

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N. J.

BULLETIN NUMBER 8.

January 2, 1934

#1. Attention is drawn to the fact that all temporary licenses automatically expire on February 6th, 1934. After that date no one may transact any branch of the alcoholic beverage industry unless he holds a permanent license. The Control Act dispenses with investigation and advertisement as conditions precedent to issuance of temporary licenses, but is in no sense a waiver of these requirements. It follows that no permanent license can be issued until advertisement according to Sec. 22 has been completed by each temporary licensee; further that each municipal issuing authority must have completed their investigations of the applications on which temporary licenses have been issued. Unless both requirements shall have been complied with, all business by temporary licensees will have to come to a stop on February 6th, now barely more than a month away.

With this in mind, the following correspondence is set forth primarily to indicate the procedure which municipal issuing authorities should follow, and incidentally to delineate the objectives of the Legislature and the mechanics adopted by it to bridge the Control gap between Repeal and permanent licenses; further to request everyone who has any knowledge of facts which would or should prevent the issuance of a permanent license to any licensee to write to the respective issuing authorities so that appropriate action may be taken.

UNITED STATES DISTRICT COURT
District of New Jersey

Chambers of
Judge Clark

Newark, N. J.
December 28, 1933

Dear Mr. Burnett:

I have postponed writing you because I know into what a welter of almost overwhelming problems you have been plunged. I would like to advise you, however, that I have in my possession facts concerning certain cereal beverage companies and/or breweries here in New Jersey which I should like to bring to your attention if that becomes necessary.

The newspapers of last spring and summer may have made you familiar with the proceedings leading up to the revocation of the following permits: Harrison Beverage Company, Eureka Cereal Beverage Company, Superior Manufacturing Company, Union City Brewing Company and the Camden County Beverage Company. You probably know also that these breweries had permits from the State of New Jersey. * * * * * I think it would be very detrimental to the people of New Jersey if this situation were to occur again and I should, therefore, like to be advised if you receive any applications involving the actual premises on which these breweries operated. I say "the actual premises," because we found that various

corporate disguises were utilized to hide the real owners.

Yours sincerely,

(Signed) William Clark.

January 1, 1934

Hon. William Clark,
U. S. District Court,
Newark, N. J.

My dear Judge Clark:

Thanks for yours of the 28th ult. Will be right glad if you will transmit at once full particulars of all facts concerning any beverage companies and breweries that will be helpful in determining whether or not they are entitled to permanent license.

I must confess that prior to December, with the exception of two weeks in the early Fall when investigating the truth of the alleged brewery slush fund charges, I knew absolutely nothing about the alcoholic beverage business and not being interested except generally as a citizen read only the headlines of the news items which you mention.

In respect to the concerns specifically mentioned in your letter, no licenses have been granted except to the Camden County Beverage Company, which has a temporary brewery license.

The Control Act, passed December 6th, designed to assert instant domination over the whole field of the alcoholic beverage industry coincidentally with the advent of repeal, provided that:

1. It is unlawful to manufacture, sell, transport or distribute alcoholic beverages except in accordance with the Control Act which covered twelve different types of licenses;
2. Temporary licenses, effective immediately, may be granted during the first two months following repeal without publication or investigation as a condition precedent, provided however that the application for such temporary license was completely executed on forms prescribed by the Commissioner and the full pro rated annual fee paid.
3. The temporary license was to be operative only during the two months period or until revocation, whichever shall first occur.
4. During the two months period these applications are to be investigated and duly advertised so that hearings may be held on protests which may be lodged against issuance of the permanent license. If the findings of fact by the issuing authorities justify the issuance of a permanent license, it is then issued as a matter of course and without any further fee. If, however, it develops that a permanent license should not be issued, revocation may be made forthwith and without waiting for the two months to expire.
5. To guard, as far as possible, against abuse of the temporary license provision was made not only that the application should be on the form prescribed by the Com-

missioner and completely answer the searching questions to be set forth in such form of application, but also that all statements in the sworn application were to be deemed material and that any person who should knowingly misstate any material fact under oath in said application should be guilty of a misdemeanor and punished accordingly. Fraud, misrepresentation, false statements, misleading statements, evasion or suppression of material facts in the securing of a license are grounds for revocation.

Pursuant to the statutory plan, the Camden Beverage Company duly filed its sworn application, and there appearing nothing on its face which would warrant denial temporary license was issued as aforesaid.

