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

BULLETIN NUMBER 56 December 17, 1934

1. MUNICIPAL BOARDS OF ALCOHOLIC BEVERAGE CONTROL - POWER OF GOVERNING BODY TO ABOLISH - HOLD-OVER IN OFFICE AFTER EXPIRATION OF TERM

December 13, 1934

Hon. Charles E. Bird,
City Counsel,
Trenton, N. J.

Dear Mr. Bird:

I have your questions presented in your behalf by Mr. Rimo, this afternoon, viz.:

1. Has the governing body, the City of Trenton, the power to abolish the Board of Alcoholic Beverage Control, erected by such governing body by resolution under the authority conferred by the "Beverage Control Act"?

2. Does a member of the Board of Alcoholic Beverage Control hold over after the expiration of the term for which he was appointed, and until his successor has been appointed and qualified?

3. Will the State Commissioner recognize the governing body, as the local issuing authority, when acting as such, in the event of the abolition of the Board of Alcoholic Beverage Control?

The answers follow:

1. YES. The Control Act itself did not create the Trenton Municipal Board of Alcoholic Beverage Control. That Board was created by the governing body of Trenton pursuant to the permissive authority conferred on it by the Control Act. The power that created the Board can also terminate it. Greene vs. Freeholders of Hudson, 44 N.J.L. 388 (Sup. Ct. 1882). The Board is merely a means or instrumentality to which was lawfully delegated certain powers conferred and duties imposed upon the governing body. If the present judgment of the governing body is that the Board which it created no longer serves the ends for which it was established, or that the powers and duties might better be exercised and discharged directly by the governing body, that body has the reserved power to abolish the Board. The creature is not greater than the creator. In the absence of express provision to the contrary, the power conferred upon your governing body to enact the creative resolution implies the power to repeal it, whenever in its absolute discretion repeal is necessary or expedient. See Stemmler vs. Madison, 82 N.J.L. 596 (E. & A. 1911).

It is true that Sec. 5 of the Control Act contemplates appointments to the Municipal Board for one, two and three years, and provides that the members shall be removable by the appointing authority for cause. These provisions in no way conflict with the conclusion above. They mean that so

long as the Board is in existence, appointments shall be made for those terms and that no individual member may be removed except for cause. Your question, however, contemplates abolition of the whole Board, and, as to that, no member has any legal cause for complaint. The holding of public office is not a contract. The valid abolition of the office removes the incumbent irrespective of his stated term of office. Cf. Hoboken vs. Gear, 27 N.J.L. 265 (E. & A. 1859). Our courts have consistently held that even where the incumbent is protected by tenure, the bona fide abolition of the office for reasons of governmental efficiency is effective. See May vs. Nutley, 111 N.J.L. 166 (Sup. Ct. 1933).

2. YES. The laws of 1881, p. 47; 1 C. S. 619, Sec. 105, so provide, viz.: "That any officer of any city in this state who now holds or hereafter shall hold any office therein, under any law of this state which fixes the term thereof for a precise and a determined period, shall continue to hold such office and exercise the duties of the same, notwithstanding the time limited for its continuance shall have expired, until his successor has been appointed and qualified."

See Clark vs. Trenton, 49 N.J.L. 349 (Sup. Ct. 1887); Stilsing vs. Davis, 45 N.J.L. 390 (Sup. Ct. 1883); Hoell vs. Camden, 68 N.J.L. 226 (Sup. Ct. 1902).

3. YES, for reasons in first answer.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

2. APPELLATE DECISIONS - SNYDER VS. MIDDLETOWN TOWNSHIP

WILLIAM A. SNYDER,
Appellant
-vs-
TOWNSHIP COMMITTEE OF MIDDLETOWN TOWNSHIP (MONMOUTH COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Quinn, Parsons & Doremus, Esqs., by Theo. J. LaBreque, Esq., Attorney for Appellant
Howard W. Roberts, Esq., Attorney for Respondent

BY THE COMMISSIONER:

An appeal was filed on June 25, 1934, from the denial of a plenary retail consumption license for the period expiring June 30, 1934. This case came on for hearing after the license period for which the application had been made had already expired. The appeal was, therefore, moot and deemed to be dismissed.

