Commissioner Hock
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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 762 MAY 16, 1947.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 762 ITEM 1. MAY 16, 1947.

NEW LEGISLATION - STATE-WIDE LIMITATION OF THE NUMBER OF PLENARY AND SEASONAL RETAIL CONSUMPTION LICENSES AND PLENARY RETAIL DISTRIBUTION LICENSES - CHAPTER 94 OF THE LAWS OF 1947.

Assembly Bill No. 199 was approved by Governor Driscoll on May 1, 1947, and thereupon became Chapter 94 of the Laws of 1947. The new law, effective May 15, 1947, reads as follows:

"AN ACT concerning alcoholic beverages; limiting the number of licenses to sell alcoholic beverages at retail, and supplementing chapter one, Title 33, of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. For the purposes of this act any license for a new license term, which is issued to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term, shall be deemed to be a renewal of the expired or expiring license; provided, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses.

"2. Except as otherwise provided in this act, no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each one thousand of its population as shown by the last then preceding Federal census; and no new plenary retail distribution license shall be issued in a municipality unless and until the number of such licenses existing in the municipality is fewer than one for each three thousand of its population as shown by the last then preceding Federal census.

"3. Nothing in this act shall prevent the issuance and existence of one plenary or seasonal retail consumption license and one plenary retail distribution license in a municipality whose population as shown by the last then preceding Federal census is less than one thousand.

"4. Nothing in this act shall prevent the renewal of licenses existing on the effective date of this act, or the transfer of such licenses or the renewal of licenses so transferred.

"5. Nothing in this act shall prevent the issuance in a municipality of a seasonal retail consumption license to a person who held such a license in the municipality for the same premises, and for the same seasonal period, during the then next preceding summer or winter season, nor shall anything in this act prevent the transfer of such a license so issued.

"6. Nothing in this act shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control.

"7. Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who, having held a license of the same class in the municipality, surrendered his license or permitted it to expire because of his induction into or service in the armed forces of the United States; provided, however, that such ex-licensee shall have filed the application for a new license within one year from the completion of his active service in said armed forces.

"8. Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms or who may hereafter construct and establish a new hotel containing at least fifty sleeping rooms.

"9. This act is in addition to and not in exclusion of municipal regulations, limiting the number of licenses to sell alcoholic beverages at retail, duly adopted pursuant to the authority granted by section 33:1-40 of the Revised Statutes.

"10. This act shall take effect May fifteenth, one thousand nine hundred and forty-seven."

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ERWIN B. HOCK
Commissioner.

Dated: May 14, 1947.

2. STATE-WIDE LIMITATION OF RETAIL LICENSES (CHAPTER 94 OF THE LAWS OF 1947) - INTERPRETATION AND EXPLANATION OF THE NEW LAW.

It is very important that the operation and effect of this new law be clearly understood -- particularly by municipal officials and licensees. Accordingly, the law (which is set forth in full in Bulletin 762, Item 1) will here be taken up section by section.

Section 1 is not new. It merely repeats, word for word, the definition of license renewal, as distinguished from a new license, which is set forth in R.S. 33:1-96 as amended by Chapter 187 of the Laws of 1944.

> The license year ends on June 30th. To be a renewal, a license must be of the same class and type and must be for the same licensed premises as the expired or expiring license; must be to the holder of the expired or expiring license, and the application must have been filed not later than thirty days after July 1st. Otherwise a license is not a renewal but a new license. Since the Act is directed against new licenses, a licensee may find himself out of business, if his application for renewal is not filed promptly, and, in any event, on or before July 30, 1947.

Section 2 establishes a limitation of one plenary or seasonal retail consumption license to each 1,000 of the municipality's population, and one plenary retail distribution license to each 3,000 of population.

> The section limits plenary and seasonal consumption licenses in the aggregate.
>
> The population is figured as of the latest Federal census and there are no fractions. Thus, for the purpose of this section, a municipality having one plenary retail distribution license could not issue a new and additional such license unless its population, by the last then preceding Federal census was 6,000 or more.

Section 3 provides that, in so far as the Act is concerned, there may be one plenary or one seasonal retail consumption license and one plenary retail distribution license in a municipality even though the municipality's population (by the last Federal census) was less than 1,000.

Section 4 provides that the Act shall not prevent renewal and transfer of licenses existing on the Act's effective date -- May 15, 1947.