Allen O. Myers, one of my Inspectors in Chief, with a corps of assistants has been at work investigating the truth of all applications on which temporary licenses have been issued. His investigation of the Camden company has not yet been completed.

On December 30th I received a letter from Leo A. Crossen, Supervisor of Permits of the Federal Bureau of Industrial Alcohol, Treasury Department, transmitting findings disapproving application of the Camden company, accompanied by copy of the 1500 odd pages of testimony taken at the Federal hearings. I at once ordered the licensee to show cause on Friday, January 5th, why the temporary license should not be forthwith suspended or revoked on the ground that its application for permit to manufacture 3.2 beer under the Federal Act had been disapproved.

As this matter thus requires attention this very week, I will welcome transmission of the facts in your possession at earliest possible moment and thank you deeply for calling them to my attention.

Very truly yours,

D. Frederick Burnett,
Commissioner.

#2

WILLIAMS & LEONARD

744 Broad Street,
Newark, New Jersey

December 13, 1933

Hon. D. Frederick Burnett,
State Director of Alcoholic Beverage Control,
744 Broad Street,
Newark, New Jersey.

My dear Sir:

Under the broad powers given in the Act concerning alcoholic beverages, do you feel that you have authority to make exceptions in the granting of licenses, and if you do, what is your reaction to this situation, which crops up in the Borough of Essex Fells:

There is in existence in that Borough a social organization composed entirely of Hungarians, who own and oper-

ate a small meeting place on the westerly outskirts of the Borough in which they have monthly business meetings, and in addition, and on stated occasions (not more frequently than six or eight times a year) they have dances and other entertainments at which they would like to sell liquor in open receptacles for consumption on the premises. They had a 3.2 beer license from the Borough, which, of course, is no longer effective.

The Borough Council is willing to do anything they can to help the organization, for they are good citizens and taxpayers, and conduct themselves in an orderly fashion at their club headquarters, but the Council feels that they can do nothing but issue to them a plenary retail consumption license at the regular fee fixed by the Borough of \$350.00, which is more than this organization feels it can afford to pay.

Can you think of anything that can be done to help this organization?

Respectfully yours,

(Signed) S. D. Williams,
Attorney, Borough of
Essex Fells.

December 28, 1933

Samuel D. Williams, Esq.,
Borough Counsel,
Essex Fells, New Jersey.

Dear Mr. Williams:

I have yours of the 13th and have carefully considered the situation set forth therein but have come to the conclusion that I have no power under the Control Act to grant any dispensation or to issue any special permit.

Section 75 does confer upon the Commissioner the power to issue a license in contingencies not expressly provided for by the Act but where it would be appropriate and consonant with the spirit of the Act to issue the license. In such cases for special cause shown the Commissioner may issue a temporary permit for a specific sale during a limited time of a specified quantity of alcoholic beverages for a fee of ten dollars. The illustrations set forth are where a licensee has a stock on hand at the expiration of his license and is otherwise unable to lawfully dispose of it, or where a licensee dies having the said stock on hand and the license expires before the alcoholic beverages are sold by his personal representative, and again in the case of the foreclosure of a chattel mortgage covering alcoholic beverages. It is true that the section states that the expression of these contingencies are designed to be merely illustrative of the intention of the provision and not by such enumeration, by implication - to exclude any other application otherwise falling within the true intent and meaning of this section or in any wise to limit the general powers to cover emergencies.

It will be noted that each one of the illustrative contingencies contemplate an act or a series of acts or an event which shall have occurred precedent to the issuance of a permit and where without the permit full justice could not be done. The emergency arises because of something not foreseen in advance.

The situation which your Borough Council has in mind is really a provision for the future; to create a license to cover a situation for which the legislature did not provide. There is no emergency about the matter; there is no fair exigency out of control of the parties which makes the appeal to the Commissioner necessary - in fact, all that really appears on reflection is that this group of citizens desire to have a license to sell on the few occasions that they meet each year - a license which will cost them less than the minimum fixed by the Borough Council pursuant to the legislative mandate.

The very fact that the Legislature provided for certain classes of licenses by implication excludes all other classes of licenses.

I conclude therefore that I have no power in the premises. Your Council was well advised that they can do nothing but issue to them a Plenary Retail Consumption License at the regular fee fixed by the Borough.

Very truly yours,

D. Frederick Burnett,
Commissioner

December 28, 1933

#3

Mr. Wm. C. Gahan, Secretary,
Newark Lodge No. 237,
Loyal Order of Moose,
47 Spruce Street,
Newark, N. J.

