Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 151 DECEMBER 9, 1936.

1. DISCIPLINARY PROCEEDINGS - CASES WHERE FINES HAVE BEEN IMPOSED UNDER ORDINANCE - A FINE UNDER AN ORDINANCE SHOULD NOT CLOSE ANY MATTER WHERE DISCIPLINARY PROCEEDINGS ARE INDICATED - HEREIN OF SUSPENSION OR REVOCATION AS THE MOST POWERFUL DETERRENT.

November 23, 1936.

My dear Mr. Burnett:

At the last meeting of the Township Council I reported to them the action taken by the Police Magistrate on the violation of Cancro in the selling of liquor during the prohibited hours on Election Day. The Council desire to know whether the fine of $100. imposed upon Cancro in your opinion closes the matter, or whether you would recommend further disciplinary action.

Yours very truly,

PAUL A. VOLCKER
Township Manager

December 2, 1936.

Paul A. Volcker, Township Manager,
Teaneck, N. J.

My dear Mr. Volcker:

I have your inquiry of November 23rd.

Similar question has arisen heretofore in connection with indictments, viz.: should revocation proceedings be waived in a case where fine or imprisonment has been imposed by a criminal court. My thought has been, not only that criminal proceedings are not a substitute for disciplinary civil action, but also that the issuing authority without waiting for the outcome of the criminal proceedings should itself proceed either to revoke or suspend the license.

Thus in re Du Pree, Bulletin 108, item 8:

"The revocation proceedings should be instituted at once. It is not the desire of the Commissioner that such proceedings be held up pending the disposition of criminal charges even though the same facts are the basis of both charges.

"Revocation proceedings are separate and distinct from any criminal action against a licensee and are directed mainly against the privilege that has been accorded by the municipality to the licensee. If that privilege has been abused the issuing authority has the right, conferred by Section 28 of the Control Act, to take action. The fact that the civil privilege has been abused makes it, in the Commissioner's opinion, the duty of the issuing authority to punish that abuse by appropriate suspension or revocation."

So in re Wolfe, Bulletin 112, item 9:

> "The salutary action of your Board in revoking the civil privileges without waiting for the courts to administer criminal punishment illustrates the ruling made in re Du Pree, Bulletin 108, item 8. It is against sound public policy to permit a licensee to exercise his special privileges until formally adjudicated guilty of a crime. Summary revocation proceedings, while supplementary to criminal action, are independent thereof. The latter is designed to punish the offender; the former to protect the public."

The same principle should apply where a fine has been imposed under an ordinance. In a broad sense, to be sure, a fine is a disciplinary proceeding but it is more in the nature of criminal punishment. Only too often a penalty measured in money merely deprives the offending licensee of a mere part of his ill-gotten gains. Fines are quite ineffective to keep errant licensees in line. Then again, fines may be and often are remitted by the sentencing judge. If so, they are naught but a gesture so far as law enforcement is concerned. A suspension of the license, on the other hand, is feared by licensees more than any fine. You seldom have trouble a second time with a place which has been closed down for a while. It is the most powerful deterrent you have.

It may be said that this is punishing a man twice for the same offence. The answer is that it is merely a determination of what the total punishment shall be. When one commits an unlawful act it must be looked at from both the criminal and the civil angle. Each proceeding is separate and distinct. The fine takes care of one phase; suspension of the other.

I say "suspension" rather than revocation because I think suspension is enough for an offence of this kind. The period need not necessarily, if you choose, be as long as it otherwise would if no fine had been imposed. The Council has undoubted right to take into consideration the penalty inflicted in the Recorder's Court. But such mitigation is an entirely different thing from throwing the civil proceedings into the discard altogether.

I am firmly of opinion that a fine under an ordinance should not close any matter where disciplinary proceedings are indicated. Fines are inflicted by courts. Through disciplinary proceedings, issuing authorities have the opportunity to know first-handed the conduct of their own licensees and to control them by their own adjudications.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 4, 1936.

RE: Application for Solicitor's Permit - Case No. 40

Applicant, who seeks a solicitor's permit, admitted in his questionnaire that he had been convicted of embezzlement of Borough funds. Notice was served on him to show cause why his

application should not be denied on the ground that he had been convicted of a crime involving moral turpitude, and a hearing was duly held.