Subsequently, however, both parties hereto requested a determination on the merits by the Commissioner and agreed to

be bound by such determination with regard to the current license period. No good reason appears why such determination should not be made, inasmuch as otherwise appellant will be required to go to the expense involved in perfecting a new application and perhaps a new appeal would result. This would necessarily entail a considerable period of time and a considerable expenditure of money. In view of the parties' consent to abide by the Commissioner's determination on the basis of the original hearing, the case will be decided on the merits.

Respondent contended that the application was properly denied for the reason that there were a sufficient number of licensed places in the vicinity of appellant's premises so that the issuance of an additional license in said vicinity would be socially undesirable.

The right of a municipality to deny a license where the granting thereof would result in too many licensed places in any given vicinity is settled. Bader vs. Camden, Bulletin #44, Item #8; Furman vs. Springfield, Bulletin #49, Item #6; Clement vs. Loder, Bulletin #52, Item #5; Faccidomo vs. Union Beach, Bulletin #55, Item #8.

The population of Middletown Township is approximately 9,400. Appellant's premises are located on State Highway #35; about four and one-half miles of which runs through the Township. Respondent has issued twenty-three licenses along this highway. A plenary retail consumption license has been issued for premises approximately 500 ft. away from appellant's. It does not appear that public necessity or convenience dictate the addition of an additional license in the vicinity in which appellant's premises are located. The determination of respondent was justified by the evidence and was reasonable.

Respondent also contended that the premises sought to be licensed were unsuitable. Counsel for appellant agreed to submit photographs thereof to aid in a determination of this issue. No such photographs were ever submitted. Accordingly no opinion is expressed on this issue.

D. FREDERICK BURNETT,
Commissioner

Dated: December 13, 1934

3. APPELLATE DECISIONS - WOODROW WILSON DEMOCRATIC CLUB INC. OF PASSAIC VS. PASSAIC

WOODROW WILSON DEMOCRATIC CLUB INC. OF PASSAIC, NEW JERSEY, Appellant -vs- BOARD OF COMMISSIONERS OF THE CITY OF PASSAIC, Respondent.	ON APPEAL CONCLUSIONS

Stanley J. Polack, Esq., Attorney for Appellant
Thomas E. Duffy, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a club license.

Respondent contends that the application was properly denied by virtue of a resolution adopted by it on September 25, 1934, limiting the number of club licenses to be issued in the City of Passaic to 15, and the issuance of the allotted number.

Appellant is admittedly a bona fide club and eligible to receive a club license. All the formal requisites pertaining to the application have been complied with and the suitability of the premises and the good character of the persons interested in the club are admitted.

The right of a municipality to limit the number of club licenses to be issued was considered by the Commissioner in Societa Operaia Di Mutuo Succorso Villalba vs. Trenton, Bulletin #41, Item #5. It was there said "A municipality has the power to limit the number of club licenses, but the burden of proof to justify such a numerical limitation should be placed upon the municipality."

In the instant case, respondent introduced no evidence of any kind to justify the numerical limitation adopted by it. No reason was suggested why such a limitation was socially desirable, either in general or in its application to appellant. No explanation was offered why any limitation at all was adopted. Respondent has therefore failed to sustain the burden of proof to justify the numerical limitation.

The action of respondent Board is therefore reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 13, 1934

4. APPELLATE DECISIONS - FLANAGAN VS. HOPEWELL

THOMAS J. FLANAGAN,
Appellant
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF HOPEWELL (MERCER COUNTY),
Respondent

ON APPEAL
CONCLUSIONS

McCarthy & McTague, Esqs., Attorneys for Appellant
David L. Smith, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent asserts that the application was properly denied by virtue of a resolution adopted by it prior to the issuance of any licenses, limiting the number thereof to two, and the issuance of the allotted number. Although such limitation is subject to appeal, it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or in its application to appellant. Ryman vs. Branchburg Township Committee, Bulletin #37, Item #18. No substantial evidence was introduced to show that the limitation in its adoption

was unreasonable, nor can the appellant successfully maintain that the limitation was improperly applied to him.

