Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 117 May 2, 1936.

1. APPELLATE DECISIONS - TALBOT ET AL. v. KEPPLER AND MENDHAM.

WILLIAM TALBOT, ST. JOHN BAPTIST SCHOOL FOR GIRLS, et al., Appellants, -vs- CHARLES A. KEPPLER and BOROUGH COUNCIL OF THE BOROUGH OF MENDHAM (MORRIS COUNTY), Respondents.	ON APPEAL CONCLUSIONS

Pitney, Hardin & Skinner, Esqs., by Corwin Howell, Esq. and Frederick A. Frost, Esq., Attorneys for Appellant.

Michael Danna, Esq., Attorney for Charles A. Keppler, Respondent.

David Barkman, Esq., Attorney for the Borough of Mendham, Respondent.

BY THE COMMISSIONER:

This appeal is from the issuance of a plenary retail consumption license to respondent Charles A. Keppler. The controversy is not about him but his premises.

Appellants contend that the license should be set aside because issued in violation of the Mendham Zoning Ordinance, under which the licensed premises are located in a district zoned for residential purposes. Respondents concede that the licensed premises are in a residential zone but contend that the use thereof for the sale of alcoholic beverages is a prior non-conforming use and expressly excepted from the zoning restrictions under Section 4(b) of the ordinance.

Respondent Keppler had a 3.2 beer license at the time the original zoning ordinance was adopted on August 14, 1933. Section 4(b) of that ordinance read:

"(b) Non-conforming Uses and Conditions.

"If at the time of the enactment of this Ordinance any building is being used or any building is being constructed or altered in a manner or for a purpose which does not conform with the requirements of this Ordinance, such use, manner or purpose may be continued, even under change of title to the premises and even though the building may be partially destroyed by fire, tornado or other calamity; but if the building be totally destroyed any replacing building may be used only for a conforming use."

On December 7, 1933, a plenary retail consumption license under the Control Act was issued to Keppler. Later, on December 11, 1933, an ordinance amending certain sections of the original ordinance of August 14th was adopted, and among the Sections amended was Section 4(b). This section now reads:

"(b) Non-conforming Uses and Conditions.

"If at the time of the enactment of this ordinance any building is being used or if any building is being constructed or altered in a manner or for a purpose which does not conform with the requirements of this ordinance, such use, manner or purpose may be continued, even under change of title to the premises and even though the building may be partly or totally destroyed by fire, tornado or other calamity."

Counsel for all parties agree that the crux of the present case is whether the sale of alcoholic beverages is a prior non-conforming use within the exemption of Section 4(b).

The first question is whether the sale of 3.2 beer is the same use as that to which the premises are now being put under the plenary retail consumption license.

On this point, both sides rely on the unreported case of Speake v. Closter (Sup. Ct. April 4, 1934), where Mr. Justice Bodine set aside the issuance of a 3.2 beer permit for premises located in a residential zone, saying:

"Long before the 18th Amendment was ever contemplated, the sale of malt liquors was not favored in residential districts. It was a well recognized fact that the very character of a place licensed for the sale of alcoholic beverages, whatever the content, changed the character of the neighborhood, and that the business of selling malt liquors was quite different from that of dispensing food alone. No one conscious of the use and abuse of malt liquors can regard the license as otherwise than authorizing a new use in a zoned area. The mere fact that the respondent immediately after the grant of the license displayed signs indicating that his premises were a 'Beer Garden' was eloquent of the new use to which he intended to devote his property. A restaurant conducted for the sale of food alone cannot be regarded as a 'beer garden'. A 'beer garden' possesses a character and caters to a need far different from the mere sale of food. The granting of a license to sell beer was an unlawful interference with the rights secured to the prosecutrix under the Zoning Ordinance of the Borough. The license is set aside."

The respondents claim that the words of the learned Justice "whatever the content" indicate that "the character of the neighborhood" had already been changed by the granting of the 3.2 beer license, and hence that the plenary license does not impose any new use. The appellants contend that he used the phrase"whatever the content" to mean "no matter how small the alcoholic content may be", viz.: even as small as 3.2%; that if 3.2% was sufficient to have "changed the character of the neighborhood" for the worse, then all the greater is the change when liquor of 50% alcoholic content is dispensed.

