

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

BULLETIN NUMBER 73

May 9, 1935

1. APPELLATE DECISIONS - VOOS VS. UNION

ANNA VOOS,)	
Appellant,)	
-vs-)	
)	ON APPEAL
TOWNSHIP COMMITTEE OF THE)	CONCLUSIONS
TOWNSHIP OF UNION (UNION)	
COUNTY),)	
Respondent.)	
-----)	

Gansler & Feinberg, Esqs., by Morris Feinberg, Esq., Attorneys for Appellant.
Charles Wagner, 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 #1676 Stuyvesant Avenue, Union (Union County).

Respondent contends that the application was properly denied because there is one licensed place of business presently operating diagonally across the street from appellant's premises and the issuance of an additional license to appellant would be socially undesirable.

Appellant's proposed place of business is located along a highway carrying considerable traffic. Diagonally across the road is a place of business now operating under a plenary retail consumption license. Appellant concedes that the local residents are adequately serviced by the existing place but argues that the large number of transients traveling along the highway justifies his application.

The right of a municipality to deny an application where the granting thereof would result in the existence of too many licensed premises in any particular vicinity is well settled. Bader v. Camden, Bulletin 44, Item 8; Furman v. Springfield, Bulletin 49, Item 6; Clement v. Loder, Bulletin 52, Item 5; Faccidomo v. Union Beach, Bulletin 55, Item 8; Shinn v. Camden, Bulletin 64, Item 8.

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. Botfan v. Howell, Bulletin 64, Item 9. The only two members of respondent committee who testified, stated that in their opinions the needs of the transient trade are adequately serviced by the existing licensed place. They further testified that in no other portion of the town have licenses been issued for premises directly across the street from each other even along well travelled highways and that the interest of the township were best served by such a policy. Appellant called several witnesses who merely stated that in their opinions the issuance of the 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. Appellant has failed to sustain the burden of proof.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: May 4, 1935

2. PUBLIC BUILDINGS - RULE OF THE STATE MILITARY BOARD CONCERNING THE CONSUMPTION AND USE OF ALCOHOLIC BEVERAGES IN ARMORIES BY THOSE WHO "BRING THEIR OWN"

In Re McFadden, Bulletin 70, Item 10, it was ruled on April 16th that no special permit was required for the sale of accessories to alcoholic beverages; that as regards the consumption and use of alcoholic beverages in armories by those who bring their own, the matter was exclusively within the jurisdiction of the State Military Board and the question was accordingly referred to the Quartermaster General, Stephen H. Barlow, for ruling.

The ruling made by the State Military Board follows:

April 25, 1935

My dear Commissioner Burnett:

Acknowledging yours of April 16th, the subject therein contained was referred to the State Military Board at its session of April 22nd, and it is the opinion of that body that our Circular Letter #135 quoted in yours to Mr. McFadden covers the limit of responsibility which can be assumed by the Military authorities. It is our intent to enforce a restriction against the storage, sale and distribution of intoxicating liquors in State-owned armories, drill halls or on State Military reservations. It is our thought on this subject that the liquors carried and owned personally by visitors and trespassers on these reservations are beyond our Military control and subject to such civil or police regulations as may be published by the State or City governments. Further that control of disorder which may result from such private ownership is one for military or civil supervision as their respective interest may appear.

A copy of the resolution expressing the thought of the State Military Board is enclosed for your files.

Very truly yours,
(Signed) Stephen H. Barlow
Stephen H. Barlow
Brigadier General

The Quartermaster General.

DSH:LAT
Enc.

Trenton, April 25, 1935

IT IS CERTIFIED, That the records of this office show that the following resolution was adopted at a meeting of the State Military Board, held in Trenton, April 22, 1935:

"Be It Resolved, That the consumption of alcoholic beverages in armories by those who bring their own, and the selling of soft drinks as accessories to such consumption, does not conflict with the regulations prohibiting the storage, sale or distribution of alcoholic beverages in armories by other than the regularly authorized post exchanges."

(Seal)

(Signed) William A. Higgins
The Adjutant General.

3.

