

COMMISSIONER BURNETT  
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 81

June 26, 1935

1. NEW LEGISLATION - SUPPLEMENT TO THE CONTROL ACT

Senate Bill 291 was approved by Governor Hoffman on June 8, 1935, and thereby became Chapter 256 of the Laws of 1935.

The Rules and Regulations Governing Solicitors' Permits are promulgated today pursuant to Chapter 256 of the Laws of 1935, the gist of which is:

1. "No individual shall offer for sale or solicit any order in the State for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without this State, unless such person shall have a solicitor's permit issued by the commissioner hereunder."

2. "The commissioner is empowered to issue, subject to rules and regulations, solicitor's permits which shall set forth such facts as may be prescribed by the commissioner."

3. "Any person who violates any provisions of this act shall be guilty of a misdemeanor and punished by", etc.

The law was not designed as a revenue but as a measure to control an important phase of the liquor traffic. Hence, a solicitor may obtain one permit to represent several "lines" or "houses".

Solicitors' Permits are to be issued in respect to the period beginning July 1, 1935. Until that time permits are not necessary. The rules and regulations are effective immediately.

Rule 3 incorporates previous regulations requiring photographing and fingerprinting.

Rule 4 will not only bring in additional revenue by way of license fees to the State, but also will prevent the unfair competition which presently exists by persons not licensed under the New Jersey laws with our own licensees.

Rule 8, it is hoped, will go a long way to break up unholy alliances with the alcoholic beverage industry by those charged with the enforcement of the laws governing the same.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 22, 1935

2. RULES AND REGULATIONS GOVERNING SOLICITORS' PERMITS

1. No individual shall offer for sale or solicit any order in this State for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without this State, unless such person has a Solicitor's Permit. This, however, does not prohibit such offer or solicitation by any individual licensee himself or by the individual members of a licensed partnership or

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by any employee of any retail licensee in connection with and in the course of the licensed business. It does prohibit such offer or solicitation by individual officers, agents or employees of corporate licensees.

2. Solicitors' Permits authorize the permittee to make offers for such sales and solicit orders for such sales of alcoholic beverages, in accordance with "An Act concerning alcoholic beverages" (P.L. 1933, C. 436), as amended and supplemented, and subject to these Rules and Regulations, on behalf of the vendor or vendors represented by the solicitor and designated in the permit. The fee for such permit is Five Dollars (\$5.00) per annum. All such permits expire on the June 30th following their issuance unless otherwise specified therein.

3. Every applicant for a Solicitor's Permit shall comply with the Regulations Governing Identification of State Licensees and Their Employees.

4. Solicitors' Permits may be issued only to agents or employees of duly licensed New Jersey manufacturers or wholesalers.

5. No holder of a Solicitor's Permit shall, in the State of New Jersey, offer for sale to or solicit any order for the purchase or sale of any alcoholic beverage

(a) from anyone not holding a New Jersey manufacturer's, wholesaler's or retailer's license, or

(b) otherwise than to the extent duly allowed and permitted by law and by the New Jersey license of his employer, or

(c) otherwise than to the extent duly allowed and permitted by law or by the New Jersey license of the person solicited,

nor shall any licensed New Jersey manufacturer, wholesaler or retailer allow, permit or suffer the holder of a Solicitor's Permit who is his agent or who is in his employ to do so.

6. No licensed New Jersey manufacturer, wholesaler or retailer shall allow, permit or suffer, in his behalf, any individual to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage whether such sale is to be made within or without the State, unless such person has a Solicitor's Permit.

7. No licensed New Jersey manufacturer, wholesaler or retailer shall place any order for the purchase of any alcoholic beverage or allow, permit or suffer any of his employees to place any order for the purchase of any alcoholic beverage, with any individual who does not hold a Solicitor's Permit.

8. No Solicitor's Permit may be issued to any member of a municipal governing body or municipal issuing authority or to any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever.

9. Each Solicitor's Permit covers only the employment designated therein and is not transferable as to employer or employee or employment.

10. Whenever any change shall occur in any of the facts set forth in the Application for Solicitor's Permit, the permittee shall file with the Commissioner a notice in writing of such change within ten (10) days after its occurrence.

11. Upon the termination of any employment for which a Solicitor's Permit has been granted, the permittee shall file with the Commissioner a notice in writing of such termination and shall surrender for cancellation to the Commissioner the permit covering such employment within ten (10) days after its occurrence.

12. The foregoing regulations are subject to amendment or supplement from time to time at the discretion of the Commissioner

13. Violation of any of the foregoing regulations shall be cause for revocation of the permit or the license or both. The statute requiring a Solicitor's Permit provides:

"3. Any person who violates any provisions of this act shall be guilty of a misdemeanor and punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred dollars (\$200.00), or imprisonment for not less than ten (10) days or not more than three (3) months or by both such fine and imprisonment in the discretion of the court."

D. FREDERICK BURNETT,  
Commissioner

Dated: June 22, 1935

3. MUNICIPAL ORDINANCES - EXTENSION OF LICENSE TO EXECUTOR UPON DEATH OF LICENSEE IS NOT AUTOMATIC BUT DISCRETIONARY

MUNICIPAL ORDINANCES - MAY PROHIBIT SALES TO ALL LAW ENFORCEMENT OFFICERS IN UNIFORM WHETHER EMPLOYED BY THE MUNICIPALITY OR NOT

June 11, 1935

Roland H. Loog, City Clerk,  
Asbury Park, N. J.

Dear Sir:

I have before me for consideration the proposed ordinance regulating, relating to and prescribing the terms, conditions and regulations for the sale and distribution of alcoholic beverages, which is intended to be introduced today.

