

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

BULLETIN NUMBER 71

April 29, 1935

1. MUNICIPAL ORDINANCES - CLUB LICENSES - CLUBS WITHIN STATUTORY DEFINITION MAY NOT BE DEPRIVED OF PRIVILEGE BY ORDINANCE - PROBATIONARY PERIOD OF EXISTENCE MAY BE LENGTHENED BEYOND THE PERIOD FIXED BY THE STATE REGULATIONS - LOCAL REQUIREMENTS MUST NOT CREATE A MONOPOLY - CLUBS NEED NOT BE AFFILIATED WITH NATIONAL ORGANIZATIONS

April 18, 1935

Hon. Anthony J. Siracusa,
Atlantic City, N. J.

Dear Mr. Siracusa:

I have your letter reading:

"The Lieutenant J. Willis Gale Post, 215, Veterans of Foreign Wars have requested us to adopt a proposed amendment to our liquor ordinance which now prohibits the granting of club licenses. They propose that we amend this prohibition with a proviso that 'a club license at a fee of \$50.00 per annum may be granted to a social, fraternal, political or military organization which has been in existence for ten years before the repeal of the Eighteenth Amendment' and with a further proviso that the 'applicant receives its charter through a connection with a national organization'.

"In your opinion can we discriminate between clubs having been in existence for more than ten years and those which have not been organized during that time? In your opinion can we discriminate between organizations connected with a national organization and those that are not? These questions are being asked because the City Commission of Atlantic City does not wish to open its doors too far with respect to club licenses."

My reactions are:

- 1 - An ordinance which authorizes the issuance of club licenses only to "social, fraternal, political or military" organizations would violate the statute (Sec. 13 (5)), and hence would not be approved. The statute provides for licenses not only to social and fraternal organizations, but also to benevolent, charitable, religious, recreational, athletic or similar purposes, and not for private gain, and comply with all conditions which, subject to rules and regulations, may be imposed by the Commissioner. It does not mention political or military organizations at all, but they might well be construed to come within the fair meaning of the omnibus phrase "similar purposes". If club licenses are issued at all, all clubs falling within the definition and who fulfill the requirements must be treated uniformly. Hence, do not vary the statutory language when designating the class of clubs to whom licenses may be issued.
- 2 - I will approve a local requirement that the club shall have been in existence for ten years. The State regulations governing club licenses (Bulletin 25, Item 1, #5) provide "No license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the submission of the application", etc. (*italics mine*). Lengthening the requisite probationary period of existence before club licenses may be granted to ten or a hundred years, if you choose, tends to confine such licenses to bona fide clubs.

- 3 - I cannot approve the provision which requires that the club shall have been in existence for ten years before the repeal of the Eighteenth Amendment. Such a requirement would create a monopoly and prescribe a condition with which no other clubs in the future could possibly comply however long in existence or bona fide. Why not say, instead of the underscored words, "before submission of application for license" which would then make it open to all.
- 4 - Nor can I approve a proviso that the applicant club must receive its charter through a connection with a national organization. I have gone a long way in favoring national or state orders by exempting local constituent units, chartered or enfranchised by such national or state organizations from the stringent provisions of rule 5, and this under the requisite that such unit, chapter, or member club shall have been duly credentialed by the said national or state organization to and approved by the Commissioner. But it is going entirely too far to require that any bona fide New Jersey club must be a member of a national organization in order to get a license at all. That would virtually exclude many a fully qualified and bona fide local club. The probationary period above suggested should insure the objective you have in mind without resort to tying the club up to a national organization.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

2. SIXTH CLASS COUNTIES - RULES AND REGULATIONS - LIMITS OF POWER OF JUDGES AS ISSUING AUTHORITIES IN SUCH COUNTIES DEFINED

April 17, 1935

Hon. Palmer M. Way,
Judge of the Court of Common Pleas,
Wildwood, N. J.

Dear Judge Way:

I have before me the difficult problems presented by your proposed new rules and regulations for Cape May County.

Also your letter announcing your change of mind about raising the license fees from \$350 to \$500. I agree. Putting an increased burden upon the licensee places just so much greater premium on running a speakeasy. Your change of mind is sound.

Your proposed rules and regulations will be approved, subject to the following comments and exceptions:

1. Insofar as they limit the hours between which the sale of alcoholic beverages at retail may be made, for the reasons stated in Bulletin 43, Item 2, the Commissioner's approval is not necessary, in the first instance, in order that they be effective.

2. Rule I.a. is disapproved. It reads:

"Any and all ordinances and resolutions heretofore passed or adopted by municipal governing bodies, or other issuing authority, of the several municipalities in the County of Cape May, passed or adopted under the authority of an Act entitled, 'An Act concerning alcoholic beverages,' passed December 6, 1933, are hereby declared to be of no further force and effect. All such ordinances and resolutions are superseded by the rules and regulations hereby promulgated and established."

It is disapproved because of your lack of power to make such rule.

