

COMMISSIONER BURNETT
SENT TO REGULAR MAKING LIST

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

BULLETIN NUMBER 93

October 28, 1935.

1. REVOCATION PROCEEDINGS - NIEKRASZ - JERSEY CITY

In the Matter of Revocation)
Proceedings against)
JOHN NIEKRASZ,)
397 Henderson Street,)
Jersey City, New Jersey)
holder of plenary retail consump-)
tion license #C-585, issued by the)
Board of Commissioners of the)
Mayor and Aldermen of Jersey City.)
-----)

CONCLUSIONS AND
ORDER

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage
Control

John J. Meehan, Esq., Attorney for Respondent-Licensee

BY THE COMMISSIONER:

The licensee was charged with selling alcoholic beverages at retail on Tuesday, September 17th, 1935, while the polls were open for voting at the Primary Election, in violation of Rule #2 of the State rules concerning licensees and the use of licensed premises, Bulletin #48, Item #1, which provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

At the hearing the licensee admitted the truth of the charge but claimed that he opened his place at 6:00 P. M., believing the polls closed at that hour. It is not disputed, however, that at 6:15 P. M., when the violation occurred, the front of the licensed premises were still closed and the curtains drawn, and that the investigators gained entrance through a side door. If the licensee actually believed, as he now claims, that his place was properly open, why did he take pains to hide the fact?

Licensees are bound at their peril to know the closing hours.

It is, therefore, on this 21st day of October, 1935, ORDERED, that plenary retail consumption license #C-585, issued by the Board of Commissioner of the Mayor and Aldermen of Jersey City to John Niekrasz, for premises located at #397 Henderson Street, Jersey City, be, and the same hereby is suspended for a period of five (5) days, effective October 23, 1935.

D. FREDERICK BURNETT,
Commissioner

2. REVOCATION PROCEEDINGS - CONNOLLY - JERSEY CITY

In the Matter of Revocation)
 Proceedings against)
)
 JAMES CONNOLLY,)
 107 Ocean Avenue, Jersey City,)
 New Jersey,)
)
 holder of plenary retail consump-)
 tion license #C-465, issued by)
 the Board of Commissioners of the)
 Mayor and Aldermen of Jersey City,)
)
 - - - - -)

CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

James Connolly, Pro Se.

BY THE COMMISSIONER:

The licensee was charged with selling alcoholic beverages at retail on Tuesday, September 17th, 1935, while the polls were open for voting at the Primary Election in violation of Rule #2 of the State rules concerning licensees and the use of licensed premises Bulletin #48, Item #1, which provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal primary or special election is being held, while the polls are open for voting at such election."

At the hearing the licensee admitted the truth of the charge but claimed that he opened his place at 8:00 P. M., believing that the polls closed at that hour. The violation occurred at 8:15 P. M. in the back room of the licensed premises, which were fully lighted and in which there was a large group of customers being served. The bar room, however, constituting the principal place of business, was still dark. If the licensee actually believed, as he now claims, that he had a right to open up at 8:00 P.M., why did he keep the front closed and so dark? His explanation that he had not yet had time to open that part of his premises is quite lame. The crowd in the back room knew where to go while the polls were open. I find him guilty as charged.

It is, therefore, on this 21st day of October, 1935, ORDERED that plenary retail consumption license #C-465, issued by the Board of Commissioners of the Mayor and Aldermen of Jersey City to James Connolly, for premises located at #107 Ocean Avenue, Jersey City, be, and the same hereby is suspended for a period of five (5) days, effective October 23, 1935.

D. FREDERICK BURNETT
Commissioner

3. REVOCATION PROCEEDINGS - MANSFIELD - JERSEY CITY

In the Matter of Revocation)
Proceedings against)

ALFRED H. MANSFIELD,)
560 Newark Avenue,)
Jersey City, New Jersey,)

holder of plenary retail consump-)
tion license #C-15, issued by the)
Board of Commissioners of the)
Mayor and Aldermen of Jersey City.)

CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., for the Department of Alcoholic
Beverage Control.

Alfred H. Mansfield, Pro Se.