The testimony establishes and the exhibits confirm that the premises sought to be licensed consist of a service station in which gasoline, oil, cigarettes, cigars and sandwiches are sold. The two licenses issued were for hotels. These hotels had licenses for the period ending June 30, 1934, and the granting of their licenses for the new period were renewals. There is nothing to indicate either that the hotels were improperly preferred over appellant or that they are inadequate to supply all the demands of the residents of the community.

Accordingly, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 13, 1934

5. APPELLATE DECISIONS - BARBUTO VS. TRENTON

NICHOLAS BARBUTO,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

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Vincent A. de Benedetto, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied by virtue of its resolution of May 31st, 1934, limiting the number of plenary retail consumption licenses to be issued in the City of Trenton to two hundred fifty (250) and the issuance of the allotted number. Pending determination of this case, however, respondent repealed said resolution.

Respondent further contends that the application was properly denied because the premises sought to be licensed are too close to the Grace Protestant Episcopal Church.

Section 76 of the Control Act provides: "No license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or *** school *** provided, however, that the protection of this section may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body or authority of such church or school ***.

"The prohibition contained in this section shall not apply to the renewal of any license where no such church or school house was located within two hundred (200) feet of the licensed premises as aforesaid at the time of the issuance of the license,

nor to the issuance and/or renewal of any license where such premises had been heretofore licensed for the sale of alcoholic beverages or intoxicating liquors, and such church or schoolhouse was constructed and/or established during the time said premises were operated under said previous license."

Appellant's premises, measured in accordance with the method set forth in Section 76, are approximately one hundred (100) feet from the church. From an examination of the official city directories it appeared, however, that appellant's premises were licensed for the sale of alcoholic beverages at the time the church was constructed. Counsel stipulated that the facts as indicated by these directories were accurate. The situation is, therefore, not within the prohibition contained in section 76. Berlangieri vs. Newark, Bulletin #38, Item #16.

Notwithstanding the fact, however, that a license may be issued for appellant's premises, a municipal authority may adopt a policy not to issue licenses for premises closely situate to churches or schools even though not within the prohibition of Section 76. Ezzo and Carucci vs. Trenton, Bulletin #49, Item #13. Such a policy, however, in order to be valid must be uniformly applied throughout the municipality. Rufeisen vs. Asbury Park, Bulletin #45, Item #12; Ostertag vs. Atlantic City, Bulletin #45, Item #13.

The question is, therefore, resolved into an inquiry as to the adoption of any policy by respondent and, if so adopted, as to the uniformity of application.

In the instant case it appears that respondent has issued a plenary retail consumption license for other premises which are within two hundred (200) feet of the Grace Protestant Episcopal Church. An independent investigation conducted by this Department reveals the further fact that respondent has issued at least one license heretofore for premises within two hundred (200) feet of Saint Stephen's Hungarian Catholic Church, in Trenton, even though no waiver was obtained from said church for said premises. It is true that in the Ezzo case supra the Trenton Board did adopt such a policy in respect to schools, and there was nothing in that case to show that such policy had not been uniformly applied. Hence, the refusal to grant that license was affirmed. But, as regards the churches of Trenton, it appears that the Trenton Board has adopted no policy, or, if it has, that there has been no uniformity whatsoever in application. The churches should be protected equally. So the applicants for licenses should be treated alike. It is not fair to make fish of one and fowl of another. To justify the refusal of a license on an alleged ground of public policy, it is essential that the policy be applied fairly and uniformly in all instances.

Respondent further contends that the application was properly denied because the premises sought to be licensed are unsuitable. This contention is based upon the fact that there is an entrance leading directly from the appellant's premises to a club room on the second floor of the building in which the premises sought to be licensed are located. Appellant, however, offered to remove said entrance and permanently close the same in the event a license was issued. Admittedly there would be no objection to the premises if this were done.

The action of the respondent Board is reversed upon condition that the appellant permanently close the entrance from his premises to the club room prior to the sale of any alcoholic beverages under the license.