MORAL TURPITUDE - WHAT CONSTITUTES

The Commissioner has read with interest and profit the opinion of John S. Applegate, Esq. given to the Township Committee of Shrewsbury Township, Monmouth County, on the subject of moral turpitude. Believing it will be of value to issuing authorities in the determination of this difficult question, the full text of Mr. Applegate's opinion is reproduced as set forth in the Red Bank Register of April 25, 1935, as follows:

"My opinion as township attorney has been asked by your honorable body as to whether Mr. Ritzau, a member thereof, has forfeited his office as a member of your committee, by reason of his conviction in the Monmouth county court of Oyer and Terminer of a misdemeanor, namely, the violation of a statute of this State, entitled 'An Act Concerning Alecholic Beverages,' which violation by said statute is made a misdemeanor, the penalty for which is a fine or imprisonment, or both, in the discretion of the court.

"Accordingly, I respectfully submit the following:

"In the year 1913 the Legislature of the State of New Jersey enacted a law (see the Laws of New Jersey, 1913, page 116), providing in effect that any person holding an elective office, state or municipality, who shall be convicted upon an indictment charging such person with the commission of a misdemeanor which involves moral turpitude shall forfeit such office and cease to hold same. Mr. Ritzau was convicted of a misdemeanor. Did the act of violation of the law for which he was convicted involve moral turpitude? If it does, his office is forfeited; otherwise, not.

"It is my opinion that the crime in question, namely, the violation of our state liquor law, does not involve moral turpitude, within the meaning of the statute. The liquor law makes the act which constitutes a violation a crime. If it were not for the statute the act itself would not be a crime, for in the absence of said provision in the liquor act any one might legally make and sell liquor. The making and selling of liquor is not of itself immoral, but is arbitrarily made a crime by law. The object and purpose of the statute is the raising of revenue and the regulation of the manufacture, sale and delivery of liquor. The violation of such statute cannot be considered as immoral or involving moral turpitude when the act constituting said violation is not of itself immoral.

"According to legal authorities moral turpitude signifies an inherent quality of baseness, vileness and depravity. A statute may make an act a crime, but cannot make that act immoral if not inherently immoral.

"There are many legal authorities in support of my conclusion which are not necessary for me to cite in this opinion.

"However, there is always a certain stigma attaching to one convicted of a crime and the more serious the crime the greater the stigma, and the reputation of the individual so convicted must necessarily suffer in a greater or lesser degree and that must be true in the present case. If Mr. Ritzau were less obtuse

he would realize that his continued presence on your committee is obnoxious to the other members thereof, as well as to the well-minded people of your community, and that his usefulness as a member of said committee is ended, and he would resign voluntarily. Apparently it is not his intention to take that sensible step. Consequently, it is my advice to you that at a regular meeting of your committee a resolution be offered and adopted, requesting Mr. Ritzau's resignation. Whatever may be his final decision you will have at least placed on record permanent evidence of your having performed a duty you owe to your citizens and to yourselves."

4. APPELLATE DECISIONS - COLLIER VS. TRENTON

CARL COLLIER,)	
Appellant,)	
-vs-)	
BOARD OF COMMISSIONERS OF)	ON APPEAL
THE CITY OF TRENTON,)	CONCLUSIONS
Respondent.)	

Carl Collier, Pro.Se.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial on February 3, 1955 of an application for a plenary retail consumption license for premises located at 805 East State Street, Trenton.

Respondent contends that the application was properly denied pursuant to its policy, adopted in view of the great number of licenses which had been issued in Trenton, that no further licenses should be issued except "where special circumstances are shown to exist justifying the issuance of such additional licenses".

The resolution declaring such policy read:

"RESOLVED, that it is the considered judgment of this Board that it is socially undesirable to issue any Plenary Retail Consumption, Plenary Retail Distribution or Club licenses in addition to the licenses respectively heretofore issued and in effect, excepting where special circumstances are shown to exist justifying the issuance of such additional licenses".

