COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 78 June 11, 1935

1. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - POINTS OF PUBLIC POLICY INVOLVED

June 4, 1935

Dear Sir:- Re: Validity of Sign Regulations

I have carefully considered your memorandum relating to our sign regulations submitted on behalf of -------Sales Co., Inc., ------Company and ------Brewing Company.

The problems incident to sign regulations have given this Department much concern and have received our study and consideration for well over a year. For eight months after the creation of the Department no action was taken with respect to sign regulations in order that developments in our neighboring States as well as our own State might be fully observed. It soon became evident, however, that many practices of brewers, which contributed in large part to the enactment of the 18th Amendment and which proponents of repeal promised would never return, were again being resorted to. Believing in the language of Mr. Justice Cardozo that "when the task that is set before one is that of cleaning house, it is prudent as well as usual to take counsel of the dwellers" (Schechter vs. United States, decided by the U.S.Supreme Court on May 27, 1935, and not yet reported), the Commissioner called an open meeting to discuss proposed sign regulations.

The meeting was held on September 6th, and was well attended by representatives of all branches of the liquor industry, as well as members of the public generally. Although many other issues were controverted, it was agreed that not only the public interest but the interests of the industry itself demanded that some action be taken to eliminate the practice of brewers in furnishing to retail licensees exterior signs, which almost invariably involved substantial expenditures.

For several months following the September meeting, numerous communications were received from persons connected with the industry as well as persons having no interest in the liquor business. In addition, actual observance was made of conditions in other States and detailed reports of the operations of pertinent FACA regulations were received and considered. Conferences were held with members of the industry and officials in other States and examinations were made into the history of the subject.

On March 15, 1935, proposed regulations, prepared in the light of all of the foregoing, were drafted and widely distributed for criticisms and comments. In response, numerous communications expressing substantial agreement with the proposed regulations were received from all branches of the liquor industry and representatives of the public. Rules governing signs were promulgated on April 9, 1935.

As I understand your present contention, as distinguished from the contention advanced in a memorandum dated May 16th which

you left with us, you do not question the authority of the Commissioner to promulgate reasonable regulations with respect to the display of signs on licensed premises. You do, however, advance the sole contention that regulation #2 prohibiting the display on the exterior of retail licensed premises of signs bearing the name, brand or trade-mark of a manufacturer or wholesaler of an alcoholic beverage is unreasonable.

With this the Commissioner cannot agree. Section 36 not only authorizes the Commissioner to regulate with respect to signs and other displays on licensed premises, but also with respect to "unfair competition; practices unduly designed to increase consumption of alcoholic beverages; gifts of equipment, products and things of value; and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of the act." Section 40 prohibits brewers from having any interest, directly or indirectly, in retailing provided that "no interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or products offered for sale by such brewery, ***". Section 3 provides that "it shall be the duty of the Commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such manner as to promote temperance and eliminate the racketeer and bootlegger", and section 74 provides that the act "is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

The entire act and particularly all of the foregoing provisions should be considered since the problem before us is not one merely of advertising for display purposes as your memorandum assumes. On the contrary, one of the several expressly avowed aims of rule #2 is towards the elimination of the brewery controlled saloon. See Reichelderfer vs. Johnson, 72 F.(2d), 552, 554 (Dist. of Columbia 1934), where the court said:

> "One of the well-recognized objections to the methods of sale and distribution of liquors prior to the era of prohibition was the fact that brewers and wholesalers frequently monopolized and controlled the retail trade. As stated by Judge Nichols in Marks v. Conrad Seipp Brewing Co., 74 Ind. App. 50, 128 N.E. 620, 621: 'It is a matter of history that a part of the corrupting influence of saloons emanated from the fact that many of them were owned or controlled by the breweries, by whom they were placed in the hands of irresponsible persons who were dependent upon the breweries for their financial support. Public policy demanded that such a condition of dependence and irresponsible operation be abrogated, and the act above mentioned resulted.'"