> This means, of course, that all licenses legally in existence on May 15, 1947 may be renewed or transferred, in the sound discretion of the local issuing authority, despite the fact that the limitation quotas (Section 2) are exceeded.

Seasonal retail consumption licenses are issuable for the summer season (May 1st to November 1st, inclusive) or for the winter season (November 15th to April 15th, inclusive) -- Revised Statutes, 33:1-12(2). Strictly, a license for the 1947 summer season could not be a renewal of a license for the 1946 summer season. But for the purposes of the Act's limitation, Section 5 treats a seasonal license as a renewal of a former seasonal license if the "renewal" is for the same seasonal period (i.e., summer or winter season); and if issued for the same premises and to the same person who held a seasonal license in the municipality during the then next preceding summer or winter season.

As already pointed out, Section 1 of the new law provides that a license application to be one for renewal must be filed not later than thirty days after July 1st. Section 6 provides that the Act shall not prevent issuance of a new license to a person who files application therefor within sixty days after the renewal period has expired (i.e., within 60 days after July 30th) if the State Commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control. This section is designed not to weaken the renewal period requirement but to permit the sixty-day extension only in cases of undue hardship.

Section 7 provides, in effect, that the new law does not apply, under certain circumstances, to ex-licensee veterans. The law's limitation does not prevent issuance of a new license in a municipality to a person who held a license of the same type in the municipality and who surrendered the license or permitted it to expire because of his induction into the armed forces if the ex-licensee veteran files application for the new license within one year from completion of his active service in the armed forces. The section does not apply to all veterans but only to the indicated ex-licensee veterans.

Section 8 provides that the new limitation law shall not apply to operators of hotels containing fifty or more sleeping rooms.

Section 9 provides that the new law is in addition to and not in exclusion of municipal regulations limiting the number of retail licenses.

Of course, the new law does not permit issuance of a retail license in a municipality which is dry by referendum, or where issuance is prohibited by ordinance, or where no fee is duly fixed by municipal regulations.

The law does not permit issuance of a license in violation of a municipality's numerical limitation regulation. Where a municipal ordinance fixes license quotas more restrictive than those fixed in the new law, the municipal regulation prevails. Where the State law's quotas are more restrictive, the law prevails.

The fact that a municipality may have adopted no formal regulation limiting the number of licenses does not mean that the municipal issuing authority must grant a license application filed with it. Many municipalities without limitation ordinances have had a policy of issuing no new licenses. Even where a new license is not prohibited by the law, the determination to grant or deny a retail license application rests, in the first instance, with the municipal issuing authority (R. S. 33:1-12), and a municipality's action upon an application is appealable to the State Commissioner pursuant to R. S. 33:1-22. The new law merely fixes a maximum and, in a given municipality, far fewer licenses than would be permitted by the law may be ample to serve that municipality's public needs.

It is very important to reemphasize the fact that a new license may not be issued in violation of a municipality's limitation ordinance. The various exceptions in the law will not permit issuance of a new license unless such issuance is permitted also by the municipal regulation. For example, where a municipality has a limitation ordinance and the quota is filled, Section 7 (ex-licensee veterans) and Section 8 (fifty-room hotels) would not permit issuance of a new

license unless the ordinance were first amended or supplemented to provide for the indicated exceptions.

Section 10 makes the Act effective May 15, 1947.

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The 1946 State Limitation Law (Chapter 147 of the Laws of 1946 -- declared null and void by the State Supreme Court) contained a provision in favor of applications filed before a specified date. There is no such provision in the 1947 State Limitation Law. Where a new license is prohibited by the 1947 law, applications for new licenses fail if not granted before May 15, 1947.

ERWIN B. HOCK
Commissioner.

Dated: May 14, 1947.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
JOHN CONISHA & GEORGE GRABAWSKY)
T/a JOHN'S TAVERN) CONCLUSIONS
691-5 Summer Street) AND ORDER
Elizabeth, N. J.,)
Holder of Plenary Retail Consumption License C-186, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)
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Defendant-licensees, by John Conisha, Pro Se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead non vult to a charge alleging that they possessed illicit alcoholic beverages at their licensed premises, in violation of R. S. 33:1-50.