BY THE COMMISSIONER:

The licensee was charged with selling alcoholic bev-
erages at retail on Tuesday, September 17th, 1935, while the
polls were open for voting at the Primary Election, in violation
of Rule #2 of the State rules concerning licensees and the use
of licensed premises, Bulletin #48, Item #1, which provides:

"No licensee shall sell or offer for sale at
retail or deliver to any consumer, any alcoholic bev-
erages in any municipality in which a general, muni-
cipal, primary or special election is being held, while
the polls are open for voting at such election."

At the hearing the licensee frankly admitted the truth
of the charge. He testified that he had read in the Hudson
Dispatch that morning of Primary Day an item to the effect that
while saloons might be open, no sales of alcoholic beverages could
be made while the polls were open; that he told his son, his
regular bartender, not to sell any alcoholic beverages because
of the regulation, but that his son took a chance and was caught.
There is no question of the father's good faith, but the mere fact
that the violation was not committed by the licensee himself but
by his employee is no defense. He is responsible for what is
done on the premises. Re Kneller, Bulletin #49, Item #4. Some
punishment must therefore be administered in order that licensees
impress upon their employees that the law is made to be obeyed and
that violations, instead of helping the employer, eventually hurt
him.

It is, therefore, on this 21st day of October, 1935,
ORDERED, that plenary retail consumption license #C-15, issued
by the Board of Commissioners of the Mayor and Aldermen of Jersey
City to Alfred H. Mansfield, for premises located at #560 Newark
Avenue, Jersey City, be, and the same hereby is suspended for a
period of three (3) days, effective October 23, 1935.

D. FREDERICK BURNETT
Commissioner

4. REVOCATION PROCEEDINGS - PAVLOVICH - JERSEY CITY

In the Matter of Revocation)
Proceedings against)

ROBERT PAVLOVICH,)
97 Mallory Avenue,)
Jersey City, New Jersey,)

) CONCLUSIONS AND ORDER

holder of plenary retail consump-)
tion license #C-591, issued by the)
Board of Commissioners of the)
Mayor and Aldermen of Jersey City.)

)
Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage)
Control.)

Sidney L. Jacobs, Esq., Attorney for Respondent-Licensee.

BY THE COMMISSIONER:

The licensee was charged with selling alcoholic beverages at retail on Tuesday, September 17th, 1935, while the polls were open for voting at the Primary Election in violation of Rule #2 of the State rules governing licensees and the use of licensed premises Bulletin #48, Item #1, which provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

At the hearing the licensee denied the truth of the charge. Two investigators of this Department testified that they entered the licensed premises through a side door at 8:52 P. M.; that in the back room they noticed two men seated at a table drinking beer; that on the second table were two empty beer glasses; that the bar room was dark except for one light; that they ordered a glass of beer and were served at 8:54 P. M.; and that the clock on the licensed premises at that time indicated 8:58 P. M.

The licensee testified that he had been closed all day and had just come into the place and had not yet opened it when the investigators arrived; that when they asked for beer he pointed out that it was not yet 9:00 o'clock and that he waited until his clock showed 9:00 P. M., before he served the beer; that the empty beer glasses in the back room were there from the night before, and that the two men seated at the table were the porter who cleaned the licensed premises and the ice man, who had just delivered ice; that these two people were not served with any beer.

The licensee produced witnesses to corroborate the fact that he had opened his licensed premises shortly before 9:00 P. M., one of the witnesses being a member of the Jersey City police force. However, both the porter and the ice man denied being seated at tables in the back room.

From the entire evidence I conclude that the licensee was actually closed most all day and did not open until shortly before 9:00 P. M., and then thought to "beat the gun" by a few minutes. He did thereby violate the State regulation by selling before the polls were closed. He is, therefore, guilty as charged.

In determining the punishment to be inflicted it is proper to consider the fact that he had been closed practically all day and that the violation occurred only a very short time before 9:00 o'clock, when he would have been allowed to sell legally.