In their book entitled "Toward Liquor Control" (Harper & Brothers, Publishers, 1933), Messrs. Fosdick and Scott, after almost a year's study in this country and abroad, reached the following conclusion, among others:

> "The 'tied house,' and every device calculated to place the retail establishment under obligation to a particular distiller or brewer, should be prevented by all available

means. 'Tied houses,' that is, establishments under contract to sell exclusively the product of one manufacturer, were, in many cases, responsible for the bad name of the saloon. The 'tied house' system had all the vices of absentee ownership. The manufacturer knew nothing and cared nothing about the community. All he wanted was increased sales. He saw none of the abuses, and as a non-resident he was beyond local social influence. The 'tied house' system also involved a multiplicity of outlets, because each manufacturer had to have a sales agency in a given locality. In this respect the system was not unlike that now used in the sale of gasoline, and with the same result: a large excess of sales outlets. Whether or not this is of concern to the public in the case of gasoline, in relation to the liquor problem it is a matter of crucial importance because of its effect in stimulating competition in the retail sale of alcoholic beverages. 'Tied houses' should, therefore, be prohibited, and every opportunity for the evasion of this system should, if possible, be foreseen and blocked.

"There are many devices used by brewers and distillers to achieve this same end, such as the furnishing of bars, electric signs, refrigerating equipment, the extension of credit, the payment of rebates, the furnishing of warranty bonds when required to guarantee the fulfillment of license conditions and of bail bonds when the dealer is haled into court.

"A license law should endeavor to prohibit all such relations between the manufacturer and the retailer, difficult though this may be." (p.43)

In the Reichelderfer case, supra, the court further said:

"We think it apparent from the legislative history of this provision that Congress intended a divorce a vinculo between the business of brewing beer and the retail sale thereof, and to give the Commissioners wide latitude in enforcing this manifest purpose, which strongly supports the authority of the Commissioners to take the action complained of here. Atlantic Cleaners & Dyers, v. U.S., 286 U.S. 427, 52 S.Ct. 607, 76 L.Ed.1204; Dickson v. Uhlmann Grain Co., 288 U.S.188, 53 S.Ct. 362, 77 L.Ed. 691; U.S. v. Great Northern Ry., 287 U.S. 144, 53 S.Ct. 28, 77 L.Ed. 223; Federal Trade Commission v. Raladam Co., 283 U.S. 643, 51 S.Ct. 587, 75 L.Ed. 1324, 79 A.L.R. 1191; U.S. v. Mo.Pac. R. Co., 278 U.S. 269, 49 S. Ct.133, 73 L.Ed. 322; Church of the Holy Trinity v. U.S., 143 U.S. 457, 12 S.Ct. 511, 36 L.Ed. 226; Binns vs. U.S., 194 U.S. 486, 24 S.Ct. 816, 48 L.Ed. 1087; District of Columbia v. Dewalt, 31 App.D. C. 326."

The legislative history in New Jersey indicates that our legislature has been fully aware of the problem. See P.L. 1909, p. 318, the effect of which need not be considered further here. Indeed, it might well be contended that the Control Act, by the provision in section 40 that interior signs do not constitute prohibited interests, proscribes exterior signs as prohibited interests even in the absence of regulation.

At page 2 of your memorandum you point out that the regulations permit exterior signs not bearing a trade name and you contend that the absence of a trade name will "in no way tend to discourage drinking or to protect the health and morals of the

people". This contention ignores, however, the fact that the regulation will tend substantially to eliminate brewery controlled saloons and other abuses existing prior to prohibition and sought to be eliminated by the Control Act. Furthermore, actual experience discloses that the use of ordinary displays, unlike brewery signs, has not been abused and has caused no substantial public resentment. Surely, the Commissioner is empowered to deal with a particular evil as it arises, deferring more drastic action until warranted.

I find no substantial merit in the contention advanced at page 3 of your memorandum that regulation #2 will tend to substitutions of inferior brands by licensees. The rules do not prohibit interior signs and rule #4 expressly prohibits a retail licensee from advertising the sale of a particular brand unless such brand is actually available for sale. Clearly, in view of the foregoing, the presence or absence of an exterior sign can have no bearing on substitutions.

At page 4 of your memorandum you inquire whether a regulation similar to rule #2 would be reasonable in connection with the sale of milk. This inquiry calls for no answer since the subject matters are entirely foreign to each other and the abuses and evils inherent in one are not present in the other. See the language of Messrs. Fosdick and Scott quoted above. See also Paul vs. Gloucester County, 50 N.J.L. 585 (E. & A. 1888) where the court, referring to liquor, said: "It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied".

