

Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 108

March 3rd, 1936

1. MUNICIPAL ORDINANCES - LOCAL REGULATIONS AS TO CLOSED HOURS FOR SUNDAY SALES ADOPTED SUBSEQUENT TO A REFERENDUM IN FAVOR OF SUNDAY SALES MUST BE REASONABLE.

MUNICIPAL ORDINANCES - DEFINITION OF A CLOSED PLACE.

MUNICIPAL ORDINANCES - POWER TO DENY PARTICULAR LICENSES NOT DELEGABLE - REGULATION REQUIRING APPROVAL OF APPLICATION BY 60% OF A DESIGNATED CLASS OF RESIDENTS IS NOT VALID - HEREIN OF "HEADS OF FAMILIES".

February 21, 1936

H. C. Scudder, Esq.
Attorney for Ewing Township
143 E. State Street
Trenton, New Jersey

Dear Sir:

I have yours of the 15th asking on behalf of the Township Committee for my comments upon the proceedings now pending before the Township Committee in the matter of the revocation proceedings against the Ewing Riding Club for alleged violation on Sunday, February 9th, of your local Rules 1 and 2 adopted by resolution of the Township Committee on November 15, 1935.

So far as the alleged violation itself is concerned, I have, of course, at the present time, no opinion one way or the other. That is all a matter of proof of the facts.

The validity of the two rules themselves, as to which I take it you are in doubt, is another question and may well be discussed in conjunction with the resolution, in which they were adopted. That resolution has not heretofore been considered for approval. I shall do so now.

The rules and regulations "concerning places licensed to sell alcoholic beverages for consumption on the premises" adopted by resolution of your Township Committee on November 15, 1935 are approved as submitted subject to the following comments and exceptions.

In the ruling of November 9, 1935 re Ewing Township, Bulletin 95, item 11 (copy enclosed), I held that the referendum in favor of Sunday sales "cleared the slate of all previous ordinances and resolutions, including the resolution of April 20, 1934 which fixed the opening hour on Sundays at 5:00 P.M.". The reason was that "the only way to give full effect to the wishes of the majority who are in favor of it (i.e. Sunday selling) is to regard that referendum as wiping out and extinguishing every existing prohibition". Hence, the 5:00 P.M. Sunday hour fell as a result of the referendum. The slate was thus wiped clean. The municipality was free to start all over again and make new regulations consonant to the

New Jersey State Library

declared wish of the electorate that Sunday sales should be permitted.

That ruling did not stop short at that juncture. It endeavored to point the way to a constructive solution of the control problem considered in the light of the referendum. It continued thus:

"The referendum, however, need not necessarily be construed as a mandate for unrestricted Sunday sales. Re Way, Bulletin 58, Item 6. The Control Act, Sec. 44, as now amended, does not necessarily or automatically mean that saloons must be open twenty-four hours on Sunday. The statute reads that 'if the majority of the legal voters voting upon said question shall vote "Yes",.....the sale of alcoholic beverages on Sundays pursuant to the provisions of this act shall be permitted in said municipality'. (Italics mine). The Act elsewhere provides, Sec. 37, that the governing board of each municipality may limit the hours between which the sales of alcoholic beverages at retail may be made subject to appeal to the State Commissioner. Hence, notwithstanding the referendum, reasonable hours of sale may still be fixed by your governing body. If those hours are reasonable and constitute regulation merely, I shall uphold them. If, on the other hand, they amount to prohibition, then I am duty bound, in response to the declared wishes of the electorate, to reject them.

"In short, while the referendum wiped the slate clean of all then existing prohibitions, it did not bar a new resolution regulating Sunday selling by fixing reasonable hours as distinguished from virtual prohibition."

