

Commissioner Burnett
Sent to Regular Mailing List
STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 Broad Street, Newark, N. J.

BULLETIN NUMBER 159

January 20, 1937

1. CLUB LICENSES - BONA FIDE GUESTS - IMMEDIATE FAMILIES OF CLUB MEMBERS - VOCALISTS AND VIOLINISTS - HEREIN OF THE LAST RITES OF THE PIG.

Dear Commissioner:

I would like to have you send to me complete information on the following case: - The Hungarian-American A. C. is planning a Pig Roast Supper and Social, for the members and their immediate family only. The plan if possible, will include several guest artists such as vocalists and violinists. Of course these people are not members of the club, but are close friends. This affair is planned to be held in the clubrooms on a Sunday nite. We are wondering what your law would permit in the sale of alcoholic beverages to the members and their friends and guests. We are hoping for an early reply, as we will hold up our plan until your information has reached us.

Stephen F. Nemeth,
Secretary.

January 13, 1937

Hungarian American Athletic Club,
Stephen F. Nemeth, Secretary,
New Brunswick, New Jersey.

Gentlemen:

Under your club license, you may sell alcoholic beverages but only for on-premises consumption to your members and their bona fide guests. As to what constitutes a bona fide guest, see Notice to Club Licensees, Bulletin 100, Item 3, and re Greer, Bulletin 50, Item 6. Guests are persons expressly invited to the club by a member and who, on arrival at the club, are not only sponsored but personally attended by their respective hosts.

There is no limit on the number of persons which a member of the club may invite to the club as his guests. So long as they are bona fide guests, the club may sell alcoholic beverages to them. See re Hausmann, Bulletin 141, Item 5.

Of course, if tickets for social functions are sold to non-members or a general admission is charged, then a special permit would have to be obtained.

The immediate family of each member may be classified as bona fide guests. As regards the vocalists and violinists, there is a question as to whether these musical men are guests of any of your members. Why not solve this by giving them the beverages outright instead of selling them. You will probably reap a rich reward in the sonatas, the fugues and the rhapsodies thereafter rendered at the carnivorous obsequies.

If there is any doubt as to whom you may sell, why not take out a Special Permit and be sure.

With best wishes, I am

New Jersey State Library

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
NEWARK, NEW JERSEY

2.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1st, 1936 TO JAN. 1st, 1937 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES.

January 13, 1937.

County	C L A S S I F I C A T I O N O F L I C E N S E S										No. Sur- rendered Revoked Expired	Number Licen- ses in Effect	Total Fees Paid
	Plenary Retail Consumption		Plenary Retail Distribution		C l u b		Limited Retail Distribution		Seasonal Retail Consumption				
	Number Issued	Fees Paid	Number Issued	Fees Paid	Number Issued	Fees Paid	Number Issued	Fees Paid	Number Issued	Fees Paid			
Atlantic	456	175,620.70	57	19,700.95	6	530.00	2	55.00	2	242.12	1	522	196,148.77
Bergen	785	246,572.48	210	47,657.55	54	4,792.00	46	2,071.00	2	375.00	5	1,092	301,468.03
Burlington	175	53,352.73	16	3,350.00	29	3,181.30	1	25.00	0		3	218	59,909.03
Camden	460	180,241.79	44	15,390.24	63	5,271.64	1	50.00	1	196.91	1	568	201,150.58
Cape May	122	42,546.52	9	3,150.00	4	400.00	0		0		2	133	46,096.52
Cumberland	81	23,265.72	14	2,173.61	18	1,950.00	0		0		0	113	27,389.33
Essex	1,451	724,266.35	307	142,370.36	74	9,261.82	34	1,600.00	1	744.60	2	1,865	878,243.13
Gloucester	108	29,269.86	9	1,325.00	5	300.00	0		0		0	122	30,894.86
Hudson	1,639	696,457.11	261	105,517.13	50	5,645.62	88	3,681.07	0		2	2,090	811,300.93
Hunterdon	91	25,875.43	1	200.00	3	350.00	0		0		0	95	26,425.43
Mercer	452	174,288.02	38	7,447.71	44	5,618.90	0		0		1	533	187,354.63
Middlesex	607	237,507.33	26	7,510.00	27	2,700.00	0		4	581.45	7	657	248,298.78
Monmouth	476	186,867.39	68	17,314.17	27	2,858.74	10	409.86	12	2,986.73	5	598	210,436.89
Morris	521	94,764.31	64	15,814.53	27	2,041.75	1	35.00	10	1,300.00	7	416	113,955.59
Ocean	160	78,199.82	20	7,300.00	5	500.00	0		0		8	177	85,999.82
Passaic	932	346,696.03	101	28,650.51	27	3,265.00	20	950.00	2	300.00	3	1,079	379,861.54
Salem	47	14,203.90	4	550.00	7	300.00	0		0		1	57	15,053.90
Somerset	175	60,993.34	22	5,129.66	11	1,025.00	0		2	398.78	1	209	67,546.78
Sussex	142	30,813.45	8	1,300.00	5	260.00	0		2	300.00	0	157	32,673.45
Union	571	271,184.32	110	37,579.73	62	7,266.39	21	850.00	0		4	760	316,880.44
Warren	133	36,401.17	7	1,407.50	18	1,911.67	0		2	409.16	0	160	40,129.50
TOTALS	9,448	3,729,387.26	1,396	470,838.65	566	59,429.83	224	9,726.93	40	7,834.75	53	11,621	4,277,217.42