At the hearing applicant testified that he had been collector of taxes in the Borough for about seven years. He frankly admitted that within a period of six months prior to his arrest, he embezzled about twenty-four thousand dollars ($24,000.) of tax funds belonging to the Borough. He was indicted, pleaded guilty, was sentenced to a term of from one to three years, and was paroled after serving nine months of his sentence.

The crime of which the applicant was convicted is a high misdemeanor under the laws of our State. At the hearing applicant made no attempt to make any explanation which might lessen the degree of his guilt, except his explanation that the Surety Company on his bond had made good to the Borough for the loss sustained through the applicant's actions. This latter fact, however, does not tend to lessen the applicant's guilt. Ordinarily, embezzlement is a crime involving moral turpitude. In re U. S. vs. DeWalt, 128 U. S. 393; Cruickshank, 47 Cal. App. 496, 190 Pac. 1038. Under the circumstances of this case, the applicant was clearly guilty of a crime involving moral turpitude.

It is recommended that the permit be denied.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

3. LABELING REGULATIONS - FEDERAL ALCOHOL ADMINISTRATION'S LABELING REGULATIONS PERTAINING TO MALT BEVERAGES ARE ADOPTED WITH RESPECT TO THE STATE OF NEW JERSEY.

Pursuant to public hearing in which this Department participated, the Federal Alcohol Administration recently promulgated regulations pertaining to labeling of malt beverages. Under the terms of the governing statute these regulations can be effective only in so far as the individual States adopt similar requirements and the Federal Administration has expressed the hope that this would be done.

The Federal regulations have been carefully studied; they are calculated to furnish to purchasers of malt beverages adequate information as to their identity and ingredients and to prohibit undesirable labeling practices. The imposition of separate labeling requirements by the States would not aid control and may hinder substantially the efficient conduct of the industry. National uniformity is here particularly appropriate.

Accordingly, the following regulation has been adopted, effective December 15, 1936:

"Regulations heretofore announced by the Federal Alcohol Administration relating to labeling of malt beverages, packaged for shipment in interstate or foreign commerce, are made a part hereof

as though fully set forth and are hereby promulgated with respect to the State of New Jersey; the aforesaid regulations shall apply to malt beverages packaged purely for intrastate shipment within New Jersey to the same extent as though intended for interstate or foreign shipment.

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs
Dated: December 2, 1936. Chief Deputy Commissioner

4. FEDERAL LABELING REGULATIONS - WHY UNIFORMITY IS DESIRABLE - REASONS FOR ADOPTION BY NEW JERSEY

December 4, 1936.

Hon. W. S. Alexander,
Federal Alcohol Administrator,
Washington, D. C.

My dear Mr. Alexander:

I am happy to inform you that I have adopted in New Jersey the Federal Labeling Regulations covering malt beverages.

This completes, I believe, the adoption of all Labeling Regulations promulgated by the Federal Alcohol Administration, viz:

(1)	Distilled Spirits:	adopted	Aug. 21, 1936,	Bull.	137,	Item 9;
(2)	Wines:	"	Nov. 23, " ,	"	149,	" 7;
(3)	Malt Beverages:	"	Dec. 2, " ,	"	151,	" 3.

I agree substantially with the views expressed by you on December 2nd at the Des Moines Conference - in fact, I have declared for national uniformity of labeling regulations from the very outset of my own administration. The recommendation for such uniformity of the 1935 Committee on Uniform Law to the National Conference of State Liquor Administrators was approved as the sense of the Conference. I therefore share your hope that all the States will adopt the several labeling regulations which your administration has so carefully and well worked out.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

EXCERPTS FROM THE ADDRESS OF W. S. ALEXANDER, FEDERAL ALCOHOL ADMINISTRATOR, AT DES MOINES CONFERENCE OF STATE LIQUOR ADMINISTRATORS, DECEMBER 2, 1936.

"* * * * *One of the most troublesome problems of the Federal Alcohol Administration today is that which involves the labeling and advertising of alcoholic beverages. We cannot solve it without the aid of the individual states because the powers of the Federal Alcohol Administration are limited to transactions involving interstate commerce.

"Congress in establishing the Federal Alcohol Administration in August, 1935, gave it the power to prescribe labeling

and advertising regulations which would prohibit deception of the consumer and provide him with adequate information as to the identity and quality of the products. In order to prevent the sale or shipment of misbranded goods in interstate commerce, Congress required that all bottlers submit their labels to the Administration for approval and procure certificates evidencing such approval. It is made unlawful for bottlers of distilled spirits and wine producers, and under certain circumstances for brewers, to bottle alcoholic beverages, or remove the same from their plants, unless they are in possession of certificates of label approval at the time of bottling. The Act provides, however, that persons bottling alcoholic beverages which are not intended to be shipped outside of the state, are exempted from the requirements of the regulations upon the procurement of certificates of label exemption. We are required to issue these certificates of label exemption upon a showing that the products are not intended to be sold, or offered for sale, or shipped, or delivered for shipment, or otherwise introduced in interstate or foreign commerce.