At page 4 of your memorandum, reference is made to a letter from the Attorney General of South Dakota in which he states that the Liquor Control Commission has adopted no rules and "as long as the advertising remained on a high plane, we did not think we would adopt any rules on the point". As indicated above, the sign regulations were not promulgated until after we had observed actual developments and had concluded that arising abuses must be curbed. Rule #2 is aimed at a situation which we know exists from experience and observations, in addition to study and consultation.

At page 5 of your memorandum the suggestion is made that rule #2 is unreasonable in that it does not apply to newspaper advertising, radio advertising, etc. In the first place, it may be questioned whether the Commissioner has any statutory authority to regulate newspaper and radio advertising. Assuming that he has not, does that mean that he cannot eliminate abuses in fields within his jurisdiction? Secondly, assuming he has power to regulate advertising generally, the abuses and evils sought to be eliminated by rule #2 are developing and exist via displays on licensed premises and not advertising generally. Unquestionably, the Commissioner may properly eliminate existing and growing abuses without reference to other independent situations which may ultimately involve further regulation. The distinction between displays on licensed premises and other displays is recognized by the history of legislation in New Jersey and elsewhere and indeed expressly by section 36, which states that the Commissioner shall have power to control signs and other displays on licensed premises, but is silent as to advertising generally.

At page 6 of your memorandum, it is suggested that in those States where exterior signs are prohibited, there is ex-

press legislation therefor. No exhaustive reference to legislation in other States need be made here. Suffice it to say that in several States regulations prohibiting the display of brand names on the exterior of retail licensed premises have been promulgated without specific statutory provisions to this effect. See, for example, regulation E29 of the Michigan Liquor Control Commission, and order 19 of the Virginia Alcoholic Beverage Control Board.

The Commissioner has declined to abrogate rule #2 of the sign regulations promulgated on April 9, 1935.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

NLJ:HOK

2. APPELLATE DECISIONS - REED VS. WAY

JOHN HENRY REED,
Appellant,
-vs-
HON. PALMER M. WAY, JUDGE OF THE CAPE MAY COUNTY COURT OF COMMON PLEAS,
Respondent.

ON APPEAL
CONCLUSIONS

Benjamin M. Cohen, Esq., Attorney for Appellant.
Rex A. Donnelly, 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 the intersection of Route #50 and the Ocean City Road in Upper Township, Cape May County.

Respondent contends the application was properly denied because the location of appellant's premises renders it socially undesirable to issue a license therefor.

Both Route #50 and the Ocean City Road are heavily travelled concrete highways. They meet at an acute angle, at the apex of which appellant's premises are located. In the vicinity is a grade. Respondent found as fact that the inherent danger resulting from this intersection would be greatly increased if the sale of alcoholic beverages were permitted at this spot.

The Secretary of the State Highway Commission, speaking for the State Highway Department in a letter addressed to respondent, in reference to appellant's application said:

"It is the feeling of the State Highway Department that the conditions as now existing at the intersection of State Highway Route 50 and the County Road leading to

Ocean City at Middletown are not satisfactory and the maintenance of any business at that point which would constitute a reason for the parking of any considerable number of cars or the lack of all possible care or caution in the driving of cars at that point would aggravate the situation.

"While, of course, the State Highway Department has no police powers and no authority in matters of this nature, we would be more than pleased if an unsatisfactory situation such as this might not be made worse."

Similarly, Acting Motor Vehicle Commissioner Magee wrote:

"In general, we are opposed to the issuance of a license to sell intoxicating liquor at a place where, in the judgment of a judicial official, a traffic hazard can reasonably be presumed to be created, that is likely to endanger the lives of our citizens."

The factual finding of respondent is fully supported by the evidence and the exhibits.

While there has been no accident at this intersection for a period of some seven years, nevertheless the magnet of a tavern at this apex may well attract the parking of cars on or parallel or near the two converging highways, with consequent congestion and narrowing of the traffic lane and increased dangers attendant upon the alighting and reloading of passengers pulling out of line, followed by the effort to pull out from a closely parked line into open traffic, often difficult under normal conditions and conceivably more so after sojourn at the oasis, all of which imperils life and limb as well as impedes the fast moving through traffic. An ounce of prevention here is worth pounds of cure. Parking grounds in the rear do not eliminate the dangers. The American public is usually in too much of a hurry to use them.