D. FREDERICK BURNETT, Commissioner:

Report for the six months period ending December 31, 1936.

Respectfully submitted,
ERWIN B. HOCK, Deputy Commissioner

SHEET #2

BULLETIN NUMBER 159

3. RECORD OF STATE LICENSES AND PERMITS ISSUED - FEES AND OTHER REVENUE RECEIVED FOR THE PERIOD JULY 1, 1936 TO DECEMBER 31, 1936

MEMORANDUM TO: D. Frederick Burnett, Commissioner

<u>Type</u>	<u>Number Issued</u>	<u>Fees Paid</u>	
<u>STATE LICENSES</u>			
Plenary Brewery	3	\$ 12,000.00	
Limited Brewery	16	17,500.00	
Plenary Winery	31	15,068.50	
Limited Winery	51	3,950.00	
Limited Distillery	8	8,773.97	
Supplementary Limited Distillery	14	1,650.00	
Rectifier and Blender	25	60,349.32	
Plenary Wholesale	87	127,693.17	
Limited Wholesale	60	44,352.77	
Wine Wholesale	10	9,073.97	
Plenary Export Wholesale	17	32,500.00	
Limited Export Wholesale	2	1,570.55	
State Beverage Distributors'	189	94,413.70	
Plenary Retail Transit	10	1,500.00	
Transportation	101	19,772.62	
Public Warehouse	20	1,983.01	
Warehouse Receipts	35	3,302.29	
State Municipal	<u>113</u>	<u>1,130.00</u>	
TOTAL	792		\$ 453,583.87
<u>PERMITS</u>			
Miscellaneous Special	3085	31,210.64	
Wine	1419	1,419.00	
Solicitors'	2797	13,985.00	
Employment	<u>1136</u>	<u>1,136.00</u>	
TOTAL	8437		47,750.64
<u>LICENSE CHANGES</u>			
Change of Address	21	105.00	
Additional Premises	21	3,275.00	
Transfers	<u>2</u>	<u>275.00</u>	
TOTAL	44		3,655.00
<u>MISCELLANEOUS FEES</u>			
Emergency Transportation Insignia	7	14.00	
Paid Transportation Insignia	3872	7,744.00	
Certifications		605.00	
Special Permit Extensions	67	76.00	
Bulletins		205.90	
Mailing Lists		<u>1,337.50</u>	
TOTAL			9,982.40
FORFEITURES		2,552.72	
RETAINED PERCENTAGES		203.16	
ADJUSTED FEES		250.00	<u>3,005.88</u>
TOTAL			\$ 520,977.79
LESS REFUNDS			<u>647.67</u>
TOTAL NET REVENUE FROM LICENSES, PERMITS AND OTHER FEES			\$ 520,330.12

Respectfully submitted,

Erwin B. Hock
Erwin B. Hock, Deputy Commissioner.