On January 30, 1947, an ABC investigator seized one 4/5 quart bottle labeled "Vat 69 Liqueur Blended Scotch Whisky", one 4/5 quart bottle labeled "Gilbey's Spey-Royal Scotch Whisky A Blend", one 4/5 quart bottle labeled "Gold Label Don Q Puerto Rican Rum", one 4/5 quart bottle labeled "Old Farm Brand Straight Rye Whiskey", and one 4/5 quart bottle labeled "Austin Nichols Blended Bourbon Whiskey", when preliminary tests thereof indicated that the contents of the respective bottles were not genuine as labeled. Subsequent analyses of the contents of the bottles in question by the Department Chemist revealed differences in characteristics between the whiskey described on the labels and that contained in genuine bottles of the respective brands.

Defendants have a previous adjudicated record. Effective July 15, 1946, their license was suspended for a period of fifteen days for possession of illicit alcoholic beverages. See Bulletin 719, Item 5. Under the circumstances, I shall suspend defendants' license for a period of fifty days, less five days' remission for the plea entered herein, or a net suspension of forty-five days.

Accordingly, it is, on this 6th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-186, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to John Conisha & George Grabawsky, t/a John's Tavern, for premises 691-5 Summer Street, Elizabeth, be and the same is hereby suspended for a period of forty-five (45) days, commencing at 2:00 a.m. May 12, 1947, and terminating at 2:00 a.m. June 26, 1947.

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

20th CENTURY BAR, INC.
1571 Maple Avenue
Hillside 5, N. J.,

Holder of Plenary Retail Consumption License C-10, issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside.

CONCLUSIONS AND ORDER

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20th Century Bar, Inc., by Anthony Grieco, President, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, through its president, has pleaded non vult to a charge alleging the sale of twelve bottles of whiskey below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On March 14, 1947, an ABC agent purchased nine 4/5 quart bottles of Carstairs White Seal Whiskey and three 4/5 quart bottles of Wilson "That's All" Whiskey, each of which products are price-fixed at $3.45, for the total sum of $37.95. This amount is $3.45 less than the established price for the twelve bottles in question.

Since this is the defendant's first violation, I shall impose the usual ten-day penalty, with remission of five days for the plea, leaving a net penalty of five days. Cf. Re Neena Holding Corp., Bulletin 744, Item 5.

Accordingly, it is, on this 12th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-10, issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside to 20th Century Bar, Inc., 1571 Maple Avenue, Hillside, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. May 19, 1947, and terminating at 2:00 a.m. May 24, 1947.

ERWIN B. HOCK
Commissioner.

5. LICENSED PREMISES - APPLICATIONS FOR PREMISES NOT YET CONSTRUCTED AND WHICH WILL NOT BE COMPLETED BY JUNE 30, 1947 - COMMISSIONER'S EMERGENCY RULING OF MAY 27, 1946 (BULLETIN 712, ITEM 9) EXTENDED FOR ONE MORE YEAR - HEREIN EXTREMELY IMPORTANT RULING WITHOUT WHICH MANY PERSONS WHOSE APPLICATIONS HAVE BEEN GRANTED WILL BE UNABLE TO OBTAIN RENEWALS.

TO ALL MUNICIPAL LICENSE ISSUING AUTHORITIES:

The Alcoholic Beverage Law makes it the duty of municipal issuing authorities to investigate not only a license applicant's personal qualifications but also to investigate the premises sought to be licensed. (Revised Statutes, 33:1-24.) The State Commissioner's ruling has been that where application is made for a building not yet constructed, or for a building in process of construction, the most the municipal issuing authority may do is to grant the application subject to the express condition (imposed in the authorizing resolution, pursuant to Revised Statutes, 33:1-32) that the premises as described in the plans and specifications prepared and submitted by the applicant and found acceptable by the issuing authority shall first be completed. (Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8; Re Murphy, Bulletin 389, Item 11.)

The ruling, in the cited and other bulletin items, has been that while a municipal issuing authority may grant an application subject to the indicated special condition, the license may not be actually issued until the premises are completed in accordance with the filed plans and specifications.

Unless a license has been actually issued and is in effect on June 30th, it may not be renewed for the new license year beginning July 1st. Under our Alcoholic Beverage Law, a renewal must be to the holder of the expired or expiring license; otherwise, it is a new license. (Revised Statutes, 33:1-96.) The issuance of a new license is prohibited in many municipalities by municipal ordinance and, now, by the new State Limitation Law -- Chapter 94 of the Laws of 1947, effective May 15, 1947.