Distinguishing things said from things decided, it appears in the Closter case that a restaurant had been established in a residential section before the zoning ordinance and, therefore, could continue although a non-conforming use. Later, the owner applied for a license to sell 3.2 beer. The Borough Council ruled that such sale was not a sufficiently different commercial use from the sale of food to warrant denial of the license which it therefore granted. It was this license which Mr. Justice Bodine set aside for the incisive reasons above quoted. His phrase "whatever the content"--was used undoubtedly to emphasize the jealous regard with which he viewed the sanctity of residential neighborhoods against sale of alcoholic beverages however low the alcoholic content. His words "changed the character of the neighborhood" were used only to demonstrate vividly that a beer garden was a new and different use than a mere restaurant. He decided that the neighborhood would be changed if a beer license were granted the restaurant. That was sufficient to ban it whatever the alcoholic content. He did not speculate upon what other changes could occur or whether the neighborhood once changed would stay "put" or what uses were legal equivalents. All he decided was that the proposed use was different than the use which the ordinance excepted.

The real question in this case depends on whether the sale of beer containing 3.2% of alcohol is the same non-conforming use as the sale of liquor of higher potency. For, it is obvious, that if it is the same use, it existed at the time of the enactment of the original zoning ordinance and would, therefore, be exempted from its restrictions by Section 4(b) thereof. Is it the same?

3.2 beer was declared by Congressional fiat not to be intoxicating. The New Jersey 3.2 Beer Act, P. L. 1933, c. 85, which was approved and in effect on April 5, 1933, provided for its manufacture and sale in conformity with the Congressional Act. Clearly then, the 3.2 beer license which the respondent Keppler possessed at the time the original zoning ordinance was adopted on August 14, 1933, was for the sale of a non-intoxicating beverage. The subsequent plenary consumption license, issued to Keppler on December 7, 1933, pursuant to the present "Act concerning alcoholic beverages", P. L. 1933, c. 436, confers the privilege of selling any alcoholic beverage whatsoever. Everybody knows that distilled spirits are highly intoxicating. To place non-intoxicating 3.2% beer in the same category as 100 proof liquor, which means 50% alcoholic content, is to blind our eyes to the realities. One is admitted, even by its purveyors to be intoxicating and, if abused, a critical temptation; the other is declared non-intoxicating by statute and its use is claimed by its advocates as comparative temperance. It is not a matter of whether the neighborhood has changed or, as claimed, cannot change whatever the alcoholic content of the beverage sold in a residential district but, rather, whether the sale of intoxicating "hard" drinks is the same use as the sale of non-intoxicating malt beverages. I decide it is not.

The conclusion just reached is not dispositive of the controversy for question still remains whether the plenary license, having been in existence on December 7th prior to the amending ordinance of December 11th, 1933, is exempted from the zoning restrictions now in force in Mendham by Section 4(b) of the amending ordinance, which like its counterpart in the original ordinance, refers to non-conforming uses existing "at the time of the enactment of this ordinance".

Comparing Section 4(b) as amended with that section as originally enacted, we find that the only substantive change is with reference to reconstruction of a building in which a non-conforming use had existed after complete destruction of the building by some calamity. As for the rest, the amendment merely reiterates the provisions of the original section.

Where a statute is amended, or reenacted with changes, or repealed and simultaneously reenacted with changes, so much of the original as is repeated in the later statute without substantial change is affirmed and continued in force without interruption, but any substantial change operates as new legislation. McLaughlin v. Newark, 57 N. J. L. 298 (Sup. Ct. 1894), affirmed 58 N. J. L. 202 (E. & A. 1895). In construing statutes the courts seek to ascertain and enforce so far as possible the legislative intent. The cases recognize the New Jersey constitutional requirement that amendatory acts repeat the entire act or section amended but conclude that reiteration of the entire act does not indicate any legislative intent to repeal the original and substitute an entirely new statute in its place except to the extent of new matter therein contained. Thus in Bugbee v. Mills, 116 N.J.Eq. 59 (Prerog. Ct. 1934), it is said, at page 62:

> "Another principle of statutory interpretation, definitely established by the decision of the court of errors and appeals, and extremely pertinent to the question here at issue, is that where the legislature in amending a section of the statute, recites the entire section as amended, it does not express an intention then to enact the whole section as amended, but only an intention then to enact the change which is indicated. This rule was laid down by the supreme court as a ground for its determination in McLaughlin v. Mayor, &c. of Newark, 57 N. J. Law 298 (at p. 301); 20 Atl. Rep. 543. It was adopted with practical unanimity by the court of errors and appeals in its affirmance. McLaughlin v. Mayor, &c., of Newark, 58 N.J.Law 202; 34 Atl. Rep. 13; and was reiterated by the appellate court in Schwarzwaelder v. German Mutual Fire Insurance Co., 59 N. J. Eq. 589 (at p. 593); 44 Atl. Rep. 769."