4. LICENSED PREMISES - WHAT CONSTITUTES - PICNIC GROVES
SPECIAL PERMITS - WHEN NECESSARY - PICNIC GROVES

Dear Sir:

I have a grove on my property. Is it necessary to get a special permit to run picnics with or without alcoholic beverages?"

Yours truly

MRS. FLORENCE KALINOSKI

January 12, 1937.

Mrs. Florence Kalinoski,
Whippany, New Jersey.

Dear Madam:

I have yours of the 29th inquiring whether it is necessary to get a Special Permit to conduct picnics with or without alcoholic beverages on a grove on your property.

The records of this Department disclose that you hold a Plenary Retail Consumption license for premises on Cedar Street, East Hanover Township. I presume that the grove referred to is in connection with or adjoining the premises on Cedar Street.

Your inquiry raises two questions, first whether the grove referred to is a part of your licensed premises, and second who will sell and serve the alcoholic beverages at picnics conducted in the picnic grove.

The answer to the first question depends entirely upon how you have described your licensed premises in your application for the license which you hold. If your description of the licensed premises includes the picnic grove, then you are entitled to serve and sell alcoholic beverages to picnickers in the grove under the privileges of your license. However, if the picnic grove is not included in the description of the licensed premises, you will have no right to either sell or serve alcoholic beverages in the picnic grove because the Control Act confines the privileges extended under the license to the licensed premises only. In the latter situation, you would only be permitted to sell and serve alcoholic beverages to picnickers in the picnic grove under a Special Permit issued by this Department and such Special Permit would have to be obtained on each particular occasion when such sales were made because, in fact, it would amount to an extension of your licensed premises for the particular occasion. However, ordinarily such permits are only issued to the organization conducting the picnic and only under special circumstances are Special Permits ever issued to a licensee to extend his licensed premises even for a particular occasion.

Question two refers to situations where an organization, conducting a picnic in your picnic grove, would both sell and serve the alcoholic beverages to guests at the picnic

thereby deriving the profit from such sales. In cases of this kind, the organization would have to obtain the Special Permit to sell and serve alcoholic beverages at the picnic because your license does not extend the privilege to the organization for such sale or service. Such permit, however, would give the organization the right to purchase alcoholic beverages from you for resale in the picnic grove to guests.

The only situation in which a Special Permit would not be necessary by either yourself or the organization, would be if the picnic grove were actually a part of the licensed premises under the license and the sale and service of alcoholic beverages would be made by you as licensee because your license entitles you to sell and serve alcoholic beverages to the public in general on the licensed premises.

In other words, if the picnic grove is a part of the licensed premises, you need no Special Permit to sell or serve alcoholic beverages there, but an organization using the grove and selling and serving alcoholic beverages there must obtain a Special Permit to make such sales. On the other hand, if the premises are not a part of the licensed premises, both you and any organization serving beverages there, depending on who makes the sale and service of the alcoholic beverages, must obtain a Special Permit. In either case, the fee for such permit would be at the rate of \$10.00 per day.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. LICENSEES - TIED HOUSES - WHOLESALER AND RETAILER - A SOLICITOR FOR A WHOLESALER MAY NOT TEND BAR FOR A RETAILER WHETHER GRATUITOUSLY OR NOT.

Gentlemen:

May we inquire whether it is alright for one of our salesmen, who holds a solicitor's permit to help out a customer of his by acting as a bartender in the evening?

There is no pay connected with this, our salesman just wants to help out this man to get back on his feet again.

Respectfully yours,

CITY BREWING CORPORATION DEPOT
UNION CITY, N. J.

January 14, 1937.

City Brewing Corporation,
Union City, New Jersey.

Gentlemen:

I have your request of December 24th.

Certainly not!.

The Control Act expressly prohibits it. Section 40 declares that it shall be unlawful for any person interested

in any way whatsoever as a manufacturer or wholesaler of alcoholic beverages to be directly or indirectly interested in the retailing of alcoholic beverages. The objective was to divorce completely the manufacturing and wholesaling of alcoholic beverages from the retail trade and thus, prevent the recurrence of "tied houses."

To say there will be no pay makes no difference. It would be unique to find your customer refusing to sell and the hyphenated bartender-solicitor not parading the virtues of your beer in the spare time missionary work of getting this customer of yours on his feet.