During the license year 1945-1946 a number of municipal issuing authorities granted applications for premises not constructed and it became apparent that a number of the applicants concerned would be unable to complete their premises by June 30, 1946. Therefore, and in fairness to those applicants who had acted in complete good faith and whose failure to complete the contemplated premises was due to no fault of their own but to the unavailability of building materials, the ruling theretofore made (contained in Re Harris and other bulletin items) was modified to permit renewals for the single year 1946-1947 despite the fact that the premises were not completed by June 30, 1946. (Bulletin 712, Item 9.)

Because the very real shortage of building materials still exists, I have decided to extend for one more year the permissive relief afforded by my emergency ruling of May 27, 1946 (Bulletin 712, Item 9). ACCORDINGLY, THE INDICATED EMERGENCY RULING IS HEREBY EXTENDED FOR A SINGLE ADDITIONAL YEAR FOR THE FOLLOWING LIMITED PURPOSE AND TO THE FOLLOWING EXTENT:

Where a municipal issuing authority has granted an application for premises not yet constructed, it may amend its authorizing resolution (or motion) by a resolution setting forth that the original resolution (or motion) dated _____, is hereby amended to provide that the license is authorized to be issued, effective immediately, for the sole purpose of permitting a renewal for the license year 1947-1948.

If the indicated amendatory resolution is passed a copy should, of course, be forwarded at once to this Department.

Where the indicated amendatory resolution is passed and the license issued thereunder, and a renewal application (for the license year 1947-1948) is filed, then if the issuing authority determines to grant the application for renewal, its resolution granting that application must impose (or reimpose) a special condition reading in the following manner:

> "..., provided, however, that the license shall not be actually issued unless and until the premises as described in the plans and specifications prepared, submitted and found acceptable by this issuing authority, shall first be completed."

Thus, the license certificate, for the year 1947-1948, will not be issued and delivered to the applicant until the special condition has been complied with.

A copy of the resolution imposing the indicated special condition must be forwarded to this Department for the State Commissioner's approval required by Revised Statutes, 33:1-32.

Furthermore, the applicant's published Notices of Application shall contain the following words: "Plans and specifications of the premises to be constructed may be examined at the office of the Municipal Clerk." (State Regulations No. 2.)

There are a few instances in which an application for a place-to-place transfer of an existing license has been granted for a building not yet constructed or for a building in course of construction. In those instances, if it is apparent that the licensee will have no licensed premises on July 1st (because his new premises have not been completed and because he has lost possession of his old premises by expiration of his lease, eviction, etc.), the ruling and comments hereinabove made shall apply. In other words, the issuing authority may, in those cases, amend its transfer-authorizing resolution (substituting the word "transferred" for the word "issued"). In that event the transfer should be endorsed on the 1946-1947 license certificate. The application for the 1947-1948 renewal should be filed for the new uncompleted premises and not for the old premises. If renewal is granted, it should be made subject to the special condition set forth above, and the license certificate for the year 1947-1948 will not be issued or delivered to the applicant until the special condition has been complied with.

The situation is different where a licensee's application for a place-to-place transfer has been granted but where the licensee still has the old licensed premises and will continue to have the old premises on and after July 1st. He will probably wish to continue operation of the business and under those circumstances it would appear the proper course to apply for a renewal (1947-1948) for the old premises. If the renewal is granted, then, if and when (after July 1st) the new premises are completed, he may file a new application for a place-to-place transfer to those premises.

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The intent of this emergency ruling is to permit relief in hardship cases. Whether or not the indicated relief is to be granted in a specific case rests, in the first instance, in the sound discretion of the issuing authority.

Dated: May 14, 1947.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN SALCO)
T/a MT. OLIVE TAVERN) CONCLUSIONS
State Highway 6) AND ORDER
Mt. Olive Township)
P.O. Budd Lake, N. J.,)

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Mount Olive.)

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John Salco, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On April 1, 1947 an inspector of the State Department of Alcoholic Beverage Control seized two 4/5 quart bottles labeled "Ballantine's Liqueur Blended Scotch Whisky", when his field tests disclosed that the contents thereof were not genuine as labeled. Subsequent analysis by the Department chemist warrants the conclusion that said bottles had been completely or partly refilled with an alcoholic beverage different than that described on their respective labels.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of fifteen days, Re Nurse, Bulletin 680, Item 7, and remit five days because of the plea, Re Gelb, Bulletin 741, Item 8, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Mount Olive to John Salco, t/a Mt. Olive Tavern, for premises on State Highway 6, Mount Olive Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. May 13, 1947, and terminating at 2:00 a.m. May 23, 1947.

