:

The sale of your own brand of applejack, bottled in your own containers, cartons, etc., does not fall within the permissive scope of Lord Stirling's license. The limited distillery license under which Lord Stirling operates permits Lord Stirling to manufacture alcoholic beverages distilled from fruit juices and to rectify, blend, treat and mix and to distribute and sell its said products to licensed wholesalers and retailers. That is as much as it allows. See Re Hiram Walker, Bulletin #55, Item #4, copy enclosed. It does not permit Lord Stirling to distribute and sell anyone else's product. Nor could salesmen whose solicitors' permits have been issued by virtue of their employment by Lord Stirling sell products other than Lord Stirling's.

Then the question arises as to whether or not an employment agreement such as you propose could be made with a wholesaler, who is entitled under his license to distribute and sell all alcoholic beverages. In such a circumstance, the Commissioner would not grant a solicitor's permit. Clearly, such an arrangement would be an evasion designed to circumvent the State's licensing requirements. If carried to the extreme, it would enable the conduct of all wholesale liquor business in this State under one wholesale license by means of commission arrangements with those who sought to distribute a particular line of merchandise to their own clientele. The fact that the applicant for solicitor's permit actually conducts a wholesale liquor business outside of the State of New Jersey, as do you, serves only to substantiate and crystallize the suspicion that the employment is a subterfuge whereby the salesmen would obtain the privileges of a wholesale license without taking out a license and paying the fee.

Solicitors' permits may be issued only to bona fide agents or employees of duly licensed New Jersey manufacturers or wholesalers

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Maurice E. Ash,
Senior Inspector.

3. EMPLOYMENT BY RETAIL LICENSEES OF PERSONS FAILING TO QUALIFY AS TO RESIDENCE - NOT APPLICABLE TO RAILROAD CARRIERS OPERATING UNDER PLENARY RETAIL TRANSIT LICENSES

July 30, 1935

Dear Sir: Re: Lackawanna Railroad.

I just received a copy of the rules and regulations governing the employment by licensees of persons failing to qualify as to age or residence or citizenship dated July 5, 1935.

As I do not have a copy of the rules showing the necessary qualifications a retail licensee must possess, there is doubt in my mind as to just how the regulations under date of July 5th will apply to Retail Transit Licensees.

All our employees are over twenty-one (21) years of age and are citizens of the country. There are a number of our men, however, who do not reside in the State. This is due to the fact that some of our through trains are so operated that it makes it impossible for the men to reside in the State of New Jersey.

We have employees who are regularly assigned and in addition we employ a number of extra men from day to day to take care of heavy travel. These extra men may work two or three days and leave. As we do not have steady work for these men, it is hard to keep the same extra men to take care of our extra business. In view of the fact that we never know just what extra men we will have available, it will be difficult and quite impossible to have them comply with the law by securing a license which license no doubt would have to be taken out in advance. If this group of employees must be licensed before we employ them, it will interfere with operations and prevent us from giving the necessary service as these men will not take out a license in advance and not have a guarantee of steady employment.

Will you kindly advise if the regulations under date of July 5, 1935 applies to Retail Transit Licensees and what your wishes in the matter are?

Respectfully yours,
W. A. WILLIAMS,
Superintendent,
Dining Car Department.

August 5, 1935

The Delaware, Lackawanna and Western Railroad Company,
Dining Car Department,
Hoboken, New Jersey.

Attention: W. A. Williams, Superintendent.

Dear Sir: Re: Lackawanna Railroad.

I have your letter of July 30th re the employment by you, in the course of the operation of through trains, of non-residents of this State.

It is true that Section 23 of the Alcoholic Beverage Control Act prohibits anyone who would fail to qualify as a licensee from being knowingly employed by or connected in any business capacity whatsoever with a licensee and Section 22 of the Act prohibits the issuance of a retail license to a natural person unless he shall have been a resident of the State of New Jersey for at least five years continuously immediately prior to the submission of the application.

The extension of the statutory requirement of five years residence to employees of corporate retail licensees was designed to break up the evasion, by the creation of dummy corporations, of the requirement that individual applicants for retail licenses have five years residence in this State. It was directed primarily at the holders of plenary and seasonal retail consumption, plenary and limited retail distribution and club licenses, in which groups the abuse was thought to be most likely to occur. The reasons underlying the legislation do not in any substantial sense apply to railroad carriers engaged merely incidentally in the retail sale of alcoholic beverages in dining and buffet cars. There the danger of abuse via corporate mechanism may well be considered to be non-existent. Corporate organization is the usual, not the abnormal, means of organization for such carriers. Cf. Re Central Railroad Company of New Jersey, Bulletin #84, Item #10 (copy enclosed), holding that the finger printing regulations do not apply to railroad carriers.