He will have to stand without this crutch.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. PLENARY RETAIL CONSUMPTION LICENSEES - MAY SELL FOR ON-PREMISES CONSUMPTION, FOR OFF-PREMISES CONSUMPTION, EITHER OR BOTH.

My dear Mr. Burnett:

Under the plenary retail consumption license issued by the City of Passaic the holder of such license has the right to sell for consumption on the licensed premises any alcoholic beverage by the glass or other open receptacle. The licensee is also permitted to sell all alcoholic beverages in the original containers for consumption off the licensed premises.

Can the licensee exercise the privilege of selling only alcoholic beverages in original containers for consumption off the licensed premises?

In the City of Passaic may the holder of a Plenary Retail Consumption License conduct a liquor package store only for the sale of alcoholic beverages to be consumed off the premises and not to conduct a store where the beverage is to be consumed on the premises.

Very truly yours,
DAVID P. SALOMON.

January 9, 1937

Mr. David P. Salomon,
Passaic, New Jersey.

My dear Mr. Salomon:

All plenary retail consumption licenses, according to statute, confer the privilege of selling alcoholic beverages by the glass for on-premises consumption and in original containers for off-premises consumption. These privileges are permissive, not mandatory, and may be exercised one or the other, or both, at the option of the licensee. Thus, a consumption licensee may confine his business exclusively to the sale of alcoholic beverages in open containers for on-premises consumption or, on the other hand, exclusively to the sale of alcoholic beverages in original containers for off-premises consumption. In fact, there is nothing in the Control Act

which would make the license void even though the licensee ceased to conduct all business thereunder. Re Kessel, Bulletin 133, item 9. The license, still in effect, could be exercised at any time within its life in the future or subsequently transferred to another person or to another place. Cf. Gimbel v. Pennsauken, Bulletin 116, item 6.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. MUNICIPAL ORDINANCES -- AN ORDINANCE MAY BE AMENDED, REPEALED OR OTHERWISE SUPERSEDED ONLY BY ANOTHER ORDINANCE -- IT MAY BE AMENDED BY RESOLUTION ONLY IF THE ORDINANCE SO PROVIDES.

HOURS OF SALE - NEW YEAR'S EVE - HEREIN OF THE WAYS AND MEANS OF EXTENDING HOURS FOR SPECIAL OCCASIONS.

January 14, 1937.

Miss Marie D. Fallon,
Acting Town Clerk,
Harrison, New Jersey.

My dear Miss Fallon:

I have before me the resolution adopted by your Town Council on December 29th. I note that it permits all licensees to remain open until 5:00 a.m. on Friday, January 1st.

According to my records, the opening and closing hours for licensees in Harrison have been fixed by ordinance. Section 7 of your alcoholic beverage ordinance adopted June 28, 1934 as amended May 7, 1935, contains the controlling regulation. It declares that licensees must close on weekdays from 3:00 a.m. to 7:00 a.m. I find nothing in the ordinance authorizing any subsequent amendment by resolution. It follows, then, that it may be amended only by ordinance. The resolution of December 29th is legally of no force or effect. The ordinance, until subsequently repealed, amended or otherwise superseded by another ordinance, controls.

But that is now water that's over the dam.

So as to be legally able in the future to extend or otherwise change the hours by resolution, I suggest that you now adopt a supplement to the June 28, 1934 ordinance reading:

"The hours imposed in Sections 7 and 8 of the ordinance concerning alcoholic beverages adopted by the Town Council on June 28, 1934, as amended or supplemented, may subsequently be amended, repealed or otherwise superseded by resolution of the Town Council."

The Council will then be able legally to change the hours for special occasions in the future without going to the trouble and expense of adopting an amendatory ordinance every time. See in this connection re Somerville, Bulletin 110, item 5 and the items cited therein.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. GAMBLING - LOTTERIES - LOTTERIES ON LICENSED PREMISES ARE IN VIOLATION OF THE STATE RULES REGARDLESS OF WHETHER OR NOT THE LICENSEE HAS KNOWLEDGE THAT THEY ARE BEING CONDUCTED.

January 14, 1937.

Mrs. Helen M. Redfield,
Camden, N. J.