Dear Sir:

I have yours of December 11th re licensing of fraternal organizations.

Herewith copy of letter from Samuel D. Williams, Borough Counsel of Essex Fells, which deals with an analogous situation, and carbon of reply in which I was reluctantly forced to conclude that there is no power under the Act as it now stands to issue any different form of license to a club or fraternal organization than to any ordinary retail consumption licensee or at any lesser fee and, further, that the power given to the Commissioner to grant special permits or dispensations in cases of emergency may not properly be invoked in aid of clubs or fraternal organizations because the Legislature has itself determined just what and therefore the only classes of licenses which may be issued.

If you believe, as many do, that there should be a special class of license issued to clubs and fraternal

organizations, you may write me setting forth succinctly your reasons why the Legislature should create such new classification and what license fees you deem your organization should pay for such license and the particular rules and regulations, conditions and limitations which should govern such situation. I will be glad to incorporate the substance of such communication in my forthcoming report on suggested new legislation.

Bear in mind that anything done along these lines must be general and apply equally to all groups similarly situated. If attempt is made to effect a new dispensation for clubs and fraternal organizations, bear in mind that the term "club" or "fraternal organization" is not susceptible of exact definition, and also how easily it could be abused and by evasion and subterfuge bring highclass organizations such as yours into a penumbra entirely undeserved.

I will be very glad to have the benefit of the deliberation and considered opinion of the Loyal Order of Moose and all other highclass clubs and fraternal organizations.

Do you not think that it might be advisable to bring this matter to the attention of the highest body representative of your Order in the State of New Jersey so that whatever action is taken represents not only the views of your own Lodge but has the sanction of your official State organization as well?

Very truly yours,

D. Frederick Burnett,
Commissioner

December 29, 1933

The Department of Public Safety of the City of Newark desired a ruling on the following question:

The Belmont Avenue Public School has not been used as a schoolhouse for several years. May a license be issued for the sale of alcoholic beverages within 200 feet of this schoolhouse property?

The Commissioner ruled: Section 76 was designed for the protection of persons and not of property. The objective was stated in deference to the feelings, the sentiments and the ideals of the persons who worshipped in a church or who attended a public school. In the case of a public school the additional objective was to protect immature children from sights, sounds and influences which in the judgment of the school authorities might be deemed against the public welfare. It follows that if an edifice or building is not actually used as a church or as a public schoolhouse and there is no present intention of so using it at the time that the license is issued, the case does not fall within the so-called 200 foot rule. If the now disused school shall subsequently be utilized by the Board of Education as a school, the foregoing ruling will have no application at the time that the renewal license is applied for on or before June 30th next.

D. FREDERICK BURNETT,
COMMISSIONER

#5

December 28, 1933

Penn-Maryland Co., Inc.,
812 Jersey Avenue,
Jersey City, New Jersey.

Gentlemen:

Chief Inspector Myers reports in reference to your Temporary Plenary Wholesale License that your 8th floor is used for storage; the 7th for bottling and storage, and the 6th for blending and storage.

Your wholesale license does not permit you either to bottle or to blend. Hence no bottling or blending must be done by you on the licensed premises.

It would seem that you have taken out the wrong form of license; that you should have a Rectifier's license and not a mere wholesale license. Assuming that the error you have made is bona fide your only recourse is to file a petition to change your wholesale license into a Rectifier's license and apply the fee which you have paid to that account. The petition and accompanying application should be completely detailed and show the cause of the error or mistake and be duly verified.

Under no circumstances must any bottling or blending be done by you at the licensed premises unless and until the aforesaid petition is granted and a Rectifier's license actually issued.

Very truly yours,

D. Frederick Burnett,
Commissioner

#6

December 19, 1933

Geo. B. Holman & Co., Inc.,
151-161 Park Avenue,
Rutherford, New Jersey.

Attention-Geo. B. Holman

Gentlemen:

In answer to yours of December 14th in which you ask

1. "Is a license necessary or not when we are asked to move private stocks of liquor in conjunction with household goods from one residence to another?"

In all cases where alcoholic beverages are transported within this State by trucking companies, such trucking companies must be in possession of a Class "D" Transportation License.

2. "Will a license be required for the storage of liquor (private stock) either separately or in conjunction with household goods?"

No license is required by a warehouse to store alcoholic beverages in conjunction with or separate from household goods.

3. "Will a license be required for deliveries of liquor from wholesalers or package retailers to individual consumers, when requested by the individual?"