Examining now your Rules and Regulations with the foregoing in mind, I find that your Rule 1 fixes the opening hour at 5:00 P.M. on Sundays, and on week days at 7:00 A.M., and the closing hour at 2:30 every day. So far as weekdays are concerned, there is no question. The 5:00 P.M. opening hour on Sundays does raise a serious question. It is the very same hour that was in effect before the referendum. If the Ewing Township Committee after that referendum had permitted sales on Sundays excepting, say, during morning church hours, I should have regarded it as a reasonable regulation and not inconsistent with the referendum. So also if it had closed consumption places during the hours of Sunday evening church services. But the Township Committee has gone far beyond and reestablished the same hours that obtained prior to the referendum. To ordain that the taverns cannot open at all on Sundays until 5:00 P.M. is a virtual prohibition of Sunday selling until that late hour arrives. It is the very thing which the majority of the electorate declared against in their referendum. It is prohibition and not regulation. It nullifies the declared wishes of the electorate. It is not in pursuance but in defiance of the referendum. I hold, therefore, that the Sunday selling hours, fixed by the Township Committee, are repugnant to and contravene the referendum. They are, therefore, disapproved.

Your Rule 2 which defines a closed place as "one where all doors are locked, the lights are out and no patrons are in the place or on the premises connected therewith", is wholly approved. It makes a clean cut definition and thus avoids the difficulties with which both enforcement officers and licensees are faced when confronted with a regulation with loose or ambiguous terms. It should facilitate enforcement. Everybody

knows just what is required.

Your Rule 3 provides: "That no application for a new place will be considered unless such application is accompanied by a petition signed by at least sixty per centum of the heads of families permanently residing within five hundred feet of the place proposed to be licensed."

It raises many questions:

(a) By requiring sixty per cent of the designated class to be in favor of a new application, your rule in effect confers upon forty-one per cent the veto power to prevent the consideration of the new application, and hence the power to withhold the issuance of that particular license. The discretionary function expressly delegated to your Township Committee cannot in turn be redelegated. Cf. re Cliffside Park, Bulletin 65, item 6; re Guttenberg, Bulletin 66, item 8; re Hackensack, Bulletin 93, item 10.

(b) Why any such class? Is not a member of a family entitled to express his views as well as the head?

(c) Is it reasonable to require such consent of sixty per cent of the heads of families, each of which might possibly be his present or future business competitor? Is it reasonable that one applicant may be able to obtain a license because the family heads nod assent, while another applicant, equally worthy and qualified may be prevented from obtaining the same kind of license solely because those heads wag dissent?

(d) What is the criterion of whether or not the families, the heads of which must approve the application, are permanently residing within five hundred feet of the proposed licensed premises? How long a past residence is required? What evidence must there be of future intent to abide there in order to make the residence permanent?

(e) How is the applicant to ascertain just how many heads of families there are within the designated 500 feet radius? What is the denominator of the fraction whose consent he must obtain? Until this is determined, he cannot comply with the required numerator. Is there any register of these vital statistics for each such circle, or provision made for keeping the record up-to-date? If not, is a new family census to be taken each time a new application is made or adjudicated?

(f) Who are these "heads of families"? Do you mean ostensible or virtual? How is the Township Committee, let alone the applicant, to determine who wears the pants?

Rule 3 is disapproved because impracticable.

Rule 4, which limits the number of plenary retail consumption and distribution licenses, for the reasons stated in Bulletin 43, Item 2, does not need my approval in the first instance in order to be effective.

Rule 5 declares that for violation of the above regulations, any license to sell alcoholic beverages issued by the Township may be suspended or revoked. The title of these rules, as hereinbefore quoted, limits them to consumption licensees.

Our records show that you have issued both consumption and distribution licenses. Hence, the opening and closing hours you have fixed and in fact, all these rules and regulations, apply only to consumption licensees and leave the distribution licensees untouched.

I suggest, therefore, that you exscind from the preamble of the resolution the words "for consumption on the premises" and instead designate the particular classes of licenses to which you want the rules to apply.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

2. REVOCATION PROCEEDINGS - ILLICIT LIQUOR - PENALTIES -
HEREIN OF LIMITATION OF LICENSES.

February 25, 1936.