This resolution was submitted to the State Commissioner and approved with reservations as follows:

"The first paragraph raises a big question in my mind as to its effect. The exception 'where special circumstances are shown to exist justifying the issuance of such additional licenses' seems to nullify the operative language of the judgment, so that it practically amounts to saying 'We do not think any further licenses are necessary except we find them to be necessary'!. Again, there being no definition or even indication as to what the special circumstances may be which are reserved, the resolution creates neither a rule nor a declaration or, for that matter, a declared policy, all because of the vagueness and indefiniteness of the language employed. I appreciate the inherent difficulties confronting you in the attempt to draft

any such section at all. It is very easy to criticise and a thousand times more difficult to construct. I appreciate that something must be done toward limiting licenses in a fair and reasonable way. There is no question in my mind of lack of good faith. The only difficulty is the inherent one of attempting to formulate in language the thing which all good citizens feel. Hence, as a step in the right direction and in order to try the experiment out and learn from actual experience, I shall approve section 1 as a statement of your present intention of policy, and leave to concrete instances to arise in the future the effect and application thereof. If anybody considers himself aggrieved thereby, I will give him a full and sympathetic hearing."

This resolution has never, in fact, been adopted by the Board of Commissioners of the City of Trenton, despite the tentative approval aforesaid.

While the failure actually to adopt a formal resolution is not necessarily fatal to the policy expressed therein (Dann vs. Manasquan, Bulletin 37, Item 12; Platnick vs. Belmar, Bulletin 45, Item 16), in the absence of a previous ordinance (Eisen vs. Plainfield, Bulletin 68, Item 12), or a resolution of record (Sosnow Drug Co. vs. Freehold, Bulletin 68, Item 13), still the language in which the policy is couched, viz., "excepting where special circumstances are shown to exist", makes it peculiarly susceptible to abuse and a facile medium for conferring special privileges on one and deny them to another equally qualified. It therefore must be construed strictly and applied equally. It is not fair to make fish of one and fowl of another. Barbuto vs. Trenton, Bulletin 56, Item 5.

If all there had been to the present case was a denial of an application based on the above-mentioned policy, the action of respondent would have been affirmed. For, while appellant was personally well qualified, and there was no substantial objection to his purposed place of business, he did not sustain the burden of proof to show any special circumstances justifying the issuance of a license to him and increasing the all too plentiful number already in Trenton. But it also appears that after appellant was turned down by the local issuing authority, nine other retail consumption licenses were issued by respondent and in no one of these other cases was any adjudication made of the existence of special circumstances. If the declared policy of limiting licenses is to be more than a convenient gesture, and no new ones are to be issued unless special circumstances justifying such issuance appear, the least that must be done in each case is to determine in a fair judicial manner and openly record the finding that those special circumstances do exist. Since nine other licenses were issued indiscriminately without such adjudication of record, the reason disappears why I should hold appellant to prove more than that he is qualified as to person and place. If those licenses were proper under the present Trenton policy, so was appellant's. The policy cannot be invoked in one case and ignored in others. The least that must occur before such policy will be honored on appeal is that it be fairly and uniformly applied. Barbuto vs. Trenton, *supra*; Rufeisen vs. Asbury Park, Bulletin 45, Item 12; Ostertag vs. Atlantic City, Bulletin 45, Item 13; Skwara and Proneska vs. Trenton, Bulletin 57, Item 7.

Respondent further contends that the premises sought to be licensed are unsuitable in that there is only one lavatory for the accommodation of both sexes. Appellant had advised respondent that he was willing to install an additional lavatory. This offer was repeated at the hearing.

The action of the respondent Board is reversed upon the express condition that appellant provide an additional lavatory in the premises prior to the issuance of the license.

Dated: May 2, 1935
D. FREDERICK BURNETT,
Commissioner

5. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES. - CALENDAR AS DISTINGUISHED FROM FISCAL YEAR

April 15, 1935

Walter F. Miller, Borough Clerk,
Lawnside, N. J.

Dear Sir:-

I have the resolution fixing plenary retail consumption and distribution license fees and regulating the sale of alcoholic beverages passed by your Borough Council on February 7, 1935 pursuant to the Alcoholic Beverage Control Act.