Section 5 reads: "In case of the death of the licensee the license shall inure to the benefit of the executor or administrator of such deceased licensee unless such executor or administrator is individually disqualified from holding such a license or is not a proper person to be licensed.

It is true that Section 23 of the Act permits the issu-

ing authority to extend a license to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law. But the extension is merely permissive, and rests solely in the sound discretion of the issuing authority, and may be made only for a limited time not to exceed the term of the license. Your regulation makes the transfer automatic subject only to the executor or administrator being individually qualified and a proper person to be licensed. It is disapproved because contrary to the statute.

In response to your verbal request as to the propriety of a regulation prohibiting sales or service of alcoholic beverages by licensees to any law enforcement officer in uniform whether such officer is employed by Asbury Park or not: such a regulation will be approved. See re Cliffside Park, Bulletin 74, Item 1.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

4. APPLICATIONS TO STATE COMMISSIONER FOR MUNICIPAL RETAIL LICENSES -  
LICENSE FEES - RULES CONCERNING MUNICIPAL SCRIP AS PAYMENT

The Commissioner ruled in Re: Asbury Park, Bulletin 78, Item 16, that municipal license fees under the Alcoholic Beverage Control Act came within the contemplated scope of 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; further, that whenever scrip is accepted by a municipality in lieu of money as a payment for an alcoholic beverage license that proper notation should be made of the fact to the end that if the application is rejected or for any reason denied, the statutory ninety per cent refund shall be paid and refunded to the applicant in scrip of the same or similar kind or tenor as that deposited.

See also general instructions governing applications to the State Commissioner for municipal retail licenses, Bulletin 75, Item 13.

Accordingly, the following rules applicable in the case of applications for municipal retail licenses which, pursuant to Section 18A of the Act (P. L. 1934, c. 44), are required to be made directly to the State Commissioner, are hereby promulgated, effective immediately.

1. The municipal retail license fee required to accompany the application, when application for municipal retail license is made directly to the State Commissioner, may be paid in scrip issued by the municipality in which it is intended that the licensed premises be situated unless the terms of such scrip otherwise expressly forbid.

2. If the application is rejected or for any reason whatsoever is denied, the statutory refund of ninety per cent of the deposit shall be paid and refunded to the applicant in scrip of the same or similar kind or tenor as that deposited.

3. If the application is rejected or for any reason what-

soever is denied the statutory investigation fee of ten per cent of the deposit shall be paid and refunded to the municipality in scrip of the same or similar kind or tenor as that deposited.

4. If the application is granted and license issued, the license fee which is payable to the municipality shall be paid and refunded to the municipality in scrip of the same or similar kind or tenor as that deposited.

5. The additional fee of Ten Dollars which the Act requires shall be payable to the Commissioner and which must accompany all such applications shall be paid in cash, money order or certified check drawn to the order of D. Frederick Burnett, Commissioner. This fee may not be paid in scrip.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 11, 1935.

5. NEW LEGISLATION - AN AMENDMENT TO THE STILL SUPPLEMENT  
(P.L. 1934, C. 84, Supplementing P.L. 1933, C. 436)

Senate Bill 290 was approved by Governor Hoffman on June 8, 1935, and thereby became Chapter 255 of the Laws of 1935.

It is effective immediately.

This amendment repeats verbatim the original still supplement (P.L. 1934, C. 84, supplementing P.L. 1933, C. 436) with the following three exceptions which constitute the new matter.

(1) Section 4 is amended to read:

"4. If after such hearing the commissioner determines that the seized property constitutes such unlawful property he shall declare said property forfeited and may, in his discretion, order that the seized property, in whole or in part, be sold, destroyed or retained for the use of hospitals, and State, county and municipal institutions and that the building or premises in or on which such unlawful property was located when seized shall not be occupied or used for any purpose whatsoever for such period, not exceeding one year, as shall be fixed by the commissioner."

This enables the Commissioner to retain seized property for the use of hospitals and State, County and Municipal Institutions, instead of being confined as heretofore to retain such seized property for the benefit of State Institutions only. It thus broadens the purposes of such retention, so that hospitals and county and municipal institutions may share the benefit as well as State institutions.

(2) A new provision is added, being "4(a)."

It reads: "4(a). Any still not registered pursuant to this supplement in actual operation in the manufacture of illicit beverages or set up for such purpose, is hereby declared to be a nuisance per se and such still, parts thereof and all other property actually used in connection

therewith when seized may be destroyed at the direction of the commissioner at the time of the seizure or thereafter, without notice or hearing, anything herein to the contrary notwithstanding."

This Section confers power upon the Commissioner to destroy illicit stills without any hearing - similar to the power now exercised by the Federal authorities and thereby saving the State the expense of guarding and of storage pending hearing. Not only may the still itself be destroyed, but all other property actually used in connection therewith, when seized, may likewise be destroyed. It applies only to stills unregistered and in actual operation in the manufacture of illicit beverages or else set up for such purpose.

(3) Section 9 is amended to read:

"9. Any person who shall have in his possession or custody or under his control any still or distilling apparatus set up, dismantled, or in the process of construction, or parts thereof without having registered same in accordance with the provisions hereof shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) or imprisonment for not less than thirty days and not more than three years, or by both such fine and imprisonment, in the discretion of the court."

This Section increases the maximum penalties for illicit stills to three years and \$1,000 fine instead of six months and \$500 fine, which proved utterly inadequate in case of major violations. In the present state of public temper and empty treasury, bootlegging is felonious and not a mere misdemeanor. This bill puts much needed teeth into law enforcement and will enable our State courts effectively to punish violations of State laws as the Federal courts do in respect to Federal violations.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 24, 1935

6. APPELLATE DECISIONS - KARPF VS. SOMERS POINT

SAM KARPF CO., a corporation )  
of the State of New Jersey, )  
Appellant, )  
-vs- )  
COMMON COUNCIL OF THE CITY )  
OF SOMERS POINT (ATLANTIC )  
COUNTY), )  
Respondent. )  
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ON APPEAL  
CONCLUSIONS

Augustus S. Goetz, Esq. and Joseph A. Feder, Esq., Attorneys  
for Appellant.  
Enoch A. Higbee, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial on April 1st, 1935

of an application for a plenary retail consumption license for premises to be constructed on the south side of Ocean City Boulevard, on the Bay, at Somers Point.