D. FREDERICK BURNETT,
Dated: December 13, 1934 Commissioner

6. APPELLATE DECISIONS - MORICHELLI VS. TRENTON

LORENZO MORICHELLI,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent

ON APPEAL
CONCLUSIONS

George Pellettieri, Esq., by David Kelsey, Esq., Counsel for Appellant
Romulus P. Rimo, Esq., Counsel for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied because of its resolution of May 31, 1934, limiting the number of plenary retail consumption licenses to be issued in the City of Trenton to 250 and the issuance of the allotted number. Pending the decision of this case, however, respondent repealed said resolution.

Respondent further contends that the application was properly denied because appellant is unfit to receive a license. This contention is predicated upon the fact that on June 12th, 1934, a search of appellant's premises disclosed the presence thereon of approximately 2000 gallons of wine.

By consent of counsel, the records of this Department were introduced in evidence. These records revealed that prior to the date of said raid, appellant had made application to the Commissioner for a special permit to dispose of said wine and that such permit was subsequently issued.

The permit contained a special condition, however, that no sale was to be made in quantities of less than 25 gallons. The report filed by appellant of sales made pursuant to said permit disclosed the fact that certain purchasers received only 15 or 20 gallons of wine. A supplementary hearing was held to afford appellant an opportunity to explain the apparent violation of the special condition contained in the permit.

At the supplementary hearing it appeared that the sales originally were made in 25 gallon lots, to be delivered over a period of time, but that a large quantity of said 2000 gallons of wine spoiled and appellant was consequently unable to fill all

orders. An investigation by the State Tax Department, Beverage Tax Division, confirmed these facts. The violation of said special condition has thus been satisfactorily explained as having been caused by circumstances beyond the control of appellant.

Respondent's contention that appellant is unfit to receive a license is therefore not sustained.

Accordingly, the action of respondent Board is reversed.

D. FREDERICK BURNETT,
Dated: December 12, 1934 Commissioner

7. APPELLATE DECISIONS - VELIVIS VS. TRENTON

JOSEPH VELIVIS,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent

ON APPEAL
CONCLUSIONS

David Kelsey, Esq., by Sidney D. Baker, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied because (1) the location of the premises is not desirable and (2) there are a sufficient number of licensed places in the vicinity of the premises sought to be licensed so that the issuance of an additional license for premises in said vicinity is socially undesirable. It is unnecessary to consider the validity of these contentions inasmuch as the action of respondent must be affirmed for the following reasons.

At the hearing, although not raised by the pleadings, it appeared that the licensed premises, together with the fixtures thereon, are owned by a New Jersey licensed brewery. Appellant has arranged to obtain possession of said premises in the event a license be issued at a monthly rental of Forty Dollars ($40.00), and has further promised the brewery to handle its beer exclusively

Section 40 of the Control Act declares that it shall be unlawful for any person interested in the manufacturing or wholesaling of alcoholic beverages to be interested in the retailing thereof and "such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery * * *". In the instant case the brewery has agreed to deliver possession of certain premises by way of lease accompanied by an agreement to sell its product exclusively. This is one of the situations interdicted by Section 40.

The case of Goldstein vs. Trenton, Bulletin #54, Item #1, is not applicable. There the brewery owned the building and fixtures on December 6, 1933, and there was nothing in the record showing that the agreement to rent the property by the applicant for a license was accompanied by an agreement to handle the product of the brewery. Accordingly, it was held that a retail license could properly be issued under the exception contained inSection 40 which provides that "prior to December sixth, one thousand nine hundred and thirty-six, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages".

The action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 13, 1934

8. APPELLATE DECISIONS - BOCCISTICO COLONIALE CLUB VS. TRENTON

BOCCISTICO COLONIALE CLUB,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent
ON APPEAL
CONCLUSIONS

George Pellettieri, Esq., by David Kelsey, Esq., Attorney for Appellant
Romulus P. Rimo, Esq. Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a club license.

Respondent contends the application was properly denied because appellant is not a bona fide club, and the application was merely a subterfuge to permit the owner of the alleged club premises to obtain a license.