The situation here is complementary to that considered by the New Jersey Supreme Court in Garneau v. Eggers, 113 N.J.L. 245, where, in 1934, it upheld an ordinance of Jersey City making it unlawful for commercial vehicles to use the Pulaski Highway. The ordinance, when tested by the facts which existed in the particular locality, was sustained because it bore direct relationship to the public safety and was reasonable and not arbitrary. In the instant case, the effect of a liquor license in the particular locality would tend to have immediate and harmful effect transmitted directly to the two main highways which bound the premises sought to be licensed.

The general rights of taverns which cater primarily to transient trade using the speedways of New Jersey weigh lightly in the balance when the safety and the lives of the travelling public become of moment. In all such cases, strict construction will be the rule.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 5, 1935

3. SPECIAL PERMITS - NOT ISSUABLE IN RESPECT TO TERRITORY THAT IS VOTED DRY

June 4, 1935

Re: Army Depot

On request for a Special Permit to sell alcoholic beverages at an outing to be conducted by the Army Depot at the picnic grounds in Upper Deerfield adjacent to Bridgeton, N. J., it appeared that last November Upper Deerfield adopted a referendum in accordance with Section 43 of the Control Act, prohibiting the sale of alcoholic beverages in that municipality. It was represented that the authorities of Upper Deerfield were willing to give their consent to the sale of such beverages, subject to issuance of a permit by the State Commissioner but that they were not certain whether they had the power to so consent.

The Commissioner ruled: "The referendum makes it unlawful for the local issuing authority to issue any consumption or distribution licenses in respect to such municipality. It is true that the statute does not bind me in so many terms, but the clear intention of the electorate as expressed at the polls is that retail sales are not to take place in that municipality and hence, under no circumstances, will I do in respect to a consumption permit what is denied to the local authorities even if they do consent."

4. REGULATIONS GOVERNING IDENTIFICATION OF STATE LICENSEES AND THEIR EMPLOYEES - INTERPRETATIONS

June 5, 1935

Gentlemen:

I respectfully request that the rule requiring all employees of licensees to furnish questionnaires be further modified by exempting female factory employees.

While I fully understand the objects of the rule, I am of the personal opinion that no gain will be achieved to warrant the substantial work involved in the procurement, filing, recording and examination of the questionnaires of such employees, practically 100% of whom in this industry are classed as "unskilled".

For example, take the case of Hirman Walker & Sons (New Jersey) Inc. The actual manufacturing, blending, etc. are handled by men only. The girls employed in the factory (about 150) are engaged solely in the bottling room, where their job is to attend to the labelling and sealing of the bottles and affixing revenue stamps. The turn-over in this type of help is constant, not only with this licensee but with others in the same field, and the extra routine entailed by your existing requirement, I am sure, will prove a great burden to your office as well as to the various licensees without compensating advantages.

Permit me to suggest a modification of the rule so as to exclude therefrom female factory employees who do not occupy executive positions and who are not stockholders, officers or directors of a licensee.

Yours very truly,
MORRIS HENRY FRANK

June 6, 1935

Steckler, Frank & Steckler, Esqs.,
New York, N. Y.

Gentlemen: Att: Morris Henry Frank, Esq.

I have your letter of June 5th.

As was stated by the Commissioner in Bulletin 77, Item 11, the rules governing identification of State licensees and their employees must receive a common sense interpretation and application in order to effectuate their purpose without undue inconvenience to those affected. I agree that the dangers involved in the exemption of girls employed in labeling and sealing of bottles and affixing revenue stamps will not substantially interfere with the objects of the rules.

Accordingly, the following additional interpretation of the rules is announced by the Commissioner.

Questionnaires need not be filed by female employees who are not stockholders, officers or directors and who do not hold executive positions or have any voice in the conduct of the business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

NLJ:HOK

5. MORAL TURPITUDE - WHAT CONSTITUTES - BRIBE OF JUROR

May 29, 1935

Dear Commissioner:

We represent the Township of Hillside and would like to have your opinion concerning a Tavern owner who has received a liquor license from the Township, which license is soon to expire.

The licensee has been recently indicted and convicted of attempting to bribe a juror in a civil action and we should like to know whether under the Laws of 1934, Chapter 194, Section 22, we would be correct in refusing to issue a license to him on the ground that he was convicted of a crime involving moral turpitude.

Very truly yours,
WHITTEMORE & McLEAN

June 1, 1935

Whittemore & McLean,
Elizabeth, N. J.

Gentlemen:

I have yours of the 29th and am of clear opinion that the offence of attempting to bribe a juor involves moral turpitude.

