Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 154 DECEMBER 24, 1936

1. SPECIAL DISPENSATION - SWEDISH CHRISTMAS PUNCH - HEREIN OF GLOGG.

December 5, 1936.

Dear Mr. Burnett:

Kindly advise me if I can make a Christmas drink called Swedish glogg. It is a national Christmas drink of Sweden and as we have a lot of Swedish guests we would like to serve them their favorite Christmas drink.

It consists of port wine, brandy, and red wine, and all kinds of spices including almonds and raisins and is served from a bowl standing on the bar. It must be made in a pot on the stove and come to a boil, therefore it can't be mixed to order. Hoping this explains everything, I remain,

Yours truly,

FREDERICK THORNGREEN

December 17, 1936.

Mr. Frederick Thorngreen,
Squankum Inn,
Farmingdale, N. J.

Dear Mr. Thorngreen:

I have yours of the 5th.

Glogg sounds to me more like a typographical error than a national libation.

However, I have verified from competent independent sources that the claims you make for it are authentic and so you and all our Swedish friends, may mix, boil and dispense it here as in the Homeland, but, like egg nog, only during the period beginning one day before Christmas and ending on New Year's Day at midnight.

SKÅL! Swenske Glögg!!

D. FREDERICK BURNETT
Commissioner

2. DISCIPLINARY PROCEEDINGS - THOMAS A. SNYDER (SEE BULLETIN 153, ITEM 8) - SUSPENSION MODIFIED.

December 17, 1936

D FREDERICK BURNETT

RE YOUR SUSPENSION OF MY LICENSE C6 ATSION BURLINGTON COUNTY NEW JERSEY FOR FORTY DAYS STARTING TODAY WOULD GREATLY APPRECIATE IF YOU WOULD HOLDUP THIS SUSPENSION TILL JANUARY THIRD AS MY EXISTENCE DEPENDS ON THE HUNTING SEASON WHICH I HAVE HEAVILY STOCKED FOR AND SCHEDULED MANY GUNNING PARTIES

THOMAS SNYDER

December 17th, 1936

THOMAS SNYDER
STATE HIGHWAY #39 ATSION
BURLINGTON COUNTY NEW JERSEY

I BELIEVE YOU DID NOT FORESEE THAT WHAT HAPPENED WAS TO BE EXPECTED STOP NO PUNISHMENT CAN ATONE FOR SEVERING THIS YOUNG MANS JUGULAR VEIN HIS FORTYTWO DAYS IN A HOSPITAL AND HIS BEING CRIPPLED FOR THE REST OF HIS LIFE STOP BELIEVING YOU ARE GENUINELY SORRY TOO YOUR REQUEST THAT THE FORTY DAY SUSPENSION OF YOUR LICENSE START ON JANUARY THIRD IS GRANTED.

D. FREDERICK BURNETT
Commissioner

3. GAMBLING - BINGO - THE RULE APPLIES WHETHER A FEE IS PAID FOR PARTICIPATION IN THE GAME OR NOT.

December 15, 1936.

Dear Commissioner Burnett:

I represent Edward Dwyer, who holds a Plenary Retail Consumption License, at premises #456 Broad Street, Newark, also known as the Berwick Hotel.

For the past year Mr. Dwyer has been running weekly Bingo parties, not only in the barroom premises, but also in a fairly large room immediately adjacent to the aforesaid barroom. Mr. Dwyer has not heretofore been charging any fee whatsoever to patrons participating in the Bingo games.

A recent ruling made by you states that Bingo may not be played on licensed premises where there is a bar or in which alcoholic beverages are sold etc. while the games are in progress. Apparently your ruling is designed to prohibit games wherein a fee is charged to persons participating therein.

Will you be good enough to advise me at your first convenience whether it will be permissible for Mr. Dwyer to continue his weekly Bingo games, in view of the fact that he at no time charged a fee, or contemplates charging a fee to persons playing the aforesaid game.

Please do not presume that this is an attempt to evade or get around your recent ruling, as any check conducted either by your Department, or the Newark Police Department, will disclose that Mr. Dwyer has for approximately the past year, conducted weekly Bingo games, at no time charging a fee. These Bingo parties are conducted by Mr. Dwyer each Friday evening, so that I am at a loss at the present time whether to advise Mr. Dwyer to proceed with his game this forthcoming Friday night, December 18th, or not.

Yours very truly,

EDMOND J. DWYER

December 16, 1936.

Edmond J. Dwyer, Esq.,
Newark, N. J.

Dear Mr. Dwyer:

I have yours of the 15th re Berwick Hotel.

Enclosed is the text of the ruling re Bingo.

It applies to Mr. Edward Dwyer and his Hotel irrespective of whether a fee is paid for participation in the games or not.