Dear Mrs. Redfield:

Your letter inquires as to the responsibility of licensees for the sale of chances on their licensed premises without their knowledge.

ed be → Rule #8 of the State rules concerning conduct of
2 # 6. licensees, referring to chances and lottery tickets, provides:

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

Its express purpose was to prevent lotteries from being conducted or lottery tickets of any nature whatsoever from being sold on licensed premises either by the licensee or his employees or by anyone else as a subterfuge to attempt to relieve the licensee of responsibility.

Knowledge on the part of the licensee is therefore not necessary to constitute a violation. A liquor license is a special privilege and licensees are fully responsible for what occurs upon their premises. Violation of the State rules is cause for the suspension or revocation of the license. Each licensee must see to it that on his entire licensed premises the rules are strictly obeyed.

Knowledge or the lack of it may affect the sentence imposed but has nothing to do with the question of whether or not there was a violation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. MINORS - SALES TO MINORS ARE VIOLATIONS OF THE STATUTE AND STATE REGULATIONS REGARDLESS OF WHETHER OR NOT THE LICENSEE HAS KNOWLEDGE THAT THE PURCHASER IS A MINOR.

January 5, 1937.

Mount's Sea Food,
Washington, N. J.

Gentlemen:

The Control Act, Section 77, prohibits sales of alcoholic beverages to minors. It provides:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor and punished accordingly."

Rule 1 of the State rules concerning the conduct of licensees, also dealing with sales to minors, provides:

"No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

A violation of the Statute is a misdemeanor, cause for arrest, and subjects the offender to fine or imprisonment or both. Violation of the State rule or of the statute is cause for the suspension or revocation of the license.

Knowledge on the part of the licensee that the purchaser is a minor is not necessary to constitute a violation. A liquor license is a special privilege and licensees must be held fully responsible for what occurs upon their premises. It is incumbent upon you to see to it that on your premises the statute and rule are strictly obeyed. In your own interest, you will do well to require of any young people adequate proof of their age.

The best advice I can give you is that if you doubt the prospective purchaser is an adult, don't sell. It will, in the long run, be the safest way to insure your keeping your license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - MONTE CARLO PARTIES - CONDITIONS IMPOSED - HEREIN WHERE FUN CEASES AND THE EVIL OF GAMBLING BEGINS.

January 15, 1937.

Dear Sir:

I would appreciate your advice as to whether the Plainfield Country Club may properly allow the use of its club premises for a so-called Monte Carlo Party entertainment.

The Club now holds plenary retail consumption License #C-21, issued by Raritan Township, effective July 1, 1936, and expiring June 30, 1937.

The entertainment in question is proposed to be given by the Plainfield Junior League, and will be patronized by members of the League and of the Plainfield Country Club and such guests as may be invited.

Upon the payment of an entrance charge, a person attending this entertainment will be entitled to admission and to receive a

certain quantity of paper "stage money". The paper money received will be used in playing various games of chance during the evening.

At the end of the evening individuals may then use the paper money they still retail to bid in various prizes which will be auctioned off.

I might add that there will be strict prohibition against the use of any actual money by the participants in the various games of chance, or in the subsequent auction of prizes. Furthermore, none of the paper money will be redeemable in any other manner than by use at the auction of prizes--in other words, there will be no redemption of paper money for cash.

As the Plainfield Country Club wishes to do nothing that will in any way infringe the provisions under which it holds its liquor license, I would appreciate your advice as to whether the entertainment as outlined above will meet with your approval, in conformance with the provisions of the law.

If your ruling on the above is favorable, I would appreciate further advice as to whether the amount of paper money to be received by each guest must be limited to that issued upon admission of the guest to the party, or whether those guests desiring to, may purchase additional amounts of paper "stage money".

I would appreciate your advice on the above at your early convenience.

Very truly yours,

D. C. PHILIPS
Chairman House Committee

January 18, 1937.

D. C. Philips, Chairman,
House Committee,
Plainfield Country Club,
Plainfield, N. J.

Dear Mr. Philips:

I have yours of January 15th re proposed Monte Carlo Party.