Hence you will be justified in refusing to grant him a license at renewal.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner

DFB:L

6. LICENSEES - SECOND COMMISSION OF VIOLATION OF ALCOHOLIC BEVERAGE CONTROL ACT PERMANENTLY DISQUALIFIES LICENSEE

June 5, 1935

Dear Commissioner Burnett:

We have several instances in this City where during the past year licensees have been convicted and fined in the local police court for the sale of or the possession of untaxed liquor. In most instances their licenses were suspended by the Board of Commissioners for periods ranging from ten days to two weeks.

A good portion of these licensees are now applying for the renewal of their licenses and the Board of Commissioners requested me to ascertain from you whether or not the licenses can be renewed.

Yours very truly,
PHILIP P. COSTELLO,
City Clerk

June 6, 1935

Philip P. Costello, City Clerk,
Perth Amboy, N. J.

Dear Mr. Costello:

I welcome your inquiry of the 5th.

If a licensee has been convicted once for violation of the Alcoholic Beverage Control Act, his license may be renewed for it may happen that the Board of Commissioners may think the licensee has learned his lesson and will strictly obey hereafter. If so, they may renew the license and if this is done in good faith and honest discretion, I shall uphold their action. On the other hand, they may deem that having violated the Act, he is not worthy and well qualified and on that ground deny the renewal. If so, their action will be upheld when done in similar good faith and discretion. In short, the issuing authority may exercise its sound discretion where there is but one conviction.

If, however, a licensee has been twice convicted for such violation, that of itself bars and blacklists him for all time and there is no power in the Board of Commissioners to grant any license. This is because the Control Act, Section 22, expressly provides "No license of any class shall be issued....to any person....who has committed two or more violations of this act."

The licensees mentioned in your letter have one strike on them already. One more and they are OUT.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

DFB:G-

7. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - EXTENSION UNTIL JUNE 30, 1935

June 7, 1935

NOTICE

Rules Governing Signs and Other Advertising Matter promulgated by the Commissioner on April 9, 1935 take effect, under their terms, on June 9th. Many breweries and sign manufacturers have advised that although they have been removing exterior signs proscribed by Rule 2 of the regulations as quickly as possible, they find that they cannot complete the work before the effective date of the regulations.

Accordingly, the Commissioner has extended the effective date of Rule 2 until June 30, 1935. No further extensions will be granted.

D. FREDERICK BURNETT,
Commissioner

8. REVOCATION PROCEEDINGS - GEORGE RIECK - FRANKLIN TOWNSHIP, SOMERSET COUNTY

IN THE MATTER OF REVOCATION PROCEEDINGS AGAINST GEORGE RIECK, the holder of Plenary Retail Consumption License C-5 issued by the Township Committee of Franklin Township (Somerset County), for premises known as Kingston Hotel, Lincoln Highway.	CONCLUSIONS AND ORDER

Frederick H. Dahmer, Esq., Attorney for George Rieck.
Jerome B. McKenna, Esq., Attorney for the Department.

BY THE COMMISSIONER:

A copy of charges preferred against George Rieck, holder of plenary retail consumption license C-5 issued by the Township Committee of Franklin Township (Somerset County) for premises located on Lincoln Highway and known as Kingston Hotel, was served upon the licensee who was ordered to show cause why his license should not be suspended or revoked.

At the hearing, proof of sales of alcoholic beverages to minors was overwhelming and conclusive. The only excuse - so-called - offered was that it is difficult for a licensee to know if a customer is over or under twenty-one years of age.

Section 77 of the Control Act provides:

> "Anyone who sells any alcoholic beverages to a minor shall be guilty of a misdemeanor and punished accordingly."

This Section makes a sale to a minor in and of itself, regardless of knowledge on the part of the seller of the age of the buyer, a crime. The seller acts at his peril. It is his duty

to ascertain whether in fact the buyer is a minor. The reasonableness of his belief that the buyer is not a minor is no defense, if in fact he is a minor.

Admittedly, there is no definite yardstick by which a licensee can make certain that his patrons are not minors. Each case must rest on its own bottom. There is only one safe rule - in case of doubt, don't sell. Nobody can be hurt by sales he doesn't make.