There would be no doubt of your authority if Section 6 of the

Control Act (P.L. 1933, Chap. 436, as amended by P.L. 1934, Chap. 85) had transferred to you as Judge of the Court of Common Pleas all powers conferred and all duties imposed upon the governing board or body of each municipality in said county. The trouble is that it merely transfers the powers and duties conferred and imposed "upon issuing officials". Question immediately arises: Are issuing officials the same as governing bodies? They are not. The former includes the latter but the converse is not true. Elsewhere the Act speaks of "issuing authorities". I have no difficulty in adjudging that "issuing officials" are "issuing authorities". Any other conclusion leads into a cul-de-sac because the term "issuing officials" is not used anywhere else in the statute. The reference, therefore, must have been intended to have been made to "issuing authorities". The emphasis undoubtedly was placed upon the issuing function whether that function was exercised by officials or by authorities, which are interchangeable in popular concept. But this does not solve the problem, because, as Section 18 points out, issuing authorities may be either the governing body of the municipality or the local alcoholic beverage board permissible under Section 5. Once a municipal board has been duly created, it has the exclusive power of making local rules and regulations and the exclusive duty to administer the issuance of all local licenses. But such municipal board, even though it is an issuing authority, never has the power of fixing fees, for that power is conferred solely upon governing bodies. Section 13. Neither would the municipal board have any right to determine whether or not limited distribution licenses or club licenses should be prohibited, for that option is vested by the Act in the governing body and may be exercised by ordinance only. Again, the statutory option (Section 13) to enact that no more than one limited retail distribution license may be granted in a given municipality is conferred solely upon the governing body. Again, in Section 37, the still broader option to enact that no more than one retail license shall be granted to any person is vested exclusively in the governing body. It is therefore clear that none of these acts could lawfully be done by a municipal board, even though it is an issuing authority.

These considerations bring to acute focus the difficulty presented by your proposed local rule. Section 6 has transferred to you as Judge all the powers and duties of issuing authorities, but it has not transferred to you any of the exclusive powers or duties of governing bodies. You are an issuing authority, i.e. you are a member of the class designated in Section 18, but that is all. It was for reason that, in Re Heil, Bulletin 47, Item 8, I ruled that in sixth class counties as well as elsewhere referenda petitions must be filed with the governing bodies of municipalities where referenda are held: "This conclusion is not affected by the enactment of Section 6A (P.L. 1934, C. 85) which vested in Judges of the Courts of Common Pleas in sixth class counties the powers and duties imposed upon 'issuing officials'". While this enactment transferred all of the powers and duties pertaining to the issuance of licenses, regulation of licensees and other powers and duties associated with the offices of issuing officials, it did not transfer the powers and duties of governing bodies under the referenda provisions. These latter provisions are directed to the ascertainment of the wills of the people in the respective municipalities, which should properly rest with the governing bodies as distinguished from the issuing officials."

I must therefore disapprove of Section I.a. because it is stated too broadly. You do have the power to abrogate and supersede all ordinances and resolutions which limit the number of licenses and the hours of sale, and regulate the conduct of the business and the nature and condition of the licensed premises, (Section 37) and which concern revocation or suspension of licenses (Section 28), and, generally, which concern every other power which issuing authorities possess under the Act. For all these powers were expressly transferred to you. But there being no transfer of the powers granted to governing bodies as such, as hereinbefore pointed out, you have no power to abrogate or supersede "all" ordinances and resolutions of

municipalities in Cape May County generally but only to the extent above defined.

It follows, as necessary corollaries (1) that the power to fix fees vested by the Control Act in governing bodies has not been transferred to you as Judge of the Court of Common Pleas, but still resides in the respective governing bodies of the several municipalities in your County; (2) that my letter of May 26, 1934 (Bulletin 33, Item 11) to W. E. Haines, Clerk of Brick Township, to the effect that Section 6 abrogated the power of municipal governing bodies in sixth class counties to fix license fee, came to an erroneous conclusion. I was mistaken. The construction of the Section there rendered was too broad. The disposition of the fees heretofore collected by you has been cured by Chapter 266 of the Laws of 1934, but there is nothing in this supplement which in any-wise warrants or implies any authority to fix and determine fees in the future.

Hence, if the Legislature desires that fees shall be fixed uniformly throughout Cape May and Ocean Counties and if the Judges of the Court of Common Pleas are to have the right to prohibit throughout those counties seasonal retail consumption and limited retail distribution licenses and to exercise other powers still vested exclusively in the governing bodies of the municipalities in sixth class counties, so far as the Alcoholic Beverage Control Act is concerned, it is necessary that the Legislature amend the law so as to transfer to the Common Pleas Judges of sixth class counties all the powers and functions of governing bodies to the full extent as set forth in the Alcoholic Beverage Control Act and its amendments and supplements, and, incidentally, that in lieu of acting by ordinance or resolution such Judges may act by promulgation of a rule or regulation duly entered on the minutes of the court.

3. Your Section III.a-2 has been very thoughtfully worded and worked out. So your III.b.

4. Your Section III.c. reads: "Absolutely no treating to be allowed, (proprietor, owner or person in charge shall not be allowed to treat, or permit it to be done by any person or patron at any time.) Penalty for this shall be grounds for loss of license."