Since each person gets the same amount of "stage money" to start off, and the use of any actual money is prohibited both in the games and in the subsequent auction of prizes and none of the paper is redeemable for cash, or in any other manner than by use at the auction, I see no great harm in such homeopathic dose of pseudo-gambling--in fact it may inoculate the losers against the genuine virus--and so the case comes within the precedent set in re Morris County Golf Club, Bulletin 122, Item 8, copy enclosed.

This permission is strictly limited, however, to the representations stated in your letter, and is made expressly subject to the condition that no one may be able to purchase additional amounts of "stage money" for any purpose. That's just where the fun ceases and the evil of gambling begins.

As soon as a player loses all of his "stage money", he is "out" for the rest of the evening and must stay out, otherwise this permission is automatically voided ab initio

The Club, of course is responsible to see to it that the law is observed at all times.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. ALCOHOLIC BEVERAGES - CONSUMPTION ON UNLICENSED PREMISES DISCOURAGED - HEREIN OF LOCKERS IN UNLICENSED CLUBS AND THE RESPONSIBILITY FOR LIQUOR VIOLATIONS.

January 18, 1937.

J. Peter Davidow, Esq.,
Millville, New Jersey.

Dear Mr. Davidow:

You asked in your letter if the club were to install individual lockers for the use of its members and they were to keep for their own use alcoholic beverages in such private lockers, would such acts be in violation of the State rules and regulations.

I suppose the question arises because the referendum held in Commercial Township on November 5, 1935, in which municipality I understand the club is situated, prevents the issuance of any retail license to the club for on-premises consumption.

The answer, technically, is no.

The mere possession or consumption of legitimate alcoholic beverages on unlicensed premises is not a violation of the law in New Jersey.

I am, however, earnestly opposed to such conduct. It creates serious problems of control. If the members were found mixing and serving drinks and an arrest were made, it would take a vast amount of explaining to prove that it was not a sale and that the beverages belonged to the members and were being served gratuitously. Enforcement officers are justifiably skeptical in such matters because they have too much the appearance of violations.

In re Blank, Bulletin 45, item 4, I cautioned against gifts of alcoholic beverages to friends of the proprietor in connection with the operation of his unlicensed roadstand. In re Berry, Bulletin 87, item 13, I advised against the serving of alcoholic beverages upon club premises without a license and pointed out that such conduct had caused an arrest in a similar situation at Princeton in which case the court had refused to accept the explanation that the liquor was not sold but that it was individually owned and brought on the premises by the members.

I cordially suggest that you advise the club not to allow the keeping of any alcoholic beverages on its premises. You can readily see the inconvenience, notoriety and expense to which

such practices could lead. The members would have only themselves to blame if after deliberately assuming the near-appearances of violation, they were charged with it and their excuse was not honored. Suppose some members brought bootleg liquor on the premises. Its mere possession, without any proof of intent to sell it, constitutes a misdemeanor. Or, suppose some member induced a club employee to procure or to mix, shake, serve or handle alcoholic beverages. Such employees have been known to do as much for mere temporal reward. How would the club slough off these responsibilities? Printed but unobserved rules are pretty disclaimers but of small defensive merit when the club has installed the very facilities.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

12. ADVERTISING - NO LAW AGAINST A WORD CONTEST WITH PRIZES BUT RULES WILL BE MADE TO FIT THE CASE IF NECESSARY - ADVERTISING OF LIQUOR OVER RADIO DEPRECATED IN GENERAL.

January 4, 1937.

Dear Sir:

Will you kindly advise the writer as to whether it is permissible for one of our Radio advertisers, operating in Phillipsburg, N. J., to announce over this station, a contest, in which the winner or winners are to receive cases of beer as prizes.

This contest is based upon the number of words the contestants are able to make out of the name of the advertiser's product. Awards are to be made weekly, to the person or persons submitting the greatest number of words.

For your further information the advertiser holds a N. J. State Distributors License.

If it is proper for him to conduct such a contest as described above, the writer will be pleased to receive your advice at the earliest possible moment. If further details are necessary, kindly advise.

Very truly yours,
H. CLARKE KREIDER
Advertising Salesman
W E S T

January 19, 1937.

Radio Station WEST,
Easton, Pennsylvania.

Gentlemen: Attention: Mr. H. Clarke Kreider

Thanks for your inquiry of January 4th.

There is nothing presently in the Rules that forbids such a contest as you describe.