I respectfully suggest that Section 10 be amended to limit the number of each class of license to be issued to not more than three in any one "fiscal licensing" year rather than "calendar" year. I make this recommendation because your regulation as worded would enable the issuance of three licenses of any class after January first, regardless of how many licenses had already been issued in that class prior to January first. If this were done, upon the expiration of all of those licenses on the June 30th following, no new licenses of that class could be issued until the next January first, and your municipality would have no licenses for six months.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

6. APPELLATE DECISIONS - UNITED STATES PIPE & FOUNDRY CO. VS. BURLINGTON, ET AL.

UNITED STATES PIPE & FOUNDRY CO.,)
Appellant,)

-vs-

COMMON COUNCIL OF THE CITY OF)
BURLINGTON (BURLINGTON COUNTY))
and PHILIP SOZIO,)
Respondents.)

ON APPEAL
CONCLUSIONS

Howard Eastwood, Esq., Attorney for Appellant.
Thomas Begley, Esq., Attorney for Respondent, Common Council of the City of Burlington.
Richard J. Hughes, Esq., Attorney for Respondent, Philip Sozio.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license to respondent Philip Sozio.

At the conclusion of the hearing it appeared that appellant's contention that the license was improperly issued be-

cause the licensee is not the sole person interested in the business, had not been raised before the issuing authority. It further appeared that the licensee still owed a balance of \$40 on account of the license fee. Accordingly, conclusions were filed remanding the case to the issuing authority to insist upon immediate payment of the balance of \$40 and to hold a hearing and determine whether appellant's contention was true in fact and to certify its action to the Commissioner. United States Pipe & Foundry Co. vs. Burlington, Bulletin 57, Item 12. Such certificate has now been filed stating that the \$40 has been paid and that the finding of the issuing authority is that the licensee is the sole person interested in the licensed business.

The question now is whether this determination is reasonably supported by the evidence taken at the hearing of the appeal.

From the testimony on appeal it appeared that the licensed premises are owned by the licensee's father, who held a plenary retail consumption license thereon for the period expiring June 30, 1934; that the father filed an application for the renewal of this license for the current period; that appellant filed written objections to such renewal on the ground that the father was personally disqualified; that the father thereupon withdrew his application and requested that the money deposited by him be applied on account of the application of the present licensee, which was filed simultaneously with the withdrawal of the father's application; that this request was granted; that thereafter the father gratuitously transferred his entire stock of goods to his son; that the son has been unemployed for the past 12 years during which time he and his family had been supported principally by his father. On behalf of the licensee there is testimony that the father is not interested in the licensed business; that the licensee has rented the licensed premises from his father at a monthly rental of \$12; that he purchased the fixtures of said premises for \$160; that the money applied on account of his license fee by his father was a loan of which he has already repaid \$100; that Miss Warner who is a member of the Common Council of Burlington and who is head of the Special Licensing Committee has inspected the licensed premises from time to time since the license was issued and has found the licensee actually conducting the same at all times.

The function of the Commissioner is not to make a new finding of fact upon the evidence presented on appeal but merely to ascertain whether in fact such evidence reasonably supports the factual determination of the municipal issuing authority. Orofino v. Millburn, Bulletin 45, Item 15. From the foregoing recital it is clear that there is sufficient in the record to support the finding of the municipal issuing authority. Accordingly, such determination will not be set aside.

Appellant further contends that the license was improperly issued because the licensed premises are too close to a church and a public school. It is admitted, however, that said premises are beyond 200 feet from the church and school and are not within the prohibition of Section 76 of the Control Act. The church and school authorities did not object to the issuance of the license. While a municipal issuing authority may properly adopt a policy not to issue licenses for premises too close to churches or schools even though said premises are not within the prohibition of Section 76, nevertheless, the social desirability of such a policy must be determined by each municipal issuing authority for its respective municipality. Cf. Barbuto vs. Trenton, Bulletin 56, Item 5.

