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

BULLETIN 261 JULY 18, 1938

1. MUNICIPAL REGULATIONS - DAYLIGHT SAVING TIME - WHEN APPLICABLE TO LIQUOR LICENSEES IN RESPECT TO OPENING AND CLOSING HOURS - HEREIN OF THE EFFECT OF THE NEWLY WORDED PROVISION OF THE REVISED STATUTES CONCERNING TIME.

July 13, 1938

Wilmer J. Tanier, Jr.
Borough Clerk
Somerdale, New Jersey

My dear Mr. Tanier:

I have before me copy of your notice of April 18th served upon licensees reading:

> "Notice is hereby given that at the regular meeting of Borough Council held on Wednesday, April 13, 1938, Daylight Saving Time was officially adopted beginning 2:00 A. M. Sunday, April 24, 1938 and continuing in effect until Sunday, September 25, 1938 at 2:00 A. M.
>
> "The opening and closing hours of premises licensed for the sale of Alcoholic Beverages shall be according to Daylight Saving Time during the above period."

Section 4 of Somerdale resolution of December 13, 1933 as amended January 10, 1934 provides:

> "No licensee hereunder shall operate or keep or permit to be kept open for the sale or distribution of beverages, any place so licensed, between the hours of 2 A. M. and 6 A. M. and from Sunday 2 A. M. until 1:30 P. M."

In Re Wagner, Bulletin 58, Item 4, I held that a regulation similar to yours in that neither standard nor daylight time was specified meant and applied to whatever was the official time in the particular community.

The only question, therefore, that I see concerning your notice is whether the above mentioned Wagner ruling made on December 18, 1934 has been altered or cancelled or otherwise superseded by the Revised Statutes of New Jersey, subsequently enacted, which now provide (R.S.1:1-2.3):

> "The standard time of this state shall be the time of the seventy-fifth meridian west from Greenwich, and wherever time is named within this state, in any manner whatsoever, it shall be deemed and taken to be such standard time except where otherwise expressed."

The Wagner ruling was based upon the 1884 Statute then in force entitled "An Act to Provide for a Standard Time in the State of New Jersey", P. L. 1884, p. 175, which read:-

"That the standard time of the state of New Jersey shall be the time of the seventy-fifth meridian west from Greenwich, and that the time named in any of the statutes of this state and in public proclamations, in the rules and orders of the senate and general assembly, in the decrees and orders of the courts and in all notices and advertisements in any legal proceedings, shall be deemed and taken to be the standard time aforesaid.

"That the time tables of all public conveyances within this state shall conform to the standard time aforesaid, and that the time named in any notice, advertisement or contract shall be deemed and taken to be the said standard time, unless it be otherwise expressed."

Since the 1884 statute, while it applied to certain items specifically described, did not expressly apply to municipal ordinances, resolutions or regulations, I held in the Wagner case that a municipal regulation, which specified neither standard nor daylight time, would apply to either time which was officially in effect in the particular municipality and just so long as it was so effective.

Standing alone, the Revised Statutes, having used an entirely new wording susceptible of a new meaning might well be construed that, in all cases when time is named, it means Standard Time unless otherwise expressed. On the other hand numerous cases in New Jersey have held that a revision is a mere compilation and reenactment of pre-existing law, which continues in effect unaltered by any changes in verbiage, collocation or omission, unless a contrary intent clearly appears. For example: Ruckman v. Ransom, 35 N.J.L. 565; Re Murphy, 23 N.J.L. 180; King v. Smith, 91 N.J.L. 648; Leonard v. Leonia Heights Land Co., 81 N.J.E. 489.

The remaining question, then, is whether such contrary intent appears. There is none in P. L. 1925, Ch. 73, which authorized the revision. There is none in the revision itself. In fact, it expressly declares: "The provisions of the Revised Statutes, not inconsistent with those of prior laws, shall be construed as a continuation of such laws" (R.S.1:1-4) and again "The classification and arrangement of the several sections of the Revised Statutes have been made for the purpose of convenience, reference and orderly arrangement, and therefore no implication or presumption of a legislative construction is to be drawn therefrom" (R.S.1:1-5). It is common knowledge that at the time of its adoption, the members of the Legislature declared publicly that they had not read the text of the Revision and that the revisers assured the Legislature that no changes in the law had been made.

Consequently, I conclude that there was no legislative intent to change the pre-existing law by the Revised Statutes.