The Commissioner, therefore, has ruled that the statutory requirement of five years residence in this State of employees of retail licensees does not apply to employees of railroad carriers employed in the conduct of alcoholic beverage businesses operating under plenary retail transit licenses.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Maurice E. Ash,
Senior Inspector.

4. APPELLATE DECISIONS - MEHLMAN VS. IRVINGTON

MINNIE MEHLMAN,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE TOWN OF IRVINGTON,)
Respondent.
- - - - - - - - - - - - - - - - - - -

Philip Mandelbaum, Esq., Attorney for Appellant.
Commissioner Herbert Kruttschnitt, For the Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license for premises located at #405 Myrtle Avenue, Irvington.

Respondent contends the application was properly denied pursuant to its ordinance prohibiting the issuance of licenses.

Section 10 of this ordinance adopted August 14, 1934 and approved by the Commissioner October 2, 1934, ex parte and subject to appeal, provides in part:

> "NUMBER OF LICENSES AND SPACE: No new license of any class authorized to be issued by the municipality, except club licenses, shall be issued, the result of which will be to increase the number of licenses issued and outstanding over the number existing up to the date of the issuance of such new license until the number issued and outstanding is less than sixty.
>
> "Upon the sale or transfer of a business and application made therefor in the same manner as for any other new license, qualification of the applying licensees and surrender of the license under which the seller

transacted business, a license may be issued to the purchaser or transferee of such licensed beverage business.

"No new licenses authorized to be issued by the municipality shall be issued except to those now holding licenses and those acquiring licenses as provided in this ordinance unless after the adoption of this ordinance the number of licenses issued and outstanding shall have been reduced by revocation or surrender to less than sixty (60) in which case licenses may be issued until the total number of licenses issued and outstanding shall number sixty (60)."

The object of this ordinance was to reduce the number of licensed places in Irvington below the number existing at the time of the adoption of the ordinance and yet not to deprive any existing licensees who properly conducted their businesses, of their licenses. In brief it provides for the renewal of existing licenses without regard to number but the issuance of no new licenses until the total number of licenses issued is reduced below 60 and then only until the number of 60 is reached.

In practice, respondent has not only renewed licenses of existing licensees and issued licenses to purchasers of licensed businesses, but also has issued licenses where the applicant was not the purchaser of the business but made his application in conjunction with the surrender of an existing license.

Appellant had a license for the period expiring June 30, 1934. Her application for renewal of this license for the period expiring June 30, 1935 was denied because she failed to deposit her money with the application on time, her excuse being that the Town Clerk misadvised her as to the last day for depositing the same. This is denied by the Town Clerk, and there is evidence that she was properly advised as to the deadline.

Appellant argues that except for the erroneous advice given by the Town Clerk she would have had a license at the time the ordinance was adopted and, therefore, would be entitled to a renewal. She did not, however, appeal from the denial of her application in July, 1934 and the propriety of that denial will not be reviewed at this late date. Hence, she has no standing.

Appellant further argues that the ordinance is unreasonable because it limits the number of licenses to be issued by number and not by territory. This argument overlooks the provisions of Section 37 of the Control Act which expressly authorizes municipalities to limit the number of licenses. There is no requirement that the regulation limiting number also allocate the licenses to be issued throughout the municipality. It is true that the proper administration of the issuance of licenses, whether there be a limitation or not, requires that the licensed places be spread throughout the municipality so that the reasonable demands of all vicinities will be adequately supplied. Vicari vs. Bloomfield, Bulletin #57, Item #4, but there is no suggestion that respondent has failed to do so under its limitation.

Appellant finally argues that the respondent itself has not enforced Section 10 of the Ordinance because it has issued licenses to new applicants who were not the purchasers of a licensed business. Without regard to whether this argument is sound, appellant having no license at all and not having purchased a licensed business is in no position to complain. Whatever Irvington has done, it has not increased the number of outstanding licenses and to that extent at least it has complied with the spirit of its ordinance.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

5. APPELLATE DECISIONS - BARONE VS. PATERSON

GEORGE BARONE,
Appellant,
-vs-
BOARD OF ALDERMEN OF THE CITY OF PATERSON,
Respondent.

ON APPEAL
CONCLUSIONS

Louis Santorf, Esq., Attorney for Appellant.
Charles F. Lynch, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for the renewal of his plenary retail consumption license for premises located at 222-232 Crosby Road, Paterson, known as the "Four Towers".

Pursuant to Section 19 of the Control Act, as amended by P. L. 1935, Ch. 257, appellant applied to the Commissioner for an extension of his license pending the appeal. On the return of order to show cause, testimony was taken and an Order entered extending the license on condition that the four towers, from which appellant's premises derived their name, remained closed.