In the instant case, I am convinced that the licensee knew at the time of the sales in question that the boys were under age. He had been arrested for the very offense in October last year, but the case was dismissed in the police court. That warning went unheeded. He knew of the close proximity of Princeton University, whence the majority of his patrons came. This of itself would put on guard an honest licensee that many, if not most of the boys coming from Princeton would naturally be under the age of 21 years. The sales in question were made to boys ranging from 18 to 20 years and included two freshmen from the University. The extremely youthful appearance of all the boys who testified that sales were made to them must have made it apparent to anyone that they were minors. There are none so blind as those who won't see.

I find the licensee, George Rieck, guilty on eight counts charging him with sales of alcoholic beverages to minors.

Notices were duly sent to the owner of record and the mortgagees of record of the licensed premises. No one appeared representing either the record owner or the record mortgagees. At the hearing, however, counsel for the licensee stated that the actual owner of the premises is a holding corporation other than the record owner and that it had received no notice of the hearing. Pending investigation in this connection, decision is reserved on the question of whether the licensed premises should be declared ineligible to become the subject of a license under the Control Act for a period not in excess of two years.

It is, on this 7th day of June, 1935,

ORDERED, that plenary retail consumption license, C-5, issued by the Township of Franklin (Somerset County) to George Rieck for premises known as Kingston Hotel, Lincoln Highway, Franklin Township (Somerset County) is hereby revoked.

IT IS FURTHER ORDERED that a transcript of these proceedings be forwarded forthwith to Hon. Clarkson A. Cranmer, Prosecutor of the Pleas of Somerset County.

D. FREDERICK BURNETT,
Commissioner

9. RETAIL LICENSEES - BOTTLING AND REBOTTLING PROHIBITED.

My dear Commissioner:

The local Board is very desirous of cooperating with you in the enforcement of the Act, in particular with respect to Sections 48 and 78 that pertain to bottling. With this end

in view therefore, I would appreciate word from you as to whether or not there has been any ruling by your Department on these two sections of the Act, or any other sections of the Act with respect to the sale by Plenary Retail Consumption Licensees of alcoholic beverages in bottles or other open receptacles, where the beverage originally was drawn from a barrel kept in the cellar of the licensed premises, and was thereafter, through the medium of the bottle or other open receptacle, sold over the bar.

Very truly yours,
RAYMOND SCHROEDER,
Assistant Corporation Counsel

RS:CM

June 6, 1935

Raymond Schroeder, Esq.,
Assistant Corporation Counsel,
Newark, N. J.

Dear Mr. Schroeder:

The practice you describe is illegal.

Section 78 prohibits a retail licensee from bottling alcoholic beverages for sale or resale.

In order to have the picture complete, however, I call your attention to Bulletin 53, Item 11, where I ruled:

"If a retail licensee were to bottle wine drawn from barrels and sell such bottled wine, he would not only be exceeding the terms of his license, but would also be violating section 78, which prohibits a retail licensee from bottling alcoholic beverages for sale or resale."

Also to Bulletin 27, Item 2, where I ruled:

"plenary retail consumption licensees may sell draught beer for consumption off the licensed premises by the pail or in metal, paper or similar cartons or containers."

Also to Bulletin 60, Item 6, where I ruled with reference to the use of decanters by licensed hotels:

"The salutary rule concerning rebottling must not be weakened or indirectly frittered away. Hence, if the decanter has a stopper or other top of any kind, it is a form of rebottling and therefore prohibited.

"On the other hand, if the decanter is of the open type, without stopper or top of any kind, and is used solely for the purpose of facilitating retail service, it is in substance a mere form of open container. The holder of a consumption license has the right to sell for on-premises consumption alcoholic beverages 'by the glass or other open receptacle'. It is necessary to pour the drink into something to send it to room or table. The open decanter may be used for this purpose as well as any other open glass or container."

Also note the case of Braunstein vs. Bridgeton, Bulletin

63, Item 9, where revocation of a plenary retail consumption license was sustained on appeal because the evidence reasonably sustained the finding that the licensee had violated Section 78.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

DFB:G-

10. LICENSED PREMISES - IN ABSENCE OF RESTRICTION IN LICENSE AND OF MUNICIPAL REGULATION PLENARY RETAIL CONSUMPTION LICENSEES MAY SELL ON LICENSED PREMISES OUTSIDE OF THE BUILDING PROPER

May 25, 1935

Dear Mr. Burnett:

We would respectfully request that you be good enough to give us a ruling on the following matter:

Berkeley-Carteret Hotel, Inc., the corporation conducting the Berkeley-Carteret Hotel at Asbury Park, New Jersey, has a plenary retail consumption license issued by the City of Asbury Park under date of July 3, 1934. We enclose a copy of that license herewith.