"An unsatisfactory situation is thus created, especially where the state laws do not impose any labeling requirements. In such cases, while alcoholic beverages shipped into a state are required to conform strictly to the federal labeling regulations, spirits bottled for sale within the state may bear any labels which the bottler chooses to use. The voiced desire of Congress, therefore, that the consumer be protected from deception, is defeated and the interstate shipper, who is required in all circumstances to comply with rigid requirements, is forced to meet unfair competitive practices.

"With a view to uniformity in state and federal requirements, and the elimination of many abuses which lead to consumer deception, several states have seen fit to adopt as state requirements all of the provisions of the federal regulations applicable to labeling. Where individual states have adopted the federal labeling regulations, the Administration has refused to issue certificates of label exemption to bottlers located in such states. The result is that all alcoholic beverages bottled for consumption within the state, as well as those shipped into the state, are labeled in such a way that the consumer cannot be deceived. This is doubly insured in the case of distilled spirits by the fact that all bottling and labeling operations are supervised by Internal Revenue storekeeper gaugers.

"Our attention is called almost daily to abuses on the part of the intrastate bottler. One typical illustration of such abuses, which accentuates the necessity for uniformity, involves a case just recently called to my attention in which a bottler of distilled spirits operating on a local scale is importing whiskey from Canada in bulk and using a label which not only fails to indicate that the product is bottled in the United States, but actually represents that the merchandise was bottled in bond under the supervision of the Canadian Government.

"I am sure that no state liquor official desires to tolerate conditions like these. They can be corrected very easily without imposing any burden whatsoever upon state authorities. If, with a view to the protection of consumers within your individual states, you see fit to adopt, as state requirements, the labeling regulations of the Federal Alcohol Administration, we of the Administration will do all in our power to cooperate with you as we have already cooperated with the several states which already impose upon intrastate bottlers the same requirements which the federal law imposes upon those who bottle for interstate shipment. Where states have adopted the federal labeling regula-

tions, we have refused to issue any certificates of label exemption. In view of the fact that all bottling of distilled spirits is under the supervision of Internal Revenue gaugers, the refusal to issue certificates of label exemption has the result of requiring that all spirits bottled within a state, as well as those shipped into the state, be labeled in strict conformity with regulations, which we conceive to be for the benefit of consumers everywhere."

5. SALES ON CREDIT - VIOLATION OF RULE - THE REASON FOR THE RULE PARTIALLY ILLUSTRATED.

December 4, 1936

Walter C. Chapman, Esq.,
Borough Clerk,
River Edge,
Bergen County, N. J.

Dear Mr. Chapman:

I have staff report of the proceedings before your Borough Council against William C. Greenwood, charged with extension of credit to customers for alcoholic beverages.

The report reads:

"On October 31, 1936, Investigators King and Higginbotham visited the licensed premises to check on a complaint that the licensee had been violating the 'No Sales on Credit' Rule.

"They found numerous slips which proved that alcoholic beverages had been sold on credit to customers. The slips were seized. In a written statement the licensee admitted his guilt. In part he said:

"'These said persons who are represented on the credit slips which you have here, they obtained their grub and drinks first and when I presented the check for the payment of same, they told me, would it be all right to pay them when they got their wages. I have pointed out specifically to the ruling of Mr. Burnett. The answer is "I'm sorry, Bill, but I haven't got the money now". So what could I do.'

"Sentence: License suspended for one (1) day, Monday, December 7, 1936.

"NOTE: The Council in imposing punishment stated that leniency was exercised only because of the previous good record of the licensee and the fact that it was his first offense. He was warned that any subsequent violation would result in the revocation of the license."

The case partially illustrates the reason why the Rule was promulgated, viz.:

"Liquor is a luxury. Sales made on credit to those who cannot afford to pay cash causes untold

hardship. Wives and families have suffered because of liquor purchased at the expense of the necessities of life. Children have had to go hungry."