I do not believe that merely nominal punishment should be imposed for a substantial offence, for it is entirely unfair to all honest licensees who scrupulously comply with the law and close their places, and tends to bring disrespect not only upon the alcoholic control act but upon law generally. I had occasion last week to call this principle to the attention of certain municipal officials with the request that subsequent offences be dealt with more drastically so that punishment be commensurate with the offence and thus inculcate a decent and abiding respect for law and order. In one municipality the licensee was caught selling at 2:25 p. m. and in the other municipality the licensees were apprehended at 6:55 p. m., 7:10 p. m. and 7:15 p.m. respectively. There could be no reasonable question but that such licensees were wantonly violating the rules and deserved substantial punishment. The instant case, however, is close to the border line. The sale took place but a few minutes before 9:00 p.m. when the licensee could legitimately operate. His clock, though fast, showed but two minutes before the hour. If there had been entire candor about the iceman, I would have regarded this as a border line case and given the licensee a reprimand, but also the benefit of the doubt. As it is, he will be set back a day for his false start.

It is, therefore, on this 21st day of October, 1935, ORDERED that plenary retail consumption license #C-591, issued by the Board of Commissioners of the Mayor and Aldermen of Jersey City to Robert Pavlovich, for premises located at #97 Mallory Avenue, Jersey City, be, and the same hereby is suspended for a period of one (1) day, namely, October 23, 1935.

D. FREDERICK BURNETT
Commissioner

5. REVOCATION PROCEEDINGS - O'BRIEN - JERSEY CITY

In the Matter of Revocation)
Proceedings against)

THOMAS O'BRIEN,)
96 Hudson Street,)
Jersey City, New Jersey,)

CONCLUSIONS AND ORDER

holder of plenary retail consump-)
tion license #C-68, issued by the)
Board of Commissioners of the)
Mayor and Aldermen of Jersey City.)

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage
Control

Clarence F. McGovern, Esq., Attorney for Respondent-Licensee.

BY THE COMMISSIONER:

Proceedings to suspend or revoke plenary retail consumption license #C-68 heretofore issued by the Board of Commissioners of the Mayor and Aldermen of Jersey City to Thomas O'Brien, for premises located at 96 Hudson Street, Jersey City, were instituted directly by the State Commissioner of Alcoholic Beverage Control at the request of Hon. Thomas J. Wolfe, a member of the Board of Commissioners of Jersey City and the Director of Public Safety.

A copy of the charges was served upon the licensee, who was ordered to show cause why his license should not be suspended or revoked. Pursuant thereto, a hearing was duly held.

The charges may be briefly summarized as follows:

(1) The licensee sold an alcoholic beverage to a minor in violation of Section 77 of the Control Act; (2) The licensee sold alcoholic beverages at retail at his licensed premises on Tuesday, September 17th, 1935, while the polls were open for voting at the Primary Election then being held in Jersey City, in violation of Rule #2 of the State rules concerning licensees and the use of licensed premises, Bulletin #48, Item #1, which provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

The licensee was charged as a second offender by virtue of his prior conviction before the Board of Commissioners of Jersey City for possessing illicit alcoholic beverages in violation of the Control Act. As a result of the same transaction he was indicted by the Hudson County Grand Jury for selling illicit alcoholic beverages, tried and found guilty in the Court of Quarter Sessions, and a fine of \$100.00 imposed.

At the hearing of the charges now under consideration the licensee pleaded guilty but claimed (1) that the licensed premises had been opened at 2:15 P. M. just as the State investigator came there, and closed immediately after he left; and (2) that he did not know the purchaser was in fact a minor.

The evidence clearly establishes that the licensee willfully violated the State rule prohibiting sales on Election Day while the polls were open for voting. His explanation is highly improbable and incredible.

Section 77 of the Control Act provides:

"Anyone who sells any alcoholic beverages to a minor shall be guilty of a misdemeanor and punished accordingly."