I assume some prize or other inducement is offered. I can't imagine grown-ups in massed formation assiduously placing markers as numbers are called just as a reducing exercise.

The games may be played in the large room you mention provided (1) there is no bar in it, and (2) that no alcoholic beverages are sold, served or consumed in that room while the games are in progress.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

4. STATEMENT MADE BY THE COMMISSIONER CONCERNING REPORT TO THE GOVERNOR

December 17, 1936

"This year's report to the Governor is a dry portrayal of the scope of the Department's endeavor to control a wet industry. Measurable strides have been taken in the right direction. Much, however, remains to be done. The situation is far from hopeless. Control can and will become an accomplished fact if every law enforcement agency will only cooperate in doing its full duty. That means municipal boards as well as police; judges as well as juries; action as well as excuses. Respect for law, like Rome, is not built in a day. It requires constant will to enforce all along the line."

D. FREDERICK BURNETT
Commissioner

5. LABELING REGULATIONS - MALT BEVERAGES - QUESTION AS TO THE WISDOM OF SECTION 24 PARAGRAPH (d) - DECISION RESERVED WITHOUT PREJUDICE TO EXISTING PRACTICE.

December 16, 1936.

D. Frederick Burnett, Commissioner

Sir:

The membership of this Association desires to request your careful consideration of the following recommendation unanimously approved today:

> "RECOMMENDED that the President be authorized to use every proper effort to have suspended, pending further investigation, Paragraph 'D' of Section 24 of the regulations relating to labeling and advertising of malt beverages, issued by the Federal Alcoholic Administration Division of the Treasury Department and adopted by the New Jersey Alcoholic Beverage Control Commission."

We submit for consideration our claim that a thorough investigation will indicate that the essential difference between ale and beer is the flavor of each; that both are made of the same materials, differences in proportions of materials and differences in manner of brewing and use of yeast being

the determining factor in designation. Ale is made by top fermentation, and beer by bottom fermentation. Both ale and beer can be made of any alcoholic strength.

We submit further that it has been generally accepted by a majority of control boards by the leadership of this industry, and by a majority of those who have carefully studied the entire problem, that the alcoholic content of malt beverages should not be permitted to become the differentiating factor in name, label, or advertising regulation of such products.

We submit further that the important difference to the consumer between ale and beer is the matter of taste and flavor, the alcoholic content being a secondary and separate preference, varying with the individual.

We submit further the information that the brewing industry as represented by local, state and territorial organizations in Connecticut, Massachusetts, Rhode Island, New York, Pennsylvania, West Virginia, Ohio, Virginia, Maryland and Delaware have heretofore and again today expressed their belief that the regulation should be suspended, pending further investigation.

We take the liberty of urging your careful consideration in the matter in the interest of that uniformity of alcoholic control regulations which you have so diligently and brilliantly worked for during the past several years.

Respectfully,

NEW JERSEY BREWERS' ASSOCIATION
CARL W. BADENHAUSEN
President

December 17, 1936.

New Jersey Brewers' Association,
Newark, N. J.

Gentlemen:

I have yours of the 16th.

I adopted the Federal regulations governing the labeling of malt beverages for the sake of uniformity throughout the country. If, as it now appears, ale may be and is being made with a less alcoholic content than the 5% minimum required by the Federal rule, then, for the sake of temperance, I cannot go along with it since I see no good reason why the alcoholic content must be stepped up for the mere sake of distinguishing it from beer. The better public policy seems to me to favor less rather than more alcohol by volume.

I have therefore delegated Chief Deputy Commissioner Nathan L. Jacobs to present these views to Hon. W. S. Alexander, Administrator of the Federal Alcohol Administration, at Washington, tomorrow.

Pending the outcome of that conference, no suspension of the regulation will be made, but no one will be prosecuted or prejudiced in New Jersey for making or selling ale, porter, or stout and labeled or advertised as such even though it does contain less alcohol than 5% by volume.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - NEW RULE 16 - BINGO AND ALLIED GAMES.

TO ALL RETAIL LICENSEES:

To effectuate the ruling contained in Bulletin #153, Item #10, the following rule is hereby promulgated, effective December 18, 1936:

RULES CONCERNING CONDUCT OF LICENSEES
AND THE USE OF LICENSED PREMISES

16. No licensee shall allow, permit or suffer any game of Bingo, Radio, Keno, Lucky, Lotto, Tango, Beano, Whip-Saw or similar game of chance to be conducted either (1) in any room in which a bar for the service, delivery or sale of alcoholic beverages is located, or (2) in any other room or place within the licensed premises while alcoholic beverages are being sold, served, delivered or consumed therein.