Such contests, however, are disapproved as tending unduly to increase the consumption of liquor, especially if conditioned upon contestants mailing in answers accompanied by labels of the advertiser's product. Irrespective of whether the contest is so hooked up or not, a liquor licensee in New Jersey should not have any part in it, and, least of all, conduct it. If one can do it, so can all, and the stilly night will reek with contests aiming ostensibly at words, but in reality, angling for customers.

Such shortsighted measures as this will be met by the immediate promulgation and rigid enforcement of Rules forbidding the conduct of such contests.

I ask the aid of your Station in barring all liquor advertising over the radio, because it carries its message directly into the home and to the family fireside, whether welcome or not.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. APPELLATE DECISIONS - CORADO vs. CAMDEN

FRANK CORADO,)	
)	
Appellant,)	
)	
-vs-)	
)	
MUNICIPAL BOARD OF ALCOHOLIC)	ON APPEAL
BEVERAGE CONTROL OF THE CITY)	
OF CAMDEN and FRANK MAIESE,)	CONCLUSIONS
)	
Respondents)	

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Herbert J. Koehler, Esq., Attorney for Appellant.
Edward V. Martino, Esq., Attorney for Municipal Board of Alcoholic Beverage Control of Camden.
Frank M. Travaline, Jr., Esq., Attorney for Frank Maise.

BY THE COMMISSIONER:

On June 25th, 1936, Frank Maiese filed application with the Municipal Board of Alcoholic Beverage Control of Camden for plenary retail consumption license for premises located at 521 Ferry Street, Camden, and on the following day notice of intention was published. On June 29th appellant and others served upon the City Clerk a petition addressed to the Municipal Board of Alcoholic Beverage Control of Camden, objecting to the granting of the application on the ground that the locality was amply supplied with licensed places of business. On July 2nd the Municipal Board granted the application without affording the objectors an opportunity to be heard and without awaiting further publication of the notice of intention. The second

publication of the notice of intention was on July 3rd, and the license certificate was delivered to the licensee on or about July 7th. Thereafter a notice, addressed to the Municipal Board, was served on behalf of the appellant, excepting to the granting of the license and requesting a hearing. The Municipal Board denied the request apparently on the ground that it had no authority to hold such hearing after the license was issued. Cf. Plager vs. Atlantic City, Bulletin #80, Item 11. Within the time permitted by the Control Act an appeal from the granting of the license was duly taken and hearing thereon was held.

The evidence introduced at the hearing indicated that the licensed premises are located in a section devoted partly to business and partly to residential use; that there are industrial plants nearby; that numerous licenses have been issued in the immediate neighborhood; that a former licensee in the locality failed to renew his license for the present fiscal year and another has closed his place of business although his license was renewed; and that appellant and the other objectors are business competitors. Under these circumstances it would appear to be within the sound discretion of the municipal issuing authority to determine whether a sufficient number of licenses in the vicinity had already been issued. Cf. Kalish vs. Linden, Bulletin #71, Item 14. The difficulty in the instant case is that this discretion was never exercised in conformance with law. Section 21 of the Control Act provides that it shall be the duty of the issuing authority to receive and "conduct public hearings on applications". The State rules provide that written objection may be filed with the City Clerk, whose duty it is to transmit it to the issuing authority in order that hearing be held upon notice to the interested parties. See Pamphlet, Rules, Regulations and Instructions, p.23.

At the commencement of the hearing, counsel for the Municipal Board stipulated that written objection was duly received by the Board prior to the issuance of the license. However, at a later stage in the proceeding it was suggested that the City Clerk had not forwarded the objection to the Municipal Board until after the license had been issued. While this latter fact may well explain the cause for the omission of hearing, the failure of the Clerk to transmit the objection is not binding on the appellant. The objection was filed with the City Clerk in due time and in strict compliance with the State rules and the objectors, without fault on their part, were deprived of the substantial right to be heard. Cf. Brown vs. Matthews, 51 N.J.L. 253, (Sup. Ct. 1889); Dufford vs. Nolan, 46 N.J.L. 87 (Sup. Ct. 1884). The hearing insured to such objectors by the statute and the rules is not a mere formality. Careful discretion must be exercised by the issuing authority in determining whether to grant an application for a license and this discretion may properly be influenced by arguments and considerations advanced on behalf of objectors at public hearing.