A final hearing has since been held.

Appellant's application was denied because of the four towers. These towers are separate small buildings used as private dining rooms, adjoining the main dining room and ball room. These private dining rooms are connected by telephone with the main room, and their occupants are served only upon request. This uninterrupted privacy was deemed to afford opportunity and immunity difficult for those seeking neurotic excitement to overlook. It is an exercise of reasonable discretion to determine that the public interest requires that places where liquor is sold be open to public view, and the denial of the license because of the towers is far from improper.

Question was also made of (1) appellant's past criminal record and (2) appellant's violation of respondent's regulation requiring an open view of licensed premises after closing hours.

(1) Appellant was convicted in 1931 of assault and battery and sentence was suspended. It is not claimed that this conviction involved moral turpitude, and the facts surrounding the commission of the offense indicates that it did not. See Federko vs. Piscataway, Bulletin #85, Item #4. Appellant was also arrested in 1926 charged with assault with intent to kill, which was nolle prossed, and detained in connection with a charge of murder but subsequently released. The last two charges apparently arose from the same transaction. This uninviting record may well have given pause to the issuing authority in considering the application.

(2) Appellant during the preceding license year was charged with violating the local screen regulation. Revocation proceedings were instituted and, although appellant was found guilty, sentence was suspended.

It also appeared that the legal name of appellant is not George Barone but Hugo De Napoli.

In view of the foregoing, the action of respondent in denying the license was reasonable and is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 7, 1935.

6. APPELLATE DECISIONS - SASSO vs. PRINCETON

ROSE SASSO,
Appellant,
-vs-
MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF PRINCETON,
Respondent.

ON APPEAL
CONCLUSIONS

Romulus P. Rimo, Esq., Attorney for Appellant.
William C. Vandewater, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises known as #212 Witherspoon Street, Princeton.

The appellant filed her application for this license on or about May 25, 1935; application being made for the period ending June 30, 1935. The application was denied on June 4, and Petition of Appeal filed herein on June 29. Respondent moved to dismiss the appeal on the ground that the appeal was academic, because the peric for which license had been sought had already expired by the time th case came on for hearing.

It will be unnecessary to pass on the motion because the appeal should be denied on the merits.

Respondent has neither adopted a resolution nor passed an ordinance limiting the number of licenses in the Borough. It has been held that a valid municipal policy may be applied, even though not announced by resolution or ordinance. Dann vs. Manasquan, Bulletin #37, Item #13; Platnick vs. Belmar, Bulletin #45, Item #16.

The testimony showed that four plenary retail distribution licenses had been issued for the year ending June 30, 1935; one of which was located diagonally across the street from appellant's premises, and another of which was located on the same street as appellant's premises. The testimony showed also that eleven plenary retail consumption licenses had been issued; one of which was located across the street from appellant's premises.

From this evidence, it appears that a sufficient number of licenses had been issued in Princeton, and particularly in the vicinity. Under such circumstances, the Commissioner will not order the issuance of an additional license. Redfern vs. Keansburg, Bulletin #81, Item #7, and cases cited therein.

Appellant has introduced no evidence to show the need for another license. No one appeared to support her application. The only testimony as to such need is her own testimony that her neighbors asked her to open up a place. As was said in the case of Colonna vs. Montclair, Bulletin #39, Item #8:

> "The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently serviced by another liquor store is difficult to sustain, especially in the case of a Distribution license for off-premises consumption."

The appellant has failed to sustain the burden of proof. The action of the respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 8, 1935

7. BREWERS - POWER TO SELL LIMITED TO SUCH BEVERAGES AS HAVE BEEN PROCESSED UNDER ITS NEW JERSEY LICENSE AND DOES NOT EXTEND TO BEVERAGES MANUFACTURED ENTIRELY OUTSIDE OF THIS STATE AND NOT SUBJECTED TO ANY PROCESSING WITHIN THIS STATE

August 7, 1935

John F. Trommer, Inc.,
Orange, N.J.
Att: Mr. Charles W. Govan.

Dear Sir:

Your letter asks whether John F. Trommer, Inc. of New Jersey will have to retain its limited export wholesale license to sell within this State and outside of this State the beer brewed in Trommer's Brooklyn, New York brewery after a New Jersey brewery license is obtained by the New Jersey Company for premises 119 Hill Street, Orange.