D. FREDERICK BURNETT,
Commissioner.

7. GAMBLING - BINGO - THE RULE DOES NOT APPLY TO A HALL IN WHICH THERE IS NO BAR AND WHERE LIQUOR IS NOT SOLD, SERVED OR CONSUMED WHILE THE GAMES ARE IN PROGRESS EVEN THOUGH THE HALL IS A PART OF THE LICENSED PREMISES.

Dear Sir:

There is a Club in our Borough who have been holding a Bingo Party every Monday evening for the past 14 weeks and next Monday evening December 21st is the final party.

As the party is being held in a hall where the premises is licensed to sell alcoholic beverages it is subject to the above ruling and I would be pleased to have your ruling if all doors were closed and locked where the said alcoholic beverages were sold would it be permissible to hold this final party, if this is not permissible can the holder of said license close his place of business during the time when the games are in progress.

Very truly yours,
JAMES B. WHITE,
Borough Clerk.

December 20, 1936

JAMES B. WHITE
BOROUGH CLERK
CARLSTADT
NEW JERSEY

IF THERE IS NO BAR IN THE HALL AND IF ALCOHOLIC BEVERAGES ARE NOT SOLD SERVED OR CONSUMED IN THE HALL THEN THERE IS NO VIOLATION OF THE RULE PROHIBITING THE PLAYING OF BINGO EVEN THOUGH THE HALL IS A PART OF THE LICENSED PREMISES STOP IF SUCH IS THE FACT THEN NO NECESSITY FOR LOCKING THE BAR

D FREDERICK BURNETT
COMMISSIONER

8. MORAL TURPITUDE - WHAT CONSTITUTES - STRICT CONSTRUCTION IN CASES INVOLVING MINORS UNDER EIGHTEEN YEARS OF AGE - VIEWS OF MORRIS E. BARISON, JUDGE OF THE HUDSON COUNTY JUVENILE AND DOMESTIC RELATIONS COURT.

December 18, 1936.

My dear Commissioner:

In answer to your letter of November 22nd containing your decisions (Bulletin 149, Items 1, 2 and 3) in which you lay down certain principles in determining whether a crime involves moral turpitude, this is to state that I have read same and am in full accord with your opinion.

> In 71 A.L.R. 190, State of North Dakota vs. Joe Malusky, Appt. North Dakota Supreme Court May 7, 1930 (59 N.D. 501, 230 N.W. 735), NUESSLE, J. in delivering the opinion of the Court, said:
>
> "The term 'moral turpitude' is not new. It has been used in the law for centuries. It connotes something which is not clearly and certainly defined. See note 43 Harvard Law Rev. page 117. Generally, it may be said that moral turpitude is evidenced by an act of baseness, vileness or depravity, in the private and social duties which a man owes to his fellow man, or to society in general."

There is a further discussion of the term 'moral turpitude' in the case cited. A careful reading leaves one with the opinion that it is extremely difficult to clearly and with certainty define the term.

In view of that fact, it seems to me that you are not only justified, but judicially correct, in determining that an act committed by an adult may involve moral turpitude, but that the same act committed by a minor does not.

I not only agree with your ruling, but commend you for your liberal and broadminded interpretation.

Sincerely,

MORRIS E. BARISON

9. SPECIAL PERMITS - DISTRIBUTION LICENSEES - NO SPECIAL PERMITS TO BE GRANTED DURING THE HOLIDAYS TO HOLD OPEN HOUSE FOR ADVERTISING OR SO-CALLED "EDUCATIONAL" PURPOSES.

My dear Commissioner:

Would it be possible for me to get from you, a special permit, to dispense to my trade over the holidays, a sample of various cocktails for the purpose of enlightening the same as to the quality and character of said drinks, with the hope of being able to interest them in the sale of necessary articles to make up these drinks for home consumption. I would like to serve, with same, a few hors d'oeuvres.

I understand that you have granted this permission in other parts of the state, and I assure you that I will do same in a high class, dignified manner.

For any consideration you might give me, relative to same, I am,

Sincerely yours,

GUS WALDRON

December 20, 1936.

Mr. Gus Waldron,
Gus Waldron's Wine & Liquor Store,
Trenton, New Jersey.

Dear Mr. Waldron:

It is true that earlier in this work I did issue a few Special Permits to Distribution licensees to serve alcoholic beverages gratuitously in connection with a demonstration or so-called "educational" program as to mixing various types of drinks. I think this was a mistake.

Your distribution license confines you to the privilege of selling package goods only for consumption off-premises, and does not permit you to serve drinks. All of this very probably and properly was taken into consideration by the local issuing authority in granting you a package goods license. To advertise by giving away drinks to all comers with the hope of selling them a bottle to take home practically makes your place for the time being a saloon but without the regulating safeguards and restrictions. It would be unfair competition with those licensees who pay for the privilege of dispensing liquors for on-premises consumption. If I do it for you, I must do it for all. It would be unseemly to have every distribution licensee throughout the State hold open house to treat its customers, actual and prospective, to free drinks - holidays or any other times. I do not approve such advertising. It is not the kind of education that I sponsor.