Respondent's answer alleges that one of the reasons for denying the application is that there is no building now erected which can be the subject of a license.

Since the denial of appellant's application must be affirmed for the reasons hereinafter stated; it is unnecessary to consider whether a municipal issuing authority must, or may properly, refuse to issue a license where the proposed licensed premises have not yet been constructed, or whether, under Section 29 of the Control Act, a license should, or may, be issued upon condition that suitable premises be constructed. Cf. Warren St. Chapel v. Excise Commissioners, 56 N.J.L. 411; Winants v. Bayonne, 44 N.J.L. 114.

Respondent contends that the application was properly denied because the number of plenary retail consumption licenses which have been issued and are now outstanding in Somers Point is adequate to supply the needs of the community and of the transient trade therein.

At the time of the denial of the application no formal action had been taken by respondent to limit the number of licenses to be issued. On May 6th, however, a resolution was adopted by the Common Council, reading as follows:

"Be it resolved that Common Council of the City of Somers Point, N. J. issue no more Liquor Licenses to any one during the year of 1935 unless it be an established place of business that has held a previous license issued by the City of Somers Point, N.J."

This resolution was vetoed by the Mayor but repassed over the Mayor's veto on May 20th after this appeal was heard.

The fact that the resolution was not adopted until after appellant's application was denied and after the appeal was heard is immaterial. Franklin Stores Co. v. Elizabeth, Bulletin #61, Item #1; Krause v. Freehold, Bulletin #76, Item #8; Zdenek v. Freehold, Bulletin #76, Item #9. As was said in the Franklin Stores case:

"Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW."

This case must therefore be considered as if the resolution were in force and effect at the time appellant's application was denied.

While a municipal limitation of the number of licenses to be issued may be reviewed by the Commissioner on appeal, it

will not be upset on appeal unless clearly unreasonable either in its adoption or in its application to appellant. Ryman v. Branchburg, Bulletin #37, Item #18.

It is conceded that the existing licensed places are adequate to supply the needs of the resident population of Somers Point, consisting of approximately 2,000. It is argued, however, that the abnormally heavy flow of traffic through the City and its proximity to Ocean City, which has a summer population of 100,000 and is "dry", gives rise to a sufficient demand in Somers Point to justify the issuance of an additional license to the twenty which have already been issued. Four Councilmen testified at the hearing that these existing twenty places are adequate to supply the needs of the transient trade and that the issuance of an additional license would be socially undesirable. The President of the Common Council, called as a witness for appellant, based his reason for favoring issuance of the license upon the ground that he believed appellant would conduct a better class of place. None of the several witnesses testifying on behalf of appellant was of the opinion that public necessity or convenience affirmatively dictated the issuance of an additional license. Thus, all that is demonstrated is a mere difference of opinion with nothing to show that the resolution limiting the number of licenses was unreasonable. Kalisch v. Linden, Bulletin #71, Item #14; Voos v. Union, Bulletin #73, Item #1. Under such circumstances the Commissioner will not review respondent's exercise of an honest and reasonable discretion Sussex County Drug Company v. Newton, Bulletin #47, Item #3; Hanelt v. Haworth, Bulletin #57, Item #11; see Bunball v. Bernardsville, Bulletin #66, Item #9.

Appellant contends, however, that the exercise of the discretion of the majority of the City Council was not honest, but, on the contrary, was prejudiced due to their adverse economic interest arising from the fact that during the summer of 1934 four of the Councilmen were employed by licensees in Somers Point. A charge of this kind is most serious, not to be made lightly, and must be proved by clear and convincing evidence. Schulte Inc. v. Perth Amboy, Bulletin #58, Item #13. Admittedly the fact of prior employment by licensees did not disqualify the Councilmen as a matter of law to consider and pass upon applications for licenses. It is a present financial interest in a licensed business which operates as a disqualification and not a past employment. Cf. Re Asbury Park, Bulletin #39, Item #2; Re Loog, Bulletin #39, Item #3; Re Brundage, Bulletin #80, Item #7. Nor is there anything to show that the members of the Common Council who were heretofore employed by licensees were influenced in fact by their prior employment or that their determination and opinion were not honest and sincere. On the contrary, they each denied that they were subject to any such influence or that they considered the desires of their erstwhile employers in passing upon appellant's application. While the circumstances have led me to scrutinize the testimony of these four Councilmen with great care to see whether their opinion was honest and sincere, I find that appellant has not sustained the burden of proof on this issue.

It is therefore concluded that the limitation of licenses is reasonable and that the determination of respondent was not biased or prejudiced.

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 22, 1935

7. APPELLATE DECISIONS - REDFERN V. KEANSBURG

CHARLES REDFERN,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
	)	
MAYOR AND COUNCIL OF THE	)	
BOROUGH OF KEANSBURG (MONMOUTH	)	
COUNTY),	)	
	)	
Respondent	)	

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Ezra W. Karkus, Esq., Attorney for Appellant.

Howard W. Roberts, 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 #1 Carr Avenue, being the southwest corner of Carr Avenue and Beachway in the Borough of Keansburg.

Although the application was rejected on November 20th, 1934, no notice of rejection was ever served upon appellant and he did not actually learn of the denial of his application until March 5th, 1935. The notice and petition of appeal were filed within thirty days thereafter and therefore the appeal is within time. See Section 19 of the Control Act.