Appellant finally contends that the license was improperly issued because the licensed premises are close to appellant's factory in which large machines are operated and the consumption of alcoholic beverages by appellant's employees lessens their efficiency and has a tendency to cause accidents and injuries to other employees. It may very well be that a municipal policy not to issue licenses for premises too close to industrial plants, if uniformly applied, is valid. See Kirchies v. Clifton, Bulletin 66, Item 1. It is not suggested, however, that the Common Council of Burlington has ever adopted any such policy. And in view of the testimony of the resident manager of appellant corporation that pursuant to his instructions practically none of the employees patronize the licensed premises, no such policy seems necessary to protect appellant corporation.

The action of the Common Council of the City of Burlington is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: May 4, 1935.

7. APPELLATE DECISIONS - ZUCK VS. WAYNE

PAUL ZUCK,)	
Appellant,)	
-vs-)	
)	ON APPEAL
TOWNSHIP COMMITTEE OF THE)	CONCLUSIONS
TOWNSHIP OF WAYNE (PASSAIC)	
COUNTY),)	
Respondent.)	
-----)	

Michael Shershin, Esq., by Milton Werksman, Esq., Attorney for Appellant.

C. Alfred Wilson, 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 #38-40 Greenwood Avenue, Wayne Township.

Respondent contends that the application was properly denied for the reason, among others, that it had adopted a policy not to issue any licenses except to established restaurants and that appellant's premises were not a restaurant.

Respondent had adopted a resolution purporting to enunciate this policy and forwarded the same to the Commissioner for his approval in accordance with Section 37 of the Control Act. The Commissioner disapproved the resolution, stating:

"Section 3 of the resolution of June 12th, as amended December 11, 1934, requires of applicants for plenary retail consumption licenses that the premises to be licensed be first licensed pursuant to 'An Ordinance to regulate certain places within the Township of Wayne in the County of Passaic wherein food or drink or both are sold to be consumed on the premises' adopted December 9, 1930 as amended and supplemented, and constitutes violations of said ordinance as grounds for revocation of the plenary retail consumption license.

"I have examined that ordinance and the supplement. By its terms it requires licensing thereunder of all public restaurants, dining rooms, grills, bars, cafes, saloons, rooms, cars, wagons and such other places wherein food or drink or both may be sold for consumption on the premises, with the exception of those places selling soda water and ice cream exclusively and boarding houses. It exacts a license fee of \$25 and an additional fee of \$5 to cover the cost of advertising the public hearing upon the license application. It regulates the conduct of businesses licensed thereunder and the nature and condition of the licensed premises. It imposes penalties for violation.

"Irrespective of the fact that it was enacted prior to the Alcoholic Beverage Control Act and therefore cannot be said to have been enacted pursuant thereto, there can be no doubt, inasmuch as licensing thereunder is required of all applicants for plenary retail consumption licenses, that it now regulates the sale of alcoholic beverages. And while the ordinance does not declare that it is adopted for revenue purposes, a license fee of \$25 and additional costs of \$5 are assessed.

"Insofar as that ordinance affects applicants for plenary retail consumption licenses, I cannot approve these additional license fees for such applicants could then be charged in excess of the statutory maximum for their licenses. The Legislature says that the maximum a municipality can charge for this license is \$2000. If the fees fixed in the ordinance are valid, you could charge \$2030 to exercise the privilege. That cannot be. The applicant may not be required to pay more for his license than the statute authorized the municipality to collect.

"Section 7 of the ordinance provides 'No license shall be issued for any public place wherein intoxicating liquor is sold' and I have nothing on record indicating that this has ever been altered or amended. But the resolution requires licensing under the ordinance before a plenary retail consumption license may be granted. And inasmuch as the ordinance expressly prohibits the licensing thereunder of such businesses, it follows that the condition you have imposed upon plenary retail consumption licenses could not possibly be fulfilled."

The mere fact that the resolution was not approved, however, does not destroy the force of the municipal policy, for a reasonable municipal policy will be upheld even though not formally adopted provided it is uniformly applied. Dann vs. Manasquan, Bulletin 37, Item 12. The disapproval was based solely on the points expressly mentioned which in no way disapproved of the fundamental policy of confining licenses to restaurants.

