

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street,

Newark, N.J.

BULLETIN NUMBER 20.

April 9, 1934

#1 ALCOHOLIC BEVERAGE LAW - ECONOMIC CONSIDERATIONS

March 25, 1934.

H. F. Brandes, License Clerk,
North Bergen, N. J.

Dear Sir:

I have yours of March 22nd inquiring whether or not a tavern owner can buy bottled goods direct from the A. & P. or any other chain store and sell them by the glass in his business.

This was ruled in the negative. See Bulletin #13, item 3, herewith enclosed.

I note that you ask the question because tavern owners who hold beverage licenses claim they can buy cheaper through the chain stores than buying direct from the wholesaler. Have you verified that it is exactly the same article? If so, it creates an economic situation which the tavern owners should bring directly to the attention of the wholesalers.

I am calling the matter to the attention of Mr. Philip H. Harrison, President of the N. J. Wholesale Dealers Association, with request to investigate and report the business situation to me.

Very truly yours,

D. Frederick Burnett
Commissioner.

March 25, 1934

Mr. Philip H. Harrison,
41 Central Avenue,
Newark, N. J.

Dear Mr. Harrison:

The enclosed copy of my letter of even date to H. F. Brandes, License Clerk, North Bergen, N. J., is, I believe, self-explanatory.

Please investigate the situation on the ground and give me an accurate report of the business situation.

Don't you think it would be well to contact Brandes and find out what tavern owners have asked him this question as he alleges? His telephone number is Union 7-0096. It may be mere propaganda by tavern owners against chain stores. Again, you may find that it is a different grade or class of goods. And on the other hand it may be that it is the fact. In any event I would like to know the exact truth.

Thank you.

Cordially yours,

D. Frederick Burnett,
Commissioner.

#2

WAREHOUSE RECEIPTS - SALE - COLLATERAL

March 25, 1934.

-----, Vice President,
 ----- Trust Company,
 Atlantic City, N. J.

Dear Sir:

I have yours of March 20th inquiring whether if a Bank accepts as collateral warehouse receipts for whiskey in storage, it would be necessary for the Bank to have a license in order to sell the whiskey in the event that the borrower defaulted on his note.

Sec. 73 provides: "For the purposes of this act, a sale of a warehouse receipt given upon the storage of an alcoholic beverage shall not be construed as a sale of the beverage represented by the receipt." It therefore follows that if the borrower does not meet the note when due, the warehouse receipt may be sold without the necessity of any license. On the other hand, license will be required if the beverages themselves, as distinguished from the warehouse receipt, are sold.

Very truly yours,

D. Frederick Burnett,
 Commissioner.

#3

MINORS - EMPLOYMENT - WHEN PROPER

March 27, 1934.

Central Labor Union,
 635 Market Street,
 Camden, N. J.

Attention: Mr. John D. Williams.

Gentlemen:

I have yours of March 24th inquiring if it is legal for minors to dispense intoxicating liquors.

As the law now stands it is illegal for any retail licensee to employ a minor in any business capacity whatsoever. The Senate today passed an amendment which still has to be approved by the House of Assembly, which, if enacted into law, will provide: "that persons failing to qualify as to age may, with the approval of the commissioner, and subject to rules and regulations, be employed by any licensee, but such employee shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage."

If this becomes law, it will still be illegal for minors to dispense intoxicating liquors, but it will become possible for a retail licensee to employ a minor to make deliveries of sales previously effected by duly qualified employees.

Very truly yours,

D. Frederick Burnett,
 Commissioner.

#4 MUNICIPAL RESOLUTIONS - VALIDITY - PROHIBITION OF BEVERAGE
SIGNS AND DISPLAYS

April 7, 1934.

Dear Sir:-

I have your letter inquiring as to the validity of the ordinance adopted by the Commissioners of Atlantic City, prohibiting the display of liquor and liquor signs within 135 feet of the northerly side of the Boardwalk.

Under Section 36 of the Control Act power is conferred upon the Commissioner to promulgate rules and regulations with respect to signs and other displays on licensed premises. No regulations on this subject have yet been promulgated as I am not quite satisfied as to what type of regulation will best serve the public interest.

In the absence of any pertinent state-wide rules and regulations, local issuing authorities may, under the provision of Section 37 of the Control Act, and pursuant to their police powers, adopt reasonable regulations with respect to liquor displays and signs.

Two questions arise under your letter:

- 1 - Is the ordinance unreasonable;
- 2 - Does it constitute an illegal discrimination.

I am of opinion that the answer to each question is in the negative. It is reasonable, in view of the nationally known character of the Boardwalk. The fact that the local authorities concurrently permit displays and signs by other types of businesses without restrictive regulations, does not constitute an unconstitutional or illegal discrimination. It is common knowledge that the sale of liquor is a different kind of business from all others and is affected with a public interest, and therefore may be lawfully prohibited by municipal regulation in the exercise of a sound discretion. The Courts have gone to great lengths in sustaining restrictive regulations which were limited, in their application, to the sale of alcoholic beverages. See Meehan vs. Excise Commissioners, 73 N. J. L. 332 (Sup. Ct. 1906) aff'd. 73 N. J. L. 557 (E. & A. 1907). Compare, however, Haskell vs. Lovell, 269 Ill. 550, 109 N. E. 992 (1915).