The instant case is illustrative. The objection being urged was that a sufficient number of licensed establishments to take care of the public needs already existed in the vicinity. This issue presented a disputed question of fact; determination thereof was dependent upon numerous local considerations and not solely upon mathematical calculations. Mainly, it was within the discretion of the Municipal Board. Cf. Kalish vs. Linden, Bulletin #71, Item 14. Under these

circumstances, the right to present evidence and argument for consideration by the Municipal Board in reaching its determination was a particularly valuable one. Cf. the recent case of Aladdin Oil Burner Corporation vs. Morton, 117 N.J.L. 260 (Sup. Ct. 1936), where the Court reversed the judgment of a District Judge sitting without a jury on the ground that he had refused to permit a summation by counsel for the plaintiff. In the course of its opinion, the Court said:

"The state of the case exhibits issues of fact; and in this situation it was error for the judge, at the close of the case, to deny the right of summation asserted by appellant. This constituted an arbitrary deprivation of an absolute right, inherent in our system of trial procedure, rather than the exercise of a discretionary authority, reviewable only in the event of abuse---the right, of the very essence of the right of hearing, answering the requirements of due process, to present an analysis of the evidence and the inferences claimed to be deducible therefrom to the trier of the facts, be that tribunal the judge or a jury. It is, of course, subject to reasonable limitation in the exercise of a sound discretion. Compare Sullivan v. State, 46 N.J.L. 446; affirmed, 47 Id. 151; Lees v. Macchie, 11 N.J. Mis. R. 245; 2 R.C.L. 405. But limitation necessarily connotes the existence of this primary right. The informality of procedure permissible in District Court proceedings does not comprehend the deprivation of an essential right such as this."

The action of the respondent, Municipal Board, is reversed and the case remanded for hearing and determination of all material issues presented in accordance with the State rules. The licensee is directed to surrender his license forthwith for cancellation. However, since the omission of hearing was not the result of any default by the licensee, an application will be entertained by the Commissioner for special permit authorizing the continuance of the business pending hearing and ultimate determination of the entire matter.

D. FREDERICK BURNETT
Commissioner

Dated: January 18, 1937

14. STATUTORY AUTOMATIC SUSPENSION - PETITION FOR LIFTING DENIED - AUTOMATIC SUSPENSIONS ARE NOT TO BE AUTOMATICALLY LIFTED.

In the Matter of)
NICK ALDARELLI,) On Petition for Lifting of
1029 Springwood Avenue,) Statutory Automatic Suspension
Asbury Park, New Jersey.)

CONCLUSIONS

John J. Meehan, Esq., for Petitioner.

The petition of December 28th, 1936 alleges that five bottles of whiskey, labeled straight, when analyzed, were found to be a blend; that Petitioner was indicted by the Monmouth County Grand Jury, tried on December 16th, 1936 and found guilty; that sentence by the Judge is to be made on January 8th, 1937.

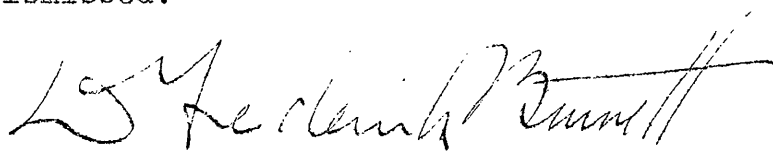
Subsequently the Petitioner was fined One Hundred Fifty (\$150.00) Dollars.

It appears on the face of the petition (1) that the Board of Commissioners of the City of Asbury Park have instituted revocation proceedings but that no decision has yet been rendered therein; (2) that petitioner's place was closed down by the Department on December 24th, just four days before the petition was made.

No cause is shown for lifting the suspension except that business at Asbury Park is seasonal and the holiday season is the time when the licensee depends upon making money for his next year's license fee.

Automatic suspensions are not automatically lifted.

The petition is dismissed.

A handwritten signature in cursive script, appearing to read "L. J. Hendrickson". The signature is written in dark ink and is positioned above the printed name of the Commissioner.

Commissioner.

Dated: January 20, 1937.