John R. Petrie, Borough Clerk,
South River,
New Jersey.

My dear Mr. Petrie:

I have staff report of the proceedings against Nick Possay for possession of illicit alcoholic beverages, and note that the licensee was found guilty and his license suspended for a period of thirty days.

No opinion is expressed as to whether or not the licensee was guilty, because that, perchance, may come before me by way of appeal and my mind, therefore, is entirely open on that score.

There are a great many licenses in your Borough in comparison with its population. Temptation comes with insidious force to those whose business is so small as not to afford a living wage. When they fall for bootleg so to sell larger quantities of the stuff at cheaper prices than their competitors who sell good legitimate liquor, trade is naturally diverted by the credulous public from the honest licensees. Bootleg liquor thus backs up against them and makes it just so much harder to eke out a livelihood. The effect of bootleg sales is thus felt all along the line. If not ruthlessly checked, it will spread like wild fire. Then everybody suffers. Every sale of bootleg deprives the State of just so much revenue. The greater the revenue from liquor, the less the tax on our homes!

Moreover, the cheating licensee is unfair to his customers who rely and have a right to rely that he is dispensing legitimate

liquor without worry as to its purity or lest it be "cracked" from poisoned denaturants.

The possession of illicit liquor with intent to sell it is, therefore, a hit below the belt, not only to the legitimate traffic but also to every citizen who rents or owns a home. Hence, a penalty of thirty days' suspension, while severe, is most appropriate and is the minimum recommended. If this doesn't suffice, we will have to step up the punishment. I believe, however, if the recommended penalty is meted out unflinchingly, without fear or favor in every case where a licensee has been convicted of selling bootleg liquor, they all will soon be brought into line and eventually there will be relief from much of this disciplinary work as it dawns on licensees that your Council is in deadly earnest.

Please express to your Borough Council my esteem for their splendid cooperation in law enforcement. If, perchance, they desire to discuss plans for local limitation of the number of licenses, I shall be glad to arrange a conference at my office, either daytime or evening, at their convenience.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. LICENSED PREMISES - PICTURES - QUESTIONS INVOLVED.

Dear Sir:

I am writing you in reference to a saloon in our city which is exposing a picture over their bar which I feel should be removed. This saloon is located at _____ . The picture is of a nude woman supposedly laying on the sea shore. When the lights are lit anyone passing by can see this picture and I and some others hereabouts do not consider it conducive to the good morals of young people and children passing by, to say nothing of men and perhaps women who frequent the place. I feel sure that no respectable business house would put such a picture on view and I am wondering if a person who pays a license to run a saloon is also privileged to corrupt the morals of people further by exposing obscene pictures.

I made a complaint to our Chief of Police. He claims to have sent a policeman there and they report that the saloon keeper refused to remove it and the Chief said he could do nothing about it. He also said he had received other complaints about the picture. One block above this saloon is a church where the pastor and people are trying to help the young people and children to build clean characters and worth while lives while the view from this saloon is most degrading. Will you kindly inform me if anything can be done in the matter.

Thanking you for any information or attention in this case, I am,

Respectfully,

MRS. _____

February 28, 1936.

My dear Mrs. _____:

I have your letter complaining of a picture in a certain saloon of a nude woman lying on the seashore.

I have made no rules concerning pictures in taverns because of the practical difficulties first in formulating such regulations, and secondly, in determining with fairness and reasonably predictable certainty in any particular case whether a given picture violates the rule. Matters of this kind are not readily amenable to rules.

As to certain pictures, particularly those in the nude, opinions of highly respectable citizens of both sexes vary widely. What is the apotheosis of artistry to one is the anathema of offensiveness to another. Everything depends so largely upon individual viewpoint.

No rules should ever be made unless those governed thereby know exactly what to do and what to avoid.