The application is therefore denied.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. MUNICIPAL ORDINANCES - REGULATIONS OF CONDUCT OR PREMISES ARE SUBJECT TO THE APPROVAL OF THE COMMISSIONER FIRST OBTAINED.

ONE PLENARY RETAIL CONSUMPTION LICENSE PER PERSON - THE POWER TO RESTRICT MAY BE ADOPTED BY ORDINANCE WITH RESPECT TO ONE OR MORE PARTICULAR CLASSES.

RESTAURANTS - DISCRIMINATION - EXCEPTION TO REGULATION REQUIRING FIVE HUNDRED FEET BETWEEN LICENSED PREMISES MUST APPLY TO ALL LICENSEES SIMILARLY SITUATED.

GIFT OR SALE OF FOOD OR ALCOHOLIC BEVERAGES BELOW COST - REGULATION PROHIBITING SAME APPROVED.

TWO HUNDRED FOOT RULE - MAY BE INCREASED TO FIVE HUNDRED FEETBY MUNICIPALITY.

LICENSED PREMISES - DISTANCE BETWEEN - EXCEPTION EXEMPTING RENEWALS OF PRESENTLY EXISTING LICENSES.

LICENSED PREMISES - TOILET FACILITIES - IF REQUIRED OF PLENARY RETAIL CONSUMPTION LICENSEES, MUST ALSO BE REQUIRED OF SEASONAL CONSUMPTION LICENSEES.

LICENSED PREMISES - TOILET FACILITIES - THE MEASURE OF WHAT IS NECESSARY SHOULD BE WHAT THE MUNICIPAL PLUMBING CODES AND HEALTH ORDINANCES REQUIRE, NOT WHAT THE HEALTH INSPECTOR DEEMS NECESSARY.

CREDIT - MUNICIPAL REGULATION APPROVED DESPITE THE ABROGATION OF THE STATE RULE - CONSIDERATIONS APPLICABLE.

LICENSED PREMISES - MUSIC AND DANCING - MUNICIPAL REGULATIONS REQUIRING SPECIAL LICENSE OR PERMIT WOULD BE APPROVED IF WORKED OUT EQUITABLY FOR ALL CONCERNED.

PENALTIES - FINE AND IMPRISONMENT - SUSPENSION OR REVOCATION - NEITHER BARS THE OTHER - TOGETHER THEY MEASURE THE TOTAL PUNISHMENT.

December 12, 1936

Albert J. Wuytack, Esq.,
Dumont, New Jersey.

Dear Mr. Wuytack: Re: Borough of Dumont.

I have your letter of December 8th; also, the proposed ordinance concerning alcoholic beverages which the Council intends to consider on first reading Monday, December 14th. I have gone over the ordinance very carefully. There are a number of comments which I would like to make and matters which I would like to suggest for your consideration.

In your letter, you advert to Sections 7 through 11 which fix the license fees for and describe the five classes of municipal retail licenses, pointing out that the Council has chosen to clarify the rules and regulations to which licenses are subject by inserting in the regular statutory provision the following underscored words, to wit: "subject to rules and regulations of the State Commissioner and of the governing body now or hereafter promulgated." I can see no objection provided you change the underscored part to read "of the State Commissioner and of the governing body which have been duly approved by the State Commissioner now or hereafter promulgated." The power to make regulations residing in the State Commissioner is conferred by Section 36. The municipal governing body derives its authority from Section 37 which declares, among other things, that it may regulate the conduct of any business

licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted. But such regulations, according to Section 37, are subject to the approval of the Commissioner first obtained.

Section 14, to the extent that it limits hours of sale, and Section 15, which limits the number of plenary retail consumption, distribution and club licenses, for the reasons stated in Bulletin 43, item 2, will not need my approval in the first instance in order to be effective. There is, nevertheless, a suggestion that I would like to make with respect to Section 15. The section provides that the number of licenses shall be confined, restricted and limited to nine plenary retail consumption, four plenary retail distribution and two club. It seems to me that it means that none others than these three classes and then only up to the quota indicated, may be granted. But Section 8 fixes the fee for seasonal retail consumption licenses and Section 10 fixes the fee for limited retail distribution licenses. Moreover, according to my records, the Borough has four limited retail distribution licenses presently outstanding. Clearly then, the Council contemplates the issuance of seasonal retail consumption and limited retail distribution licenses as well as the three classes to which Section 15 is confined and these without limit for the present at least. I therefore suggest that you add to Section 15:

"(d) Seasonal Retail Consumption Licenses, no limit.
(e) Limited Retail Distribution Licenses, no limit."