It therefore follows that the Wagner ruling supra is reaffirmed.

Accordingly, your notice to licensees is approved.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. MUNICIPAL REGULATIONS - DAYLIGHT SAVING TIME - THE PROCLAMATION OF DAYLIGHT SAVING TIME BY A MAYOR IS NOT OF ITSELF SUFFICIENT TO MAKE IT THE OFFICIAL TIME OF A MUNICIPALITY - HEREIN OF THE UNFORTUNATE RESULT OF SUCH LACK OF FORMAL EFFECT BECAUSE OF THE PRACTICAL EXTENSION OF THE CLOSING HOURS OF TAVERNS TO 4:00 A. M. AND OF SUGGESTIONS TO OFFICIALS AND THE INDUSTRY AS TO THE CURE.

July 13, 1938

Charles W. B. Lane, Executive Sec'y
Tavern Owners Ass'n of Cliffside Park
Cliffside Park, New Jersey

My dear Mr. Lane:

I have before me your telegram of June 12th inquiring:

"PLEASE ADVISE IMMEDIATELY IF CESSATION OF SALES AT 4 AM DAYLIGHT SAVING TIME CONSTITUTES COMPLIANCE WITH CLIFFSIDE PARK RESOLUTION RELATING TO HOURS OF SALE."

According to my records, the only regulation concerning hours of sale of alcoholic beverages in Cliffside Park is that contained in resolution of December 6, 1933, which provides:

"BE IT FURTHER RESOLVED, that no alcoholic beverages shall be sold before the hour of six a. m., or after the hour of three a. m., except on Sunday, on which day no beverages shall be sold after three a. m., nor before the hour of twelve o'clock noon."

On April 22, 1938, the Mayor proclaimed Daylight Saving Time as the official time of the Borough of Cliffside Park as follows:

"PROCLAMATION
Concerning Daylight Saving Time

"WHEREAS, the City of New York is to adopt Daylight Saving Time on and after midnight, Sunday, April 24, 1938, and,

"WHEREAS, the close proximity of the Borough of Cliffside Park to the City of New York and the interests of the people of the Borough make it desirable that the official time locally conform to that of the said city,

"THEREFORE, I, THOMAS G. FOX, by virtue of the authority vested in me as Mayor, do hereby direct that the official time of the Borough be changed to conform with the time in New York City on the date and at the time aforesaid.

"FURTHERMORE, I request the citizens of the Borough to change their clocks accordingly.

"Dated: April 22, 1938.

"Thomas G. Fox

"Mayor."

I have heretofore ruled in Re Wagner, Bulletin 58, item 4, and reaffirmed in Re Tanier, Bulletin 261, item 1, that where no standard of time is specified in the resolution or ordinance regulating hours of sale, it may be converted into Daylight Saving Time for the usual appropriate period by the adoption of an ordinance or resolution making Daylight Saving Time the official time of the municipality during that period.

However, a mere proclamation by the Mayor, without authority conferred by some resolution or ordinance, is ineffective to effect such a conversion. Re Kane, Bulletin 186, item 4. The reason is that a resolution or ordinance may not be amended or its operation altered except by an enactment of equal or greater legal import. The adoption both of ordinances and resolutions requires the assent of at least a majority of a quorum of the governing body, whereas a proclamation is but a public notice by the Mayor. Obviously, a mere announcement by the Mayor cannot alter or abrogate a formal enactment by the governing body.

Consequently, the hours of sale fixed in the Cliffside resolution of December 6, 1933 are governed by Eastern Standard Time, unless the proclamation of the Mayor was the result of a resolution or ordinance of the Borough Council directing or authorizing the Mayor to make such proclamation. I have no record of any such resolution or ordinance.

The unfortunate result is that the answer to your telegram is in the affirmative. I say "unfortunate" because if the people of your Borough are honoring the proclamation of your Mayor, as well they might, by observing Daylight Time, as so many of us do, the practical result is that your taverns are open until 4:00 A. M. and that is a mistake! Three o'clock in the morning is plenty late for any self-respecting citizen to be prowling around pleasure-bent. It is this early morning carousing which brings the liquor traffic into disrespect. These are the hours when decency vanishes, revelry becomes debauch and futures are blighted, not to speak of broken bones and saddened homes. Re Wayne Township, Bulletin 244, item 3. The fact that technically the closing time is 3:00 A. M. makes no difference. What really counts is the time that is currently observed by the citizenry of your community. Nor is it of any practical moment that the taverns open on Standard Time. The number of drinks sipped at six in the morning is quite negligible. Of course, they could not open on one time and close on the other so as to gain an extra hour each day. Re Megill, Bulletin 201, item 2. So there is no talking point in that.