A brewery license entitles the holder to brew any malt alcoholic beverages and to distribute and sell his products. The phrase "his products" refers only to those products brewed pursuant to the New Jersey license and does not refer generally to all products owned either by the licensee himself or by associated corporations. The sale of beer, other than that brewed under the New Jersey brewery license, for purpose of resale - (unless bottled by the New Jersey brewery licensee, in which circumstances it could, pursuant to the Commissioner's ruling Re Rosenberg, Bulletin #67, Item #11, copy enclosed, be considered his product) - would constitute an ordinary wholesale transaction which is permissible only under a wholesale license.

Accordingly, even after John F. Trommer, Inc. of New Jersey obtains its New Jersey brewery license it will have to retain its limited export wholesale license in order to sell within this State and outside of this State beer brewed in New York unless through subsequent bottling or other processing pursuant to the New Jersey brewery license the New York beer could be said to have become the product of the New Jersey brewery.

Herewith also are rulings Re James Clark Distilling Corporation, Bulletin #7, Item #8, Re Limited Distillery Licenses, Bulletin #50, Item #9, Re Hiram Walker & Sons, Bulletin #55, Item #4, and Re American Distilling Company, Bulletin #55, Item #5, which have particular reference to distillers' and rectifiers' and blenders' licenses, but in principle also apply and control with respect to brewery licenses.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Jerome B. McKenna,
Attorney.

8. REFERENDUM - INVALIDITY WITH RESPECT TO MATTERS NOT SPECIFIED BY STATUTE FOR SUBMISSION TO THE ELECTORATE

MUNICIPAL ORDINANCES - PLENARY RETAIL CONSUMPTION LICENSES - CONFINING SALES TO PREMISES WHERE ALCOHOLIC BEVERAGES ARE SOLD EXCLUSIVELY - ATTEMPTED EXCLUSION OF HOTELS AND RESTAURANTS

July 28, 1935

Dear Sir:

The Borough of Caldwell has by referendum prohibited the sale of alcoholic beverages on Sunday. We have a delicatessen store,

a diner and two drug stores which are necessarily open on Sunday for the sale of food and other merchandise, and which we have reason to believe are finding it easy to evade the Sunday restriction on the sale of alcoholic beverages.

We would appreciate your opinion as to whether or not the Borough could enact an ordinance requiring stores such as these to have a separate room for the storage and sale of alcoholic beverages, such room to have its own street entrance and to have no means of connection or passageway with main part of the store used for the sale of food, drugs or other merchandise.

Very truly yours,
LLOYD J. SIMMS,
Chief.

August 7, 1935

Lloyd J. Simms, Esq.,
Chief of Police,
Caldwell, N. J.

My dear Chief:

You mention in your letter that the Borough has by referendum prohibited the sale of alcoholic beverages on Sunday. This morning we learned by telephone from Mr. Jacobus, the Borough Clerk, that no referendum concerning alcoholic beverages has been held to date pursuant to the Alcoholic Beverage Control Act; that the referendum to which you probably refer was held on November 7, 1933 upon the question "Shall the Borough Council of the Borough of Caldwell, in the County of Essex, adopt a resolution permitting the sale of the beverage known as beer having an alcoholic content exceeding one half of one per centum of alcohol by weight and not greater than 3.2 per centum of alcohol by weight on the first day of the week commonly called Sunday?"; that the result was in the negative; that no resolution permitting the sale of beer on Sundays was adopted. Presumably then, pursuant to the referendum, the sale of beer on Sunday was prohibited.

On December 6, 1933, C. 436, P. L. 1933, a comprehensive scheme of control of the manufacture, sale and distribution in this State of all alcoholic beverages, became law.

There is no provision in the Alcoholic Beverage Control Act for referenda on any questions other than those expressly set forth in Sections 41, 42, 43 and 44 (as amended) and in Section 6 of the supplement, C. 254, P. L. 1935, effective July 4th of this year. See Re New Legislation, Bulletin #83, Item #1, and Bulletin #89, Item #1. While the power of the Legislature to delegate to the electorate the control of the sale of alcoholic beverages has long been recognized, such delegation must be by statutory provision and in the absence thereof the matter may not be the subject of referendum. The vote on the question you mention, while it may be considered advisory, would seem to have no binding effect. Cf. Re Rutherford, Bulletin #63, Item #1.

Section 9 of ordinance No. 213 to regulate the sale of alcoholic beverages in the Borough of Caldwell, adopted July 2, 1934, provides:

> "No alcoholic beverage shall be sold on Sunday or between the hours of one o'clock and seven o'clock a. m. weekdays."

This ordinance, until superseded by a referendum held pursuant to the Alcoholic Beverage Control Act, controls. Pursuant thereto, all

sales of alcoholic beverages are prohibited on Sunday. Hence, if the stores you mention or any one else violates the ordinance, their licenses may be summarily revoked. It is your duty to see that the law is strictly enforced. I will cooperate with you in every reasonable way if requested.