There will then be no misunderstanding as to exactly what Section 15 means. If, as regards these two latter classes, the Council finds in the future that a numerical limitation must be imposed, it may then amend Section 15 in this regard by subsequent ordinance or, by now expressly reserving in the section the right to do so, by subsequent resolution.

Section 16 provides: "No more than one plenary retail consumption license shall be granted to one person."

Your Borough Council has the power, under Section 37 of the Act, to enact by ordinance that no more than one retail license of any class shall be granted to any person, corporation, partnership, limited partnership or association in Dumont. So long as it has the power to do this with respect to all classes of retail licenses, I see no reasonable basis for denying it the right to avail itself of the same power with respect to one or more particular classes. I believe that the statute sets up merely the ultimate power and does not prevent a municipality from availing itself of that power in part. In fact, it is expressly conferred with respect to limited retail distribution licenses. See Section 13, sub. 3b. So long as it is enacted by ordinance - when applied to all classes of retail licenses, the statute requires that it be enacted by ordinance - I believe it competent to apply it to any one or more particular classes and not to others. Section 16 will, therefore, be approved providing that the word "person" be followed by the words "corporation, partnership, limited partnership or association."

Section 17, as submitted, is disapproved. It declares that no plenary or seasonal retail consumption license shall be within five hundred feet of any other plenary or seasonal consumption license excepting from the provisions of the regulation renewals of presently existing licenses and restaurants as thereinafter defined.

Such restaurants, according to the definition, must be all on one floor level, have not less than one thousand square feet of public floor space in aggregate nor less than one hundred and fifty square feet per room, must have equipment to accommodate not less

than fifty persons at once with adequate refrigeration and kitchen facilities and stores of foodstuffs on hand. Furthermore, the gift or sale of food or any alcoholic beverage below cost as an inducement to encourage consumption of alcoholic beverages is prohibited. There may not be in the public dining space any bar; alcoholic beverages must be prepared in a room from which guests are excluded. And if the Borough Council so directs, the licensee must keep a record of all sales adequate to disclose the volume of sales of alcoholic beverages and the volume of sales of foodstuffs. All this, bear in mind, is merely to define what kind of a restaurant is meant when this 500 foot rule is to be applied. It is not an attempt to define restaurants generically nor does it in any way prevent a restaurant which does not comply with these requirements from getting a license. All it does is to establish a particular class of restaurants and to confer upon it, to the exclusion of others, an exemption from the rule.

Restaurants, according to the statute, are all establishments regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted. It is such establishments which comprise the class. Without pausing to consider whether or not some of the criteria you have set up are reasonable - why all on one floor, why <u>each</u> room not less than 150 square feet, why selling food under cost, why no bar and why the necessity for the reports and what relevancy, anyway, have these matters to an exemption from a regulation establishing a minimum distance between licensed premises - I disapprove because you exclude establishments which may be restaurants in fact. The section is, therefore, discriminatory and unreasonable. The reasons are fully set out in <u>re Teaneck,</u> Bulletin 125, item 8, and <u>Peck v. West Orange,</u> Bulletin 147, item 1. Copies of both are enclosed. The items therein cited can be obtained from Mr. Bersch, the Borough Clerk, who has a complete set of the Department bulletins in his files.

One more thing, while on Section 17. Subdivision (c) declares that the gift or sale of food or any alcoholic beverage below cost, or the offering in any manner whatsoever of any other inducement by the licensee, his servants, agents or employees to encourage the consumption of alcoholic beverages is hereby prohibited. Does this apply only to restaurants as defined in Section 17 - the definition comprises practically the entire context of the section - or does it apply to all licensees and all occasions? It is not clear which was intended. The fact that it is but one of the six subdivisions which make up the definition of restaurant leads me to believe the former. But if that were the case, I could not approve because if such conduct is bad in such circumstances, by its nature it is bad in all others and consequently, instead of applying merely to restaurants, it must apply to all. If intended to apply to all, clearly it should at least be set out in a separate section not tucked away as part of a definition of restaurants where, by virtue of the specific application of the rest of the section, it may be construed to be limited thereby. If so set out and made to apply to all, it will be approved, not as an economic measure for that is beyond your jurisdiction, but as a prohibited inducement which fairly falls within the power conferred to make regulations concerning practices designed unduly to increase the consumption of alcoholic beverages. See <u>re Trenton,</u> Bulletin 47, item 13.

Section 19 reads: "No plenary retail consumption license, no seasonal retail consumption license, and no plenary retail distribution license shall be granted for premises located within a radius of 500 feet of any public school, or private school house not conducted for pecuniary profit; the said 500 feet to be measured in the

normal way that a pedestrian would properly walk from the nearest entrance of said school to the nearest entrance of the premises sought to be licensed, provided, however, that this prohibition shall not apply to the renewal of any such class of license now issued, nor shall it apply to the renewal of any such class of license where no such school was located within said prohibited distance at the time of the issuance of the said license so to be renewed, or as otherwise excepted by the provision of the said Act."