I will approve this if you still desire it, after reflection, as the expression of your local policy, but personally advise against it as worded. To prohibit the proprietor or barkeep from treating "on the house" is a forward-looking and advisable regulation but to attempt to stop customers from treating each other will only lead to evasion, and I am afraid be impractical. Drinking alone - each paying for his own drink - well, it just isn't done.

5. Your Section III.e. providing "Sale to a minor is a misdemeanor. Punishment will be severe." is, of course, legally unnecessary because it is already a part of the statute, but it serves a good purpose by its repetition and being expressly incorporated in the rules. Too much emphasis cannot be placed on the evil of selling to minors. They have got to be protected against themselves.

6. Admire greatly your III.h. prohibiting issuance of licenses for premises on the ocean side of any boardwalk.

7. Your rule IV - captioned: "RULES FOR SUNDAY SALES WHERE PERMITTED" provides:

"1. No sales are allowed between the hours of 3 A.M. and 12 noon on Sunday during the months of June, July, August and September. During the balance of the year no sales allowed between the hours of 2 A.M. and 12 noon on Sunday.

"2. All bars to be closed. No drinks to be passed over the bars. Sales can only take place where served at tables."

Subsection 1 raises the question whether, after referendum, under Section 44 permitting the sale of liquor on Sundays, it is still competent to regulate and restrict the hours of such sale. I have heretofore held in the affirmative in my letter to you of December 18, 1934 (Bulletin 58, Item 6), on the ground that an affirmative vote on such referendum merely permits the sale on Sundays but subject to regulation; that Section 44 which provides for a referendum on Sunday sales expressly states that if the majority of the local voters shall vote yes, sales of alcoholic beverages may be made "pursuant to the provisions of this act", which provisions include regulation of hours; that such affirmative vote is not therefore a mandate compelling wholly unrestricted Sunday sales. This subsection is therefore approved as written.

Subsection 2 is all right so far as consumption on premises is concerned and will be approved as submitted if, on reflection you still desire it. It may be open to attack on the ground of discrimination between those licensees equipped only to serve over bar and those equipped to serve by other means. I will tentatively approve ex parte as a police regulation. See Bulletin 43, Item 11. But there is a practical consideration which I submit to you, viz. that requiring a bar to be closed prohibits entirely its use for any purpose. Even though alcoholic beverages may be served at tables they cannot come over the bar. In order to serve draught beer on Sundays, the licensees would have to have it on draught at some place other than the bar. There is another point which may be raised on appeal, viz. that the regulation cannot be justified as a police regulation in the face of a referendum permitting Sunday sales, on the ground that there is no control feature involved and that the closing down of the bar may be contended to be arbitrary.

Subsection 2, however, must be disapproved so far as plenary retail distribution licensees are concerned. For such licensees cannot possibly comply with the provision "Sales can only take place where served at tables." Such licensees have no right to serve at all. Yet the referendum expressly provided that they may sell on Sundays. Hence your rule would deprive these licensees of the privilege to which they are entitled by the referendum. Again, this rule would prohibit sales for off-premises consumption by plenary retail consumption licensees. The clause should be modified to apply to such sales only as are made for consumption on the premises.

8. Your rule V, which provides that neither seasonal retail consumption nor limited retail distribution licenses shall be issued in Cape May County and which fixes the fees for the other three classes of retail licenses is disapproved in toto because of lack of jurisdiction, for the reasons hereinbefore set forth under point 2.

So far as prohibiting seasonal retail consumption licenses.

is concerned, there is an additional question, viz. there is no option conferred by statute as in the case of limited retail distribution and club licenses. Such permission may imply that the option does not exist. For the reasons stated in Miller vs. Greenwich, Bulletin 57, Item 9, and in Re Township of Greenwich, Bulletin 61, Item 6, I doubt whether seasonal licenses may legally be prohibited at all. It is for that reason that I recommended to the Governor and Legislature that this matter should be set at rest by conferring power upon municipalities to prohibit, if they choose, seasonal retail consumption licenses, so as to create the option uniformly with the other options conferred by statute.

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

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

3. MUNICIPAL ORDINANCES - SUNDAY SALES - ALL OR NONE

MUNICIPAL ORDINANCES - LICENSE FEES - LICENSES ISSUABLE ONLY
AT FEES SCHEDULED OF RECORD

April 17, 1935

Mr. L. M. Hartshorn,
Clerk of Hillsborough Township,
Somerville, N. J.

Dear Sir:

Section 9 of your resolution of December 12, 1933 as amended May 8, 1934, prohibits all sales of alcoholic beverages on Sundays with the exception of beer, which it permits to be sold between the hours of noon and midnight. There is no power in municipalities to discriminate between kinds or classes of alcoholic beverages so far as sales on Sundays are concerned. In fact, everything in the Control Act negatives differentiation between alcoholic beverages. Throughout the Act they are treated uniformly alike. The Township Committee may either permit or prohibit the sale of all alcoholic beverages on Sunday, but it lacks the power to allow the sale of some and prohibit the sale of others. The Section is, therefore, disapproved. See Bulletin 64, Item 6.