The application was originally rejected in November for the reason that respondent felt that appellant was merely a "front" for an undisclosed principal and that therefore the issuance of the license would be improper. See Pilla v. Trenton, Bulletin #30, Item #11; Kurpiewski v. Trenton, Bulletin #34, Item #6.

There is no evidence, however, to sustain this finding of the local issuing authority and indeed it is not even set up in respondent's answer to the petition of appeal as a reason for denial.

The only defense alleged is that the number of licenses now issued and outstanding in Keansburg, and particularly in the vicinity of appellant's premises, is adequate to supply the demands thereof, and the issuance of any additional licenses would be socially undesirable.

It is admitted that at the time of the denial of appellant's application this factor was not considered by respondent. The question of sufficiency of licenses was not raised until late in December, 1934, when, at a meeting of the Keansburg licensees with respondent, the licensees complained that due to the number of licenses which had been issued it was difficult for them to make a legitimate living, and requested that no further licenses be issued. No formal action was taken upon this request, however, until March 5th, 1935, at which time respondent adopted a resolution providing that all applications for plenary retail consumption licenses be laid over until the month of June, 1935, prior to the time of renewing all present licenses.

The first question raised under these facts is whether respondent's opinion, formed subsequently to the denial of appellant's application, can now be considered as a ground for affirming said denial.

In Franklin Stores Co. v. Elizabeth, Bulletin #61, Item #1, the Commissioner said:

"Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW."

See also Krause v. Freehold, Bulletin #76, Item #8; and Zdenek v. Freehold, Bulletin #76, Item #9, where this rule was applied on appeal from the denial of an application for a consumption license and the denial affirmed on the basis of a resolution adopted subsequently thereto.

It is concluded, therefore, that if in fact it is socially undesirable to issue an additional license in Keansburg or in the vicinity of appellant's premises, the action of respondent must be affirmed on this appeal.

Keansburg is a summer resort beach town with a resident population, according to the last census, of 2,190. During the summer season the population becomes much greater, the estimated summer population, including daily excursionists, being somewhere between 25,000 and 40,000. This figure, however, as in all summer resort towns, includes an extra large percentage of women and children.

There are 31 plenary retail consumption licenses now issued and outstanding in Keansburg. There are approximately 8 licensees within a block of appellant's premises. The Mayor and one of the Councilmen, the Recorder of Keansburg, and the Borough Manager of Keansburg all concurred in the opinion that a sufficient number of licenses had already been issued and that the issuance of any additional licenses would be socially undesirable. The one Councilman who was in favor of the issuance of the license based his opinion upon his desire to increase the municipal revenue derived from licenses and his disbelief in the efficacy of a numerical limitation of licenses from a control standpoint.

From the foregoing, it appears that a sufficient number of licenses has been issued in Keansburg, and particularly in the vicinity of appellant's premises. Under such circumstances the Commissioner will not order the issuance of an additional license therein. Bader v. Camden, Bulletin #44, Item #8; Sussex County Drug Co. v. Newton, Bulletin #47, Item #3; Furman v. Springfield, Bulletin #49, Item #6; Clement v. Loder, Bulletin #52, Item #5; Faccidomo v. Union Beach, Bulletin #55, Item #8; Hacnelt v.

Haworth, Bulletin #57, Item #11; Bunball v. Bernardsville, Bulletin #66, Item #9; Voos v. Union, Bulletin #73, Item #1.

The action of respondent is affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: June 22, 1935.

8. APPELLATE DECISIONS - HARTLIEB V. HILLSDALE

JOHN HARTLIEB, )  
Appellant, )  
-vs- )  
MAYOR AND COUNCIL OF THE )  
BOROUGH OF HILLSDALE (BERGEN )  
COUNTY), )  
Respondent )

ON APPEAL  
CONCLUSIONS

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Chandless, Weller & Selser, Esqs., by John Frank, Jr., Esq.,  
Attorneys for Appellant.

Mackay & Mackay, Esqs., by George W. Babcock, Esq.,  
Attorneys for Respondent.

Harry A. Sosnow, Esq., Attorney for Isidor Gersten, present  
Distribution Licensee.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for premises located at #118 $\frac{1}{2}$  Broadway, Hillsdale.

Respondent contends the application was properly denied by virtue of its resolution of July 24th, 1934 limiting the number of plenary retail distribution licenses to be issued in Hillsdale to one and the issuance of the allotted number.

Section 37 of the Control Act expressly authorizes municipal issuing authorities to limit the number of retail licenses to be issued. Although such a limitation is subject to appeal it will not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or in its application to appellant. Ryman v. Branchburg, Bulletin #37, Item #18.

Hillsdale is a residential community with a population of approximately 3,000. Under the resolution there have been six consumption licenses and one plenary retail distribution license

issued in the Borough. Several of these consumption licensees and the distribution licensee are in close proximity to appellant's premises. The Mayor of Hillsdale explained the policy of the issuing authority in the granting of licenses as follows:

"Well, the policy of the governing body was based entirely on the type of community in which we live; it is strictly residential; the liquor question was one we felt should be handled carefully; we have quite a number of churches; we decided that we would endeavor to handle that question as carefully as possible. The result was that when the applications for a license came up, the location in the Borough was considered very important, with the result today that the various establishments handling liquor are so well distributed that when you stand in Hillsdale you don't see any signs. We have no complaints from any of our citizens as to the way the liquor question was handled, absolutely no trouble, and from our experience and my own, the people of the Borough today appear to be well satisfied."