Now for your question as to whether or not the Borough Council could enact an ordinance requiring the delicatessen store, the diner and the drug stores to have a separate room for the storage and sale of alcoholic beverages, such room to have its own street entrance and no means of connection with the premises used for the sale of food, drugs or other merchandise.

As regards plenary retail consumption licenses: The statute, Section 13, sub. 1, provides that such licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, or drug store or other mercantile business, except the keeping of a hotel or restaurant, is carried on. To confine such licenses to premises selling alcoholic beverages exclusively would be to license only saloons, to the exclusion of the hotels and restaurants for which the statutory exception expressly provides. Hence I could not approve an ordinance so doing. Licensing of hotels and restaurants to sell alcoholic beverages is at least as socially desirable as the licensing of saloons. The control problem, if restaurants are permitted to remain open during the hours when sales of alcoholic beverages are prohibited, must be met with adequate policing.

As regards plenary retail distribution licenses: The statute, Section 13, sub. 3 (a), provides that the governing board or body of each municipality may, by ordinance, enact that this license 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. Such an ordinance would require the separation of the premises upon which the sale of alcoholic beverages under distribution licenses was conducted, from all other premises upon which there are conducted other mercantile businesses and would be within the Council's legal authority to adopt.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. RETAIL LICENSES - ISSUANCE BY THE STATE COMMISSIONER - MUNICIPAL CONSENT REQUIRED - PROCEDURE IF CONSENT IS NOT OBTAINABLE.

Dear Sir:

In the first place, the law distinctly states that when a member of the issuing authority of a municipality is also a member of the body applying for a Club License that application must be submitted directly to the Commissioner.

Such being the case this procedure was carried out. The application was returned noting certain discrepancies one of which was that copies of a resolution passed by the local municipality and certified to by the City Clerk approving of the issuance of a Club License accompany the application.

It would appear that such a procedure was simply a case of "passing the buck" - in other words, the Commissioner is the only authority to whom application can be made but at the same time it is necessary for him to obtain permission from the local authorities before such a license can be issued.

In the City of Beverly the American Legion has endeavored to discharge certain obligations which were assumed by the Post when

business was at its best. It is useless to go into this matter minutely but the fact remains that operating a bar was the only solution of our problem of discharging our indebtedness. The American Legion bar was operated under a regular retail plenary consumption license during the past year and numerous obligations met and discharged. The license fee was $200.00. This year the governing authority raised the license to $350.00. In view of this increase and certain other restrictions under which we are compelled to operate, we could not see our way clear to meet the additional cost of license and therefore made application to operate under a Club License. This Post is the only one in the entire County of Burlington denied the right to operate under a Club License.

The question seems to revert directly to the local municipality. If they do not care to cooperate and grant permission for the Legion to operate under a Club License the State promptly withdraws from the situation which, in our humble opinion, defeats the intent and purpose of the law.

For your information it is stated that unfortunately or otherwise the Common Council of the City of Beverly is in the majority dry and in no way sympathetic with our efforts to obtain a Club License. It is simply a question of the Legion making a decided effort to liquidate their just obligations and a body of prejudiced men sitting in control of the local government defeating this purpose regardless of the sentiments of the community. It may readily be seen that one answer to the problem would be to elect councilmen who would be sympathetic to our cause. However, this does not relieve the situation at the present time.

If the Department of Alcoholic Beverage Control is vested with the power, as it appears to be according to law, it would seem fitting in a case such as set forth above that these circumstances be investigated impartially and that the Commissioner either deny or issue such a license and in case of denial specify the reasons on which his decision is based.

Very truly yours,
Wm. A. Cortright, Jr. Post No. 115,
American Legion.
E. C. Wright,
Adjutant.

August 8, 1935

E. C. Wright, Adjutant,
Wm. A. Cortright, Jr. Post No. 115,
American Legion,
Beverly, N.J.

My dear Mr. Wright:

It is true, as you say, that the State Commissioner is the only authority to whom application can be made when a member of the license issuing authority of the municipality happens to be a member of the board applying for a club license. The object of this statute was not for the purpose of enabling the State Commissioner to go over the head of the local authorities but simply to prevent a situation arising where a member of the local Council would be placed in the invidious position of voting for or against a license to a club or other body of which he was also a member. To have him retire from the room and not participate in the proceedings would not be a proper solution because it is but human nature for his other friends on the Council who are not members to vote for the issuance of a license to the club of which he is a member as a courtesy to him. Hence the

statute, by putting all those cases up to the State Commissioner, relieves the situation by having an absolutely independent and disinterested person pass on the application instead of the local governing board or other license issuing authority.