I shall, therefore, write the Mayor and Council of Cliffside Park forthwith, requesting them to amend their present resolution by making the closing hour not later than 3:00 A. M. according as clocks are usually set in your bailiwick.

I cordially suggest to your Tavern Owners Association that it take the initiative by passing a resolution supporting the Mayor and Council in enacting such an amendment. Such voluntary action on your part will undoubtedly have the approval of Neil F. Deighan, President of the New Jersey Licensed Beverage Association who wrote me, on July 1st, in respect to the above mentioned amendment to the Wayne Township Ordinance (Bulletin 244, Item 3) which sought to change the closing time from 3:00 to 4:00 A. M.: "After reading your opinion and advice in the matter, no self-respecting licensee would want such an extension. You very wisely stated: 'Licensees who advocate such an extension must be stone blind.'"

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. MUNICIPAL REGULATIONS - DAYLIGHT SAVING TIME - SUGGESTED FORM OF REGULATION APPLICABLE TO BOTH STANDARD AND DAYLIGHT SAVING TIME.

July 13, 1938.

Mayor and Borough Council of Cliffside Park
c/o Arthur H. Abrams, Borough Clerk,
Cliffside Park, N. J.

Gentlemen:

Herewith copy of a letter of even date to Charles W. B. Lane, Executive Secretary of the Tavern Owners Association of Cliffside Park concerning tavern closing regulations.

For the reasons therein stated, I suggest that you amend your resolution of December 6, 1933 to read:

> "BE IT FURTHER RESOLVED, that no alcoholic beverages shall be sold before the hour of six a.m., or after the hour of three a. m., except on Sunday, on which day no beverages shall be sold after three a. m., nor before the hour of twelve o'clock noon.
>
> "The hours hereinabove referred to shall be Eastern Standard Time, except from the last Sunday in April to the last Sunday in September, when they shall be Daylight Saving Time."

I believe the foregoing action is wholly in the public interest.

Respectfully submitted,

D. FREDERICK BURNETT,
Commissioner.

4. RETAIL LICENSEES - WHISKEY POURERS - POURERS MAY NOT BE USED ON BOTTLES OTHER THAN THE WHISKEY THEY ADVERTISE.

Dear Sir:

Is it an infraction of the A.B. C. rules to have a "pourer" on a whiskey bottle with the name of a whiskey not in the bottle? For example, a "Wilson Whiskey" pourer on a Calvert bottle.

Very truly yours,

Philip Schlenger

July 13, 1938.

Mr. Philip Schlenger,
Paterson, N. J.

My dear Mr. Schlenger:

I wish that you would not attach any "pourer" to a bottle which bears the name of any whiskey other than that in the bottle.

The primary purpose of labeling is to identify accurately the contents of the package. A new gadget naturally attracts more attention than the familiar label.

If you put a Wilson pourer on a Calvert bottle, there are many who well might be misled.

Don't do it.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. LABELING - REGULATIONS NO. 24 - APPLICATION TO DESIGNATE WHISKIES STORED IN REUSED COOPERAGE AS STRAIGHT WHISKIES AND TO AFFIX LABELS BEARING UNQUALIFIED STATEMENTS OF AGE DENIED - LABELING REGULATIONS MODIFIED TO REQUIRE THAT WHISKEY PRODUCED IN THE UNITED STATES (OTHER THAN CORN WHISKEY) STORED IN REUSED COOPERAGE AND HEREAFTER BOTTLED, LABELED AND SOLD WITHIN NEW JERSEY BEAR A STATEMENT OF THE LENGTH OF SUCH STORAGE.

In the Matter of the Application)
by)
RARITAN DISTILLERS CORP.,)
FEDERAL PRODUCTS CO., and)
CRESCENT BEVERAGE CO.,)
) On Petition
for modification of the labeling)
regulations in so far as they) CONCLUSIONS
pertain to distilled spirits)
stored in reused cooperage.)
)
. . . . . .

Alfred D. Van Buren, Esq., Attorney for Applicants.