In Colonna v. Montclair, Bulletin #39, Item #8, a resolution limiting the number of licenses to be issued in the Town of Montclair, with a population of approximately 42,000, to twelve consumption licenses and ten distribution licenses was held to be reasonable. In the course of his opinion the Commissioner said:

"The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently serviced by another liquor store is difficult to sustain, especially in the case of a distribution license for off-premises consumption. For, with telephone and transportation facilities, such a store can properly service an area of much greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality. Its decision may be reversed if it fails in the ultimate test of public necessity and convenience. In the instant case, the appellant has failed to sustain the burden of proof. The action of the respondent Board is therefore affirmed."

Similarly, in Sussex County Drug Co. v. Newton, Bulletin #47, Item #3, the Commissioner affirmed the action of the local issuing authority in refusing to issue a plenary retail distribution license in a residential town where one such license had already been issued even though no numerical limitation had ever been formally adopted.

Respondent's limitation of the number of licenses to be issued and the denial of appellant's application thereunder was reasonable.

The action of respondent is affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: June 22, 1935.

9. MUNICIPAL RESOLUTIONS - PROHIBITION OF DANCING AND MUSIC -  
HEREIN OF THE USE OF THE RADIO

June 24, 1935

Mrs. Mary Hendricks,  
Clerk of Southampton Township,  
Vincentown, N. J.

Dear Madam:

I have your letter of June 18th asking if it would be lawful for Mr. Louis Brown to have a radio in his hall where it could be heard in the bar-room and for Mr. George Thomas, who has a nineteen room hotel and maintains his residence there, to have a radio in his residence which can be heard in the bar-room.

Neither the Alcoholic Beverage Control Act nor the rules and regulations of this Department prohibits radios in or from being heard in bar-rooms. However, your Township Committee's resolution of June 29, 1934, approved by the Commissioner in letter of even date, applies. Its Section 3 reads:

"BE IT FURTHER RESOLVED that it shall be unlawful to have any dance hall, dancing or music of any kind, nature or description connected with or as a part of any premises licensed to sell alcoholic beverages in accordance with the provisions of the aforesaid act, except it shall be lawful to operate a radio in any part of the premises other than the bar room;"

The concluding exception in Section 3 would permit Mr. Louis Brown to have a radio in his hall adjacent to the bar-room and Mr. George Thomas to have a radio in the part of the hotel he occupies as his residence even though the radios could be heard in the bar-rooms.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

## 10. LICENSED PREMISES - WHAT CONSTITUTES - AMUSEMENT PARKS

Re: Beisch

Honorable Sir:

In reference to inquiry made by our Inspector Mr. B.A. Mallon relative to the subject of how to fix license on an application that is made by an amusement park, who claim the main building and two stands in the part as their licensed premises. What we would like to know is, are these two stands, (sell beer only) and the main building to be considered their premises, that is if they declare and claim same at the time of signing their application or do they have to pay a separate license for the main building and the two stands or should we embody all three as they claim on one license.

Respectfully yours,  
WALTER BEISCH, Sec'y  
Local Board of Alcoholic Beverage  
Control

June 1, 1935

Walter Beisch, Secretary,  
Municipal Board of Alcoholic Beverage Control,  
North Bergen, Hudson Co., N.J.

Dear Sir:-

The application should contain a description in detail of the exact location of the premises, including grounds, floors and rooms where the alcoholic beverages are to be stored, sold and served. See Bulletin #72, Item #3, page #6. This will, in general, constitute the premises sought to be licensed. See Bulletin #35, Item #15. Section 23 of the Control Act provides that "a separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises".

Where the application describes separate buildings as the premises sought to be licensed, separate licenses will, in general, be necessary. This conclusion is not altered by the fact that the separate premises consist of independent stands operated at separate points within a large amusement park. Separate licenses, however, will not invariably be required on the sole ground that the premises sought to be licensed consist of several buildings. Situations may arise where it can reasonably be said that because of the adjacent location of the buildings and their operation as a single unit, they constitute one specified place of business within the meaning of the statute.

It is the duty of the issuing authority to determine, in the first instance, after considering all of the pertinent facts in the particular case presented whether a single license may be issued to an applicant where the premises sought to be licensed include several adjacent buildings operated as a single place of business.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By:  
Nathan L. Jacobs,  
Chief Deputy Commissioner  
and Counsel

NLJ:HOK

11. APPELLATE DECISIONS - CONNOLLY VS. MIDDLETOWN

MATTHEW J. CONNOLLY, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF MIDDLETOWN, )  
Respondent. )

ON APPEAL  
CONCLUSIONS

Dominic J. Hart, Esq., Attorney for Appellant  
Howard W. Roberts, 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 #1 Bray Avenue, East Keansburg, Township of Middletown.

Respondent contends that the application was properly denied because a sufficient number of plenary retail consumption licenses had been issued and are now outstanding in the vicinity of appellant's premises and the issuance of an additional license would be socially undesirable.

Appellant's premises are located in a section of Middletown known as East Keansburg which has a resident population of less than 1000. East Keansburg is a beach front resort and during the summer season the population is greatly increased, the estimated daily population over week-ends being between 6,000 and 10,000. As in all summer resorts, however, this summer population includes an extra large percentage of women and children. See Redfern vs. Keansburg, Bulletin #81, Item #7.

There are five plenary retail consumption licensees now operating in East Keansburg, one being on the same block and within 150 feet of appellant's premises. It is not contended that the existing licensed premises are inadequate to supply the needs of the residents but it is argued that the large summer population and transients renders it proper to issue an additional license to appellant.