ERWIN B. HOCK
Commissioner.

7. COURT DECISIONS - NEW JERSEY COURT OF ERRORS AND APPEALS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION AND ALFRED E. DRISCOLL, COMMISSIONER v. HOBOKEN ET AL. - DECISION OF NEW JERSEY SUPREME COURT REVERSED AND ACTION OF COMMISSIONER SUSTAINED.

NEW JERSEY COURT OF ERRORS AND APPEALS
Nos. 21-24 February Term 1947

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Respondent-Appellant,

-and-

ALFRED E. DRISCOLL, State Commissioner of Alcoholic Beverage Control,

Intervening Respondent-Respondent,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN, JOHN NOVAK, SOPHIE BROTMAN, EMIL PFEIFER, JOHN LENSI and DANIEL G. MAROTTA,

Prosecutors-Respondents

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Respondent-Appellant,

-and-

ALFRED E. DRISCOLL, State Commissioner of Alcoholic Beverage Control,

Intervening Respondent-Respondent,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN, and SYDNEY GORDON and LOUIS GORDON, t/a GORDON BROTHERS,

Prosecutors-Respondents

ANGELO ANTHONY LUPO and BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN,

Prosecutors-Respondents,

-vs-

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, a corporation of the State of New Jersey,

Respondent-Appellant,

-and-

ALFRED E. DRISCOLL, Commissioner of the State Department of Alcoholic Beverage Control,

Respondent-Respondent

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Defendant-Appellant,

-and-

ALFRED E. DRISCOLL, State Commissioner of the Department of Alcoholic Beverage Control,

Defendant-Respondent,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN and CHARLES MARINELLI,

Prosecutors-Respondents

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Defendant-Appellant,

-and-

ALFRED E. DRISCOLL, State Commissioner of the Department of Alcoholic Beverage Control,

Defendant-Respondent,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN and ROSE PIZZINO,

Prosecutors-Respondents

Argued February 5, 1947. Decided April 24, 1947.

For respondent-appellant, Hudson Bergen County Retail Liquor Stores Association: Nathan L. Jacobs, Samuel Moskowitz; Fraser, Stoffer & Jacobs.

For Alfred E. Driscoll, State Commissioner of Alcoholic Beverage Control: Walter D. Van Riper, Attorney General, Samuel B. Helfand, Deputy Attorney General.

For Board of Commissioners of the City of Hoboken: John J. Fallon.

For John Novak, Sophie Brotman, Emil Pfeifer, John Lensi, Daniel G. Marotta, Sydney Gordon and Louis Gordon, trading as Gordon Brothers: Abraham J. Slurzberg; Joseph B. McFeely.

For Angelo Anthony Lupo: Anthony P. LaPorta.

For Charles Marinelli and Rose Pizzino: John F. Lynch, Jr.; N. Louis Paladeau, Jr., Benedict A. Beronio.

The opinion of the court was delivered by

Case, Chief Justice. This opinion is in the case of John Novak.

The Hudson Bergen County Retail Liquor Stores Association filed its petition of appeal with the State Commissioner of Alcoholic Beverage Control naming as respondents John Novak and the Board of Commissioners of the City of Hoboken. The petition alleged that on October 2, 1945, the board had granted Novak's application for a plenary retail distribution license and had erred therein because the act was an abuse of discretion in that there were already "ample liquor outlets" to serve the needs of the neighborhood and of the city and that the granting of the licenses was socially undesirable. The board and Novak answered separately, admitting the granting of the license, otherwise denying the allegations of the petition and setting up that the Board of Commissioners was vested with authority to issue the license and that the appellant filed the petition for the selfish purpose of unlawfully establishing a monopoly in itself and its members; and Novak added the allegation that the municipality had the authority to determine the number of licenses.

At the hearing de novo before the commissioner the appellant put in proof tending to show that the City of Hoboken was "a mile square city", that in 1940 its population, according to census, was 50,000; that the number of licenses was 238 on August 1, 1945, and that the granting of twelve additional licenses since that date brought the number to 250; that 250 licenses meant one license to every 200 of the population, including men, women and children, or, allowing a

recognized deduction of forty per cent of the total population for persons under twenty-one years of age and therefore not lawful patrons, a licensed place for every 120 adults; that although there had been an influx of workers due to war conditions these persons were mainly daily transients and not residents; that within approximately a two block radius of Novak's establishment there were twelve other licensed places; that all of the city licensees were members of the appellant organization and that the objection to the new licenses was that the city had reached the saturation point; that every municipality in Hudson County except Hoboken and all of the cities in the state comparable in size to Hoboken had limitation ordinances; that the number of licenses in Hoboken was at the lowest per capita of population in the state and that the resulting condition was "terrible". The respondents took no testimony.