It appears from your letters of February 23rd and March 28, 1935 that only in the resolution of December 12, 1933 has the Township Committee fixed plenary retail consumption and plenary retail distribution license fees and these, according to that resolution, in amounts of \$350 and \$200 respectively. But my records indicate that for the year ending June 30, 1934 the Township Committee issued four plenary retail consumption licenses upon the payment of fees based upon an annual fee of \$350 and that for the year ending June 30, 1935 the Township Committee issued seven plenary retail consumption licenses upon payment of an annual fee of \$200.

Your explanation of the absence of a resolution fixing this year's plenary retail consumption license fee in the amount of

\$200 does not cure the absence of a proper resolution. While you state that through inadvertence the terminology of the resolution of December 12, 1933 was changed, and that it was actually intended to fix the consumption fee in the amount of \$200 and the distribution fee in the amount of \$350, the record as you have heretofore certified it does not bear this out. As aforesaid, in December, 1933, four consumption licenses were issued upon payment of fees based upon an annual fee of \$350 and this indicates with reasonable certainty that the Township Committee's resolution of December 12, 1933 set forth the fees as they were actually intended. This conclusion is supported by the fact that on December 12, 1933 the minimum annual fee which could be charged for a plenary retail consumption license was fixed by statute at \$350. The Township Committee could not at that time have fixed a plenary retail consumption license fee of \$200 per annum even if it desired. Irrespective of what the intention may have been the only thing that counts is what the record actually shows. Compare the analogous rulings made in Eisen v. Plainfield, Bulletin 68, Item 12 and in Sosnow vs. Freehold, Bulletin 68, Item 13.

Inasmuch as applicants for plenary retail consumption licenses in your Township are being charged an annual fee of \$200 and inasmuch as the statute requires that the governing body fix the license fee, it is entirely illegal unless a resolution so doing be adopted by your Township Committee at once and be made retroactive by its terms.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

4. SPECIAL PERMITS - FEES - NOT TO BE IMPOSED BY MUNICIPAL RESOLUTION
OR ORDINANCE

April 9, 1935

Dear Sir:

Is it possible to issue and pass a resolution or ordinance whereby this Municipality can get some compensation for future permits of this kind issued for sales in our municipality?

Yours truly,
J. NEWTON STIRES,
Township Clerk

April 18, 1935

Mr. J. Newton Stires,
Clerk of Union Township,
Jutland, N. J.

Dear Sir:

I have yours of April 9th.

The authority to issue special permits and to fix and collect fees therefor is conferred exclusively, by Section 75 of the Alcoholic Beverage Control Act, upon the Commissioner. Municipalities may fix and collect license fees solely for the issuance of the five classes of retail licenses expressly set forth in

Section 13, sub. (1), (2), (3) a., (3) b., and 5.

Accordingly, a municipal resolution or ordinance purporting to impose a fee to accrue to the municipality for the issuance of a special permit to sell alcoholic beverages would not be valid.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

5. LICENSES - CORPORATION IS NOT DISQUALIFIED BECAUSE OFFICER IS ALIEN BUT ALIEN CORPORATE OFFICER OF RETAIL LICENSEE MAY NOT TEND BAR ON ITS BEHALF

April 22, 1935

Hon. George B. LaBarre,
Mayor,
Trenton, N. J.

Dear Sir:-

Please refer to your telegram of April 13th reading:

"Willow Inn Inc a corporation has made application for plenary retail consumption license stop the application shows that its secretary and treasurer is not a stockholder but it appears that he is an alien and this seems to bar the granting of a license to this corporation or bar him under fourth paragraph of section twenty three but our city counsel is somewhat doubtful in view of section twenty two stop I would appreciate your wiring collect your decision."

And my wired reply of the same date reading:

"Section twenty-two permits issuance of license to corporations even though it has alien stockholder and officer stop under section twenty-three however such alien may not be actively engaged in conduct of alcoholic beverage business stop complete opinion follows."

Section 23 of the Control Act provides that no person who would fail to qualify as a licensee shall be employed by or connected in any business capacity whatsoever with the licensee. Section 22 provides that a corporation may receive a license even though its officers, directors or stockholders would fail to qualify as licensees because of lack of citizenship, residence or non-age. While Section 22 governs with reference to the eligibility of a corporate applicant to receive a license, nevertheless, Section 23 gives rise to the difficult question as to how far an unqualified officer of a licensed corporation may engage in the activities of said corporation.

The foregoing provision contained in Section 22 must be read in connection with the prohibition contained in Section 23. Each must be construed so as to give it the fullest reasonable effect consistent with the other.

Section 22 was adopted principally to attract capital into this State by permitting large foreign corporations to obtain

a license herein. It was not intended to permit persons who were unqualified to obtain a retail license by means of a corporate mechanism and as officers of such a corporation to carry on the licensed business.