Of course, no licensee is privileged to corrupt anyone's morals. They are bound to maintain decent self-respecting places. Hence, if a picture is obviously obscene, that's quite a different matter. I would then have no hesitancy in acting quickly. The mere undraped human figure is not of itself obscene.

I therefore cannot pass one way or the other on the facts as you present them, but shall detail one of my executives to view the picture of which you complain and report whether action by me is advisable.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. JURY TRIAL - VIOLATORS OF CONTROL ACT MAY NOT BE TRIED IN SUMMARY PROCEEDINGS - DESIRABILITY OF TRIAL BY JURY.

Dear Sir:

Recently in a complaint made by one of your agents, which came before me in my Court, I was somewhat annoyed by having the defendant's attorney request a preliminary hearing and that the charge be sent to the Grand Jury. At the time I felt forced to grant this application.

I am satisfied, however, that offenses under the Liquor Act are not indictable. The only place in the Alcoholic Beverage Act that I find the word "indictment" used is Section 69, page 35 of the small pamphlet, which you send out, and I would refer you for this question to the case of State vs. Rodgers, 91, N.J. Law Reports, page 212. In this case, which was that of a drunken driver, the Court says: "Driving while under influence of intoxicating liquor is a statutory offence--the difference between statutory and common law is that statutory offence is complete when done, whereas at common law, offence is not committed until inconvenience or annoyance to public."

The further point raised in that case was: "Second. The next point is that the act is unconstitutional because it grants to the magistrate and to the Court of Common Pleas on appeal the power to try a criminal offense without a jury. As has already been pointed out, the offense is not criminal within the meaning of that term; that is, it is not an offense, which subjects the offender to indictment." See 134 At. Rep., page 751, quoting Justice Trenchard in 84, N.J. Law, 512, State vs. Lakewood Market Co., and further "It has been repeatedly held in this State that in a summary procedure for the collection of a penalty for a violation of a police regulation, neither party is entitled to a trial by jury."

If, therefore, the offenses under the liquor law come under police regulation and disorderly conduct, the defendant is not entitled to an indictment by a Grand Jury or trial by a petit jury, but can be tried in a summary manner, as in disorderly and similar cases.

I am calling this to your attention, as it would save endless delays and expense, if these cases could be forced on for trial without juries. I personally believe that with a very slight amendment to these laws this could be done. I should be glad to get your reaction in this matter.

Yours very truly,

F. W. FREEMAN.

February 13, 1936.

Hon. Forster W. Freeman,
Judge of the First Criminal Judicial District,
Paterson, New Jersey.

Dear Sir:

I have carefully considered your letter suggesting that persons accused of violations of the Control Act be tried in summary proceedings.

I agree with your view that there are no constitutional barriers (cf. Latimer v. Wilson, 103 N.J.L. 159 (E. & A. 1926); State v. Rodgers, 91 N. J. L. 212 (E. & A. 1917); State v. Anderson, 40 N.J.L. 225 (Sup. Ct. 1878), and that the legislature could have provided that violations under the Control Act shall be triable without jury. However, the Act contains no such provision and I am satisfied that the legislative contemplation was to the contrary. This conclusion is fortified by the statutory description of violations as "misdemeanors", the substantial nature of the penalties imposed, the reference to indictments in Section 69 and the numerous indictments and consequent convictions evidencing the accepted construction of the Act. See State v. Bolles, 13 N.J. Misc. 273 (Sup. Ct. 1935). In the light of the foregoing I should think the courts would hasten to the conclusion that in the silence of the legislature the usual requirements of indictment and trial by jury are applicable. See the cases collected in 33 C. J. 706, under the following:

"But generally, wherever the law makes a particular act, done in contraversion of the liquor laws,

an offense or a misdemeanor, without directing the form of proceeding for its punishment, such proceeding properly takes the form of a criminal prosecution founded on an indictment or presentment by a grand jury."