The commissioner correctly set up as his standard for decision that the issuance of retail liquor licenses in the first instance rested within the reasonable discretion of the local issuing authority, that in the absence of an abuse of such discretion the action of the authority in issuing licenses should not be disturbed and that, therefore, the question for determination by him was whether the respondent board had abused its discretion in granting the additional distribution licenses. He held that the issuing of liquor licenses without regard for the paramount issue of public necessity and convenience constitutes an abuse of discretion, that the license in dispute had been so issued, that any presumption of validity of the act of the board in granting the application had been negatived by the ratio of licenses to population, that public necessity did not require the additional license, that the Board of Commissioners had "run riot" in the granting of licenses and that therefore the license involved herein, with other licenses, should be cancelled. The matter went on writ of certiorari to the Supreme Court which held that Hudson Bergen County Retail Liquor Stores Association was not a taxpayer or an aggrieved person and was not found by the commissioner to be such and therefore, inasmuch as the statutory appeal was given to "any taxpayer or other aggrieved person opposing the issuance of such license" (R. S. 33:1-22), was not in position to take the appeal to the commissioner, and, further, that the act of the board in granting the license was not such an abuse of discretion as warranted the revocation of the license. The original appellant now appeals from that judgment of the Supreme Court.

The sale of intoxicating liquor has from the earliest history of our state been dealt with by legislation in an exceptional way. In its legal significance it is sui generis. "It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied". Paul v. Gloucester County, 50 N.J.L. 585, 595. "The sale of intoxicating liquor is in a class by itself". Bumball v. Burnett, 115 N.J.L. 254. "The right to regulate the sale of intoxicating liquors by the legislature, or by municipal or other authority under legislative power given, is within the police power of the state and is practically limitless. It may extend to the prohibition of the sale altogether. A license is not a contract. It is a mere privilege." Meehan v. Excise Commissioners, 73 N.J.L. 382, affirmed 75 N.J.L. 557. "There is no inherent power in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community it may be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils." Crowley v. Christensen, 137 U.S. 86, 34 Law Ed. 620. "The liquor business is peculiarly subject to strict governmental control." Franklin Stores Co. v. Burnett, 130 N.J.L. 596.

The licensing tribunal is as the legislature may determine. Under VII Anne (Kinsey ch. XV) licenses were granted by "the Justices of the Peace in their Sessions or under the Hands and Seals of two Justices of the Peace out of the Sessions, the one of them being of the Quorum". By XII George II (Nevill ch. LX) the authority was limited to the justices in open session only. Under the act of February 24, 1797, it was in the Court of General Quarter Sessions. Pat. p. 235. By the Inns and Taverns Act of 1846 (Rev. p. 577; 3 C.S. 2850) it was in the Court of Common Pleas. Subject to the diversion of the power from time to time to one and another class of municipalities, the Court of Common Pleas remained the basic licensing body until the repealer of 1934 (ch. 32, P.L. 1934) which dovetailed with the present Alcoholic Beverage Control Act, ch. 436, P.L. 1933. Both statutes became operative upon the repeal of national prohibition. By R. S. 33:1-21, the Court of Common Pleas was the issuing authority in sixth class counties until the repealer of 1942 (ch. 159, P. L. 1942). There is no merit in the contention that the authority to issue or control licenses must, constitutionally, be placed within the municipality.

It is contended that the authority which the commissioner undertook to exercise is contrary to art. 4, sec. 7, par. 11 of the state constitution which provides that the legislature shall not pass local or special laws regulating the internal affairs of towns and counties, and that the legislature shall pass general laws in such instances. The constitutional injunction is against certain enactments by the legislature. We are pointed to no part of the statute which may fairly be called private, local or special. The statute applies generally throughout the state.

The reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes from early colonial times. Chapter XV, Kinsey, passed March-April 1709, VII Anne, the first licensing statute appearing in our compilations, contained this: "Forasmuch as there are great Exorbitances observeable in many Places within this Province, occasioned by Persons selling Drink in private Houses, to the Dishonour of God and impoverishing of the Common wealth", therefore no one should sell except under the conditions named, one of which was having a license. So, Chapter LXXVIII, Kinsey, in the Fifth of King George, provided that "whereas it is evident that many Persons in this Province do spend their Time and Waste their Substance by frequenting Taverns and Tippling Houses to the great detriment of themselves and their Families" therefore no tavern keeper might recover for a credit of more than 10 Shillings. The statute of March 15, 1738-9, XII George II, Allinson, Chapter CLVIII, recited that "Whereas the true and original Design of Taverns, Inns and Ordinaries, was for the accommodating Strangers, Travellers, and other Persons, for the Benefit of Men's Meeting together for the Dispatch of Business, and for the entertaining and refreshing Mankind in a reasonable Manner, and not for the Encouragement of Gaming, Tippling, Drunkenness, and other Vices so much of late practiced at such Places, to the great Scandal of Religion, the Dishonour of God, and impoverishing the Common Wealth: And Whereas the present prescribed Methods of granting Licenses for the Purposes aforesaid are insufficient to obtain the Benefits hoped for"; therefore the licensing restrictions should be tightened. VIII George III A.D. 1768, Allinson, Chapter CCCCLXXII, imposes still further limitations "For regulating Taverns, so as to make them answer the End of their Institution, and more effectually to prevent their being perverted to Places of Gaming, Tippling, Drunkenness, Revellings, Extortion and other Vices". For added examples, since the turn of the last century, see the so-called Bishop's bill (ch. 114, P.L. 1906), the local option act of 1918 (ch. 2 and 3, P.L. 1918), and the state prohibition act of 1920 (ch. 3, P.L. 1920). Following came national prohibition, on the repeal of which our legislature adopted the present alcoholic beverage act. Thus, through nearly 250 years the legislature has struggled

with the conditions arising out of the sale of liquor. The current statute is to be construed in the light of the long series of statutes of which it is the culmination and of the decisions of the courts regarding those statutes. Meticulous technicalities should not be permitted to thwart so considerable an effort toward keeping a public convenience from becoming a social evil. The state authorities should be given every reasonable opportunity to work out the mandate of the legislature. Matthews v. Asbury Park, 113 N.J.L. 205.

The commissioner is himself, with respect to numerous grades of licenses, the issuing authority (R. S. 33:1-18). As to other licenses, the appropriate municipal body, referred to in the statute as the "other issuing authority" (R. S. 33:1-19), initially passes on the application, and from the determination of that body, whether to grant or to refuse, there is an appeal to the commissioner. Not only has the commissioner authority in the issuing of licenses, original as to some, appellate as to others; he is burdened with the duty of administering and enforcing the statute and of taking all "acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of the statute (R. S. 33:1-23); he is given authority to make both general and special rules and regulations for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages generally and with specific reference to many enumerated subjects, inter alia "unfair competition" and "instructions for municipalities and municipal boards" (R. S. 33:1-39); he is ordered to "adopt and promulgate suitable rules and regulations to insure compliance with this statute" (R. S. 33:1-84); he is directed "to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger" (R. S. 33:1-3); he is authorized, after the hearing on an appeal, "to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this chapter" (R. S. 33:1-38). Finally, we have the legislative mandate that "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed" (R. S. 33:1-73).

Having regard for the exceptional treatment long accorded the sale of intoxicating liquor and for the varied and extensive expressions of authority in the statute, we conclude that the commissioner has powers of supervision and control which set him apart from a formal appellate tribunal and that his jurisdiction to entertain an appeal from the action of the other issuing tribunals, where the public good is concerned, is not to be shorn by judicially imposed procedural limitations which are technical rather than substantial.

The statute provides (R. S. 33:1-1(r)) that for the purpose of the act the word "person" means "any natural person or association of natural persons, association, trust company, partnership, corporation, organization, or the manager, agent, servant, officer, or employee of any of them". Appellant is a person, and the licensees who constitute its membership are persons, within the application of the statute. We think that the earlier licensees, whether alone or through the appellant organization, were sufficiently interested in the subject matter to constitute them "aggrieved" persons within the meaning of this statute and that inasmuch as the purpose of their organization is to regulate and control the liquor traffic their effort and the effort of their association to that end and to the present extent are in harmony with the objective of the statute. The "controversy relates to a matter of public policy of universally recognized importance concerning a traffic which, in the opinion of many, largely adds to the disorders of society and the burdens of taxation". (The language is that of Mr. Justice Dixon in Ferry v. Williams, 41 N.J.L. 332, 339.) It takes but slight private interest,

added to and harmonizing with the general public interest, to invoke intervention by the commissioner. The interest of the appellant herein was sufficient and was sufficiently manifested. Such pecuniary advantage, if any, as may come to the appellant from the limitation of licenses is incidental to the major question of public morals and general welfare, and the possibility that appellant may reap some personal advantage from the result does not nullify the main quest.