This is the first case of its kind since the rule became effective - that is, where the licensee was caught. I appreciate tremendously the prompt salutary action of your Council in exacting obedience to the Rule just because it is a Rule. I can't help feeling sorry, however, for "Bill". Under the circumstances, the one day suspension was ample.

Please express my deep esteem to your Council.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. REVOCATION PROCEEDINGS - PETITION TO LIFT INELIGIBILITY - PETITION DENIED WHERE NOTHING APPEARS EXCEPT THAT THE SHOE PINCHES.

IN THE MATTER OF REVOCATION PROCEEDINGS AGAINST KARL BLUSCHKE, the holder of Plenary Retail Consumption License #C-11, issued by the Township Committee of Franklin Township (Somerset County) for premises known as Kingston Bar and Grill, located on Lincoln Highway #1, Kingston, Franklin Township.

. . . . . .

ON PETITION TO MODIFY ORDER OF MAY 13, 1936.

CONCLUSIONS

Levenson, Comen & Levenson, Esqs., Attorneys for Petitioner.

BY THE COMMISSIONER:

The order of May 13, 1936, declared the premises ineligible for any further liquor license for two years.

Kingston Holding Company, owner of the premises, now petitions to lift the order of ineligibility because it is causing great loss in that the premises are suitable only for an inn (which presumably, although not so stated, it cannot rent to advantage without ability to get a liquor license);that the previous licensee, Karl Bluschke, was not in privity with the petitioner or any of its officers or stockholders, except as tenant paying rent; that Bluschke violated the law without the knowledge or information of petitioner; that it now has a new tenant, one Anthony Catana, whom it believes to be a proper person to conduct a bar and to be a resident of Trenton and whom it "knows of its own knowledge.....is in nowise connected directly or indirectly with the former licensee".

Just how petitioner knows this very important fact of its own knowledge is not disclosed.

The petition is verified only generally by the President of the Kingston Holding Company who declares the contents "true to the best of my knowledge, information and belief" - in short, no proof except hearsay and belief. No

affidavit of the proposed new licensee is attached showing his own qualifications and his entire freedom from business or personal association either with Karl Bluschke or the predecessor tenant, George Reick, whose license on the very same premises was also revoked. No pledges are given that the petitioner will see to it that the new tenant, unlike its last two tenants, shall comply with the law at all times. No explanation is given as to why no evidence was introduced at the Bluschke revocation hearing by petitioner, one of the parties to that proceeding, despite testimony that the previous license to its tenant, Reick, had been revoked on the same ground, viz: sale of liquor to minors, students in Princeton University, notwithstanding petitioner then had its day in court to show its own good faith and clear itself of gross laxity, or connivance with, or responsibility for the actions of its own tenants. No effort, apparently, has been made to obtain the consent of Princeton University to reopening the inn which on two previous occasions caused it so much trouble.

Nothing appears except that the shoe pinches after a vacancy of six months. The object of the law was to impose an obligation on landlords to see to it that their premises were not used for unlawful purposes.

The petition is dismissed without prejudice to renewal after another six months.

D. FREDERICK BURNETT
Commissioner

Dated: December 7, 1936.

7. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - RULE 16 PROHIBITING SALES ON CREDIT BY RETAIL LICENSEES ABROGATED - HEREIN OF THE BOOMERANG WHICH MAY SMITE THE SHORTSIGHTED.

December 6, 1936.

TO ALL RETAIL LICENSEES:

Rule 16 Concerning Licensees and the Use of Licensed Premises, promulgated July 28, 1936, prohibited sales on credit by retail licensees.

The rule was made because of frequent complaints from wives and children of those who could not afford to pay cash that liquor purchased on credit was all too often at the expense of the necessities of life.

A fair trial of four months has demonstrated that the rule does not accomplish its objective. Complaints continue accompanied by urgent request that names be kept confidential lest the informing wife be suspected and beaten up by an irate husband. To honor her request, as I must, blocks the only practical avenue of approach to the truth which, in most cases, resides in secret understanding between vendor and buyer. Conscientious licensees who have obeyed the rule in every case, just because it is a rule, have lost sales to those who have flaunted it. It is ostentatiously utilized by the cheater to rid himself of those whose credit he doubts but indulgently "waived" for those whose custom he curries. It plays into the hands of the unscrupulous. The less records a licensee keeps, the less likely to be caught. A wink of the eye, a shrug of the shoulders and a good memory is all that is necessary. There is no simple objective test such as in cases of possession of bootleg; sale on election day or during prohibited hours. No audit, however intensive, will disclose a violation when no records of a particular transaction are kept. Due to our habits,

service and settlement are rarely concurrent. Even though it is a cash transaction, we pay as we leave. Detection is well nigh impossible unless an investigator is permanently stationed to supervise each transaction in every one of the 11,000 retail outlets in the State.