A Appellant's premises do not consist of a restaurant and appellant admits that he does not intend to conduct a restaurant therein. It is not suggested that respondent has not uniformly applied its stated policy. On the contrary it appears that each of the 40 licenses issued by respondent heretofore has been for an established restaurant. Appellant argues, however, that the restriction of the issuance of the licenses to restaurants is unreasonable. Such a restrictive policy was considered and held valid in DiBono v. Bridgeton, Bulletin 30, Item 9; Barber v. Bridgeton, Bulletin 31, Item 1. See also MacCracken vs. Belvidere, Bulletin 38, Item 18. For the reasons expressed in the cited cases the denial of appellant's application pursuant to the policy adopted by respondent was reasonable.

Accordingly, the action of respondent is affirmed.

Dated: May 4, 1935

D. FREDERICK BURNETT,
Commissioner

8. LICENSES - SPECIAL CONDITIONS - ISSUING AUTHORITIES MAY EXACT WAIVER FROM LICENSEE TO PROTECT LAND ON WHICH PUBLIC SCHOOL IS CONTEMPLATED TO BE SUBSEQUENTLY ERECTED.

May 6, 1935

Harold J. Schlosser, Borough Clerk,
Milltown, N. J.

Dear Sir:-

I have the resolution adopted by your Borough Council on March 11, 1935 imposing upon the plenary retail consumption license to be issued to Martin Pulyer for premises 20-22 Cottage Avenue, Milltown, the special condition that "said license shall be issued, granted and accepted subject to the proviso that in the event a public school building is hereafter erected within the limits of the ordinance in proximity to said licensed premises that the licensee shall have no claim to a renewal hereof by reason of this license having been granted."

While this condition is contrary to Section 76 of the Alcoholic Beverage Control Act so far as concerns the renewal of license where no such schoolhouse was located within two hundred feet of the licensed premises at the time of the issuance of the license, yet the licensee having waived at the outset and before expenditure or commitment the protection afforded by statute against subsequent loss of his license should a public schoolhouse be constructed within two hundred feet thereof, the special condition is therefore approved.

The insertion of this condition will enable your community to keep its future schools free from embarrassment of licenses presently granted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

9. MAY WINE - NOT PERMISSIBLE FOR TAVERN KEEPERS TO MAKE "MAY WINE"

April 25, 1935
Union City, N. J.
744 Bergenline Avenue.

Commissioner D. F. Burnett
Dept. of Alcoholic Bev. Control
Newark, N. J.

Dear Sir:-

It has been told to me by a wine wholesaler, that a Tavern Keeper is not permitted to make his own MAY WINE, comprised of Tax Paid Wines and Tax Paid Champagne, the main ingredients.

Inasmuch as May wine is a very palatable drink during the month of May, I would appreciate your office advising me as to whether there is anything in our law or perhaps a ruling of the

department, which would prohibit me from making such a drink to be served on my premises, the same as any mixed drink such as a manhattan cocktail and numerous others.

Yours very truly,
THE AVENUE TAVERN
H. E. Krumnow

May 6, 1935

Mr. H. E. Krumnow,
Union City, N. J.

Dear Mr. Krumnow:

I have yours of the 25th ult. You were correctly informed that it is not permissible for any tavern keeper to make his own May wine. The manufacture of wine may be lawfully undertaken only by a winery licensee. Although all that you purpose to do is to mix wines with other ingredients, that process constitutes rectification and needs a regular license. For a limited time, on a special holiday occasion, I permitted tavern keepers to make up Easter egg-nog. But this experiment is not a precedent to be amplified into allowing rectification of May wine for a month. There is no feasible way in which enforcement officers may determine whether the ingredient wines are tax paid or not. The situation is radically different from the mixed drinks which you mention, such as a Manhattan cocktail, which are mixed for immediate service and consumption whereas you purpose to make up quantities in advance for consumption at an indeterminate time.

The practice will not be allowed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

10. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER -- RULE 1 - COST OR VALUE IN EXCESS OF \$100. - GOLF SCORE CARDS

May 8, 1935

Lakewood Country Club,
Lakewood, N. J.