Yes. See 1 supra.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

January 2, 1934

#7

All State licensees are required to report to the State Commissioner of Alcoholic Beverage Control on the first business day of each month all sales and all deliveries of alcoholic beverages made during the preceding month showing age, brand, person to whom sold and/or delivered; by whom; how and when delivered; and complete description of all bulk sales. They are also required to furnish a monthly report of sales for the purpose of taxation to the State Tax Commissioner.

Arrangements have been perfected by D. Frederick Burnett, State Commissioner of Alcoholic Beverage Control, and George W. Grimm, Jr., Deputy in Charge of the Beverage Tax Division representing J. H. Thayer Martin, Commissioner of the State Tax Department, whereby in the interests of efficiency and economy, a single consolidated report, in triplicate, will be made by each State licensee and filed with the State Commissioner of Alcoholic Beverage Control who will utilize such reports for control purposes and transmit the duplicates to the Tax Department for the purpose of collecting the tax. The licensee has thus to file but one report which will satisfy the requirements of these State Departments.

The sales report will cover all taxable sales of alcoholic beverages for resale in New Jersey; also out of state sales with appropriate schedules both for sales with and without exemption.

The information required on the report designed to effect control of the industry calls for sworn statements of the age of the liquor, with appropriate subdivisions covering the age and quantity of component parts of blended liquor, e.g. over four years old; over one year old and less than four years; one year or under; spirits or alcohol; water and blending agents and each ingredient thereof, the total of which must equal the total number of gallons reported for taxation. Other features of control provisions are specific statements of how the liquor is packed - whether in Nips, pints, quarts or other bottles or in barrels, casks and other bulk containers; by whom and how and when delivered, including the name of the carrier and the carrier's license number.

In order to enable wholesale licensees to make their detailed reports without undue congestion it has been arranged that the reports are to be filed on the fifteenth day of each month (unless the same falls on a Sunday or holiday in which event the report must be filed not later than the first business day after the fifteenth) showing all sales during the

preceding calendar month. Appropriate forms are being printed and will shortly be sent to each State licensee to be filled out; verified by affidavit and filed.

No licensee will be required to file any report until these necessary reports have been printed and supplied, but thereafter, beginning January 15th, each State licensee will be required to file a similar monthly report.

When this system has been installed the Commissioner of Alcoholic Beverage Control purposes to require similar reports from retail licensees showing all receipts of alcoholic beverages. Comparison of these reports will furnish, it is believed, a practical means of ascertaining all sales and all deliveries of alcoholic beverages thruout the State. With control thus established taxation follows and it is believed that large sums of money representing sales of alcoholic beverages heretofore escaping taxation will be brought into the State Treasury.

#8

December 30, 1933

On Wednesday, December 27th, the Commissioner held a conference with representatives of all branches of the Alcoholic Beverage industry, including distillers, vintners, blenders, rectifiers, wholesalers, retailers and trade associations, for the purpose of devising uniform labeling and standards of purity for the protection of the people of this State. In attendance as his guests were also Mr. Joseph H. Choate, Jr., Director of Federal Alcoholic Control Administration, and Mr. J. M. Doran of the Distiller's Institute, also the representatives of State and Municipal Health Departments.

The Commissioner is intensively engaged with this problem at the present time. Therefore, in the interests of uniformity, we suggest that all municipalities refrain from passing any ordinances relative to the regulation of labeling and standards until further notice.

On the other hand, if municipalities wish to make tests for purity of the alcoholic beverages sold in their communities, that course is approved. If any are found ~~actually~~ to contain poisonous, injurious or deleterious substances, then, of course, municipalities should take appropriate action to stamp out such a situation and punish the offenders.

#9

December 29, 1933

Hon. Michael P. Duffy,
Director of Public Safety,
Newark, N. J.

Dear Mr. Duffy:

Your secretary, Mr. Leo Cluesmann, asks me in your behalf whether the City of Newark may refuse to issue a liquor license to the proprietor or operator of a candy store. Mr. Cluesmann tells me that you feel that stores where candy is sold to young children are not proper places for the dispensation of liquor.

The answer is in the affirmative. Newark, like any

other municipality, has the power under Section 37 of the Control Act to "regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted". Prohibition of licenses to candy stores is within the power to regulate. The prohibition should, of course, be uniform and apply without discrimination or favor to all candy stores in the City. A municipal resolution to that effect will be approved if presented.

Reservation: This ruling goes merely to the existence of your legal power and not to the expediency or policy of its exercise.

Very truly yours,

D. Frederick Burnett,
Commissioner