Application was made by Raritan Distillers Corp., Federal Products Co., and Crescent Beverage Co., holders of New Jersey rectifier and blender licenses, for authority to bottle certain alcoholic beverages purchased by them between October 1936 and February 1937 from American Distilling Co. and stored in reused cooperage, as straight whiskies and to affix labels bearing statements of age. Pursuant thereto, hearing was duly held and the interested parties were afforded opportunity to express their views and introduce evidence in support of their contentions; and in addition, a record of the hearing of November 15, 1937 before the Federal Alcohol Administrator at Washington and dealing with reused cooperage, was introduced in evidence.

Prior to the applicants' acquisition of the whiskey which is the subject of this proceeding, regulations relating to labeling of distilled spirits had been promulgated by the Federal Alcohol Administration and had been adopted on August 21, 1936 for the State of New Jersey. See Bulletin 137, Item 9. The regulations prohibited generally the use of the description

"straight whiskey" or any statement of age on labels affixed to containers of whiskey (other than corn whiskey) stored in reused cooperage. These restrictions were based upon the view that the nature of the traditional American type whiskey (other than corn whiskey) required storage in charred new oak containers, with the consequent contribution to the distillate of a large amount of extractives from the wood; that reused barrels would not furnish an adequate quantity of such extractives to give the product the characteristic flavor of such whiskey; that such whiskey should be preserved from the distintegration which would follow if whiskey not conforming thereto were permitted to be sold under similar labels; and that this could be accomplished by requiring products labeled as straight whiskey to be stored in new cooperage for a certain period of time and by prohibiting age statements on products stored in reused cooperage. The record of the hearing of November 15, 1937 before the Federal Alcohol Administrator contains extensive testimony in support of the validity of the foregoing individual findings. No independent evidence inconsistent therewith has been presented to the Commissioner on behalf of the applicants.

The Commissioner has consistently taken the position that labels on containers of alcoholic beverages should contain accurate and adequate information acquainting purchasers with their identity and ingredients; that where the consumer is thus informed there would be no useful purpose served by the imposition of separate labeling requirements by the respective States; that uniformity is particularly appropriate in this field; and that since examination of the labeling regulations of the Federal Alcohol Administration has disclosed that they are calculated to protect fully the consuming public, they should be followed generally and should be departed from in individual instances only upon a substantial showing warranting such action. The regulations of the Federal Alcohol Administration prohibiting whiskies stored in reused cooperage from being designated as straight whiskey and further prohibiting unqualified statements of age with respect thereto appear to be directly in the public interest. The Commissioner has therefore reached the conclusion that there should be no departure therefrom in so far as intrastate transactions within New Jersey are concerned.

In one respect, however, the Commissioner is unable to adhere fully to the distilled spirits labeling regulations of the Federal Alcohol Administration, now in force. Although they require that whiskey (other than corn whiskey) currently produced in the United States and stored in reused cooperage bear, in lieu of an age statement, the phrase "stored _____ (years and/or months) in reused cooperage", they do not require nor indeed permit such statement with respect to such whiskey hereafter bottled and labeled but produced before March 1, 1938. The refusal to compel or permit the use of the quoted statement with respect to whiskey manufactured prior to March 1, 1938 and hereafter bottled was evidently based upon the thought that it would otherwise be unfair to competing licensees who used new cooperage in reliance upon the restrictions theretofore embodied in the regulations. This consideration is outweighed by the public interest in favor of a complete and accurate description of the product being purchased.

Accordingly, it is the Commissioner's ruling that labels on containers of whiskey (other than corn whiskey) produced in the United States, stored in reused cooperage and hereafter bottled, labeled and sold within New Jersey in intrastate commerce

shall bear a truthful statement in the following form:

"Stored _____(years and/or months) or more in reused cooperage."

In all other respects the present regulations of the Federal Alcohol Administration relating to labeling of distilled spirits are in force with respect to the State of New Jersey and apply to distilled spirits packaged purely for intrastate shipment within New Jersey to the same extent as though intended for interstate or foreign shipment.

D. FREDERICK BURNETT
Commissioner

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

Dated: July 14th, 1938.

3. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS - HEREIN OF BOYS AND PIGEONS.

July 11, 1938.

RE: CASE #226

This is to determine applicant's eligibility for a solicitor's permit. Under R.S. 33:1-25, 26 (Control Act, Secs. 22, 23), no one convicted of a crime involving moral turpitude shall be, or shall work for, a liquor licensee in this State.