In order that licenses so issued by the State Commissioner would not be contrary either to the municipal ordinances and resolutions or to the declared policy of the particular municipality, I established a rule of procedure to the effect that the application must be accompanied by a resolution of the local issuing authority approving the same. This rule seems to me properly coincident with the principles of home rule.

Rules, however, are made for the purpose of working out fair practices and procedure; hence, if it should appear in any given case that the municipality refused to approve the issuance of such a license to a certain club on grounds which seemed unreasonable, it would be my duty, just like in any other case of appeal from the action of a municipality, to afford a hearing to all interested parties to get at the truth of the situation and to determine whether or not the grounds advanced for the refusal was reasonable or not.

The situation is illustrated in the recent decision in the matter of the Cranford American Legion Holding Co., Inc., Bulletin #83, Item #3, copy of which is herewith enclosed. In that case the Township Committee refused to approve the issuance of the license on the ground that the licensed premises was in a residential neighborhood. That being a proper reason, the rule was enforced and the application denied. If no good reason had been advanced, the application would have been granted.

So in your case it all depends whether there are any solid and substantial grounds for denying a license or not.

If you desire, I will set down the matter for a hearing at which both sides may be heard at an early date, upon notice of course to your municipality and its governing body.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. SOLICITORS' PERMITS - ISSUANCE TO RETAILER TO REPRESENT A BREWERY PROHIBITED - ISSUANCE TO MUNICIPAL EMPLOYEE DIRECTLY OR INDIRECTLY CONCERNED WITH THE ISSUING OF LICENSES PROHIBITED - MUST BE HELD BY "COLLECTORS" IF THEY SELL OR SOLICIT THE SALE OF ALCOHOLIC BEVERAGES

August 8, 1935

Burton Products, Inc.,
Paterson, N. J.

Att: Mr. J. P. Constantino.

Dear Sir:

I have your letter asking three questions regarding Solicitors' Permits:

(1) "Is a tavern owner licensed by the municipality allowed to work for a brewery under this Solicitor's Permit?"

The answer is in the negative. Section 40 of the Alcoholic Beverage Control Act provides that it shall be unlawful for any person interested in any way in a brewery, winery, distillery, rectifier and blender, or wholesaler of alcoholic beverages to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages, and further, that it

shall be unlawful for any person interested in any way in the retailing of alcoholic beverages to conduct, own either in whole or in part, or be interested directly or indirectly in any brewery, winery, distillery, rectifier and blender or wholesaler of alcoholic beverages. A retail licensee may not be employed by a brewery.

(2) "Is an employee of a municipality whether directly or indirectly interested in any manner in controlling issuing of licenses allowed to sell beer?"

Rule #8 of the Rules and Regulations Governing Solicitors' Permits, Bulletin #81, Item #2, provides:

> "8. No Solicitor's Permit may be issued to any member of a municipal governing body or municipal issuing authority or to any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever."

The purpose of this rule was to divorce the conduct of the alcoholic beverage industry from those charged with the enforcement of the laws governing the same. The rule prohibits the issuance of Solicitors' Permits not only to the actual members of municipal governing bodies or license issuing authorities but also to any person to whom is entrusted, in any manner whatsoever, the enforcement of the alcoholic beverage laws. It disqualifies a municipal employee who is directly or indirectly concerned with the issuing of licenses from obtaining a Solicitor's Permit to sell beer.

(3) "Our interpretation of Solicitor is one asking for orders and taking orders; it has no connection with a collector who collects from customers both of his own making and others. Would an employee in the office answering a phone be considered as a Solicitor inasmuch as he receives the orders as they are called in?"

A Solicitor's Permit must be held by anyone who offers for sale or solicits any orders in this State for the purchase or sal of any alcoholic beverage whether such sale is to be made within or without this State, excepting an individual licensee himself, the individual members of a licensed partnership and employees of retail licensees soliciting in connection with the retail business. A collector such as you describe, i. e., "who collects from customers of his own making", is a solicitor whatever you call him. There is no virtu in mere names. If a collector offers for sale any alcoholic beverage or solicits any orders therefor, he must first obtain a Solicitor's Permit.

Office employees who merely receive orders over the telephone are not required to hold Solicitors' Permits if their duties are actually confined to that of order clerk and do not encroach upon those of solicitor or salesman. As such, the order clerk's employment must be confined to clerical duties. He may not offer for sale or solicit any orders for the purchase or sale of any alcoholic beverage and the performance of his duties must be confined to the license premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. MUNICIPAL ORDINANCES - VALIDITY - NO POWER TO IMPOSE ADDITIONAL LICENSE FEES ON TOP OF REGULAR LICENSE FEES

August 8, 1935

Hon. Percy Camp,
Toms River, New Jersey.