According to the statute, the proscribed distance is two hundred feet. You may, however, increase it to five hundred feet if you choose. Re Upper Saddle River, Bulletin 77, item 6. And I note that the additional protection is afforded only to public and private schools, not to churches and applies only to plenary and seasonal retail consumption and plenary retail distribution licensees. Such distinctions are valid if reasonable. They may be in this case. I will approve them tentatively because they may possibly be sustained by virtue of different factual situations involved. The regulation, as in the case of all those given ex parte approval, is subject to review on appeal at which time it can be considered on the merits and affirmed or set aside as the particular facts may warrant. But inasmuch as you have said that the five hundred feet shall be measured in the normal way that a pedestrian would properly walk, you must strike out from the fourth line the words "a radius of." To measure the distance in the normal way that a person would walk will give you an entirely different result than if you use the radius method. And furthermore, from the tenth and twelfth lines, exscind the words "class of." It is not the classes of licenses that you want to exempt but the particular licenses which may presently be within the five hundred feet or subsequently be within that distance if a school is erected in the future.

Section 21 prohibits the issuance of plenary retail distribution licenses for any premises within five hundred feet of any other plenary retail distribution licensee. Don't you want here also, as you did in Section 17 with respect to consumption licenses, to make an exception in favor of renewals of plenary retail distribution licenses presently outstanding? I think it but fair, if there are any now outstanding whom the rule would affect, that you do.

Section 22 requires that all premises operating under plenary retail consumption licenses be equipped with separate toilets for men and women. You have in Section 8 provided for the issuance of seasonal retail consumption, as well as plenary retail consumption licenses. Plenary and seasonal consumption licensees stand essentially in the same position. Both sell all kinds of alcoholic beverages to the general public for consumption on the licensed premises. The only difference between them is the length of the license term. Section 22 must be made to apply to both plenary and seasonal retail consumption licensees.

In conclusion, Section 22 declares that the installation of these toilets shall meet with the approval of the Health Inspector. I think that it should say, rather,"the installation of which shall be made in accordance with the Borough plumbing codes and health ordinances" or whatever other municipal ordinances or regulations may control. An applicant could then simply by referring to the ordinances or codes to which the section adverts, tell exactly what installation he was required to make and how he would have to make it. Cf. re Union Township, Bulletin 113, item 11; Bulletin 118, item 7.

I note that Section 27 provides in part: "No sales of alcoholic beverages for consumption on the licensed premises shall be made on credit.....provided that such prohibition against sales on credit shall not apply to club licenses."

Less than a week ago, on December 6th to be exact, I abrogated the State rule which prohibited sales by retail licensees on credit. After four months of trial, I find it to be practically unenforceable. I venture the opinion that eventually you will find that the rule which you have drawn is also. It is easier to evade than was the State rule. It allows consumption licensees to sell on credit for off-premises consumption. Thus, merely to prove that a customer was indebted to a licensee for liquor purchases would not be sufficient to show a violation. You would have the additional burden of proving that it was sold for on-premises consumption. Now, mind you, I am not demanding that you discard your proposed rule. If the Council chooses to include it, I shall approve it. I am merely pointing out what my experience with such a rule has been and, therefore, suggest before final decision is made as to whether or not it should be included, that you consider carefully the thoughts expressed in my Notice to Retail Licensees of December 6th, abrogating the State rule (Bulletin 151, item 7), a copy of which is enclosed.

Section 31 provides: "No licensee shall allow, permit or suffer in or upon the licensed premises any dancing, or the playing of music, except music by radio, victrola or other reproducing method, without first having obtained a permit therefor from the Mayor and Council."

I cannot approve Section 31 as it now stands. The question is not as to your power to require that a permit be obtained before dancing or music, except by some reproducing method, is allowed on licensed premises. I believe that it may properly be made the subject of regulation and a special license or permit therefor first required. But in what manner must the application be made and what information must it set out? What qualifications render the applicant acceptable and the premises suitable? Is a fee to be charged and if so, how much? On what criteria does the granting or denying of the permit by the Mayor and Council depend? If these and other matters of common fairness to the licensees are carefully thought out and an equitable solution submitted, I shall be glad to reconsider it.

Section 35 provides: "Any person who shall violate any of the provisions of this ordinance, and any person who shall sell or distribute any alcoholic beverage without having complied with or in violation of the provisions of this ordinance, for which no other specific and prescribed fine or penalty is provided, shall, upon conviction be subject to a fine not exceeding Two Hundred ($200.00) Dollars, or imprisonment for not exceeding ninety (90) days, or both such fine and imprisonment, in the discretion of the Court."