This section makes a sale to a minor in and of itself regardless of knowledge on the part of the seller of the age of the buyer, a crime. The seller acts at his peril. It is his duty to ascertain whether in fact the buyer is a minor. The reasonableness of his belief that the buyer is not a minor is no defense, if in fact he is a minor. Re Rieck, Bulletin #78, Item #8. In the instant case, the purchaser was in fact sixteen years of age. The

investigators testified that the appearance of the boy clearly indicated his correct age, and that it was for this reason that suspicion was aroused and the boy questioned. His extremely youthful appearance should have made it apparent to anyone that he was a minor. As stated in Re Ricck, supra, "there are none so blind as those who won't see."

I find the licensee guilty of selling alcoholic beverages to a minor in violation of Section 77 of the Control Act.

Not counting the Election Day matter, which is a violation of a rule as distinguished from a violation of the Alcoholic Beverage Control Act, it thus appears that this licensee has been found guilty of committing two violations of the Act itself:

- (1) The conviction in the Hudson Quarter Sessions for possessing bootleg beverages;
- (2) His guilt in selling to a minor as now adjudicated.

Section 22 of the Control Act provides that the commission of two or more violations of the Act shall disqualify the licensee from receiving a license of any class whatever. I have no option, therefore, except to revoke his license. Pursuant to Section 22, he will not be eligible to receive any further alcoholic beverage license whatsoever.

A copy of the charges and notice of hearing were duly sent to the owner of record of the licensed premises, Mary Kelly. No one appeared on her behalf. Subsequently, however, a letter was received from the agent managing the property stating that the charges and notice of hearing had been received but that Mrs. Kelly is an old lady of 75 years and in poor health; that the agent did not know it was necessary for her to appear; that even if he had known it she could not have appeared on account of her physical condition. There is nothing to indicate that she was connected in any way with the licensee or knew or participated in the violations committed by him. The charges as to her are dismissed.

It is, therefore, on this 21st day of October, 1935, ORDERED, that plenary retail consumption license #C-68 issued by the Board of Commissioners of the Mayor and Aldermen of Jersey City to Thomas O'Brien, for premises located at #96 Hudson Street, Jersey City, be, and the same hereby is revoked, effective October 28, 1935.

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - POLISH FALCONS vs. HILLSBORO.

Polish Falcons First District, Inc.,)	
)	
Appellant,)	
)	
-vs-)	On Appeal
)	
Township Committee of the Township of Hillsboro,)	<u>CONCLUSIONS</u>
)	
Respondent.)	

William Harris, Esq., by Harry A. Pechenik, Esq., Attorney for Appellant

W. Eddy Heath, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for renewal of its club license for premises located at Weston Road, Hillsboro Township.

Polish Falcons is a national fraternal organization, having a large membership. It is comprised of a number of districts and appellant is a duly accredited district operating in New Jersey. A children's camp, situated in Hillsboro Township on a tract of land $74\frac{1}{2}$ acres, is conducted by appellant. Approximately one-half of the children are admitted without charge. A club house, which is separated from the rest of the camp by a road, is maintained by appellant for the use of adult members, particularly parents of children at the camp. The license sought is to permit the sale of alcoholic beverages to members and bona fide guests of appellant at this club house.

Respondent does not question the high character of the appellant organization or the social utility of its activities. It denied the application, however, because of the objections by neighboring residents. At the hearing on appeal its counsel asserted that he did not believe respondent had any objection to the issuance of the license if appellant conducted its property without annoyance to neighbors. The objections were based on (1) increased traffic; (2) alleged intoxication, shouting and other noises; and (3) trespasses upon adjacent property.

The first objection relates not to the sale of alcoholic beverages but to the maintenance of the camp. The increase in traffic is a consequence of the justifiable maintenance of the camp in a location apparently well-suited for such purpose. In support of the second and third objections, there was some evidence introduced of occasional intoxication, shouting and other noises, and trespasses. The evidence indicated, however, that most of the alleged conduct occurred at a distance from the licensed premises and without the knowledge of appellant's officers. As soon as the officers learned of the complaints, they made immediate efforts to correct conditions and engaged special police to patrol the premises. Numerous witnesses testified on behalf of appellant to the effect that the premises were conducted in orderly fashion.