Section 22 contemplates that the directors and officers of a corporate licensee who were personally unqualified to receive a license would, nevertheless, be permitted to perform the executive functions inherent in their offices. Thus they could determine matters of policy, make contracts for the purchase of materials and equipment, handle the financial affairs and generally exercise executive supervision in the conduct of the corporate business. But it was not contemplated that Section 22 would permit such directors and officers by virtue of their offices to perform the usual tasks incident to the actual conduct of the alcoholic beverage business as, for example, the actual work involved in the manufacture of alcoholic beverages, the solicitation of orders, particular sales, the tending of bar, the service of food and drink and the maintenance of order in the licensed premises. Such activity is prohibited by Section 23. Any other conclusion would result in the complete emasculation of the prohibition contained in Section 23 by the simple device of invoking the corporate mechanism.

It is therefore ruled:

1. That the mere fact that the secretary and treasurer of the corporation is an alien does not bar the granting of a license.
2. That a corporate officer who is personally unqualified to receive a license may not tend bar on behalf of a corporate licensee.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

6. APPELLATE DECISIONS - SANFORD DRUG CO. VS. MAPLEWOOD

SANFORD DRUG CO., INC.,)
Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF MAPLEWOOD (ESSEX)
COUNTY),

Respondent.

ON APPEAL
CONCLUSIONS

Maurice Schapira, Esq., Attorney for Appellant.
Abraham H. Cornish, Esq., by Ervin S. Fulop, Esq., Attorney for Respondent.
Edward J. Gilhooly, Esq., Attorney for St. Joseph's Church, Objector.

BY THE COMMISSIONER:

This is an appeal from the denial of an application

for a plenary retail distribution license for premises located at 1885 Springfield Avenue, Maplewood.

Respondent contends that the application was properly denied because the character of the neighborhood in which appellant's premises are located and the existence of a place directly across the street licensed for the retail sale of alcoholic beverages for consumption off the licensed premises rendered it socially undesirable to issue a license to appellant.

The premises sought to be licensed consist of a drug store located at the southwest corner of Springfield Avenue and Prospect Street. Almost directly across the street is a chain grocery store for which a plenary retail distribution license has been issued by respondent. The neighborhood consists of a group of small neighborhood stores along Springfield Avenue, entirely surrounded by an exclusively residential area. A block away but more than two hundred feet from appellant's premises is St. Joseph's Church on Prospect Street, which is not only devoted to religious purposes but also contains facilities for and is actually used as a non-sectarian community center, adjoining which is a public playground. Farther away and within a short distance of the Church is a public school. On Springfield Avenue, about two hundred fifty feet away, is a club composed of approximately fifty young men between 18 and 22 years of age. The Church and a large number of residents in the vicinity object to the issuance of a license to appellant for the reason that many young people attend the functions conducted in the Church and habitually congregate in the vicinity of appellant's store.

In determining whether to issue a license, an issuing authority may properly consider the character of the neighborhood, the number of existing licensed premises and the public sentiment of the residents. Shinn vs. Camden, Bulletin 64, Item 8.

If this were an application for a consumption license, I should have no hesitancy in affirming the decision. The application, however, is for a package goods store. Different considerations therefore apply. Normally, the sale of liquor in sealed, original containers for consumption off the licensed premises would be perfectly proper, where the licensed premises are in a business neighborhood, Seashore Beverage Co., Inc. v. Way, Bulletin 47, Item 12, except in such cases where there are special factors involved such as a city four-corners, Schulte, Inc. vs. Perth Amboy, Bulletin 58, Item 13, or where the saturation point is adjudged to have been reached, Sussex County Drug Co. vs. Newtor Bulletin 47, Item 3, or where there is a municipal limitation of the number of licensees, Colonna vs. Montclair, Bulletin 39, Item 8.

The question is - is this license in this community socially desirable? There is no social convenience and necessity involved for there is already a package goods store just across the street. To be sure, it is closed at 6 p.m. and therefore not open in the evenings, and it is also closed all day Sundays and holidays. It is argued that there should be some place in the neighborhood where liquor can be bought in the evening or on Sundays. But it was just because the grocery store was closed so early in the evening and was not open on Sundays and holidays that no objections were filed when its license was under consideration. The fear of the Church and the neighboring residents that liquor sold in the evenings or on Sundays or other free time of the young people will be surreptitiously consumed, without super-

vision or control, in the immediate vicinity of the licensed premises is not unreasonable. There is no public demand in this suburban community which requires day and night service in the sale of package goods liquor.

The respondent's denial of appellant's application was not unreasonable. Accordingly the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: April 23, 1935

7. LICENSEES - EXHIBITION OF MERCHANDISE AND METHOD OF MANUFACTURE
AT INDUSTRIAL EXPOSITIONS - PERMISSIBLE WHEN MADE SOLELY FOR
THESE PURPOSES

March 11, 1935

My dear Commissioner:

We are seriously considering the leasing of space in the forthcoming "Newark On Parade" industrial exhibit to be held in the former Newark Center Market the week of April 6th.