And at page 64, it is said:

> "Under the rule in the McLaughlin and Schwarzwaelder cases, supra, no intent of the legislature to give the force of newly enacted legislation to the great portion of section 1 of the act of 1922 which is repeated exactly in the act of 1926 (and this includes the provision as to exemptions), is to be implied. Only the intent to make the changes indicated is to be imputed."

Accord, Great Northern Railway Company v. United States, 155 Fed. 945 (C. C. A. 8th Cir., 1907), affirmed 208 U. S. 452; 52 L. Ed. 567 (1908).

This rule of statutory construction should apply to the interpretation of ordinances for they are in the nature of municipal statutes.

The brief of the attorney for respondent municipality and concurred in by respondent Keppler, correctly states the effect of the instant amendment. He says:

"The only effect of that amendment, as I view it, was to allow the building used for the non-conforming use, if totally destroyed by fire, etc., to be rebuilt and used as a non-conforming use, or in other words, to enlarge the rights of the owner to that extent."

Applying the rule, I find that Section 4(b) of the original zoning ordinance has continued to date in full force and effect from August 14th, 1933, except as to the new matter incorporated into it by the amendment of December 11, 1933. The amendatory ordinance of December 11, 1933 is entitled "An Ordinance to Amend an Ordinance entitled 'An Ordinance Limiting and Restricting to Specified Districts, and Regulating Therein, Buildings and Structures According to their Construction and the Nature and Extent of their Use, in the Borough of Mendham, in the County of Morris; and Providing for the Administration and Enforcement of the Provision Therein Contained and Fixing Penalties for the violation Thereof'". There is nothing in it to indicate that the Borough Council intended thereby to exempt from the restrictions of the original ordinance non-conforming uses created between August 14th and December 11th, 1933. Any other construction would make the effective date of the ordinance not August 14th but December 11th, 1933, and thereby reward persons who violated the ordinance in the interim by creating new non-conforming uses. No such premium was intended. The ordinance both as originally enacted and as amended speaks as of August 14, 1933. No new uses were legalized by the amendment. All that was done or intended to be done was to enlarge the rights of the owners of the then existing non-conforming buildings in the event of their total destruction by fire, tornado or other calamity.

Accordingly, I hold that only such non-conforming uses as were in existence on August 14, 1933 are permissible.

This license, therefore, having been issued in violation of the Mendham Zoning Ordinance, must be set aside. Speake v. Closter, supra; Warren Street Chapel v. Trenton, 56 N. J. L. 411 (Sup. Ct. 1894); Bachman v. Phillipsburg, 68 N. J. L. 552 (Sup. Ct. 1902); Ostrowski v. Newark, 102 N. J. Eq. 169 (Ch.1928).

The action of respondent Borough Council in issuing the license is reversed. The license is hereby declared void. All activity thereunder must cease forthwith.

D. FREDERICK BURNETT

Commissioner

Dated: April 27th, 1936.

2. REVOCATION PROCEEDINGS - POSSESSION OF BOOTLEG LIQUOR - REVOCATION NOTWITHSTANDING ALLEGED HUMANITARIAN MOTIVES.

April 27, 1936.

Ronald C. Alford, Secretary,
Municipal Board of Alcoholic Beverage Control,
West Orange, New Jersey.

My dear Mr. Alford:

Alfred J. Grosso, attorney for West Orange, reports that Philip Krupin, of 525 Northfield Road, holder of Plenary Retail Consumption License C-16 was found guilty by the Municipal Board of Alcoholic Beverage Control of West Orange of charges lodged against him, viz:

(1) Possession of illicit alcoholic beverages;

(2) Possession of implements and paraphernalia for the unlawful treating, mixing and blending of alcoholic beverages.