Dear Sir: Re: Borough of Seaside Heights.

You ask if pursuant to Mercantile License Ordinance No.181

as amended by Ordinances Nos. 190 and 192 relating to licenses and fixing license fees for business required to be licensed in the Borough of Seaside Heights, the Council may license upon payment of fee retailers or wholesalers of liquors. I have examined the ordinance and find in Section 2 that the license fees therein imposed are for the purpose of revenue, not control. The answer to your question is in the negative.

The Borough of Seaside Heights is in Ocean County, a count of the sixth class. Section 6 of the Alcoholic Beverage Control Act as amended June 8, 1935 by C. 257, P. L. 1935, transfers, in all counties of the sixth class, all of the powers conferred and all of the duties imposed upon issuing officials in and for each municipalit in said county with respect to retail licenses to reside and be imposed upon and performed by the Judge of the Court of Common Pleas. Said Judge is thereby empowered and under the duty to fix the license fees in accordance with the Act and may, as regards each municipality perform the functions otherwise vested in municipal governing bodies by Section 37. The Legislature has in this way provided for fees and licenses to sell alcoholic beverages at retail and no fees may be charged or licenses issued otherwise than in the manner specified. If each municipality in Ocean County could collect a license fee in addition to the County fee (which incidentally is refundable to the municipalities), applicants could be charged in excess of the statutory maximum for their licenses. For example, the maximum fee which Judge Conover could fix for a plenary retail consumption license is $2,000.00. If the $100.00 set forth in Section 1, heading "V", subdivision 4 of Ordinance No. 181, were validly applicable, an applican for a plenary retail consumption license for premises in Seaside Heights could be charged $2100.00 to exercise the licensing privilege That cannot be. The applicant may not be required to pay more for his license than the statute authorizes the issuing authority to collect. Cf. Re Lebanon, Bulletin #64, Item #6, and Re Wayne, Bulletin #69, Item #6, copies enclosed.

Nor may a municipality exact a fee for the wholesaling of liquors. The licensing of wholesalers is made by the Act the exclusi function of the State Department.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. RULES CONCERNING CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES APPLICATION TO ADVERTISING EQUIPMENT DESIGNED FOR GAMBLING

RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - ADVERTISING DEVICES DESIGNED FOR GAMBLING PROHIBITED

August 8, 1935

P. Ballantine & Sons,
Newark, N.J.

Gentlemen:

I have before me a sign advertising your beer. It is in the nature of a cardboard stand in which a bottle can be placed. It was taken by one of my investigators from behind the bar at the premises of a retail consumption licensee in Lyndhurst, N. J. On this sign, directly above the receptacle for the bottle, is a disc which spins around and contains twenty-one dice combinations pictured thereon. The wording on the sign follows:

> "Who buys the next glass of Ballantine's? Spin it and see. Spin it and see. Spin it and see. No gamble in a glass of Ballantine's. Every drink the same - it's swell."

The question mark at end of the first quoted sentence is in the nature of an arrow pointing to the dice.

My investigator, in his report, gives as his reason for bringing in the sign that it "suggests gambling."

It not only suggests gambling but it is an open invitation to people to gamble by use of this sign or device which would be a clear cut violation of Rule #7 of the rules governing the conduct of licensees and the use of licensed premises. This rule provides:

> "7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises."

See also Re Gott, Bulletin #65, Item #10, wherein I said:

> "***the playing of cards or dice upon licensed premises under an agreement whereby the loser is to pay for drinks is contrary to law and hence would constitute a violation of the rule and subject the license to revocation."

The case of Brown v. State, 49 N. J. L. 61, holds that playing cards for beer to be purchased and paid for by the loser is gaming.

It is therefore patent that by this advertising sign or device you are encouraging and aiding licensees to violate the above rule and also the law.

You will immediately discontinue this type of advertising and notify your customers who may be in possession of such signs to discontinue their use and destroy same.

I await your immediate promise of compliance.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - APPLICATION TO EXTERIOR SIGNS BEARING MANUFACTURERS', WHOLESALERS' OR TRADE NAMES ATTACHED TO SAME BUILDING BUT NOT DISPLAYED IN CONNECTION WITH A RETAIL LICENSED PREMISES

Dear Mr. Burnett:

Would you kindly give us an opinion as to whether or not we can lease a roof for the erection of a sign to a liquor distiller for the display of a sign for National Advertising, where the first floor of such building is being used as a cafe or saloon.

August 8, 1935

Albert M. Greenfield & Co.,
Professional Arts Building,
1616 Pacific Avenue,
Atlantic City, N.J.