I advert to the phrase in this section which says "for which no other specific and prescribed fine or penalty is provided." There are other specific and prescribed penalties provided for each and every violation of the ordinance. See your Section 33 which authorizes the suspension or revocation of licenses for such violations. Does it follow then that in all cases, Section 35 would be a nullity? Obviously, that is not what was intended. A fine under an ordinance should not bar disciplinary proceedings through a suspension or revocation of a license and vice versa, a suspension or revocation should not bar a fine. In many cases, both are clearly warranted. Fine or imprisonment results from a criminal action. Suspension or revocation results from a civil action. Each proceeding is separate and distinct. The former vindicates the State. The latter is directed against the privileges which the license confers. Together, they measure the total punishment for an offense. See in this connection <u>re Teaneck,</u> Bulletin 151, item 1, copy enclosed, which goes into the considerations involved in some detail. I most cordially suggest that the above quoted phrase be

exscinded from Section 35. The discretion of the Borough Council in imposing a sentence of suspension or revocation or of the magistrate before whom an offender may appear, will in no wise be prejudiced.

Subject to the foregoing comments and exceptions, the ordinance upon final adoption will be approved as submitted.

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.

11. DISCIPLINARY PROCEEDINGS - ASSORTED VIOLATIONS AND APPROPRIATE PENALTIES - RESULTS OF UNSTERILIZED LAW ENFORCEMENT - HEREIN OF THE PERVERSION OF APPEALS UNDER PRETENSE OF SEEKING JUSTICE.

December 23, 1936

Mr. Eugene Ertle,
City Clerk,
City Hall,
Jersey City, N. J.

Dear Mr. Ertle:

I have staff report and your certification of the proceedings against the following Jersey City licensees:

1. Feliks Szalecki: Misrepresentation of facts in application for license in that he failed to disclose the true owner of the licensed premises. Adjudicated guilty. License revoked.

2. William S. Guskind: Sale on Election Day, November 3rd, last, while the polls were open for voting. Adjudicated guilty. License suspended for two days, viz.: December 21 and 22. Incidentally, Guskind appealed this adjudication. An appeal from a suspension operates under the Statute as an automatic stay unless the State Commissioner determines otherwise. On examining the Petition of Appeal I found the grounds therein stated to be frivolous and wholly without merit. Sensing that the real objective was a stay so to be able to take advantage of the Christmas buying rush, I therefore issued a Rule to Show Cause returnable last night at 8:30 P. M. why the stay should not be vacated. Both parties appeared at that hearing. Testimony was taken. Appellant was driven into a confession of guilt. The stay was therefore vacated immediately so that the sentence of suspension starts this morning at 6 A. M. continuing throughout the two days next preceding Christmas. I doubt if he sells again on an Election Day. An appeal to a disinterested, impartial tribunal serves a useful purpose. The automatic stay which accompanies it is not, however, to be abused or adroitly perverted to accomplish wholly selfish purposes under the pretense of seeking justice.

3. Rickheys, Incorporated: Sale before 1 P.M. on Sunday contrary to terms of City Ordinance. Adjudicated guilty. License suspended for two days.

4. Anthony F. Giordano: Sale in undersized containers for off-premises consumption in violation of State Rule. Adjudicated guilty. License suspended for two days.

5. Abraham Samilson: Possession of an illicit beverage - one bottle of whiskey the contents of which differed from that as represented by its label. Adjudicated guilty. License suspended for two days.

6. Braddock Bowl Tavern, Inc.: Possession of an illicit beverage - one bottle of whiskey, the contents of which differed from that as represented by its label. The staff report states:

"Evidence showed that the business was transferred from the former licensee, John Martin, on October 15; that formal transfer did not take place until October 24; that the new licensee was in possession at the time the violation took place. It was contended that the bottle seized had been left there by the prior licensee and that the violation should not be chargeable to this corporation.

"Decision was reserved by Commissioner Casey.

"Certification from the City Clerk shows:

"Verdict: Charges dismissed based on the dispute of fact as to which licensee was responsible; warning given."

7. Donato Bozza: Possession of an illicit beverage. Adjudicated guilty. License suspended for two days.

8. Anthony Giscondi: Misrepresentations in his application by which he secured his license. Adjudged guilty. License revoked.

9. Bert Zaremba: Violation of your local ordinance in that he did permit a woman to be served at the bar. Adjudged guilty. License suspended for thirty days.

10. Vito Mancini: Permitting an unauthorized person to tend bar in violation of local ordinance. Adjudged guilty. License suspended for two days.

11. Trier and Kau: Sale on Sunday prior to the legal hour for opening. Adjudged guilty. License suspended for two days.

12. Michael Digeno: Permitting gambling for drinks in the licensed premises. Adjudged guilty. License suspended for two days.