The public, over-trained to buy on installments, regards denial of credit, whatever the cause, as a personal reflection and vents its antagonism on the unfortunate dealer who lives up to the rule by buying from those who are willing to take a chance so long as there is a profit. A check-up of some of the larger retailers reveals a decrease in volume of sales since the rule ranging from 27.1% to 40%. Yet the volume of sales throughout the State is practically constant. The inference is inescapable.

A rule which is practically unenforceable is worse than no rule.

The rule is therefore abrogated effective immediately.

This cancellation is no boon to licensees who sell on credit to those who cannot afford to buy at all. Starved wives and under-nourished children do not create good will for the shortsighted licensee who hasn't the vision to see beyond the quick profits of TODAY the boomerang of TOMORROW.

D. FREDERICK BURNETT
Commissioner

8. SALES ON CREDIT - VIOLATION OF RULE - - SUSPENSION LIFTED.

December 6, 1936.

Walter C. Chapman,
Borough Clerk,
River Edge, N. J.

Dear Mr. Chapman:

Confirming telegram: I have today lifted the suspension against William C. Greenwood and wired him accordingly to the end that he may operate tomorrow.

I have done this with full deference to the judgment of your Borough Council; in fact, I have already expressed my appreciation of their enforcement of the Credit Rule just because it was a Rule.

The Rule, however well-intentioned, has proven on experience to be impractical. The Greenwood case is illustrative.

Hence, for the reasons expressed in today's notice to licensees (copy enclosed) I have abrogated the Rule.

Therefore, it is but fair to lift the Greenwood suspension.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

). DISCIPLINARY PROCEEDINGS - SUNDAY SELLING - LICENSE OF SECOND OFFENDER REVOKED - HEREIN OF THE EFFECTIVE WAY TO ESTABLISH CONTROL

December 7, 1936.

Mr. Thomas Coburn,
Township Clerk,
Burlington, N. J.

Dear Mr. Coburn:

I have staff report of the proceeding before the Township Committee of Burlington against Charles Elmer Abrams charged with having sold alcoholic beverages on Sunday, contrary to the Township regulation and after he had been warned not to do so by one of my investigators.

I note the licensee pleaded guilty and that his license was revoked effective December 6, 1936. I am further informed that the decision of the Committee carries with it a two year disqualification of the licensed premises.

The report states:

"On Sunday, September 20, 1936, Investigator Perry visited the licensed premises at 7 P.M. He found 15 patrons in the place and upon interviewing the licensee, was informed that he was unaware of the fact that no Sunday sales could be made. Investigator Perry warned the licensee to discontinue Sunday sales.

"On Sunday, October 18, 1936, Investigators Perry and Roxbury visited the licensed premises at about 7:40 P. M. They entered by a rear door. The lights were on in the barroom but the shades and blinds were all pulled down. The licensee was in charge and was serving beer to five persons. There were four men and three women in the licensed premises. At first the licensee contended that the people in the room were his guests.

"He admitted to the Investigators that he sold alcoholic beverages on Sunday, contrary to the Township regulation, because that was the only way he was able to 'get by'."

This licensee persisted in unlawful conduct, notwithstanding a warning to desist. Your Committee by its forward looking action, has served notice upon licensees that it is poor business to try to "get by" by breaking the law. If every municipality throughout the State followed the attitude of your Township Committee in its treatment of second offenders, liquor control would quickly become an accomplished fact. The example set merits emulation throughout the State.

With sincere appreciation and respect, I am,

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. MUNICIPAL ORDINANCES - CLOSED HOURS FOR LICENSED PREMISES - EXCEPTIONS IN FAVOR OF RESTAURANTS AND CLUBS APPROVED.

November 16, 1936.

Alfred J. Grosso, Esq.,
Orange, N. J.