Before definitely leasing this space however there is a question in our mind as to the legality of our ability to display our merchandise because of the existing regulation prohibiting the storing of our products in any premises other than those carrying either a wholesale or retail license. May I point out here that this contemplated exhibit is not for the purpose of selling either draught or bottle beer but will be used by us solely for the purpose of displaying our merchandise and its method of manufacture for exhibit purposes only.

We would very much appreciate an official opinion as to whether or not we may be permitted to arrange for such an exhibit.

Very truly yours,
G. KRUEGER BREWING COMPANY
John G. Krueger

March 12, 1935

G. Krueger Brewing Company,
Newark, N. J.

Attention of John G. Krueger, Esq.

Gentlemen:

I have yours of March 11th and note that you are considering the leasing of space in the forthcoming "Newark on Parade" industrial exhibit to be held during the week of April 6th; that the contemplated exhibit is not for the purpose of selling your product but is to be used solely to display your merchandise and its method of manufacture for exhibit purposes only.

There is no objection to this, despite the incidental technical temporary storing of products on unlicensed premises.

This ruling applies to all other licensees who may

similarly display goods at this exhibit solely for the same purposes.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

8. LICENSEES - EXHIBITION OF MERCHANDISE AND METHOD OF MANUFACTURE AT INDUSTRIAL EXPOSITIONS - ALCOHOLIC MERCHANDISE AND PRODUCTS MAY NOT BE GIVEN AWAY GRATUITOUSLY BY EXHIBITORS AT EXPOSITIONS

April 25, 1935

Hon. Joseph G. Wolber,
Newark, N. J.

Dear Senator:

Herewith copy of the ruling made in re Krueger Brewing Co. (Bulletin 71, Item 7).

This answers your question. The reason that the exhibitor may not give away the product gratuitously is that the Control Act defines a sale as "the gratuitous delivery or gift of any alcoholic beverage by any licensee." Hence any donation or gift of an alcoholic beverage by a licensee constitutes a sale and is prohibited except on the licensed premises.

There is also the additional reason that if the exhibitor is a manufacturer, he cannot deal with the consumer direct but may effect sales only to licensed wholesalers and retailers.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

9. REVOCATION - EFFECT - LICENSEE AFTER REVOCATION IS INELIGIBLE TO BE A BARKEEPER FOR TWO YEARS

Re: J.R.

Mr. Burnett:

I used to be a licensed holder of retail liquor, I was caught with untaxed liquor in my possession, have paid a fine of \$200.00 and have my license revoked. Therefore will you kindly let me know whether that takes my privilege away from me by getting a job as a Bartender working for someone else.

Yours truly,
Jerry R-----.

April 25, 1935

Dear Sir:-

Section 23 of the Control Act provides that no person who would fail to qualify as a licensee shall be knowingly employed by or connected in any business capacity whatsoever with the licensee. Section 28 provides that any license revocation shall render the licensee ineligible to receive any other

license of any kind or class under the Control Act for a period of two years from the effective date of the revocation.

You are, therefore, ineligible to receive a license for said period of two years and since you are ineligible to receive a license you may not be employed by or connected in any business capacity whatsoever with a licensee during the period of ineligibility.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

10. SPECIAL PERMITS - NOT ISSUED WHEN MUNICIPAL CONSENT REFUSED FOR
GOOD REASON

April 26, 1935

Ramsey Democratic Club, Inc.,
Ramsey, N. J.

Gentlemen:

I am sorry that I have to deny your application for special permit for social affair because of the refusal of the Borough of Ramsey, based on good reasons, to give their consent.

The reason why I insist upon obtaining the written approvals of the chief of police and the clerk of the municipality where the social affair is held, is to ascertain whether there are any local ordinances or resolutions prohibiting sales of alcoholic beverages or limiting the hours thereof, or whether the granting of a permit would in anywise violate the declared policy of a municipality, or whether the governing board has any sound objection to the character of the individual, group or organization which purposes to conduct the social affair or whether there is any other reason why the permit should be refused by me. Inadvertent conflict with local enactments and policies is thereby avoided.

If this were a mere arbitrary refusal by the municipality I should deem the action of the Council discriminatory and unreasonable. I find, however, from the letter of the Borough Clerk written to the secretary of your club on April 24th, that their reason is based upon the understanding between the Mayor and Council on the one side and the American Legion on the other, at the time the latter's club license was granted, that the licensed premises would not be at any time allowed to be used for the sale of alcoholic beverages to the public generally. The club license restricts sales of alcoholic beverages to members and bona fide guests. Under normal circumstances, I would be willing to give a special permit for a social affair at which outsiders were admitted, but in view of the understanding above mentioned in reference to the use of the licensed premises, I cannot grant you a permit for the American Legion clubhouse or hall.