Mr. McKenna of my staff thus sums up the testimony:

"On March 11, 1936 at about 3:15 P. M. Investigators Beck and Linnenkohl visited the licensed premises. In a rear bedroom on the second floor Investigator Beck found a one-gallon jug of alcohol, one-half full, bearing no tax stamps. In the front bedroom occupied by the licensee and his younger brother, Sidney, the following unlawful property was found:

"1 Gallon jug of whiskey, 3/4 full
1 Pint bottle of alcohol, half full
1 Pint bottle of whiskey, bearing label 'Old Methusalem'
1 Carton containing 14 containers, as follows:
3 Bottles full of whiskey, bearing label 'Cointreau'
1-4/5 qt. bottle, bearing label 'Champagne', 3/4 full of whiskey
1 - 1/5 gallon bottle labeled 'Cognac', 1/2 full
1 - 1/5 gallon bottle labeled 'Fine Champagne, Cognac' full
1 - 1/5 gallon bottle labeled 'Blackberry Flavor Liqueur' 1/2 full
1 - 4/5 qt. bottle labeled 'Johnny Walker Black Label', 3/4 full
1 - Quart bottle labeled 'Old Overholt Whiskey' full
1 - Pint bottle labeled 'I.W. Harper' full
2 - Pint bottles, labeled 'Canadian Club Whiskey', one, full - one, one-half full
1 - Pint bottle labeled 'Old Currency', 3/4 full
1 - Pint bottle labeled 'Old Farm', 1/3 full

1 Carton containing six (6) containers of alcoholic beverages as follows:
1 - 1 gallon jug of whiskey, 1/2 full
1 - 1 gallon jug of whiskey, 1/4 full
1 - 4/5 qt. bottle, bearing label 'Gordon Gin', 1/4 full
1 - 4/5 qt. bottle of rum, 3/4 full
1 - 4/5 qt. bottle of whiskey, 1/4 full
1 - 4/5 qt. bottle of gin, 3/4 full

3 Glass cylinders
1 Hydrometer
1 Small bottle of coloring.

"Philip Krupin, the licensee, stated he knew that the above articles were in the room; that they belonged to his brother Sidney who had brought them with him from California; that he had not insisted upon his brother removing them because he had to humor him; that his brother was still suffering as the result of a very serious automobile accident that he had in California. Sidney Krupin, testified and claimed ownership of the seizure."

I note his license was revoked thereby proclaiming it poor policy for any licensee in West Orange to make such humanitarian experiments on licensed premises, irrespective of the supposed therapeutic value of the administration of bad spirits to induce good ones. He had enough bootleg on hand to have given his brother a perennial beam and kept him in good humor during a tolerably long convalescence. If your Board had swallowed and hadn't revoked, both he and his brother might well have worn a perpetual grin.

If the adjudication of guilt was properly made, your Board has rendered a distinct civic service in revoking the license.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. MUNICIPAL ORDINANCES - PROHIBITING LICENSEES FROM SELLING TO POLICEMEN OR FIREMEN IN UNIFORM OR IF NOT IN UNIFORM WHO ARE KNOWN TO BE ON DUTY OR WHOM THE LICENSEE HAS GOOD REASON TO BELIEVE ARE ON DUTY APPROVED.

April 28, 1936.

William A. Miller,
City Manager,
Clifton, New Jersey.

Dear Mr. Miller:

I have before me your letter of April 13th and the resolution adopted by the City Council on April 7th prohibiting sales to policemen or firemen in uniform or, if not in uniform, who are known to be on duty or whom the licensee has good reason to believe are on duty.

It reads:

"RESOLVED, that the holder of a Plenary Retail Consumption License or any other type of license for the sale of alcoholic beverages, in the City of Clifton, nor such licensee's agents or servants in the licensed premises, shall deliver or serve any alcoholic beverage from the licensed premises to any policeman, fireman, detective, police or fire chanceman, or superior officer of any police or fire department of any municipality while such policeman, fireman, detective, chanceman or superior officer is in uniform, and

"BE IT FURTHER RESOLVED, that the holder of a Plenary Retail Consumption License or any other type of license for the sale of alcoholic beverages, in the City of Clifton, nor such licensee's agents or servants in the licensed premises, shall serve any alcoholic beverage to any policeman, fireman, detective, police or fire chanceman, or superior officer of any police or fire department of any municipality while such policeman, fireman, detective, chanceman or superior officer is not in uniform and who is known to licensees, or agents or employees thereof to be on duty or whom licensees or agents or employees thereof have good reason to believe are on duty, and

"BE IT FURTHER RESOLVED, that violation of these regulations by any licensee or the licensee's agents or servants in the licensed premises shall be cause for suspension or revocation of the license."

The resolution is approved as submitted.

See correction in Bull 117, Item 7 L-1933

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

NOTE: Cf. Re Bloomfield, Bulletin 110, item 11.

4. RULES GOVERNING IDENTIFICATION OF STATE LICENSEES AND THEIR EMPLOYEES - MOTIVATION OF THESE RULES - HEREIN OF FINGERPRINTING.