Dear Mr. Grosso: Re: Town of West Orange X-2245

The proposed ordinance provides that every licensed place, except restaurants, shall be closed between the hours of 3:00 a.m. and 1:00 p.m. on Sundays and between the hours of 2:00 a.m. and 7:00 a.m. on weekdays. Section 4 provides: "For the purpose of this ordinance, the word 'restaurant' shall mean either an establishment regularly and principally used for the purpose of providing meals to the public having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods, in which no other business except as is incidental to such establishment is conducted; or a club with a regular dues-paying membership, and having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods, and not conducted primarily for gain. No licensee, including a licensee maintaining a restaurant as herein defined, shall sell or offer for sale, or deliver to any consumer, member or guest, any alcoholic beverage during the closing hours set forth in Section 3 hereof."

The definition of a club should be amended. To be sure there is no definition set forth in the Alcoholic Beverage Control Act as there is of a restaurant. Your ordinance provides that no club licenses shall be issued. That is entirely within your power. Under your definition of a club as being an organization "with a regular dues-paying membership, and having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods, and not conducted primarily for gain", a couple of men might take out a retail consumption license, call their place a club, provide for dues at a dime a year, cause the alleged club to pay them handsome salaries so as to absorb the profits, so to make it appear that the establishment was not conducted primarily for gain, and then if they had the kitchen and dining room equipment they would be exempt from closing. That, of course, is not what you have in mind at all. Undoubtedly, you have in contemplation legitimate, bona fide clubs of which I knew there are several in West Orange. But that is what your ordinance would permit or at least invite. Since there is no statutory definition of a club, resort must be had to the State rules and regulations to determine the test of a bona fide club. Therefore, even though no club licenses whatsoever are to be issued in West Orange, I suggest that you change the definition of a club as set forth in Section 4 to read "or a club which could qualify for a club license pursuant to the State rules and regulations, and which has a regular, bona fide dues-paying membership, and which has an adequate kitchen and dining-room equipped for the preparing, cooking and serving of foods and which is not conducted primarily for gain". I believe that definition would stand up and afford a fair test.

Subject to the foregoing changes, I believe your ordinance avoids the objections set forth in Peck v. West Orange, Bulletin

147, Item 1. It will apply to all bona fide restaurants and clubs regardless of size and fall within those fair differentiations contemplated by Bulletin 19, Item 7 and Bulletin 43, Item 11. It remains, nevertheless, as in the case of all other regulations given ex parte approval, subject to review on appeal. See in this connection Bulletin 34, Item 5, and Bulletin 43, Item 12.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. LIST OF MUNICIPALITIES, SUPPLEMENTING RE DOUGHERTY, BULLETIN 103, ITEM 7, WHICH EITHER PROHIBIT THE SALE OF ALCOHOLIC BEVERAGES OR IN WHICH LICENSES HAVE NOT BEEN ISSUED.

December 7, 1936.

Dr. Izora Scott, Director
National Woman's Christian Temperance Union,
Washington, D. C.

My dear Dr. Scott:

Your information as to the number of New Jersey municipalities in which no alcoholic beverages are sold appears to have been taken from re Dougherty, Bulletin 103, item 7, a compilation which as of January 22, 1936 set out this information. Since January 22d and prior to the general election held on November 3d last, there were a number of changes. I am sending you herewith another copy of re Dougherty supra and am listing below the changes so that you may have before you the complete information on this situation as it stands today.

The Borough of Pennington, Mercer County, on March 2, 1936 adopted an ordinance prohibiting within the Borough the issuance of all retail licenses.

The Township of Upper Freehold, Monmouth County, has fixed retail license fees and issued retail licenses for the current fiscal year.

The Township of Pahaquarry, Warren County, has also fixed retail license fees and issued retail licenses for the current fiscal year.

Licenses have been issued in the Township of Harding, Morris County, for the current fiscal year.

Licenses have also been issued in the Borough of Pine Beach, Ocean County, for the current fiscal year.

The Borough of Helmetta, Middlesex County, although having fixed retail license fees does not have any retail licenses presently outstanding.

So far as I know, no municipalities in this State voted to go "wet" or to go "dry" at the last general election. All that has been reported to me to date on this score is the referendum

held in Elk Township, Gloucester County, the result of which prohibits retail sales of hard liquor for on-premises consumption. The question submitted in Elk Township was that provided for in Section 41 of our Act, reading:

> "Shall the retail sale of alcoholic beverages, other than brewed malt alcoholic beverages and naturally fermented wine for consumption on the licensed premises by the glass or other open receptacle, pursuant to the 'Act concerning alcoholic beverages,' be permitted in this municipality?"