The determination of the question as to the number of licensed premises which should be permitted in any given vicinity is a matter confined to the sound discretion of the issuing authority. Bader vs. Camden, Bulletin #44, Item #8; Sussex County Drug Co. vs. Newton, Bulletin #47, Item #3; Furman vs. Springfield, Bulletin #49, Item #6; Clement vs. Loder, Bulletin #52, Item #5; Faccidomo vs. Union Beach, Bulletin #55, Item #8; Battaglia vs. Glassboro, Bulletin #66, Item #4. The number of transients passing the premises sought to be licensed is one, but only one, of the factors to be considered by an issuing authority in reaching its decision. Furman vs. Springfield, *supra*; Botfan vs. Howell, Bulletin #64, Item #9; Voos vs. Union, Bulletin #73, Item #1. Two of the Township Committeemen testified at the hearing of the appeal that the Township Committee in passing upon the issuance of licenses for premises located in East Keansburg had considered the fact that they were dealing with a summer resort the population of which was subject to wide fluctuations and stated that in their opinions the five existing consumption places in East Keansburg were adequate in view of all the circumstances and that the issuance of an additional license would be socially undesirable. It was stipulated that the other three members of the Township Committee who were present at the hearing would testify to the same effect.

Appellant called several witnesses who merely stated that in their opinions the issuance of an additional license was not socially undesirable. Their testimony does not prove that the action of the Township Committee was unreasonable but merely demonstrates a difference of opinion on a question upon which reasonable men could differ. Kalish vs. Linden, Bulletin #71, Item #14. Under such circumstances the Commissioner will not reverse respondent's exercise of an honest and reasonable discretion. Voos vs. Union, *supra*; Karpf vs. Somers Point, Bulletin #81; Item #6; Redfern vs. Keansburg, Bulletin #81, Item #7.

The action of respondent is affirmed.

Dated: June 24, 1935.

D. FREDERICK BURNETT,  
Commissioner

12. APPELLATE DECISIONS - BOWLBYVILLE VS. RANDOLPH

BOWLBYVILLE BEER GARDEN, INC., )  
Appellant, )

-vs-

TOWNSHIP COMMITTEE OF TOWNSHIP )  
OF RANDOLPH (MORRIS COUNTY), )  
Respondent )

ON APPEAL  
CONCLUSIONS

George M. Passmonick, Esq., Attorney for Appellant.  
Morris H. Saltz, 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 on Garrison Avenue, Bowlbyville, Randolph Township.

Respondent contends that the application was properly denied because the premises sought to be licensed are located in a residential neighborhood and the issuance of a license therein is socially undesirable.

It has been held that a municipal issuing authority may properly refuse to issue a license for premises located in a residential neighborhood. Vannozzi vs. Trenton, Bulletin #35, Item #7; Apgar vs. Tewksbury, Bulletin #66, Item #2; Hickey vs. Lopatcong, Bulletin #68, Item #1; Hackman vs. Greenwich, Bulletin #71, Item #13.

The Bowlbyville section of Randolph Township is a residential community with a population of approximately 500. It has only two general stores which service the immediate demands of the local residents. Appellant's premises consist of a private dwelling house which he intends to alter if successful on this appeal. The Chairman of the Township Committee testified that in view of the residential character of the community the Township Committee was of the opinion that no consumption license should be issued therein. The only license issued in Bowlbyville is a plenary retail distribution license. This class of license is obviously different from the license applied for by appellant and does not give rise to the situation attempted to be prevented by respondent's laudable policy of prohibiting saloons in the midst of a residential community.

Since the action of respondent must be sustained for the reasons hereinbefore stated it is unnecessary to consider respondent's second contention that the person principally interested in appellant corporation is a non-resident who, by means of a corporate mechanism, is attempting to obtain a retail license in New Jersey in evasion of the statutory requirement of Section 22 that individuals applying for retail licenses must be residents of New Jersey for five years continuously immediately preceding the filing of the application. In this connection it may be noted that the Legislature has recently enacted a law providing that no retail license shall be issued to any corporation, except for premises operated as a bona fide hotel, unless each owner, directly or indirectly, of more than ten per centum (10%) of its stock qualifies in all respects as an individual applicant.

P. L. 1935, c. 254.

The action of respondent is affirmed.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 24, 1935

13.

RULES GOVERNING APPEALS

1. All appeals to the Commissioner shall be by a notice of appeal addressed to D. Frederick Burnett, Commissioner, 744 Broad Street, Newark, N. J., accompanied by a petition of appeal, setting forth the subject matter of the appeal, the action of the issuing authority, the relief sought and the grounds therefor.
2. The appellant shall first serve a copy of the notice and petition of appeal upon the respondent issuing authority and where the action appealed from is the granting or transfer of a license or the refusal to revoke or suspend a license, a copy shall also be served upon the licensee. The notice and petition of appeal together with an acknowledgment or affidavit of service, shall be filed with the Commissioner forthwith.
3. Appeals from the issuance of a license and from the granting or denial of an application for a transfer of license must be taken within thirty (30) days from the date of the action appealed from; all other appeals must be taken within thirty (30) days after the service or mailing of notice by the municipal issuing authority of the action appealed from.
4. Within five days after service of the notice and petition of appeal, each respondent shall file an answer with the Commissioner and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action.
5. Upon the filing of the notice and petition of appeal, at least five days notice of the time and place fixed by the Commissioner for the hearing of the appeal shall be given to the appellant, the respondent issuing authority, and where the action appealed from is the granting or transfer of a license or the refusal to revoke or suspend a license, to the licensee.
6. All appeals shall be heard de novo and the parties may introduce oral testimony and documentary evidence, but the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed, shall rest with the appellant.
7. All appeals shall be heard at the Department of Alcoholic Beverage Control, Room #812, #744 Broad Street, Newark, N.J. and shall be open to the public, unless otherwise directed by the Commissioner.
8. Where none of the material facts is disputed, or where there is available a stenographic transcript of the proceedings before the issuing authority, the parties may agree to present the appeal upon an agreed statement of facts or upon such sten-

ographic transcript. Subject to the approval of the Commissioner, the agreed statement of facts or the stenographic transcript may be filed with the Commissioner at any time prior to the time fixed for the hearing of the appeal, in lieu of a hearing of the appeal.