Gentlemen:

I have yours of the 6th raising the question whether you may use the sample of golf score card which advertises a brand of whiskey.

There is no legal objection to the sample submitted.

There is another point involved, however: Rule 1 of the Rules Governing Signs and Other Advertising Matter provides that no manufacturer or wholesaler shall, in any one license year, furnish or deliver to any retail licensee, directly or indirectly, any advertising matter, the aggregate cost or reasonable value of which exceeds \$100.00 with respect to each licensed premises, and that no retail licensee shall permit or suffer the display of any advertising matter furnished or delivered in violation of this regulation. That means that if the manufacturer or wholesaler who furnished you these golf score cards furnishes them to you in an amount, the aggregate cost or reasonable value of which exceeds \$100.00 per license fiscal year, or if such cost or value

of these score cards together with other advertising matter furnished by the same manufacturer or wholesaler is in excess of such sum, not only does the manufacturer or wholesaler violate the regulation but you, as a retail licensee, would likewise violate. You will therefore have to keep careful record of all advertising matter which you receive by sale, loan, gift or otherwise to insure that you as a retail licensee do not violate the regulation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

11. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - RULE 4 - DISSEMINATION OF ADVERTISING MATTER BY A RETAIL LICENSEE IS NOT PER SE A REPRESENTATION THAT ANY PARTICULAR BRAND OF ALCOHOLIC BEVERAGE IS AVAILABLE FOR SALE

May 7, 1935

Gentlemen:

We are enclosing herewith two samples of advertising matter sent to us by Seagrams, which we are desirous of placing in our stores for distribution. You will notice that these booklets advertise the entire Seagram line; there are however no prices quoted

Under Section 4 of the "Rules Governing Signs and Other Advertising Matter" issued by the Control Board, it is stated that no sign or other advertising matter advertising the sale of any particular brand etc. In offering these booklets to the public we do in no way state that we are offering all of the Seagram line for sale in our stores, and because of the fact that we carry only a few of their more popular items, we are in doubt as to whether or not we are permitted to allow such matter to be distributed. You will notice that we do in no way state that the items are for "sale" in our stores, the word "sale" being used in the Control Board ruling.

We would appreciate your advising us as to what we may do regarding the distribution of this type of advertising matter.

Very truly yours
THE GREAT A & P TEA COMPANY
P.J.Lembeck
Paterson Sales Dept.

May 8, 1935

The Great Atlantic & Pacific Tea Company,
Paterson, N. J.

Gentlemen:

I have yours of the 7th and the two pamphlets advertising a certain brand of liquor. There is nothing in the advertising samples submitted which in any way indicates or purports to represent that the goods advertised are on sale at your stores. In fact, your name does not appear in anywise on the advertising matter. Hence there is no objection under Rule 4 to your distributing these booklets.

Your attention is called to the ruling just made in Re: Lakewood Country Club, Bulletin 73, Item 10, copy of which is here enclosed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

12. REVISED RULES FOR ADVERTISING "NOTICE OF INTENTION" TO APPLY FOR A LICENSE APPLICABLE TO ALL MUNICIPAL RETAIL LICENSES

Rule #9 (as set forth in Bulletin 72, Item 2) is hereby amended to read:

#9. Proof of publication of Notice of Intention to apply for license shall be substantially in the following form:

STATE OF NEW JERSEY)
COUNTY OF) SS.

_____, of full age, being duly sworn according to law, on his oath says:

That he is a _____, employed by _____ (Name of newspaper), which is a newspaper printed in the English language, published and circulated in _____ (Name of municipality or county); that a Notice of Intention, of which the annexed notice is a true copy, was published once a week for two (2) weeks successively in the said _____ (Name of newspaper); and that the first insertion was on the _____ day of _____, 193 , and that the second insertion was on the _____ day of _____, 193 , making two (2) insertions in all.

Sworn and subscribed to before me this _____ day of _____, 193 .