In April 1931 applicant, then 17 years 9 months of age, was arrested and charged with attempted larceny of pigeons. He explains this arrest as follows: that one day he accompanied his father, a physician, in visiting a sick farmer; that applicant, an amateur pigeon breeder, received the farmer's consent to trap and take some of the farmer's "common" pigeons; that the next evening applicant and two boys whom he had interested in the venture drove to the farm for this purpose; that applicant, fearful lest he might disturb the sick farmer, decided to forego the venture and to return at a more favorable time; that when the boys returned to their car from the farm, a local policeman arrested them as "suspicious looking characters" and later charged them with trying to steal the farmer's pigeons; that, at an informal hearing before the local police recorder, the whole affair was treated in a humorous vein and the recorder dismissed the case. The farmer confirms applicant's story of permission to take the pigeons.

Local police records, however, declare that applicant was actually convicted but was released on 3 months' probation. The present acting police chief of the municipality states that these records may not be accurate; that, in any event, "no record of any complaint being signed can be found and how these boys received a hearing under such conditions I cannot understand"; that he is endeavoring to have the State and Federal Bureaus of Investigation expunge applicant's name from their records.

Even if it be assumed that applicant was convicted of an attempt to steal pigeons, the facts here do not bespeak moral turpitude, especially since applicant was less than 18 years of age at the time of the alleged crime. Re Application for A.R.C. Permit, Case #36, Bulletin 149, Item 1.

Moreover, applicant, when stating in his questionnaire and application for a permit that he had never been convicted of any crime, seemingly had no intent to falsify his record and actually believes (what may be the fact) that the charges against him were dismissed.

It is recommended that applicant be declared presently eligible to hold a solicitor's permit.

Nathan Davis,
Attorney

APPROVED with delight. But what a miscarriage of justice against a young boy!

D. FREDERICK BURNETT
Commissioner.

7. RETAIL LICENSES - FEDERAL TAX STAMPS - APPLICANT FOR LICENSE MUST PROCURE FEDERAL TAX STAMP EVEN THOUGH THE LICENSE WILL BE TRANSFERRED, IMMEDIATELY UPON ISSUANCE, TO ANOTHER.

Dear Sir:

Application has been made to this office by one Adam Spiegel for a renewal of Plenary Retail Consumption License C-82 for premises at 124 Highland Avenue and also application for transfer of said license to Mary Basar and application for transfer from 124 Highland Avenue to 174 Ackerman Avenue. Mrs. Basar has secured a Federal stamp covering her license. Mr. Spiegel also made application at the Passaic Post Office, Internal Revenue Office, for a Federal stamp, and said stamp has been refused by the Internal Revenue office, it being claimed that such a stamp is not necessary in Mr. Spiegel's case.

I have accepted the aforementioned applications pending the Commissioner's opinion in the matter.

Very truly yours,

William A. Miller,
City Manager.

July 14, 1938.

William A. Miller,
City Manager,
Clifton, N. J.

My dear Mr. Miller:

I understand that you have applications pending for the renewal of Spiegel's license for the current year, and for transfer of same to Mrs. Basar, awaiting Spiegel's Federal tax stamp, which, the Bureau of Internal Revenue claims is unnecessary, inasmuch as immediately upon the issuance of the license it will be transferred to Mrs. Basar.

It may well be unnecessary under Federal law for Spiegel to procure a tax stamp. My understanding is that the Federal law requires the tax stamp to be procured only if business will actually be conducted. But the State law is otherwise. It expressly requires (R.S. 33:1-25, Control Act, Sec. 22), that a photostatic copy of the necessary Federal stamps, or other

evidence in lieu thereof satisfactory to the Commissioner (State Regulations No. 9), must accompany the license application. The provision is mandatory. No license can be issued unless the tax stamp is procured. I deem it not unwise, even in the instant case, because if the license is issued to Spiegel and the transfer to Mrs. Basar doesn't go through, Spiegel will have a valid license entitling him to continue in business if he wishes.

I am sure that if you will explain to the Internal Revenue office that Spiegel must have a tax stamp because the State law requires it, you will have no further trouble. I have no objection that under the circumstances the applications were accepted without Spiegel's tax stamp having been procured, but don't issue the license until satisfactory evidence that it has been obtained is presented.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. RETAIL LICENSEES - MAY DISCRIMINATE TO WHOM THEY SELL EXCEPT ON ACCOUNT OF RACE, CREED OR COLOR.