If you hold your affair elsewhere than that hall, your application will be granted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Newark, New Jersey.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD - JULY 1, 1934
TO APRIL 1, 1935 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

County	C L A S S I F I C A T I O N O F L I C E N S E S										No. Surren- dered Revoked Expired	No. Licen- ses in Effect 4/1/35	Total Fees Paid
	Plenary		Plenary		Club	Limited		Seasonal					
	Retail Consump-		Retail Distribu-			Retail Distri-		Retail Con-					
	tion		tion			bution		sumption					
	No.		No.			No.		No.		No.			
Issued	Fees Paid	Issued	Fees Paid	Issued	Fees Pd.	Issued	Fees Pd.	Issued	Fees Pd.				
Atlantic	423	\$ 163,343.33	53	\$ 17,794.45	9	\$ 577.35	7	\$ 275.00	7	\$ 800.14	12	487	\$ 182,790.27
Bergen	776	253,460.87	210	49,671.89	53	4,400.82	52	2,421.00	2	337.50	26	1,067	310,292.08
Burlington	172	49,298.02	12	2,379.19	22	2,255.28	1	25.00	1	75.00	4	204	54,032.49
Camden	495	182,159.93	49	16,615.95	56	4,348.57			1	116.43	14	587	203,240.88
Cape May	101	33,711.24	7	2,361.26	6	550.00			18	4,628.64	21	111	41,251.14
Cumberland	103	28,474.53	8	1,390.75	22	2,045.51					5	128	31,910.79
Essex	1,588	763,836.97	265	122,354.43	75	9,982.18	46	2,268.62	1	262.50	38	1,937	898,704.70
Gloucester	118	31,288.47	10	1,258.72	2	100.00			1	150.00	1	130	32,797.19
Hudson	1,892	713,220.01	222	87,605.70	43	4,522.15	117	4,276.20	1	165.00	59	2,216	809,789.06
Hunterdon	68	18,196.70	1	200.00					1	140.63		70	18,537.33
Mercer	487	178,203.03	32	6,210.96	47	4,307.69					7	559	188,721.68
Middlesex	577	224,149.44	23	7,330.00	36	3,261.90	2	100.00	1	117.00	9	630	234,958.34
Monmouth	478	186,693.89	74	19,667.32	28	2,938.21	17	809.00	21	6,238.02	33	585	216,346.44
Morris	320	96,474.31	70	16,898.77	20	1,419.66	2	85.00	12	1,751.41	20	404	116,629.15
Ocean	119	55,361.58	27	9,693.00	9	862.75	2	73.00	25	6,099.00	25	157	72,089.33
Passaic	941	350,218.51	83	32,777.92	29	3,442.26	30	1,442.70	3	787.50	30	1,056	378,668.89
Salem	50	15,903.50	4	575.00	4	300.00					2	56	17,578.50
Somerset	164	56,882.92	23	5,050.00	14	1,190.14					4	197	63,123.06
Sussex	111	25,403.85	5	700.00	5	275.00			3	412.50	3	121	26,791.35
Union	595	283,696.46	107	36,729.79	62	6,517.15	26	1,230.39	1	273.75	18	773	328,447.54
Warren	139	37,895.83	4	838.75	14	963.75	3	135.00	1	240.79	6	155	40,074.12
TOTALS	9,717	\$3,747,873.39	1,289	\$428,103.85	556	\$54,260.37	305	\$13,140.91	100	\$22,595.81	337	11630	\$4,265,974.33

D. FREDERICK BURNETT, Commissioner:

Herewith report, as requested, complete for the first nine months of the current fiscal year.

Respectfully submitted,

B. Carlton Brown
Deputy Commissioner

12. APPELLATE DECISIONS - VONELLA VS. LONG BRANCH

FRANK VONELLA,)
Appellant)
-vs-)
BOARD OF COMMISSIONERS OF)
THE CITY OF LONG BRANCH)
(MONMOUTH COUNTY),)
Respondent)
- - - - -)

ON APPEAL
CONCLUSIONS

Giordano, Golden & Hurley, Esqs., by John C. Giordano, Esq.,
Attorneys for Appellant
Jacob Steinbach, Jr., 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 #14 Fourth Avenue, Long Branch, N. J.

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

Fourth Avenue is zoned for business purposes and contains a tailor shop, lumber yard, grocery store and wholesale liquor establishment. Respondent has issued plenary retail consumption licenses for two premises along Broadway which intersects Fourth Avenue, each licensed place being about 300 or 400 feet away from appellant's premises. One of these licensed premises is at the intersection of Fifth Avenue and Broadway, the other is on the south side of Broadway between Third and Rockwell Avenues. A public school is located about one-fourth of a mile away from the premises sought to be licensed. Respondent contends in support of the denial of the application that children going to school pass along Fourth Avenue.

It appears, however, that respondent has heretofore issued licenses for premises located in neighborhoods much more residential than Fourth Avenue, much closer together than are appellant's to the nearest licensed places and also along streets traversed by children on their way to school. Indeed, licenses have been issued by respondent for premises closer to the very school in question than are appellant's premises.

No reason is suggested, or appears from the record, why respondent applied a different standard to appellant's application than it had applied to the other applications. Municipal policies in order to be valid, must be uniformly applied. Tankle vs. Trenton, Bulletin #56, Item #10; Barbuto vs. Trenton, Bulletin #56, Item #5; and Sam Karpf Co. vs. Camden, Bulletin #66, Item #3. In view of respondent's issuance of the licenses hereinabove referred to, the denial of appellant's application cannot be sustained.