(Signature of officer administering oath)

(Title of such officer)

13. BULLETIN ITEMS - CERTAIN ITEMS SUPERSEDED

Rule #9 of Bulletin 72, Item 2, concerning Revised Rules Applicable to All Municipal Retail Licenses for Advertising "Notice of Intention" to Apply for a License, is superseded by Bulletin 73, Item 12.

14. APPELLATE DECISIONS - ANDREACH VS. KEANSBURG

BENJAMIN ANDREACH,)
Appellant,)
-vs-)
MAYOR AND COUNCIL OF THE)
BOROUGH OF KEANSBURG (MON-)
MOUTH COUNTY),)
Respondents.)

ON APPEAL
CONCLUSIONS

Herman W. Brams, Esq., Attorney for Appellant.
Howard W. Roberts, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant filed an application for a plenary retail consumption license for a building to be constructed at the southwest corner of Carr and Center Avenues, Keansburg. Respondent, after consideration of this application, adopted a motion by which all applications for plenary retail consumption licenses were laid over until June, 1935. Appellant, contending that this motion was, in effect, a denial of his application, thereupon filed this appeal.

Appellant asserts that the denial of his application was based solely upon political and personal reasons without regard to the merits of the application. There is testimony in the record that the Mayor publicly stated that the real reason why appellant was turned down was that he "had gone around with a petition for his recall last year". On cross examination, the Mayor stated:

"Q. Did you make a statement on March 5th, in answer to a question of Mr. Martin in which he said, 'Isn't it a fact, Mr. Mayor, that the reason you refused to act on the application of Mr. Andreach and grant him the license applied for, is because he circulated a petition last year for your recall?' -- did you say, in answer to that question, 'That's right'?"

"A. I admit - I spoke before that. I believe the testimony stated I didn't answer Mr. Martin's question when put to me--

"Q. Isn't it a fact that the reason you turned down Mr. Andreach's application was because he circulated a petition for your recall last November?"

"A. Not altogether - I admit we are not good friends."

If this were all, I should unhesitatingly reverse the respondent.

The appeal, however, must nevertheless be dismissed on another ground, viz.:

Section 22 of the Control Act provides:

"A photostatic copy of all federal licenses, permits and/or stamps necessary to the lawful conduct of the business for which a State license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the commissioner, must accompany the license application."

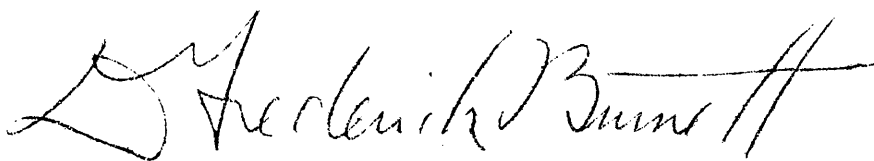
Counsel for appellant admitted that appellant had not obtained, or paid the necessary fee for, a Federal tax stamp, prior to the filing of the application or the disposition thereof by respondent. See Burd vs. Mine Hill, Bulletin 38, Item 7; Manning vs. Sandyston, Bulletin 48, Item 2; American Legion vs. Palmyra, Bulletin 48, Item 4. Appellant argues, however, that respondent waived strict compliance with this statutory requirement because the

Municipal Clerk had advised him that he could obtain the stamp after the application was granted and that he relied on this advice. The Clerk had no right to waive statutory requirements. The statutory language is imperative. The words are "must accompany the license application". The provision is mandatory, not merely directory. Subsequent presentation of the tax stamp on this appeal will not suffice. The stamp must accompany the application. Even the issuing authority cannot waive it, let alone the Municipal Clerk. See Trotto vs. Trenton, Bulletin 46, Item 11, where the Commissioner said:

"Nor can respondent waive the requirements of the Act and the rules and regulations governing the advertising of notice of intention, for such requirements are jurisdictional prerequisites to the consideration of any application. Jurisdiction to issue a license, when there has not been complete compliance with the statutory requirements pertaining to the application, cannot be acquired by consent."

Furthermore, it appears that after the application was disposed of by respondent, appellant requested the Municipal Clerk to return it to him. This was done. 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 dismissed because of lack of compliance with the statutory requisites.



Commissioner

Dated: May 9, 1935