There is no reason why appellant organization should not be able to conduct its camp and enjoy the privileges of a club license at its club house without annoyance to neighbors and I am satisfied from the evidence that appellant intends to exert its full efforts to this end.

Accordingly, the action of respondent is reversed, upon the following conditions:

(1) That appellant will not serve intoxicating liquors to persons other than its members and their bona fide guests;

(2) That it will comply with all of the rules concerning the conduct of licensees and the use of licensed premises, and particularly rule #5, which provides as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, brawls or any unnecessary noise, nor allow, per-

nit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

(3) That it will take all necessary steps to prevent trespasses upon adjacent properties.

The license, subject to the aforesaid conditions, shall be issued immediately by the respondent, but jurisdiction of this proceeding is retained by the Commissioner to insure complete compliance with all of the conditions.

D. FREDERICK BURNETT
Commissioner

Dated: October 23, 1935.

7. LICENSES - DELICATESSEN STORES - GENERAL PRINCIPLES.

N O T I C E

TO ALL MUNICIPAL ISSUING AUTHORITIES:

Complaints have been received that various municipalities have issued consumption licenses for premises operating either as delicatessen stores or as combined restaurants and delicatessens. The issuance of consumption licenses in such cases is contrary to section 13 of the Control Act and the decisions in Retail Liquor Distributors Association vs. Polonsky, Bulletin #88, Item #10, and Retail Liquor Distributors Association vs. Kornblau, Bulletin #88, Item #11. In the Polonsky case, a license was issued by Atlantic City for a delicatessen and grocery store, with incidental tables at which food could be consumed on the premises. On appeal, the license was cancelled. In the Kornblau case, although the licensee conducted a restaurant, he also conducted a delicatessen and grocery business. This license also had to be cancelled, viz:

"The delicatessen part of the business must not only be a minor part, but also must be merely incidental to the conduct and operation of the restaurant. The casual sale of delicatessen articles by a restaurant to persons patronizing the establishment as such, may well be considered to be incidental to its business. A contrary conclusion must be reached, however, where a complete delicatessen and grocery department is being operated, the customers of which consist mainly of persons who have not been served in the restaurant. The establishment conducted by the licensee is a restaurant and delicatessen and grocery store. The issuance of the plenary retail consumption license was, therefore, in violation of section 13 (1) of the Act."

The notice of May 27, 1935 (Bulletin #76, Item #1) is to the same effect:

"Even where the applicant does conduct a bona fide hotel or restaurant, a consumption license may nevertheless not be issued if he also operates on the same premises a delicatessen, grocery, candy store or any other proscribed business. Evasions and subterfuges must not be permitted to nullify the legislative policy."

I cordially recommend that immediate investigation be made to the end that if any consumption licenses have been inadvertently issued in your municipality for premises operating as a delicatessen or as a combined restaurant and delicatessen, steps be taken forthwith to cancel the licenses.

Your cooperation will be greatly appreciated.

D. FREDERICK BURNETT
Commissioner

Dated: October 24, 1935.

8. REVOCATION PROCEEDINGS - ADOLPH TRUCKING CO. INC.

In the Matter of Revocation)	
Proceedings against)	
ADOLPH TRUCKING CO. INC.,)	
511-23 West 24th Street,)	On Revocation
New York City,)	
)	<u>CONCLUSIONS</u>
Holder of Transportation License)	
#T-126)	

Jerome B. McKenna, Esq., Attorney for Department

Andrew Van Blarcom, Esq., Attorney for Licensee, Adolph Trucking Co. Inc.

Charges and notice to show cause why the transportation license #T-126, issued to Adolph Trucking Co. Inc., #511-23 West 24th Street, New York City, should not be suspended or revoked on the ground that it had illegally transported alcoholic beverages in New Jersey during January and February, 1934, and July to October, inclusive, 1934, were duly served upon the licensee. Upon the return date of the notice, a hearing was held and the licensee was afforded full opportunity to be heard.

The licensee has been engaged in trucking business since 1923 and operates a fleet of approximately 50 trucks. In March, 1934, transportation license #T-100 was issued to it. This license expired on June 30, 1934. On November 1, 1934, license #T-126 was issued and this license expired on June 30, 1935. An application for a transportation license for the current period has been duly filed but action thereon has been withheld pending determination of these proceedings.