RETAIL LICENSEES - WHILE THERE IS NO LEGAL OBLIGATION TO REFUSE TO SELL TO A CUSTOMER, IF SOBER, EVEN AGAINST PROTEST OF FAMILY, FAR-SIGHTED LICENSEES WILL HEED THE REQUEST, AND IF WARRANTED, WILL COMPLY.

Dear Commissioner:

Is a tavernkeeper obliged to sell a drink to any patron of good repute, sober, and industrious?

Will a tavernkeeper be subject to punishment in the event that he sells a drink to a patron who is of good repute, sober and industrious, when the said patron's wife requested that no drink be sold to her husband. The patron in question has but one, and at most, two drinks every evening on his return from work. He does not enter the establishment under the influence, and is not intoxicated when he leaves.

Yours very truly,

Lawrence E. Burns

July 14, 1938.

Lawrence E. Burns, Esq.,
Orange, N. J.

My dear Mr. Burns:

Generally, it is within the discretion of a tavern-keeper to sell to whom he chooses.

The reason is that tavernkeepers have great responsibilities under the law. They must maintain good order and conduct at all times. Since they are fully responsible for all violations that may occur, it is only fair that they be permitted to exercise their judgment and refuse to sell if they have cause to believe that the service will result in the customer's not conducting himself properly. See Re Dorflinger, Bulletin 136, Item 12.

But the thing that tavernkeepers may not do is refuse to sell to anyone on account of race, creed or color. That is contrary to the Civil Rights Act (R.S. 10:1-1 et seq.). You will find a discussion of the rights and duties of licensees in this respect in Re Grant, Bulletin 231, Item 1; Re Griffin, Bulletin 200, Item 7; Re Craster, Bulletin 198, Item 6; Re Tait, Bulletin 188, Item 9.

There is nothing in the law which obliges a licensee to refuse to sell to a customer, if sober, merely because some member of the family has requested it. That is up to the individual licensee himself. Of course, if he is conscious of what is in his own best interest, he will weigh the request most carefully, and, if warranted, will comply. It means that he will be more highly regarded by his fellow men and respect for the business he engages in will increase, all of which will help to insure the continuance of his privilege to hold a license. A little more respect and sympathy for social consequences and a little less stubbornness in standing strictly on legal rights is, if licensees would only realize it, the wisest course for them to follow. For the extent to which licensees are legally or morally bound to restrict sales at the request of a member of the customer's family, see Re Culligan, Bulletin 135, Item 8; Re Bloodgood, Bulletin 172, Item 12.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

9. BREWERIES - RETAILERS - A PERSON NOT CONNECTED WITH ANY ALCOHOLIC BEVERAGE BUSINESS MAY GUARANTEE PAYMENT OF A RETAILER'S ACCOUNT.

Dear Sir:

We represent P. Ballantine & Sons, of Newark, New Jersey, which company is the holder of a New Jersey State Plenary Brewery License. Occasionally our client receives orders from retail licensees to whom it is unwilling to sell because of poor credit rating. However, in some of these cases, an additional inducement is presented in the form of an offer by a third party to guarantee the payment of the account. We will appreciate it very much if you will inform us if the guarantee of these accounts by a third party, who is not a licensee, will violate any of your regulations.

Very truly yours,

McGovern & Farrell

July 14, 1938.

McGovern & Farrell, Esqs.,
Newark, N. J.

Gentlemen:

There is nothing in the Alcoholic Beverage Law or the State Regulations that would prevent someone not connected with any alcoholic beverage business, directly or indirectly, from guaranteeing payment of a retailer's account to a brewery.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. ADVERTISING -- BEER CANS -- CONTEST DISAPPROVED.

July 15, 1938.

Miller, Owen, Otis & Bailly,
New York, N. Y.

Gentlemen: RE: Continental Can Company - Beer Can Advertising

I have your letter of June 3d and enclosures.

The scheme involves a contest, awarding cash prizes for the best letters finishing in twenty words or less the sentence: "I LIKE THE CAP SEALED CAN FOR BEER BECAUSE...."