The owner is one Adelmo Conti, a member of appellant organization. Mr. Conti had applied to respondent for a license in his own name for these premises, but the application was rejected. Thereafter the club, which apparently had been in existence for some ten years, was incorporated and the present application filed. After this application was denied, Mr. Conti appeared before the issuing authority with a companion, who admitted that the business to be conducted under the license would be Mr. Conti's. This statement was testified to by a member of respondent Board, and Mr. Conti did not deny the occurrence of the incident or the making of the statement. There is no testimony that at the time the statement was made Mr. Conti denied the truth thereof. None of the officers of the club were present at the hearing of the appeal, the only member of the organization to testify being Mr. Conti himself. At least one other member of the club was present, however, but did not testify due to the fact

that he was unable to speak English.

In view of the foregoing, it cannot be said that respondent's determination that appellant's application was merely a subterfuge to permit the owner of the alleged club premises to obtain a license was unreasonable.

Accordingly, the action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Dated: December 13, 1934 Commissioner

9. APPELLATE DECISIONS - ZEBROWSKI VS. TRENTON

JOSEPH ZEBROWSKI,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent

ON APPEAL
CONCLUSIONS

Benjamin Cieresko, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at 801 Lamberton Street, Trenton.

Respondent's sole contention is that the application was properly denied because there are a sufficient number of licensed places in the vicinity of the premises sought to be licensed, and the issuance of an additional license in said vicinity would be socially undesirable.

Appellant's premises are located in a neighborhood containing a mixture of stores and residences. The nearest licensed places are a block away in either direction. The premises sought to be licensed are outfitted for the sale of alcoholic beverages and were used for that purpose for many years prior to the adoption of the Eighteenth Amendment.

Respondent has heretofore issued as many as five or six licenses for premises on a single block. See Kaplan vs. Trenton, Bulletin #41, Item #9. Throughout the municipality licenses have been issued with abandon, the distances intervening between the licensed premises in numerous instances being considerably less than one block. In view thereof, respondent's contention in the instant case cannot be sustained.

The action of Respondent Board is reversed.

D. FREDERICK BURNETT,
Dated: December 13, 1934 Commissioner

10. APPELLATE DECISIONS - TANKLE VS. TRENTON

SAMUEL TANKLE,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent

ON APPEAL
CONCLUSIONS

I. Herbert Levy, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied by virtue of a resolution adopted by it on May 31, 1934, limiting the number of plenary retail consumption licenses to be issued in the City of Trenton to 250, and the issuance of the allotted number. Pending determination of this case, however, respondent repealed this resolution.

Respondent further contends that the application was properly denied because appellant is personally unfit to receive a license. This contention rests on the single fact that appellant admittedly conducted a speakeasy during the prohibition period and that on one occasion he pleaded guilty to a violation of the National Prohibition Act. Respondent has, however, issued licenses to numerous persons who had admittedly violated the National Prohibition Act and who were convicted for such violations. See Cohen vs. Trenton, Bulletin #50, Item #4. One of the police officers assigned to enforcement in the City of Trenton testified that notwithstanding he had raided appellant on numerous occasions, appellant's speakeasy was no worse than seven or eight hundred other speakeasies existing in Trenton during the prohibition period and that it had been conducted cleanly. The only member of respondent Board who testified, admitted that appellant was no worse than the other speakeasy proprietors, many of whom received licenses from respondent. No reason appears for the attempted discrimination. The offence of the appellant was the violation of a statute since repealed. It did not involve turpitude. He is, therefore, not disqualified under the Control Act. Re Carabelli, Bulletin #46, Item 3. If the respondent had adopted and consistently maintained a policy excluding former speakeasy proprietors from receiving licenses, the Commissioner would affirm the instant rejection. But, letting alone uniformity of application, no such policy has ever been adopted. Applicants for licenses should be treated alike. It is not fair to make fish of one and fowl of another. Barbuto vs. Trenton, Bulletin #56, Item #5. Accordingly, this contention cannot be sustained.

Respondent also contends that the application was properly denied because there is a sufficient number of licensed places in the vicinity of appellant's premises and the issuance of an additional license therefor would be socially undesirable. For the reasons expressed in Nobili vs. Trenton, Bulletin #42, Item #6, this contention cannot be sustained.

Respondent further contends that the application was properly denied because the premises sought to be licensed are presently unsuitable. Appellant admits that in order to be put in proper condition, the premises must be papered and painted and that new plumbing and flooring have to be installed. When this is done, there can be no question that the premises will be suitable.