At the hearing the licensee admitted that during January and February, 1934 and July to October, inclusive, 1934, it transported alcoholic beverages into New Jersey without a transportation license, but denied that there had been any wilful attempt to violate the Control Act. The testimony on behalf of the licensee establishes that Adolph Duchini, its managing officer and President, had no personal knowledge of the illegal deliveries into New Jersey; that his secretary, whose duty it was to obtain all necessary licenses, was not aware of the illegal shipments; that the consignees named in the charges were not customers of the licensee

but were customers of various companies which contracted with the licensee to make the shipments; and that the slips returned to the licensee by the truck drivers in connection with the illegal shipments disclosed the names of the licensee's customers and the number of packages delivered, but did not disclose the ultimate transportation into New Jersey. An investigator of the Beverage Tax Division of the State Tax Department testified that the licensee's records were kept in poor fashion but that it cooperated fully in his examination of its transactions.

From all of the testimony, it appears that although the licensee violated the Act, such violation was unintentional and the result of its inadequate records and supervision. Consequently, the licensee will be afforded an opportunity to pay forthwith the prorated license fee for the months of January and February, 1934, and July to October, inclusive, 1934, during which shipments of alcoholic beverages were made by it into this State without the authority of a transportation license, and to install proper records pertaining to shipments of alcoholic beverages into this State. Pending such payment and the receipt of proof of installation of such records, decision on the pending revocation proceedings and the application for a license for the current period will be reserved.

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs
Chief Deputy Commissioner

Dated: October 26, 1935.

9. LICENSEES - EMPLOYMENT OF PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE OR CITIZENSHIP - PERMIT NOT NECESSARY IN CERTAIN CASES.

Dear Sir: Re: Bulletin No. 82, Regulation 10 - Great
Atl. & Pac. Tea Co.

Pursuant to your request to me, at our conference of yesterday, I herewith detail the problems arising in connection with the above-captioned Regulation with reference to The Great Atlantic and Pacific Tea Company:

The Tea Company has over 1,000 stores in the State, of which over 170 are the holders of Retail Licenses for Consumption off the Premises, issued by the various municipalities in which the stores are located. In addition, the Company is the holder of two Transportation Licenses. The total number of employees of the Company in the State is approximately 5,000. It is difficult to state with accuracy (for reasons hereinafter set forth more particularly) the exact number of these employees who would be affected by the ruling. However, it is safe to say that practically every store has at least one minor, part time or non-resident employee. Hence at least 1,000 of its employees would come within a strict interpretation of the Regulation.

It should also be pointed out that the Company's retail business follows a very definite rate during the week—that is, on Monday of any given week the amount of business done is 10% of the week's business; 17% is done on Friday and 33% on Saturday. The other 40% varies over Tuesday, Wednesday and Thursday.

The Company also finds it necessary, because of vacations, illness or increased demands of business, to transfer employees from one store to another. In some cases this means from one municipality to another and in other cases means merely a shifting between two stores in the same locality. As you know, most of the stores employ on a part time basis boys of High School age to assist in the stores and to make deliveries. In most, if not all, such cases the boys are employed by the local store manager and the central employment office has no specific and detailed record of such employment, the local manager being permitted to make certain additions to his staff and report the same to headquarters. In some instances, of course, these boys work regularly, but many occasions arise in which the local manager must obtain immediate help. In those stores which have a meat market in connection with them, it is frequently necessary to have extra butchers, who are sometimes non-residents, working only on Friday and Saturday. However, these butchers do not always work at the same store.

As the Department records show, the Company also maintains warehouses at Newark and Paterson, where a large part of the Company's office and clerical force is situated. This office force includes, of course, a large number of minors and non-residents.

The above will serve as an outline of the conduct and management of the Company's business.