Att: Mr. J. B. Scanlan.

Gentlemen:

Rule #2 of the rules governing signs and other advertising matter provides:

> "No retail licensee shall permit or suffer the display, on the exterior of the licensed premises, of any signs or other advertising matter bearing the name, brand or trade-mark of any manufacturer or wholesaler of any alcoholic beverage."

These restrictions are designed to aid in the elimination of brewery controlled saloons and to curb the evils of brewery competition for retail trade before abuses develop. See Re Slavitt, Bulletin #67, Item #2; Re Validity of Sign Regulations, Bulletin #78, Item #1 (copies enclosed).

You now inquire whether you may lease the roof of the Neptune Bank Building in Atlantic City to a firm advertising liquor in spite of the fact that the first floor is at present leased and operated as a restaurant and bar.

Under the Control Act, "licensed premises" are defined as "any premises for which a license under this act is in force and effect"; "licensed building" is defined as "any building containing licensed premises"; "building" is defined as "a structure of which licensed premises are or may be a part***". In general what constitut the licensed premises will be determined from the description of the premises where alcoholic beverages are to be sold contained in the application. They may, but need not necessarily, include the entire building. Re City of Millville, Bulletin #35, Item #15 (copy enclosed).

Rule #2, however, is not confined either in letter or in spirit to situations where signs are physically attached to the actu exterior of the licensed premises. It applies as well where the sig is located on land in the vicinity of the licensed premises under th control of the licensee and displayed in connection with the license premises.

It is not sufficient, therefore, merely to say that the sign is not displayed upon the licensed premises itself.

Where, however, the sign is not only off the licensed pre ises, but is not displayed in connection therewith, bears no reference thereto or the business conducted thereon, and is not under the control of the retail licensee, the situation does not give rise to the evils sought to be eliminated by the rules. Accordingly, under such circumstances the mere fact that the sign is displayed upon the roof of a building containing retail licensed premises does not violate Rule #2.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Jerome B. McKenna,
Attorney.

14. FREE LUNCH - PERMITTED

MUNICIPAL ORDINANCES - EFFECT OF REGULATIONS PROHIBITING SALES BETWEEN CERTAIN HOURS

August 8, 1935

E & W Corporation,
Long Branch, N. J.

Gentlemen: Re: Monmouth Bar & Grill.

There is nothing in the Alcoholic Beverage Control Act or in the regulations of this Department which prohibits a licensee from giving away "free lunch." My files do not contain any resolution or ordinance by the Board of Commissioners of the City of Long Branch prohibiting it.

As regards hours of sale: Section 5 of an ordinance regulating the sale and distribution of alcoholic beverages adopted on June 26, 1934 by the Board of Commissioners of the City of Long Branch provides:

> "The hours between which sales of alcoholic beverages at retail may be made....are as follows: On week days between the hours of 7 A. M. and 3 A. M. of the morning following. On Sundays between the hours of 1 P. M. and 3 A. M. of the morning following. Alcoholic beverages as defined in said Act shall not be sold at any other time at retail in the City of Long Branch."

See Bulletin #56, Item #12, (copy enclosed) Re: The consumption of beverages after midnight Saturdays in cases where municipalities have voted against Sunday sales, the principle of which ruling was declared therein to apply to all cases where sales of alcoholic beverages are required to cease at a certain hour whether that hour is fixed by referendum or by municipal regulation.

The local regulation above quoted prohibits between certai hours sale of alcoholic beverages on Sundays but does not require that licensed premises be closed during those hours. It follows that it does not prevent licensees from remaining open, during those hours, for the purpose of conducting businesses other than the sale of alcoholic beverages. See in Re: The difference in effect between an ordinance closing licensed premises or forbidding the sale of alcoholic beverages, Bulletin #58, Item #1, copy also enclosed.

Applying the foregoing principles to the facts, it follows that, while the Long Branch local regulations do not go the length of closing your doors on Sundays at 3 a. m. or prevent your opening them before 1 p. m., they do ordain that you shall not sell liquor between 3 a. m. and 1 p. m. on Sundays. I rule that this prohibits not only service of alcoholic beverages to customers during the proscribed hours but also that the bar and all places whence delivery or service of such beverages are made by you must be actually and absolutely closed punctually at 3 a. m. on Sundays and stay closed up until 1 p. m.

The answer to your question "Can we serve people inside our doors after we close our doors at 3 a. m." is therefore "NO" if you mean alcoholic beverages. The answer to your question "Are we allowed to open on Sunday before 1 p. m. if we serve meals" is "YES" provided you mean that nothing but meals will be served.

Very truly yours,

Commissioner.