The vote was 'yes' 242, 'No' 243. This referendum happens to have been the first held in this State, pursuant to the present statute, the result of which was to cause a municipality, so far as sales for on-premises consumption are concerned, to be "partially dry". Elk Township has not, however, issued any retail licenses either before or since the referendum.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

12. LIMITATION OF LICENSES - A MUNICIPALITY MAY LIMIT THE AGGREGATE NUMBER OF SUMMER SEASONAL LICENSES, NOT THE NUMBER WHICH MAY BE ISSUED BY THE MUNICIPALITY AND THE NUMBER WHICH MAY BE ISSUED BY THE STATE COMMISSIONER.

LICENSES - PROHIBITION OF PARTICULAR CLASSES OF RETAIL LICENSES MUST BE ENACTED BY ORDINANCE.

SEASONAL RETAIL CONSUMPTION LICENSES - WINTER SEASONAL LICENSES MAY BE PROHIBITED PROVIDED THE PROHIBITION IS ENACTED BY ORDINANCE BUT SUCH PROHIBITION IS SUBJECT TO REVIEW ON APPEAL.

December 7, 1936

C. D. Gordon,
Borough Clerk,
Mount Arlington, N. J.

Dear Mr. Gordon:

I have carefully considered the resolution limiting the number of licenses in Mount Arlington Borough which was adopted by the Mayor and Council on November 20th. There are a number of comments with respect to the resolution that I would like to offer for your consideration.

The resolution provides that the number of licenses in the Borough shall be limited to:

> "1 Club License.
>
> "5 Plenary Retail Consumption Licenses.
>
> "5 Seasonal Retail Consumption Licenses, Summer Season, granted by the Mayor and Council.
>
> "1 Seasonal Retail Consumption License, Summer Season, granted by the Commissioner of Alcoholic Beverage Control of the State of New Jersey.

"No Plenary Retail Distribution Licenses.

"No Limited Retail Distribution Licenses.

"No Seasonal Retail Consumption Licenses, Winter Season."

Under the terms of Section 37 of the Act, the limitation of the number of licenses is not made subject to the Commissioner's approval. It is instead, as provided for in Section 38, subject to review on appeal after which it may be set aside, amended or otherwise modified as the Commissioner may order. See Bulletin 43, item 2. But I thought that as a matter of courtesy I should, nevertheless, give you my thoughts in connection with the limitation of the number of licenses which the Council has imposed in order that the Council may make the corrections necessary to having the limitations and prohibitions intended to be imposed in proper legal form and thus forestall, to as great extent as possible, appeals.

The resolution first provides that there shall be no more than one club license and five plenary retail consumption licenses granted. So far, so good. To that extent, as above indicated, my approval is not necessary in the first instance in order for it to be effective.

Continuing, it declares that there shall be not more than five summer seasonal licenses granted by the Mayor and Council and not more than one summer seasonal license granted by the State Commissioner.

Now, there is no reason why you cannot limit the aggregate number of all summer seasonal retail consumption licenses to six. If the resolution did so, I would not question it. But you cannot break the limitation down into two quotas - one which may be filled by the Mayor and Council, the other by me. Such a regulation could make the issuance or denial of a license depend on whether the Mayor and Council or I was the issuing authority. That is not a proper criterion by which to measure whether or not a license should be granted. For example: Suppose that the Mayor and Council had issued the five summer seasonal licenses allotted to them and I had issued the one summer seasonal license allotted to me and subsequently, the summer seasonal license which I had issued was surrendered. Until an applicant who was required by statute to make his application directly to me applied, no further seasonal licenses could be issued. And this, despite the fact that a vacancy existed. Such an application might never again arise. Even if it subsequently did arise, the Council might, in the meantime, have been forced to deny, because its quota was filled, one or more applications which may have been made directly to it, all of which presuming the applicants otherwise fully qualified would be entitled to receive their licenses ahead of the one allotted to me to issue because of their priority. If the Council wants no more than six summer seasonal licenses, the resolution should be amended so that it provides that not more than six summer seasonal retail consumption licenses shall be granted and the two separate limitations now imposed struck out.

The resolution then provides that no plenary or limited retail distribution licenses shall be granted. The statute confers upon the governing body of each municipality the power to enact that no plenary or limited retail distribution licenses shall be issued but requires that such a prohibition be adopted by ordinance. See Section 13, sub. 3a and 3b. Mere resolution, there-

fore, will not suffice. In order to be legally effective the prohibition of these two types of licenses must be enacted by ordinance.