Section 1 of the Regulation in effect prohibits the employments of an alien, minor or non-resident by any licensee, without a permit. Inasmuch as the Tea Company is a licensee within the meaning of the act, a strict interpretation of or construction of the regulation means that it includes all the employees of the Tea Company. This is so whether or not the particular employee is employed in a store selling alcoholic beverages or not, or in any other store or in either of the Company's warehouses. QUERY:- Is the Regulation intended to apply to this entire group of employees?

As explained above, the hiring of a large part of the group of employees affected by the Regulation, is done by the local manager. In emergency situations it is not possible to obtain a permit, as a condition precedent to employment, as this would mean in a great many instances persons could not be employed as the emergency would be over before the permit could be obtained. Further, as Section 5 provides that

"Each such permit is confined to the premises and to the employment designated therein and is not transferrable as to employer or employee or employment"

the Tea Company would be seriously handicapped in any cases where it found it necessary to shift its employees affected by

the regulation from one store to another.

Section 4 of the Regulation requires that applicants for a permit shall submit Form 115 to the Department. Section 6 requires that whenever any change occurs in any of the facts stated in the application for such permit both the employer and the employee shall file with the Commissioner a notice in writing of such change within ten days after its occurrence. Section 7 provides that upon termination of any employment for which permit has been granted or upon the qualification of the employee as to age, residence or citizenship, the employer shall file with the Commissioner, within ten days thereafter, a notice in writing of such termination or qualification and shall surrender the permit to the Commissioner for cancellation. Compliance with the requirements of these sections by the Tea Company would obviously entail a very large amount of clerical work and would involve considerable additional expense to the Company, owing to the size of its organization. It should also be pointed out that compliance with the regulation would materially increase the work of the Department of Alcoholic Beverage Control, especially in view of the fact that there are a number of other concerns in the same situation as the Tea Company. The Department would continuously be the recipient of numerous requests for permits and would be continually advised of changes that would necessarily have to be made in each permit.

It is not possible to estimate at this time the exact amount of additional expense which the Tea Company would have to incur, but it can safely be said that the amount is so great that it would probably preclude the Company from seeking to obtain any permits at all. It would then be compelled to hire only adult, resident employees. This in itself would be a serious handicap because, in the first place, it could not afford to pay as high a wage as adults would require. For instance, many boys come in after school and work for a few hours for a few dollars. It would be practically impossible to obtain adults on this basis. Secondly, if the Tea Company should pay the same rate to adults it would be seriously criticized because of the low wage paid to such adults.

It should be pointed out that the Tea Company does not desire to employ any of these employees in any way in connection with its liquor trade. The work done by these employees is entirely disassociated from the sale of alcoholic beverages and the Tea Company has in the past scrupulously observed the requirements of the statute in this respect. It does, however, feel that a strict enforcement of a literal construction of the Regulation will seriously handicap it in its business, without promoting the very good intentions for which the regulation was promulgated.

It is respectfully requested that a modification of the rule be made to alleviate the burdens and hardships outlined above. As a suggestion - it might be that the regulation could be so modified as not to include this class of employees, who are employed by a licensee whose principal business is not that of selling alcoholic beverages.

We understand that the enforcement date of the regulation has been extended to August 31st. Inasmuch as it will take considerable time to prepare the questionnaire in the event that you decide not to modify the regulation, we should appreciate hearing from you at your early convenience. If you so

desire, we shall be pleased to arrange an appointment with the officials of the Tea Company, who can supply you with any further details that may be omitted above.

Very truly yours,

FREDERICK A. FROST

Dear Sir: Re: Bulletin 82, Regulation 10 - L. Bamberger & Co.

Reference is made to our letter of even date herewith, with reference to the application of Bulletin 82, Regulation 10, to The Great Atlantic and Pacific Tea Company. The same problem has been presented to us by L. Bamberger & Co. In many respects the facts outlined in our other letter are the same with respect to the Department Store business but there are certain additional features that we wish to call to your attention. L. Bamberger & Co. employs between 4,000 and 5,000 persons, of whom approximately 1,500 to 2,000 would be affected by the regulation. The Liquor Department is on the seventh floor and of course the persons employed throughout the other departments of the store, including the clerical and office force, are in no way associated with the sale of alcoholic beverages and have absolutely no contact with the sale of alcoholic beverages. There are approximately 20 persons employed in the liquor department. The store also employs a number of aliens in various capacities. The labor turn-over is also quite large, especially at Christmas time and at other dates when business is at its peak. The Company also has a large warehouse where minors and non-residents are employed, who would be affected by the ruling.