April 1, 1936.

Gentlemen:

We have your letter of the twenty-fifth asking for questionnaires, photos, etc. We appreciate that the New Jersey law probably requires this, and we do not want you gentlemen to think that there is any feeling on our part towards you who are enforcing the law, but we do think it is unwarranted to ask anyone to practically put themselves on a suspected criminal basis in order to do business in the State.

Therefore, we would appreciate it if you would return our check, inasmuch as if these requirements are necessary, we would prefer not to do business in the State of New Jersey.

It appears to us it would be simpler, and a much better guarantee, if you would simply refer back to the record of our company, as a manufacturer and as individuals, for many years previous to Prohibition, during Prohibition, and since that time, and we pride ourselves that we survived the Prohibition days with not even a question about our character or reputation.

We should like to do business in New Jersey, as we have

many friends there, but we believe you, yourself, would hesitate to follow the regulations required in order to do business.

Yours very truly,

JAMES WALSH & COMPANY, INC.
By: E. A. O'Shaughnessy,
Vice-President.

April 28, 1936.

James Walsh & Co., Inc.,
Lawrenceburg, Indiana.

Gentlemen: Attention: E.A. O'Shaughnessy, Vice President.

I have yours of April 1st.

Our licensing division is not run on a "suspected criminal" basis. The questionnaires, photographs and fingerprints are designed to bring out the whole truth about every applicant, so to approve only those who are worthy and then to identify and protect our licensees from impostor competitors. The procedure is not perfect but it has resulted in keeping literally hundreds of undesirables out of the liquor business.

Of course, this procedure is resented by the undesirable. I believe you will welcome it once you understand its purpose. True, fingerprinting is commonly thought of in connection with criminals. But thinking citizens nowadays, all along the line, are coming to the realization that universal fingerprinting has tremendous values which should be utilized to great advantage in our civic and social lives. Most of the prejudice against it is because of its earlier and exclusive association with criminal procedure. Naturally, if you think in those terms, you will take pride never to be fingerprinted. But when it dawns that it means one's own personal protection, as well as that of society in general, our pride will be in living a record which no fingerprints may blot.

Our purpose is to encourage trade in New Jersey. Uniformity in treatment of all applicants, however, is essential. Upon reflection, I trust you will agree that our procedure is not only warranted but wholesomely conducive to the protection of your industry as well as that of the public.

We shall welcome your admittance to do business in New Jersey. You may have your money back less the statutory service charge, however, if you still wish it.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

5. MUNICIPAL ORDINANCES - REGULATIONS PROHIBITING SALES EXCEPT THOSE DULY LICENSED SHOULD BE BROAD ENOUGH TO EXEMPT ALL SALES DULY LICENSED UNDER THE ACT.

MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - LIMITATION MUST BE MADE WITH RESPECT TO EACH PARTICULAR CLASS AND NOT WITH RESPECT TO THE AGGREGATE OF ALL CLASSES OF LICENSES GENERALLY.

MINORS - EMPLOYMENT - PERMITS TO EMPLOY MINORS WILL NOT BE ISSUED IF CONTRARY TO VALID MUNICIPAL RESOLUTIONS, ORDINANCES OR POLICIES.

April 27, 1936.

George P. Dennis,
Borough Clerk,
Hightstown, New Jersey.

Dear Sir:

I have before me your letter of April 11th. I have gone over the proposed ordinance concerning alcoholic beverages which you anticipate introducing on May 5th next. There are a number of comments with respect to the ordinance which I would like to offer for the Council's consideration.

Section 5 says that no alcoholic beverages shall be sold or distributed at retail in Hightstown "except in those cases provided by law where the licenses in question are to be issued by the State Commissioner of Alcoholic Beverage Control".

The statute provides for the issuance of municipal retail licenses by the State Commissioner only when a member of the local issuing authority is or has a direct or indirect interest in the applicant for the license. Control Act Reprint, Section *18A (C. 44, P. L. 1934). In all other instances, according to the statute, municipal retail licenses are issued by the local issuing authority, in your case the Mayor and Council. But Section 5, as worded, would prohibit the sale and distribution of alcoholic beverages at retail unless the licenses were issued by the State Commissioner. Hence, it would prohibit sale or distribution under licenses issued by the Mayor and Council. My records show that it was by the Council that all of the licenses presently outstanding in your Borough were issued. If Section 5 were enacted as it now stands it would, in effect, declare each of your municipal licenses to be a nullity.