The remaining facts are similar to Adams vs. Trenton, Bulletin #54, Item #9 and do not bar the issuance of a license for the reasons therein stated.

The action of respondent Board is reversed on condition that appellant's premises be papered and painted and a new floor and plumbing installed, reasonably satisfactory to respondent, prior to the issuance of the license.

D. FREDERICK BURNETT,
Dated: December 14, 1934 Commissioner

11. RULES CONCERNING LICENSEES AND THE USE OF LICENSED PREMISES - GAMBLING - WHAT CONSTITUTES

December 14, 1934

Frank H. Hutchins, Vice-President,
Board of Alcoholic Beverage Control,
Trenton, New Jersey.

Dear Mr. Hutchins:

I have yours of the 8th reading:

"With the approach of the holidays, the saloon keepers are indulging in practices that are questioned by the inspectors. For instance, some saloon keepers are disposing of candy in one and two pound boxes by chancing them off on a punch board. They claim it is legal because everyone gets something for their money. The chancing is done on a small number board containing seventy-five numbers. Any person drawing numbers one to fifteen are given a box of candy free. All those who draw numbers above fifteen up to seventy-five pay at the rate of one cent for each number. The question is whether this comes under the rule that prohibits gambling.

"Another practice is chancing off turkeys by throwing dice, by wheel, punch board, or other device at a flat rate of so much per chance. We wish to know if this is permissible."

Each of the practices mentioned is undoubtedly illegal The law clearly forbids the practices you describe. They are governed by State vs. Shorts, 32 N.J.L. 398. That case was decided in 1868 and the incisive opinion of Chief Justice Beasley has never been disturbed. He said: "A lottery, says Johnson, is a 'game of chance; a distribution of prizes by chance.' This ingredient of chance is, obviously, the evil principle against which all prohibitory laws are aimed. It is by this means that cupidity is solicited, for, if fortune be propitious, in consideration of the trivial price of a ticket, a return of value is to be expected. This temptation was, undoubtedly, offered to the public by these defendants.....the chances of success were, therefore, slender; but still there was a chance of a disproportionate gain, and the offer of this or any other such chance, is the stimulus to the spirit of gaming which the law prohibits. Any person who obtained a gift, as it is called, under the operation of this scheme, owed his success to his fortune in drawing from the doorkeeper the ticket with the lucky number upon it. But for this fortuitous circumstance he would

have failed, and it was this opportunity which he purchased with his ticket."

See also Re Pelous, Bulletin 43, Item 16, and opinion of Prosecutor Abe J. David to the same effect.

The mere fact that everybody gets something for their money doesn't cure the illegality. See Pure Mint Co. vs. La Barre, 96 N.J.Eq. 186. So if every customer gets a pretzel. Re Harrison, Bulletin 53, Item 8.

Licensees who indulge in any of these practices are not only subject to revocation proceedings but also to indictment.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

12. RETAIL CONSUMPTION LICENSEES - CONSUMPTION OF BEVERAGES AFTER MIDNIGHT SATURDAYS IN CASES WHERE MUNICIPALITIES HAVE VOTED AGAINST SUNDAY SALES

THE TOWNSHIP OF HAMILTON
County of Mercer

December 6, 1934

D. Frederick Burnett, Commissioner

Dear Sir:

In regard to the Retail Licensed Premises in Hamilton Township, Trenton, N. J.:

You no doubt have on your files in your office the data regarding the election on November 6th, in this Township as to Sunday sales. The Trenton Division of the New Jersey Licensed Beverage Association's President has asked us to write you to ascertain if it is permissible for the Township Committee to allow these Licensed Places to run until 2:00 o'clock on Saturday nights, providing that what is consumed after 12:00 o'clock is paid for before 12:00 o'clock.

Now that Trenton and the surrounding Townships have Sunday sales you can see what a tough spot it places these men in by a ruling to close their places of business at 12:00 o'clock on Saturday nights, just when they are doing business.

The Township Committee will appreciate your careful and considerate ruling on the above.

Very truly yours,
JOSEPH T. CAPPEL,
Chairman, Hamilton Twp. Committee

December 14, 1934

Hon. Joseph T. Capple, Chairman,
Hamilton Township Committee,
Trenton, N. J.