We should appreciate it if you would consider this case at the same time and we shall also be pleased to supply you with any further facts or details that may be needed by you in arriving at a conclusion. In the main the conditions as to the regulation which should be modified are the same as those contained in our letter to you concerning The Great Atlantic and Pacific Tea Company hereinabove referred to.

Very truly yours,

FREDERICK A. FROST

September 5, 1935

Pitney Hardin & Skinner, Esqs.,
Newark, N. J.

Gentlemen: Att: Frederick A. Frost, Esq.

Pursuant to our conversation of Tuesday, I wish to advise you that pending final determination by the Commissioner you may proceed in accordance with the following:

(1) Where a Department store, holding a distribution license, has a separate and distinct liquor department, individual permits pursuant to the rules and regulations governing the employment by licensees of persons failing to qualify as to age or residence or citizenship (Bulletin #82, Item #10) need not be

obtained for persons not employed in the liquor department and who do not, in anywise, sell or solicit the sale of or deal with alcoholic beverages.

(2) Where a company operates a chain of stores, only certain of which are licensed, such individual permits need not be obtained for persons employed exclusively in stores not licensed and who, therefore, do not sell or solicit the sale of or deal with alcoholic beverages.

(3) Where the licensed stores referred to in the preceding paragraph have separate and distinct liquor departments, operating under distribution licenses, such individual permits need not be obtained for persons not employed in the liquor departments and who do not, in anywise, sell or solicit the sale of or deal with alcoholic beverages.

Upon the Commissioner's return, I shall review the entire situation with him and will advise you as to his rulings.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

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

October 25, 1935.

Pitney Hardin & Skinner, Esqs.,
Newark, N. J.

Gentlemen: Attention: Frederick A. Frost, Esq.

Kindly refer to Deputy Commissioner Jacobs' letter to you of September 5th.

I have reviewed the situation and approve the ruling made by him.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. MUNICIPAL ORDINANCES - POWER TO FIX HOURS OF SALE - NOT DELEGABLE.

October 25, 1935.

Ethel M. Hoyt, Clerk,
City of Hackensack,
Hackensack, New Jersey.

Dear Madam:

I have before me Ordinance No. 226 adopted September 16, 1935, governing the sale of alcoholic beverages within the

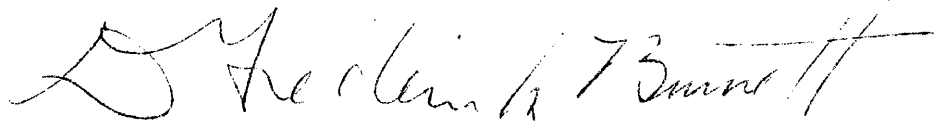
City of Hackensack, New Jersey and to prescribe penalties for violation thereof.

Section 6 provides that "the City Manager is hereby empowered to extend the closing hours on special occasions where application is made for such special permits."

It is an established principle of law that a discretionary function expressly delegated cannot in turn be re-delegated; that the discretionary administration of a function vested by statute exclusively in a particular person or body cannot be conferred in turn by that person or body upon some other person or body. The statute, Section 37, confers upon the governing board or body of each municipality the authority to limit, by ordinance or resolution, the hours between which the sale of alcoholic beverages at retail may be made, and to fix, by ordinance or resolution, the hours of closing for licensed premises. It goes no farther. There is no power conferred enabling the governing body to delegate same, as your section provides, to the City Manager. The hours of sales or closing in Hackensack may be determined only by the City Council. Cf. re Cliffside Park, Bulletin 65, Item 6 and re Guttenberg, Bulletin 66, item 8.

Section 6, to the extent above quoted, is, therefore, disapproved.

Very truly yours,


Commissioner

New Jersey State Library