13. Anthony Kulasha: Charged with having permitted a woman to tend bar in violation of local ordinance. Adjudged guilty. License suspended for two days.

No opinion is expressed on the merits of any of the above cases, except Guskind, because, perchance, they may come before me by way of appeal.

I do, however, wish once again to express to the Board of Commissioners my sincere appreciation for its respect-commanding actions which continue Jersey City in high gear for unsterilized law enforcement.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. DISCIPLINARY PROCEEDINGS - ELECTION DAY VIOLATION - REASONS WHY ONE DAY PENALTY INSUFFICIENT.

December 23, 1936.

Mr. Robert Laing,
Borough Clerk,
Borough of Mountainside,
Westfield, N. J.

Dear Mr. Laing:

I have staff report of the proceedings before the Borough Council of Mountainside against Louis Miller, charged with having sold alcoholic beverages on Election Day, November 3rd, last, while the polls were open for voting.

I note he was adjudicated guilty and that his license was suspended for one day, December 21, 1936.

While I am appreciative of the action of the Council in its adjudication of guilt, I do respectfully submit that the penalty in a case of this kind should be more than a day's suspension because it merely substitutes a colorless ordinary business day for an especially profitable election day. A nominal punishment is unfair to the honest licensees who scrupulously comply with the law and close their places tight.

I trust the Council will bear this in mind in dealing with future violations of this kind that may occur in Mountainside.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - WARNING

December 23, 1936.

Richard A. Jessen,
Borough Clerk,
Keansburg, N. J.

Dear Mr. Jessen:

I have staff report of the proceedings before the Borough Council of Keansburg against

1. Frank Johnson,
   195 Main Street,

2. Nicholas Deturo,
   342 Main Street,

charged with having possessed in their stock of liquor, bottles that were "off proof" and hence illicit. I note that each licensee entered a plea of guilty, disclaiming, however, personal responsibility for the discrepancies in the bottles; that each license was suspended for one (1) day.

My first impulse upon reading these sentences was to state most emphatically that they were inadequate for the offense charged. My attention was then called to the following statement of the Council in imposing sentence:

"We have investigated the circumstances thoroughly and while in these particular cases, we are satisfied that the licensed holders were innocent of any intentional wrong-doing, still it must be borne in mind that all licensees are responsible for any illicit beverages in their premises regardless of their knowledge or intentions or anything else."

The staff report states:

"Both licensees were warned that any future violations would result in a revocation of their licenses."

I sincerely trust that this warning will serve not only these licensees but all licensees in Keansburg and that future cases of this kind will be dealt with more severely.

Customers are entitled to be served what they pay for and not something different than represented by the labels on the liquor bottles.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF SUNDAY CLOSING HOURS - DISMISSAL WITH REPRIMAND.

December 23, 1936.

Mr. Frank A. Priest,
Township Clerk of Hamilton Township,
Trenton, New Jersey.

Dear Mr. Priest:

I have before me staff report and your certification of the proceedings before the Township Committee of Hamilton against George E. Henrie charged with having sold alcoholic beverages on Sunday in violation of Township Resolution.

The report states:

"On Sunday, October 18, 1936 at about 6:30 P. M. Investigators Perry and Roxbury visited the licensed premises. They entered the front door and going to the bar purchased two glasses of beer. There were seven patrons in the place, some drinking, two partly intoxicated. The bartender admitted the violation.

"At the hearing, the licensee, a man 73 years of age and in poor health, testified that he had been upstairs all day and did not know of the violation. He stated that there would be no repetition of the offense.

"Verdict: Dismissed with reprimand.

"NOTE: The following statements were made by Committeemen Steiner, Hartman and Burgner:

'Mr. Steiner: In view of the fact that this is your first offense and the fact that you have now instructed your bartender not to sell on Sunday while cleaning up, the Committee has decided to dismiss your case with a reprimand. However, if you return on any similar violation you must look forward to a severe penalty.

'Mr. Hartman: I feel that you should have another chance. We all slip over the traces at some time and I feel that you have done that this time, but I am willing to let you off this time, but with the admonishment that severe action will be taken if you return.

'Mr. Burgner: We are here to carry out the beverage law as enacted by the State and also our local ordinances. We realize that the Township closing hours are rather restricted but a referendum was held and the people voted against open Sunday and that referendum must be abided by. I can assure you that if you come here again on the same violation a severe penalty will be meted out'."

Please express to the members of the Committee my appreciation for its prompt attention to this case. The past record of the Committee leaves me with the complete assurance that the warning will be borne in mind in future cases of this kind and that hereafter penalties will be handed out to errant licensees.

Very truly yours,

D. Frederick Burnett
Commissioner