In conclusion, the resolution declares that no winter seasonal retail consumption licenses shall be granted.

Your Borough Council has the power to prohibit the issuance of all seasonal licenses. It is conferred by statute. And if duly enacted by ordinance, as the statute requires, such a prohibition is final and not subject to review. The Act, however, does not distinguish in this regard between summer and winter seasonal licenses. The option to prohibit which it provides is an option to prohibit all. Even so, I believe it competent for a municipality to distinguish between summer and winter seasonal licenses - to permit the issuance of one and prohibit the issuance of the other - if the distinction is made on reasonable and proper grounds. The statute does not contemplate that if any seasonal licenses are to be prohibited, it must be all. It sets up merely the ultimate power. It does not prevent a municipality from availing itself of that power in part.

But as a prohibition of all seasonal retail consumption licenses is required by statute to be enacted by ordinance, so also must a prohibition of summer or winter seasonal licenses be enacted by ordinance. Mere resolution will not do. Your prohibition of winter seasonal licenses will, therefore, be approved provided it is adopted by ordinance. Not being an enactment of the option which the statute confers, it will be, however, as in the case of all ex parte approvals, subject to review on appeal, at which time we may look behind the prohibition to find out whether or not in the light of the particular facts adduced it should be sustained.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. APPELLATE DECISIONS - FARLEY vs. HIGH BRIDGE.

META B. FARLEY,	:	
Appellant,	:	ON APPEAL
-vs-	:	CONCLUSIONS
THE BOROUGH COUNCIL OF THE BOROUGH OF HIGH BRIDGE,	:	
Respondent.	:	

Tarantola & Duff, Esqs., by Nathan Duff, Esq., Attorneys for Appellant.
Anthony M. Hauck, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises on East Main Street, Borough of

Highbridge.

Respondent denied the license because (1) the neighborhood is residential; (2) the number of consumption licenses outstanding in the Borough are sufficient, and particularly because there is a licensed place in the immediate vicinity of appellant's premises which is sufficient to take care of the needs of those residing in that section of the Borough.

Appellant owns her premises. She is a widow and has conducted a boarding house at her home for a number of years, although at the present time she has no boarders. She desires to use the first floor of her home as a restaurant and sought a liquor license to be used in conjunction with the restaurant business. Prior to the hearing she had not established the restaurant in her home. She believes that she could make a success of the restaurant business because the Taylor-Wharton steel plant, which employs about four hundred people, is located a short distance from her home.

Considering the first reason advanced by respondent, it is apparent from photographs that the easterly side of East Main Street, namely, the side of the street upon which appellant's premises are located, is devoted solely to residential purposes. The westerly side of East Main Street also contains a number of private homes, although there is a garage and service station directly opposite appellant's home and a battery of private garages adjoins the service station. There is evidence also that the employees of the steel plant park their cars along East Main Street in the vicinity of appellant's premises. Despite the presence of the service station and the garages, the street is essentially residential. Appellant's next door neighbors on both sides have objected to the issuance of the license. Three other families who reside on the same side of the street and in close proximity have also objected. The petition against granting the license was signed also by five residents of Maryland Avenue, the street to the rear of appellant's premises.

As to the second reason advanced by respondent in support of the denial, it appears that there is a licensed place on Washington Avenue, a short distance from East Main Street. That section of Washington Avenue is devoted to business purposes, and the licensed place is directly opposite the steel plant. The total population of the section of the Borough in which appellant's premises are located is approximately two hundred (200). The Borough had a population of eighteen hundred seven (1807) according to the census of 1930, and respondent has issued five other licenses in addition to the one previously mentioned. Of these five licenses, one has been issued in the North High Bridge section, and the other four, including two issued to hotels, are located in the central part of the Borough, which is the most thickly populated section thereof. All six licenses described were outstanding prior to the time that appellant made her application. In view of this situation, it cannot be said that the determination of respondent as to the sufficiency of licensed places in the Borough, and particularly in the section thereof where appellant's home is located, was unreasonable.

In view of the character of the neighborhood, the objections of residents therein and the existence of sufficient licensed places, it cannot be said that the action of respondent in denying the license was unreasonable. Mills v. East Brunswick, Bulletin #141, Item #1 and cases therein cited; Moran v. West Orange, Bulletin #143, Item 8; Cain v. Lyndhurst, Bulletin #143, Item 10.

The action of respondent is, therefore, affirmed.

Commissioner.

Dated: December 9, 1936.