Presumably, what you intended to do was to prohibit all sale or distribution unless duly and properly licensed pursuant to either the ordinance or the Act. It does not say so in so many words but that would appear to be the contemplated result. The section will accomplish this if in place of the words above quoted, you insert instead "except pursuant to the terms and provisions of said Act." It will then be broad enough to exempt from the prohibition, any lawful sale or distribution of alcoholic beverages which may be made.

Section 6, in part, limits the number of licenses which may be issued. It says that there shall be no more than seven licenses issued, including both retail consumption and retail distribution. It does not fix the quota for each class; it provides instead for a numerical limitation of the aggregate number of all licenses to sell alcoholic beverages at retail, irrespective of class.

A similar question came before me in re Somerville, Bulletin 110, item 6. Therein, I disapproved such a regulation because of the practical difficulties involved in its administration. There would be no test by which I could pass judgment should question as to the application of the numerical limitation come before me on appeal. There is a vast difference between consumption and distribution licenses. Each serves a distinct purpose. And by fixing merely the total number to be issued, the question

of how many of each class should be granted is left open. It does not indicate a clear and definite licensing policy. Instead of limiting the total number of all licenses, the Borough Council should limit the number of licenses which may be issued in each specific class. I cordially suggest that Section 6 be revised accordingly.

* * * * *

Section 16 prohibits minors from singing, dancing, performing, acting, playing in an orchestra or engaging in any performance or entertainment conducted upon a licensed premises. Now, the statute, Section 23, as amended by Chapter 257, P.L. 1935 on June 8, 1935, prohibits the employment by licensees of anyone who would fail to qualify as a licensee but authorizes the Commissioner to approve the employment of persons failing to qualify as to age or residence or citizenship, providing that pursuant to such employment they do not in any manner whatsoever sell or solicit the sale of any alcoholic beverages. Thus, the employment by licensees of minors is a matter controlled in the first instance by statute. And, based upon the statute, rules and regulations have already been promulgated. See Compiled Rules, Regulations and Instructions, March 1936, Page 16.

Standing alone, neither the statute nor the State rules and regulations would prohibit a minor from being employed to play in an orchestra or to perform as an entertainer upon a licensed premises, providing the Commissioner's approval had first been obtained. And so far as the statute is concerned, whether or not the approval should be given rests entirely in the Commissioner's discretion. But it does not necessarily follow that the Commissioner cannot give effect to local regulations which municipal authorities, because of unique local conditions, deem necessary and warranted. In this connection, the situation is essentially the same as that controlling the issuance of special permits for social purposes. Although the statute, Section 75, confers upon me the authority to issue special permits solely in my own discretion, as a condition precedent to the issuance of such permits I require the consent of Municipal Clerks and Chiefs of Police so as to cooperate with and protect the interests of the municipality in which the permit will be exercised and I have often refused to issue a permit if the municipal consent has not been given. To recognize and to give full force and effect to local resolutions, ordinances and policies which reflect the requirements of the local situation is consistent with the established principles of Home Rule. The statute does not prevent municipalities from imposing, in the exercise of police power, reasonable regulations designed to protect the moral welfare of the minor members of the community by further limiting the manner in which minors may be employed, provided the regulations carry out the purpose of the statute and are not repugnant thereto. In fact, such regulations have been anticipated. The permit which conveys the Commissioner's approval of such employment is, by its terms, subject to all municipal ordinances, resolutions and regulations which may control.

I shall approve your Section 16 as an expression by the Council of your local policy.

Subject to the comments hereinabove made, the ordinance, upon final adoption, will be approved as submitted.

* * * * *

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. SPECIAL PERMITS - SALES OF ALCOHOLIC BEVERAGES ON ELECTION DAYS - PRINCIPLES APPLICABLE.

April 27, 1936.

Chas. W. B. Lane, Executive Secretary,
Tavern Owners Association of Cliffside Park,
Grantwood, New Jersey.

Dear Sir:

Referring to your letter of April 13th, I note that the Association contemplates having a dinner for its members at about 5:30 P.M. on Primary Election Day next and that you would like to serve alcoholic beverages at the affair.

It is clear that you cannot serve alcoholic beverages during the hours the polls are open if you hold the dinner upon a licensed premises. The reason for this is that Rule 2 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises would prohibit it. Rule 2 says that "No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal primary or special election is being held, while the polls are open for voting at such election."