Thus far, the sale of liquor has been confined to the bar rooms within the hotel building, the dining rooms and other places within the building.

It is now proposed to place some tables and chairs outside of the building proper and along the line of the windows in the present Berkeley Bar. These tables and chairs will all be within the private property lines of the hotel company and will not in any way encroach upon any public highway and will be marked off from the rest of the grounds by a line of hedge or flower boxes.

The authorities at Asbury Park have stated that they have no objection to what the hotel company is proposing to do in this connection and we would, as stated, appreciate your ruling as to whether liquor may be sold at these tablies under the authority of the license of which we enclose a copy.

Respectfully yours,
MC CARTER & ENGLISH

June 8, 1935

McCarter & English,
Newark, N. J.

Gentlemen: Re: Berkeley-Carteret Hotel, Inc.

I have your letter of May 25th. The copy of your licens describes the licensed premises as "Sunset Avenue and Kingsley Street". There is no restrictive condition that the bar or bars shall be at any particular place. The license is to sell generally on the licensed premises.

Hence, the answer is in the affirmative so far as the State Law is concerned.

This ruling is subject to all local municipal regulations now or subsequently in effect, enacted pursuant to Section 37 of the Act, providing the approval of the State Commissioner is first obtained.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

DFB:G-

11. WINE PERMITS - HOME CONSUMPTION - GIFTS

Dear Mr. Burnett:

The following question has come to me for an answer: Wine that is made at home and for home consumption - may the maker, after securing his $1.00 permit, be permitted to serve wine to his guests or friends in his own home without making himself liable for a fine from your department?

Very truly yours,
HARRY H. SMITH,
Acting Clerk.

June 8, 1935

Harry H. Smith, Acting Clerk,
Washington, N. J.

Dear Mr. Smith:

The answer is in the affirmative. Having complied with the law, the maker may serve his guests and friends as freely as he would food - always providing that it is a bona fide out-and-out gift. Under no circumstances may he sell such wine.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

DFB:G-

12. 200 FEET RULE - CHURCH - MEANS THE PLACE OF WORSHIP ITSELF

Dear Commissioner Burnett:

An applicant has made application to the Town of Dover for a plenary retail consumption license. The proposed premises are within 200 feet of a house which is used as a residence home by sisters of charity. These sisters teach in the Catholic school in Dover. I was wondering whether under the circumstances, this residence would be regarded as a church or place or worship. I would appreciate your ruling on this as soon as possible.

Yours very truly,
S. C. MEYERSON,
Town Counsel

June 8, 1935

Samuel C. Meyerson, Esq.,
Dover, N. J.

Dear Mr. Meyerson:

The statute, Section 76, speaks of a church. That

does not mean property owned by a church or affiliated with a church. It means the place of worship itself. Hence, the residence of the Sisters does not come within Section 76.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

DFB:G-

13. BARKEEPERS - ELIGIBILITY - MORAL TURPITUDE

MORAL TURPITUDE - WHAT CONSTITUTES - ROBBERY

June 8, 1935

Dear Sir: Re: Blank

Section 23 of the Control Act provides that -

"No person who would fail to qualify as a licensee under this act shall be knowingly employed by or connected in any business capacity whatsoever with the licensee;"

The question of whether you may be employed by a licensee will therefore depend upon whether you are personally qualified to receive a license.

Section 22 of the Act provides that -

"No license of any class shall be issued to * * * any person who has been convicted of a crime involving moral turpitude * * *."

The guiding principle in determining what constitutes moral turpitude may be stated as follows: Is the conviction of the crime more than an adjudication that some rule had been violated or something done which was forbidden, or, on the other hand, should the conviction make the defendant feel ashamed for having done something intrinsically wrong? As said by the Commissioner in Bulletin 15, Item 5:

"The facts are to be analyzed to see if devoid of hypocrisy, fanaticism, and hard-shell prejudice, one should or should not feel a sense of shame because of the act for which he was convicted."

Conviction of the crime of robbery constitutes a conviction of a crime involving moral turpitude. If such conviction does not bring a sense of shame, it ought to.