Dear Mr. Capple:

I have yours of the 6th.

The mere fact that liquor is "paid for" before midnight would leave the door wide open to evade the will of the majority of your municipality duly expressed by referendum, for, by paying for the specific liquor in advance or by making a general deposit, or by effecting credit arrangements or similar device, it would be possible for anyone to come into the tavern after midnight, order delivery of beverages claimed to have been previously "bought" and thus, for all practical purposes, the expressed will of the people that liquor shall not be sold on Sundays will be set at naught. This would be defiance, not compliance. Furthermore, there would be no practical regulatory test by which the Police or other enforcement agencies could determine whether or not the law was, in fact, being complied with. The Police haven't the time nor the means to conduct a judicial inquiry to determine whether the liquor had been bought and paid for before midnight. The test must be one which will enable enforcing authorities to determine by bare inspection whether the law is being obeyed or violated.

The referendum did not forbid drinking on Sundays but it did prohibit sales on Sundays. Sunday starts at midnight Saturday. Sale includes delivery. Delivery means, in respect to a drink, service. Service of an alcoholic beverage is an act readily determinable.

I shall therefore rule that unless local municipal ordinance or resolution requires the closing of licensed premises at midnight on Saturdays or shall otherwise forbid (and I shall approve all such ordinances or resolutions whenever such is the sense of the particular community) that there is nothing improper for licensees who are entitled to sell for consumption on the premises permitting customers to remain on the licensed premises after midnight on Saturdays and to consume alcoholic beverages until the closing hour fixed by municipal ordinance or resolution, providing, however:

1 - That on that particular Saturday such beverages were purchased from the licensee for consumption on the premises and paid for and actually delivered and served to the customer not later than midnight; and

2 - That the bar and all other places whence delivery or service of such beverages is made by the licensee are actually and absolutely closed punctually on the stroke of midnight.

This ruling is made experimentally in the effort to find a practical solution of the problem of consuming after a given hour that which was previously purchased in good faith consistent with the determination of your electorate that no sales shall be made on Sundays. If obeyed, no sales will be effected. If its letter or spirit is abused or leads to confusion or does not lend itself to satisfactory enforcement, I shall cancel it without hesitancy. If the privilege is violated, I shall see to it that it is visited with severe penalty.

The principle of this ruling will apply to all cases where sales of alcoholic beverages are required to cease at a certain hour whether that hour is fixed by referendum or by municipal regulation. In no event, however, may liquor be consumed on licensed premises after the hour fixed by municipal ordinance or resolution at which the licensed premises are to be closed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

13. LICENSED PREMISES - BUSINESS NEIGHBORHOODS

December 14, 1934

Dear Sir:- Re: Abdo Elias vs. Municipal Board of Alcoholic Beverage Control of Trenton

I have yours of December 7, 1934 requesting reconsideration of the above decision.

In considering the transcript, I was faced with the question of whether an owner of property, located in a business area, could be deprived of an opportunity to use his property in a legitimate business venture on the ground that such use would seriously inconvenience a single individual or group of individuals residing nearby. Objections to the issuance of a license in a residential neighborhood are a proper reason for the denial of an application, but this does not apply to a business neighborhood. In earlier decisions the rule was announced that general objections to the issuance of any license for premises located in a business neighborhood do not justify the denial of an application. The instant case was determined simly by an application of this well-settled principle.

It may be that at the time your family purchased the property in which you now reside, the neighborhood was residential. But neighborhoods change, much as the residents dislike to see the change. What once was a residential neighborhood may develop into a business neighborhood. The march of time cannot be denied. The neighborhood in which you reside and the Elias premises are located, is now not only zoned for business, but is used almost exclusively for business purposes. Under such circumstances, while it is extremely unfortunate for the few remaining residents that the transformation of the neighborhood lessens habitability, nevertheless long term social interests demand that, once such a change has been effected, the neighborhood thereafter be dealt with as a business neighborhood.

Although sympathetic to your objection, I could not have decided this case otherwise than I did. There would therefore be no purpose served in reconsideration, since all the facts you now mention were before me when I made my original decision.

Very truly yours,

Commissioner