On the other hand, if you hold the affair upon some premises not licensed under the Alcoholic Beverage Control Act and if at the affair the alcoholic beverages which are served are given away really gratuitously in every respect and no special permit is required, then the delivery of the alcoholic beverages will be an out and out gift and neither the letter nor the reason of Rule 2 will apply.

But if tickets are sold for the affair or if admission is charged or if the price of the alcoholic beverages is included in the price of the dinner, it would be a sale within the terms of the Act and a special permit would be required. Then, if the affair were held on other than licensed premises, whether or not the sale of alcoholic beverages at the affair would fall within the reason of Rule 2 and be prohibited thereby would depend upon the nature and purpose of the affair, the place where it was to be held, the character of the organization running it and whether or not it was to be strictly private or open generally to the public.

The Commissioner will entertain an application for a special permit to sell alcoholic beverages at a social affair on an election day only if it includes all such information. If, within the contemplation of the Act, alcoholic beverages will be sold at the affair you intend to hold, make application for the special permit setting forth in detail all of the facts and

it will receive his immediate consideration.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.
By: Maurice E. Ash,
Senior Inspector.

7. MUNICIPAL ORDINANCES - REGULATIONS ARE SUBJECT TO PRECISE CONSTRUCTION.

April 30, 1936.

William A. Miller,
City Manager,
Clifton, New Jersey.

Dear Mr. Miller:

On April 28th, I wrote to you (Bulletin 117, item 3) about the resolution regarding sales to policemen and firemen, which was adopted by the City Council on April 7, 1936.

My attention is called today to the fact that Section 1 commences "RESOLVED, that the holder of a Plenary Retail Consumption License or any other type of license for the sale of alcoholic beverages, in the City of Clifton, nor such licensee's agents or servants in the licensed premises, shall deliver or serve any alcoholic beverage ....." and that Section 2 commences "BE IT FURTHER RESOLVED, that the holder of a Plenary Retail Consumption License or any other type of license for the sale of alcoholic beverages, in the City of Clifton, nor such licensee's agents or servants in the licensed premises, shall serve any alcoholic beverage .....", whereas they should read respectively:

> "RESOLVED, that neither the holder of a Plenary Retail Consumption License or any other type of license for the sale of alcoholic beverages, in the City of Clifton, nor such licensee's agents or servants in the licensed premises, shall deliver or serve any alcoholic beverage....
>
> "BE IT FURTHER RESOLVED, that neither the holder of a Plenary Retail Consumption License or any other type of license for the sale of alcoholic beverages, in the City of Clifton, nor such licensee's agents or servants in the licensed premises, shall serve any alcoholic beverage...."

You have inadvertently omitted the "neither" which should go with the following "nor" and I suggest that the Council amend the resolution at once so as to put it in because as the resolution now stands technically it requires the holder of the license to sell to policemen or firemen but prohibits his agents or servants from doing so.

I know that you did not intend any such result but the resolution is susceptible of such misconstruction.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. MUNICIPAL ORDINANCES - REGULATIONS EXTENDING THE LOCAL CLOSING HOUR MUST CONFER THE PRIVILEGE GENERALLY UPON ALL LICENSEES AND NOT UPON PARTICULAR LICENSEES BY NAME.

April 27, 1936.

Theodore J. Holz,
Clerk of Washington Township,
Long Valley, New Jersey.

Dear Sir:

I have before me your letter of April 6th in which you advise that on April 4th the Township Committee adopted a resolution reading:

> "Resolved: that upon application of Charles C. Messler, special permit is hereby granted to him to remain open on the morning of May 13th, 1936 until 3- A.M. with permit to sell alcoholic beverages."

A resolution so worded, conferring upon one licensee alone the privilege of selling alcoholic beverages after the regular closing hour, raises at once the question as to whether or not there has been discrimination in favor of the one licensee referred to at the expense of other members of the same license class. According to my records, Charles Messler, who holds plenary retail consumption license No. 1, is the only retail licensee of any kind or class in the Township. So, in the instant case, there is no discrimination. However, it would be better and consequently I so suggest that in the future resolutions extending the privilege of selling alcoholic beverages after the regular hour when sales must cease be worded so as to confer the privilege generally upon all licensees and not upon particular licensees by name. Both the appearance of discrimination and also the fact will then safely be avoided.