The contest definitely limited, in terms, to adults, invites the public generally to participate without any necessity of purchasing beer or making any statement to the effect that they are consumers of beer sold in a cap sealed can. Dealers and distributors who sell beer in these cans will be supplied with application blanks and information to assist applicants in making their answers. Such dealers will receive duplicate awards on the theory that the dealer supplied the basis of the prize winning answer.

Despite the carefully worded plan, it is apparent that the average contestant, instead of relying on the hearsay of someone else, will conclude that he cannot hope to make an inspired answer and win a prize without buying the can and trying the beer. The dealer-distributor stimulus is likewise strong. If all that was really desired was the reaction of the dealer, based on the information which the Company itself supplies, there would be no occasion for inviting the public.

It is my duty to prevent practices designed unduly to increase the consumption of alcoholic beverages. Accordingly, all contests in connection with the sale of alcoholic beverages have been disapproved. See Re Presbrey, Bulletin 246, Item 9; Re Brown Friar, Bulletin 199, Item 11; Re Schneider, Bulletin 198, Item 8; Re Donnelley, Bulletin 161, Item 1; Re WEST, Bulletin 159, Item 12; Re Gooderham & Worts, Bulletin 156, Item 5.

This contest is, therefore, disapproved.

Liquor licensees are forbidden to handle contest blanks or possess them on licensed premises. See Re Hartman, Bulletin 172, Item 5.

Copies of the rulings referred to have been sent you under separate cover.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. LICENSEES - MAY NOT DISCRIMINATE TO WHOM THEY SELL ON ACCOUNT OF RACE, CREED OR COLOR - RIGHTS AND REMEDIES UNDER THE CIVIL RIGHTS ACT.

Dear Mr. Burnett:

It has been brought to my attention that public tap rooms, beer gardens and saloons operating under a plenary retail consumption license throughout the Township of Landis and Borough of Vineland, are using unfair tactics toward the Negro population in dispensing of alcoholic beverages.

They are using various methods of discouraging the Negro from drinking in their establishments, such as:

1. Separate places at the bar (white on this end, colored on the other end).
2. One establishment has a special bar for colored patrons.
3. Signs of "Colored Trade Not Solicited" are exhibited in many establishments.
4. A picture (very insulting to the race) hung upon the wall and underneath, "Colored Trade Not Solicited. This Means You."
5. Others say, "You can buy it here but you must drink it elsewhere.
6. There are some establishments that will not serve colored patrons at all. This sentiment is growing more and more each year.

Do these public establishments, under the laws of New Jersey, and licensed by these municipalities, have the right to operate under such insulting, demoralizing and embarrassing methods?

If they do not, will you kindly explain to me what action can be taken to enable the Colored American Citizen to obtain the same courtesy, privileges, respect and consideration as any other group of citizens?

Very truly yours,
Louis Harmer

July 15, 1938

Mr. Louis Harmer,
Vineland, N. J.

My dear Mr. Harmer:

Generally, it is within the discretion of a tavernkeeper to sell to whom he chooses.

The reason is that tavernkeepers have great responsibilities under the law. They must maintain good order and conduct at all times. Since they are fully responsible for all violations that may occur, it is only fair that they be permitted to exclude persons who they have reasonable cause to believe will not conduct themselves properly. Re Dorflinger, Bulletin 136, Item 12.

Discrimination on account of race, creed or color, however, is not permissible. It is a misdemeanor under the Civil Rights Act (R. S. 10:1-1 et seq.), which provides, inter alia:

10:1-2. "All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodation, resort

or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons."

10:1-3. "No owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly refuse, withhold from, or deny to, any person any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post, or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from, or denied to, any person on account of race, creed or color, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed or color is unwelcome, objectionable or not acceptable, desired or solicited."

10:1-5. "A place of public accommodation, resort or amusement within the meaning of this chapter shall be deemed to include any inn, tavern, road house or hotel,.... any restaurant,.....any place.....where any beverages of any kind are retailed for consumption on the premises;....."

You will find a discussion of the rights and duties of licensees in this respect in Re Grant, Bulletin 231, Item 1; Re Griffin, Bulletin 200, Item 7; Re Craster, Bulletin 198, Item 6; Re Tait Paul, Bulletin 188, Item 9.

The foregoing does not, of course, impair the right of a tavernkeeper to refuse service or accommodations where it may result in disturbance or violation of the law. The Act itself, by the terms "subject only to the conditions and limitations established by law and applicable alike to all persons", contemplates that those seeking accommodations shall be proper persons to be served.