Our Courts have declared that liquor regulations stand on a footing of their own and are sui generis. In Paul vs. Gloucester County, 50 N. J. L. 385, (E. & A. 1888), our court of last resort declared: "The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied."

Very truly yours,

D. Frederick Burnett,
Commissioner

DFB:L

#5 LICENSES - PROPOSED NEW TYPES - REQUEST FOR REACTIONS

THE CITY OF SUMMIT
NEW JERSEY

The Office of the Mayor

April 6th, 1934

Mr. D. Frederick Burnett, Commissioner,
N. J. Liquor Control Board,
724 Broad Street,
Newark, N. J.

Dear Mr. Burnett,

Sometime ago I brought to your attention the desire of the governing body of our community to issue licenses for the sale of wine and beer only for consumption on the premises and the distribution of hard liquor by the package.

I had hoped that in your recommendations to the legislature, you might include such a form of license as I understand that a great many other residential communities are anxious to be able to issue that particular type.

Is there any way possible that some provision of this kind can be obtained? With us, licenses of this sort, I know would be entirely satisfactory to our people generally and would obviate the necessity of the return of the saloon.

As you probably know, this condition was assured to us prior to the repeal of the 18th amendment.

Awaiting your advices, I am,

Very truly yours,
(Signed) F. T. Snook
Mayor

ETS: CWG

April 7, 1934

Hon. Edward T. Snook,
Mayor,
Summit, N. J.

My dear Mr. Snook:

The type of license you advocate was not provided for in the recommendations of the McCarter Commission, nor has any such amendment been offered as yet. Until the present law has been fully tried out, I cannot properly recommend to the Legislature any change save those born of actual experience. I shall bear the point in mind however.

I note with interest your understanding that there are many other residential communities which desire this type of license. It will be helpful in gauging public opinion on this subject if you will communicate with the executive officers of the municipalities which you have in mind and ask them to write me their views. If there is sufficient desire by municipal governing bodies throughout the State to issue such licenses, I will be glad to give the matter further thought.

Very truly yours,

D. Frederick Burnett
Commissioner

DFB:L

The Commissioner invites all municipalities to communicate with him, if they desire the privilege of issuing the type of license advocated by Mayor Snook. Opposition need not be recorded. At most any recommendation by the Commissioner would be to make it permissive not mandatory.

#6 LICENSES - DEATH OF LICENSEE - ISSUANCE TO PERSONAL REPRESENTATIVE

April 9, 1934

Clerk of _____ Township

Dear Sir:

We have your report of issuance of permanent plenary retail consumption licenses. We note that the temporary license originally issued to R. P. B., deceased, has been replaced with a permanent license granted to his wife, L. B.

Section 23, paragraph 2, of the Alcoholic Beverage Control Act, provides that in case of death the issuing authority may, in its discretion, extend the license for a limited period of time not exceeding its term, to the executor or administrator. Consequently if R. B. would have been entitled to a permanent license, your municipality has the right to grant such a permanent license to his executor or administrator.

Inasmuch as the permanent license expires June 30, 1934, the issuing authority may extend the license to this date, at its discretion.

We note that permanent license was issued to the wife. There is no authority to issue a permanent license to his wife as such. If, however, she is his executor or administrator, then the action of issuing the permanent license to her is proper, provided, that such license is issued to her in her official administrative capacity, and not to her as an individual. Your records should be clear on this point and we request that they be corrected accordingly and that the facts be reported to us.

Please understand that the procedure above applies only to this particular situation. If L. B. desires to take out a license for the year beginning July 1, 1934, she must then apply for it in her own individual name and all statutory conditions of application, investigation and publication, precedent to its issuance, must be complied with.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By:
Maurice E. Ash,
Inspector-in-Chief

#7 LICENSES - PARTNERSHIP - RETIREMENT OF PARTNER

April 9, 1934

Mr. John G. Hafner,
Clerk of Lawrence Township,
Lawrenceville, New Jersey.

My dear Mr. Hafner:

We have yours in which you ask for the procedure to be followed in removing a retiring partner's name from the original partnership license when the business is to be continued by a remaining former partner. Permission to so amend a partnership license is contained in the Commissioner's ruling to be found in letter to Mr. Thomas J. Markey, reprinted on page 4 of our Bulletin #19.

Any change of ownership of a business operating under a partnership license must be immediately so notified to the issuing authority from whom the license was obtained.

Record must be kept by the issuing authority so amending the original application and notation thereof made upon the appropriate stub in the license book.

Receipt of notice of change of ownership shall be evidenced by endorsing upon the face of the original license: "This license, subject to the original terms and conditions thereof, is hereby continued in the name of (names of remaining partners) trading as (new trade name)."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

By:
Maurice E. Ash,
Inspector-in-Chief