It is argued that the questions whether or not the appellant was an "aggrieved person" and whether or not there was an abuse of discretion by the commissioner were questions of fact and that we are therefore forestalled by the findings of the Supreme Court thereon. Not so. Both were questions of law. The facts are not in dispute. The Supreme Court made no findings of fact. The facts being as they were -- and are -- the Supreme Court drew the legal conclusion that the appellant was not thereon to be considered an aggrieved person under the statute. We draw the opposite conclusion. So, too, the finding by the commissioner that the board had, upon the admitted facts, committed an abuse of discretion, was a finding that the act of the board was clearly against the logic and effect of the presented facts. Matters resting in discretion are not, in general, subject to review on appeal, unless an abuse of discretion is shown, Martin v. Lehigh Valley R. R. Co., 114 N.J.L. 243, but where the abuse becomes a ground of reversal, it is, even when committed by a court of record, legal error. The Supreme Court considered that the admitted act of the board was not an improvident exercise of its discretion. That finding was a conclusion of law, and we disagree.

It is also said that because the city had not passed an ordinance, as it was empowered to do under R. S. 33:1-40, limiting the number of licenses for the selling of alcoholic beverages at retail the commissioner could not revoke a license on the ground that there were too many licensed places; but even where a city has passed such an ordinance the commissioner may keep the number below that fixed by the ordinance, when the circumstances justify. Phillipsburg v. Burnett, 125 N.J.L. 157.

The statute is a comprehensive revision of the law relating to alcoholic beverages. It covers the entire industry from manufacture, blending and storage to transportation and sale at both wholesale and retail. No one part of the statute is to be preferred above another except as the provisions and intent of the statute require. The authority of a municipal board, within its field, to issue a license has no greater dignity than the authority of the commissioner within his field to review the issuing of the license.

We conclude that the commissioner was within his authority in assuming to act and that his finding was upon sound premises.

The judgment of the Supreme Court is reversed and the order of the Commissioner of Alcoholic Beverage Control is affirmed.

The numerous other cases entitled as above do not differ sufficiently in principle to require separate opinions. They will follow the same course.

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8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
CHARLES J. GEDLINSKY)
T/a CHARLIE'S GRILL)
160 Ashmore Avenue) CONCLUSIONS AND ORDER
Trenton 10, N. J.,)
Holder of Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Trenton.)

Charles J. Gedlinsky, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On April 1, 1947, an ABC investigator seized a 4/5 quart bottle labeled "King William IV V.O.P. Brand Blended Scotch Whisky" after a preliminary test of the contents of the bottle indicated that it was not genuine as labeled. Subsequent analysis by the Department chemist disclosed differences in characteristics between the whisky described on the label and that contained in the bottle.

Defendant denies any knowledge relative to the violation. However, a licensee is responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of fifteen days, less five days' remission for the plea entered herein, or a net suspension of ten days. Re Bressler, Bulletin 752, Item 12.

Accordingly, it is, on this 18th day of May, 1947,

ORDERED that Plenary Retail Consumption License C-40, issued by the Board of Commissioners of the City of Trenton to Charles J. Gedlinsky, t/a Charlie's Grill, for premises 160 Ashmore Avenue, Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 19, 1947, and terminating at 2:00 a.m. May 29, 1947.

ERWIN B. HOCK
Commissioner.

9. STATE LICENSES - NEW APPLICATIONS FILED.

The Great Atlantic and Pacific Tea Company
337 Sherman Ave., Newark, N. J.
Application for Public Warehouse License filed May 9, 1947.

Federal Wine & Liquor Company (Plenary Wholesale License W-47)
315 Clendenny Ave., Jersey City, N. J.
Application for additional warehouse at 418 North North Carolina Ave., Atlantic City, N. J., filed May 12, 1947.

Erwin B. Hock
Commissioner.