9. Subpoenas and subpoenas duces tecum, signed by the Commissioner, for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request to the Commissioner.

10. The failure of the appellant to appear at the time and place designated for the hearing of an appeal, shall be cause for the dismissal of the appeal, and upon the failure of the respondent to appear at such time and place, the Commissioner may permit the appellant to proceed ex parte.

11. An appeal from a suspension or revocation of a license shall act as a stay of such suspension or revocation pending the determination thereof unless the Commissioner shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the Commissioner.

12. Upon appeal from the denial of an application for renewal of a license, the Commissioner may, in his discretion, upon application therefor, by verified petition setting forth in detail the grounds for the application, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the term of the license pending the return of the order to show cause. If it shall appear upon the return of the order to show cause that the action of the respondent issuing authority is prima facie erroneous and that irreparable injury to the appellant would otherwise result, the Commissioner may, subject to such conditions as he may impose, order that the term of the license be extended pending a final determination of the appeal.

13. The determination of an appeal shall be by a written opinion setting forth the conclusions of the Commissioner and the reasons therefor, and copies of the opinion shall be mailed forthwith to the parties to the appeal.

14. The rules herein contained shall be considered as general rules governing the conduct of appeals, and since they are designed to facilitate the hearing of appeals and advance justice, they may be relaxed or dispensed with by the Commissioner in any case where a strict adherence to them will result in injustice.

15. These rules are effective immediately and supersede previous rules governing appeals dated May 4, 1934 and set forth in Bulletin 26, Item 4.

D. FREDERICK BURNETT,  
Commissioner

Dated: June 25, 1935.

14. BULLETIN ITEMS - CERTAIN ITEMS SUPERSEDED

The Rules Governing Appeals dated May 4, 1934 and set forth in Bulletin 26, Item 4, are superseded by the Rules dated June 25, 1935 and set forth in Bulletin 81, Item 13.

15. APPELLATE DECISIONS - KARPf VS. WAY

SAM KARPf CO.,	)	
Appellant,	)	
-vs-	)	
HONORABLE PALMER M. WAY,	)	ON APPEAL
JUDGE OF THE CAPE MAY COUNTY	)	CONCLUSIONS
COURT OF COMMON PLEAS,	)	
Respondent	)	

Augustus S. Goetz, Esq. and Joseph A. Feder, Esq., Attorneys for Appellant.  
Rex A. Donnelly, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for premises located at #3501 Pacific Avenue, Wildwood.

Respondent contends that the application was improper in form because - -

(1) It did not contain the street address of the officers of appellant corporation, but merely the city in which they resided;

(2) Only the first part of question #18 of the application was answered;

(3) Question #21 was not answered at all.

None of these irregularities is of sufficient importance to preclude a consideration and determination of the case on the merits.

The application does not specifically ask for the street addresses of the officers and there is nothing to indicate that the omission thereof was wilful.

The first part of question #18 inquires whether the applicant "ever applied for a license in New Jersey to sell or distribute 3.2 beverages." The answer to this question was "No." The remaining parts of question #18 need be answered only when the first answer is "Yes." Hence in the instant case there was no necessity for such answers.

Question #21 reads as follows:

"21. Does the individual signing this application on behalf of said Corporation know, or have any reason whatsoever to believe or suspect that any of the officers or directors of said corporation, or any holder, directly or indirectly by any device or subterfuge whatsoever, of ten (10) percentum or more in beneficial interest of the capital stock of said corporation would fail to qualify as an individual applicant for the license hereby applied for in any respect except as to residence and age? If 'Yes,' state who would or possibly might so fail to qualify."

The testimony is that the failure to answer this question was inadvertent and there is nothing to indicate otherwise. The point was not raised at the hearing before respondent. I do not deem it substantial.

Respondent contends that the application was properly denied because there is a sufficient number of licensed places now existing in the vicinity of the premises sought to be licensed adequately to supply the demands thereof. It is frankly admitted, however, that after the denial of appellant's application two additional consumption licenses were issued for premises in the same vicinity, one being approximately but 150 feet away from appellant's premises. While it is proper to refuse to issue a license for premises located in a vicinity already adequately provided for, nevertheless where the respondent subsequently issues additional licenses in the same vicinity, the contention that the issuance of additional licenses is socially undesirable falls of its own weight.

Respondent also alleges in its answer that - -

"Sam Karpf is the principal stockholder of the applicant. He is a large judgment debtor. The corporate title is a cloak to meet the requirements of the alcoholic beverage act. The Issuing Authority looked to the substance rather than the form to prevent a fraud practiced upon it."

The appellant was incorporated March 18, 1931. Unless Mr. Karpf is gifted with singular clairvoyance, he could hardly have formed the appellant corporation as a cloak to evade the requirements of the Alcoholic Beverage Act which was enacted two and one half years later.

Respondent finally contends that the application was properly denied because appellant conducts or intends to conduct a chain of retail liquor stores throughout the State and that the issuance of a license for a "chain store" is socially undesirable.

Section 6 of the Control Act as recently amended (P.L.1935 c. 257) provides that in all counties of the sixth class the Judge of the Court of Common Pleas shall exercise all the powers conferred and all the duties imposed upon issuing officials, and further provides that

"said judge \* \* \* may, as regards each respective municipality, \* \* \* provide that no more than one (1) retail license shall be granted to any person, corporation, partnership, limited partnership, or association \* \* \*".