In view of the foregoing, I am sorry to say that you are not eligible to receive a license. You may not therefore be employed in any capacity whatsoever by a licensee. The statutory prohibition enacted by the Legislature is absolute and it is not within my power to permit you to work when the statute says that you may not.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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14. WINE PERMITS- HOME CONSUMPTION - REFUND UPON DENIAL OF APPLICATION

June 8, 1935

Section 75A of the Alcoholic Beverage Control Act (P.L. 1934, C. 237) authorizes the Commissioner, subject to rules and regulations, to issue special permits for the manufacture within homes of wines in quantities of not more than two hundred (200) gallons for personal consumption only. The fee for such special permits is one ($1.00) dollar.

If the application for such permit is denied the fee, less proper service charges to be determined by the Commissioner, will be returned to the applicant.

15. BONDS - TAX BONDS - NO OFFICIAL LIST OR FAVORITE COMPANIES

Rumors have reached the Commissioner of Alcoholic Beverage Control that unnamed insurance agents have been representing themselves to applicants for State licenses as recommended by the Commissioner to write tax bonds.

All such representations are wholly false!

The Commissioner has never so recommended any agent, directly or indirectly, nor indicated in any manner any preference in favor of any particular agent or company.

Members of this Department are forbidden to write any such bonds, solicit any such business, or recommend any surety company or agent, directly or indirectly, to any such applicant. Violation of this prohibition will result in the immediate dismissal of the violator from the staff.

The requirement that applicants for State licenses post bonds is statutory. The sufficiency of the bonds is passed upon by the State Tax Commissioner. Any bond approved by him, regardless of the company writing the bond or the agent through whom it is written, is, and always has been, acceptable to this Department.

D. FREDERICK BURNETT,
Commissioner

Dated: June 10, 1935

16. LICENSE FEES - DEPOSIT - MAY BE MADE IN MUNICIPAL SCRIP

June 8th, 1935

Dear Commissioner Burnett:

A number of applicants for Alcoholic Beverage Licenses have requested the City to accept Scrip either in part or full payment of their license fee.

For your information, the City of Asbury Park is issuing Scrip and I personally feel that the City should accept Scrip either in part or full payment of an Alcoholic Beverage License.

In as much as the funds collected for Alcoholic Beverage Licenses go directly to a municipality, it would seem to me that the practice would be fair. In addition to this, if the City cannot accept Scrip on certain obligations of its citizens,

the value of our Scrip is greatly reduced and it will not circulate to any great extent.

Yours very truly,
ROLAND H. LOOG,
Acting City Manager

RHL:MV

June 10, 1935

Roland H. Loog, Acting City Manager,
Asbury Park, N. J.

Dear Mr. Loog:

I have yours of the 8th.

The Control Act, Section 22, provides that "a deposit of the full amount of the required license fee" must accompany the license application.

The Scrip Act, P.L.1933, c. 86, p. 183, provides that scrip "may be accepted from any holder or bearer thereof by the municipality....issuing the same in payment and discharge of taxes, assessments and other charges, which may be due to the municipality....issuing the same".

While a license fee is neither a tax nor an assessment and is not, strictly speaking, something which is "due to the municipality", and hence, applying a strict construction is not an "other charge" of the same nature as the specific words which precede this omnibus or catch-all generality, nevertheless it is within the broad intendment of the Scrip Act. Its objective is to make municipal scrip legal tender so far as the municipality issuing the same is concerned. To honor it for every purpose within the fair meaning of the Act creates and maintains a market for it, and thereby fortifies municipal credit. To accept the scrip extinguishes a municipal obligation to the same extent as if the license fee were paid in money. The fact that the scrip may at the time be selling at a discount is of no moment. If it were not to be accepted in discharge of license fees, it would sell still lower. To accept it, tends towards restoration of municipal credit with direct benefit to the municipality in the way of lower interest charges on its own new obligations.

I therefore rule that municipal retail license fees under the Alcoholic Beverage Act come within the fair meaning of the generic term "and other charges" used in the Scrip Act, and hence may be paid to a municipality in scrip issued by that municipality unless the terms of such scrip otherwise expressly forbid.

It is further ruled that whenever scrip is accepted in lieu of money as a payment of an alcoholic beverage license that proper notation shall be made of the fact, to the end that if the application is rejected or for any reason whatsoever the application is denied, the statutory 90% refund of the deposit shall be paid and refunded to the applicant in scrip of the same or similar kind or tenor as that deposited.

Very truly yours,

Frederick Burnett

Commissioner

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