Subject to the foregoing comments and further subject to exception so far as it limits hours of sale (in which connection, for the reasons stated in Bulletin 43, item 2, it does not need my approval in the first instance in order to be effective), the resolution is approved as submitted.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. MUNICIPAL ORDINANCES - AN ORDINANCE CANNOT BE AMENDED, REPEALED OR OTHERWISE SUPERSEDED BY MERE RESOLUTION UNLESS THE ORDINANCE EXPRESSLY SO PROVIDES.

April 28, 1936.

Mrs. Sara C. Griffin,
Clerk of Lower Penns Neck Township,
Pennsville, New Jersey.

Dear Madam:

On October 19, 1934, I wrote to Mr. Leo J. Griffin, the then Township Clerk, regarding the Township Committee's ordinance concerning alcoholic beverages adopted June 15, 1934, which ordinance fixed retail license fees, provided for the issuance of licenses and regulated sales of alcoholic beverages thereunder. Now I have before me the resolution concerning alcoholic beverages

adopted by the Township Committee on June 28, 1935 and the ordinance concerning alcoholic beverages adopted by the Township Committee on April 17, 1936.

The ordinance of June 15, 1934 was enacted without limitation as to the length of time it was to be in effect. It was, then, effective as originally adopted until legally amended, repealed or superseded. But notwithstanding the ordinance, the resolution of June 28, 1935 purported to fix license fees and regulate retail sales of alcoholic beverages in the Township for the fiscal year commencing July 1, 1935 and, furthermore, to revoke and amend all ordinances and resolutions theretofore adopted inconsistent therewith. Thus, the resolution purported to supersede the earlier ordinance. That, however, could not legally be done. An ordinance cannot be amended, repealed or otherwise superseded by a mere resolution. It must be done at least by ordinance. American Malleables Co. v. Bloomfield, 83 N. J. L. 728 (E. & A. 1912).

So until the adoption of the April 17, 1936 ordinance, in Section 22 of which all resolutions and ordinances concerning alcoholic beverages theretofore adopted were repealed and rescinded, the ordinance of June 15, 1934 remained in full force and effect. The trouble comes in that licenses have been issued for the current fiscal year pursuant to and at the reduced fees set forth in the resolution in spite of the fact that until April 17, 1936 the earlier ordinance would have still controlled. And as the resolution in pursuance of which these licenses were issued had no legal standing, it would follow that the licenses themselves would be void.

The ordinance adopted April 17, 1936, in which license fees are fixed in the same amounts as in the resolution, controls the licensing situation from now on. It wipes the slate clean of all resolutions and ordinances concerning alcoholic beverages theretofore enacted. It rescinds the June 15, 1934 ordinance. It does not, however, rescind the June 28, 1935 resolution because that resolution never legally existed. It will control all licenses to be issued in the future but it does not validate those issued pursuant to the June 28, 1935 resolution in the past.

According to my records, ten plenary retail consumption, one plenary retail distribution and two club licenses were issued for the current fiscal year pursuant to and at the fees fixed in the resolution. Each of these licensees has acted in good faith and with reliance upon the apparent validity of his license. And now that each has made commitments and incurred expenditures, it would clearly be unfair that they should suffer or be deprived of their licenses at this late date through no fault of their own. The Township Committee should at once by resolution expressly ratify and affirm the issuance of these licenses.

The resolution of June 28, 1935, for the reasons aforesaid, I am not considering for approval.

The ordinance of April 17, 1936 is approved as submitted excepted in so far as Section 5 limits the number of licenses and Section 6 limits the hours between which sales of alcoholic beverages at retail may be made. In those respects, for the reasons stated in Bulletin 43, item 2, it does not need my approval in the first instance in order to be effective.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. REVOCATION PROCEEDINGS - ILLICIT BEVERAGES - UNIFORM ACTION IN REVOKING LICENSES WHENEVER ILLICIT LIQUOR IS FOUND ON PREMISES WILL EVENTUALLY LESSEN UNPLEASANT WORK OF ISSUING AUTHORITIES.

April 29, 1936.

Ronald C. Alford, Secretary,
Municipal Board of Alcoholic Beverage Control,
West Orange, N. J.

Dear Mr. Alford:

I am today in receipt of staff report of the proceedings against Frank D'Alessandro for possession of illicit alcoholic beverages and dice. I note that he pleaded guilty and that your Board in accordance with its several previous decisions, revoked his license.

I am sure that as the news spreads of your Board's determined, uniform action in revoking licenses where illicit liquor is found on the premises, it will have much less such unpleasant work to do, for it has already made it clear to everybody that West Orange is no place for bootleggers.

Very truly yours,

D. Frederick Burnett

Commissioner.