In connection with a similar provision contained in Section 37 of the Control Act and applicable to all municipalities except those in sixth class counties, the Commissioner said:

"The provision \* \* \* exhibits Legislative intent to confer absolute authority upon each municipality to dispose of this economic rather than control problem by ordinance and to make such authority exclusive." Bulletin #21, Item #56.

The power conferred as aforesaid is to be exercised "as regards each respective municipality." Thus with respect to each municipality respondent may provide that no more than one retail license shall be granted to any person, etc. No power, however, is vested in respondent absolutely to prohibit any "chain store" from receiving even a single license in any given municipality. The power vested in respondent by the Legislature is to prohibit the issuance of more than one and not to refuse to issue any at all.

In view of the above statutory provision it must be concluded that since appellant corporation has no licenses whatsoever in Wildwood, respondent could not properly refuse to issue a license to appellant on the ground that it conducted or intended to conduct a chain of retail liquor stores throughout the State.

The action of respondent is reversed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: June 25, 1935.

16. APPELLATE DECISIONS - MORTON VS. WAY.

EDWARD F. MORTON,	)	
	)	
Appellant,	)	
	)	ON APPEAL
-vs-	)	CONCLUSIONS
HONORABLE PALMER M. WAY,	)	
JUDGE OF THE COURT OF COMMON	)	
PLEAS OF CAPE MAY COUNTY AND	)	
ISSUING AUTHORITY,	)	
	)	
Respondent	)	

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 Harry Tenenbaum, Esq., Attorney for Appellant.  
 Rex A. Donnelly, Esq. and Samuel Eldredge, Esq.,  
 Attorneys for Respondent.  
 Charles A. Bonnell, Esq., Attorney for Chamber of Commerce of the  
 City of Wildwood, Wildwood Hotelmen's Association, and  
 Cape May County Licensed Beverage Association.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at #505 East 26th Avenue, North Wildwood.

Respondent contends that the application was properly denied because in contravention of Section III-"g" of respondent's rule and regulations approved December 18, 1934, which reads in part:

"g. No firm, corporation or person shall be granted a retail license to sell any alcoholic beverage on, under, or within one hundred (100) feet, on the land side, of any boardwalk, or within one hundred (100) feet of any approaches or connections to said boardwalk, which said boardwalk extends along the Atlantic Ocean in this County."

Appellant concedes that his premises are on the boardwalk and hence within the regulation but argues the regulation itself is unreasonable and unconstitutional.

Boardwalks at New Jersey seashore resorts have become an institution. Sportland vs. Loder, Bulletin #41, Item #4. A boardwalk is in essence a seashore public park. Platnick vs. Belmar, Bulletin #45, Item #16.

Municipal regulations prohibiting the sale of alcoholic beverages on boardwalks or a reasonable distance thereof have been uniformly approved. Re Atlantic City, Bulletin #20, Item #4; Dann vs Manasquan, Bulletin #37, Item #12; Platnick vs. Belmar, Bulletin #45, Item #16; Leggett vs. Manasquan, Bulletin #79, Item #13.

I hold it a reasonable and salutary exercise of police power to exclude liquor sales from ocean front walks which are essential parts of our beach playgrounds peopled in the main by women and children, the latter often of tender years.

The contention that the regulation is unconstitutional fails on mere inspection. It bears direct and immediate relation to public morals, comfort and the general welfare. The sale of liquor is a different kind of business from all others. It is affected with a public interest. Re Atlantic City, supra. Liquor regulations stand on a footing of their own. In Paul vs. Gloucester County, 50 N. J. L. 585, our Court of Last Resort declared:

"The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied."

The action of respondent is affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: June 26, 1935.

17. APPELLATE DECISIONS - QUINLAN VS. ALLENHURST

LEO V. QUINLAN,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
THE BOARD OF COMMISSIONERS	)	
OF THE BOROUGH OF ALLENHURST,	)	
Respondent	)	

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 Quinn, Parsons & Doremus, Esqs., by John F. Borden, Esq. and James D. Carton, Jr., Esq., Attorneys for Appellant.  
 Richard W. Stout, Esq., by William J. O'Hagan, Esq., Attorney for Respondent.

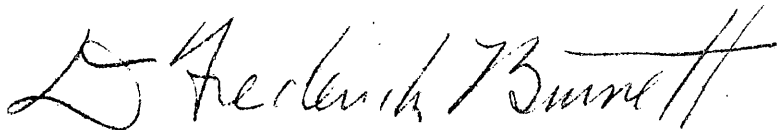
BY THE COMMISSIONER:

This is an appeal from the denial of an application for renewal of a plenary retail consumption license for premises known as "The Allenhurst Inn", situated on Norwood Avenue, Allenhurst.

I cannot consider this case on its merits, as I would like, because it appears that after respondent denied the application, appellant's counsel requested the Borough Clerk to return the application, the fee, the tax stamp, and everything else filed with the Borough. This was done. The fee was returned in full - - not even the ten per cent investigation fee being retained. Hence there is now no application on file and nothing of municipal record on which to base a license. The withdrawal of the application was fatal to appellant's case. The situation is the same as in Andreach v Keansburg, Bulletin #73, Item #14, where I ruled:

"Without regard to the obvious impropriety of returning the application, (see Principles and Rules Concerning Refunds of License Fees, Bulletin #11, Item #4), there now remains nothing before respondent to support the issuance of a license. In Simonko vs. Trenton, Bulletin #34, Item #9, it was pointed out that the acceptance by an applicant of the return of the money accompanying the application after denial thereof, might well constitute an abandonment thereof. A fortiori, must this be so where the applicant requests and receives not only the deposit but also the application itself."

The appeal is therefore dismissed.

A handwritten signature in cursive script, reading "Frederick Burnett". The signature is written in dark ink and is positioned above the printed name of the Commissioner.

Commissioner.

Dated: June 26, 1935.