The action of respondent Board is reversed.

Dated: April 29, 1935.

D. FREDERICK BURNETT,
Commissioner

13. APPELLATE DECISIONS - HACKMAN VS. GREENWICH

MOSES HACKMAN,	)	
Appellant	)	
-vs-	)	
TOWNSHIP COMMITTEE OF THE	)	ON APPEAL
TOWNSHIP OF GREENWICH (WARREN)	)	CONCLUSIONS
COUNTY),	)	
Respondent	)	

Moses Hackman, Pro Se.

Francis L. Thompson, 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 in Stewartsville, Greenwich Township (Warren County).

Respondent contends 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 objected to by a great number of residents.

Greenwich Township is an agricultural community with a population at the last census of 1141. The premises sought to be licensed are located in a portion of the Township known as Stewartsville which is residential in character containing only two or three small stores which service the immediate demands of the local residents. Stewartsville is approximately a mile from the Phillipsburg-Washington Highway and two miles from the Somerville-Newark Highway. Respondent has consistently refused to issue licenses for premises located in this neighborhood. The only licenses issued in the Township - two retail consumption licenses - were for premises located in rural areas along state highways.

Numerous persons residing in Stewartsville objected to the issuance of any licenses therein. These objections, coupled with the residential character of the community, reasonably sustain the denial of appellant's application. A municipality may very 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.

Appellant contends that his premises constitute an hotel and that therefore he is entitled to a license. It appears, however, that the premises have not been used for an hotel for at least twenty years and that it contains no improvements. Such a building cannot reasonably be termed an hotel. Apgar vs. Tewksbury, supra.

The action of respondent is affirmed.

Dated: April 29, 1935.

D. FREDERICK BURNETT,
Commissioner

14. APPELLATE DECISIONS - KALISH VS. LINDEN, ET AL

JULIUS KALISH,)
Appellant)

-vs-)

LINDEN ALCOHOLIC BEVERAGE)
CONTROL BOARD AND GEORGE)
VERCHICK,)
Respondents.)

ON APPEAL
CONCLUSIONS

Julius Kalish, Pro Se

Lewis Winetsky, Esq., by Joseph C. Monico, Esq., Attorney for
Respondent Board.

BY THE COMMISSIONER:

Appellant is a member of the City Council of Linden and presented a petition to respondent Board in opposition to the issuance of a plenary retail consumption license to respondent Verchick for premises located at #3104 Tremley Point Road, Linden. The application was granted despite the opposition. Hence this appeal.

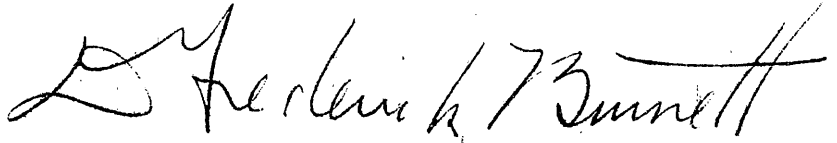
Appellant contends that prior to the issuance of the license to Verchick there was a sufficient number of licensed premises in the vicinity of the premises sought to be licensed adequately to supply the demands of the residents of said vicinity.

Verchick's premises are located on what is admitted to be a business street. There are a number of other licensed places on the same street. All three members of respondent Board testified that in their opinion the issuance of the license was socially desirable. Appellant and several taxpayers testified to the contrary.

The determination of the question as to the number of licensed premises which should be permitted in any given vicinity is a matter confided to the sound discretion of the issuing authority. Sussex County Drug Co. vs. Newton, Bulletin #47, Item #3. Thus, it has been held that on an appeal from the action of the municipal issuing authority in limiting the number of licenses to be issued, the limitation will not be upset unless it clearly appears to be unreasonable. Ryman vs. Branchburg, Bulletin #37, Item #18. Likewise the refusal of an issuing authority to issue a license where the issuance thereof would result in too many licensed places in any one vicinity, has been consistently affirmed where a uniform policy has been adopted and applied by the issuing authority against undue congestion of licensed premises. Bader vs. Camden, Bulletin #44, Item #8; Furman vs. Springfield, Bulletin #49, Item #6; Clement vs. Loder, Bulletin #52, Item #5; Faccidomo vs. Union Beach, Bulletin #55, Item #8; Snyder vs. Middletown, Bulletin #56, Item #2; Battaglia vs. Glassboro, Bulletin #66, Item #4.

Where, as here, an attack is made upon the exercise of the discretion of the municipal issuing authority in the issuance of a license, the burden rests upon the appellant to prove an abuse of that discretion by clear and convincing evidence. The proofs offered in the instant case fall short of sustaining this burden. All that appears is a mere difference of opinion.

The action of respondent Board is affirmed.

A handwritten signature in dark ink, appearing to read "D. F. Clark". The signature is fluid and cursive, with a large initial "D" and a stylized "F".

Commissioner

Dated: April 29, 1935