The enforcement of the Civil Rights Act, however, is not within the scope of my powers or duties. My job is restricted to the administration and enforcement of the liquor laws. If there has been a violation of the Civil Rights Act, your remedy is, on proper complaint, to bring charges in accordance with the provisions of the act. See R. S. 10:1-6 and 10:1-7. Penalties may be assessed as provided in these sections.

I am deeply sympathetic with the obstacles that confront members of the colored race. See Manning v. Trenton, Bulletin 247, Item 1; Sears Roebuck v. Absecon and Jones, Bulletin 185, Item 10.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. SUNDAY SALES - EFFECT OF REFERENDUM - HEREIN OF THE POWER OF MUNICIPALITIES TO PERMIT LICENSEES TO STAY OPEN DURING HOURS SALES ARE PROHIBITED BY REFERENDUM, AND THE TEMPTATIONS AND EMPTY PRIVILEGE AFFORDED LICENSEES BY ITS EXERCISE.

July 15, 1938

Gloucester Township Beverage Association,
Blackwood, N. J.

Gentlemen:

According to my records, Sunday closing in Gloucester Township is governed by resolution adopted by the Township Committee on July 17, 1935, which provides:

> ".....that all stores, establishments or stands designated as the licensed premises for the sale and distribution of alcoholic beverages in the Township of Gloucester shall be closed at the hour of one o'clock A. M. on Sunday and shall remain closed until seven o'clock A. M. on the following day, Monday; and
>
> "BE IT FURTHER RESOLVED that there shall be no sale of alcoholic beverages in any store, establishment or stand, designated as the licensed premises from the hour of twelve o'clock midnight on Saturday to the hour of seven o'clock A. M. on Monday."

Sales of alcoholic beverages on Sundays are prohibited by referendum held in the Township on November 6, 1934 on the question, "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?", which resulted in a majority voting in the negative. Referendum held November 2, 1937 on the question "Shall the sale of alcoholic beverages be permitted in the Township of Gloucester on Sundays after 1:00 P. M.?" does not alter the prohibition resulting from the previous referendum of November 6, 1934, because in 1937 a majority also voted in the negative.

The effect of the 1934 referendum is to prohibit all sales of alcoholic beverages at any time on Sunday until a different result is reached by subsequent referendum. See Re Smyth, Bulletin 209, Item 11.

As the law now stands, all licensees in the Township must stop selling alcoholic beverages at 12:00 o'clock midnight Saturday night, must close their licensed premises at 1:00 A. M. on Sunday morning, and must remain closed and not resume sales of alcoholic beverages until 7:00 A. M. Monday.

The Township Committee may amend the resolution of July 17, 1935 to allow licensees to keep their premises open longer on Sunday mornings, if it wishes, but I do not see that that will accomplish much, or allow you to compete with the surrounding towns that have a 3:00 A. M. closing on Sunday morning, through which, as you say, you lose a lot of business. Even if the hour at which your places must close is extended from 1:00 A. M. to 3:00 A. M., it would in nowise give you power to sell alcoholic beverages after Saturday midnight. On the other hand, if the closing hour were extended, there would be a constant temptation to some of the near-sighted licensees to sell alcoholic beverages during prohibited hours in order to attract and keep patrons, and if that were yielded to, then inevitably somebody is going to get hurt and may lose his license.

Moreover, such a violation might be the cause of denying all licenses irrespective of personal fault. The two referenda already held in your Township indicate clearly the local sentiment. It is something not to be trifled with. As matters now stand, you are given an hour after selling time ceases to get your patrons out and close down the place. Dallying longer will bring in no more revenue from legitimate sale of liquor, but if any inching in is attempted it may bring down the whole house on your heads. Isn't a half loaf better than no bread at all?

Perhaps I should add:

1. Because of the result of the referendum, the Township Committee has no power to permit sales of alcoholic beverages on Sunday any time after midnight on Saturday. Re Gallo, Bulletin 215, Item 1; Re Bradford, Bulletin 230, Item 18.

2. Sales at any time on Sunday being a violation of the referendum is not only cause for suspension or revocation of the license, but also constitutes a misdemeanor. Re Bogota, Bulletin 213, Item 3.

3. All times herein mentioned are Standard, and not Daylight Saving Time.

Very truly yours,

Frederick Burnett

Commissioner.