It is quite true, as you point out, that trial by jury necessitates delay and expense which would be avoided by summary proceedings. There are other considerations, however. The formal steps incident to indictment and trial by jury, insofar as they impress the defendant with the severity of his offense, act as a deterrent in themselves. And courts are more likely to impose severe sentences commensurate with the nature of the offense, where the defendant has been afforded trial by jury than in instances where he has been summarily tried. But even more important is the following thought.

There is a growing realization that the liquor violator is a grave, social menace; that the bootlegger is particularly dangerous not only because he evades legitimate taxes and places upon the market an inferior type of liquor resulting in the injury of a legally established industry of major proportions, but also because the habit of law evasion tends to create a class which does not confine its activities to that particular field but which seeks similar illegitimate outlets for profit in other fields; and that until we have successfully stamped out the bootlegger we cannot expect fully to control the racket problem in its other manifestations. As a result the public attitude towards enforcement of the Control Act is in nowise similar to the public attitude on enforcement of the Prohibition laws. We no longer are faced with general sympathetic tolerance, and instead observe militant indignation towards those who act in disregard of a law accepted as being for the common good. Service upon grand and petit juries affords the public an opportunity to share in the enforcement of a law embodying their own conceptions. The elimination of juries would result, rightly or wrongly, in public resentment and consequent indifference to enforcement. This must be avoided at all costs.

I may say that the Commissioner concurs in the view that the grand and petit juries have in general properly discharged their duties in cases under the Control Act; that any advantages incident to an elimination of the right to trial by jury for alleged liquor violators are outweighed by the disadvantages; and that present requirements that violators of the Control Act be indictable and triable by jury be maintained.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

5. RULES CONCERNING SIZE OF CONTAINERS - SPECIAL PERMITS - COMMISSIONER WILL ENTERTAIN APPLICATIONS FOR SPECIAL PERMITS AUTHORIZING SALE OF UNDERSIZED CONTAINERS FOR RESALE FOR CONSUMPTION ON THE PREMISES.

Gentlemen:

Relative to the conversation that I had with you a few weeks ago regarding the half pint situation, I wish again to call this matter to your attention. The past few days I received a number of requests from my jobbers for commitment as to the disposition of this merchandise.

As the situation has developed we cannot authorize the return of this merchandise by a recent ruling from our home office. I feel reasonably certain that you can understand the situation that our jobbers are in, by reason of being unable to dispose of the goods by sale to the retailer, and by the refusal of the distiller to accept the merchandise for return.

May I call upon your good judgment to issue some sort of a temporary ruling, which may relieve this burdensome condition as far as our distributors and we are concerned.

I trust that you will give this matter due consideration, and that your decision will be favorable to all parties concerned.

Yours very truly,

CONTINENTAL DISTILLING SALES
COMPANY

February 3, 1936

Continental Distilling Sales Company,
East Orange, N. J.

Gentlemen:

The additional Rules Concerning the Size of Containers of Alcoholic Beverages (Bulletin #97, Item #1) were to take effect on December 1, 1935. To enable licensees to dispose of containers lawfully purchased but proscribed by the additional rules, the effective date was extended until January 1, 1936. We understand that licensees have been unable to dispose lawfully of the proscribed containers and fully appreciate the difficulties. It is our intention to abide strictly by the rules in order to effectuate fully their purpose. However, in order to avoid economic waste, the Commissioner will entertain applications for special permits authorizing, for a limited time, the sale of alcoholic beverages in undersized containers to retail consumption licensees for resale for consumption on the premises.

The application for special permit must be verified and must establish that the containers sought to be sold pursuant to the permit were lawfully possessed on or prior to November 25, 1935, the date upon which rules #4 and #5 of the Rules Concerning the Size of Containers of Alcoholic Beverages were promulgated,

and must be accompanied by permit fee of \$10.00. The permit, when granted, will contain various conditions including (1) a requirement that the containers bear special labels indicating that they are being sold pursuant to special permit, and (2) a provision that although the contents may be delivered in a glass or other open receptacle to the consumer by the consumption licensee, the container itself will, under no circumstances, be delivered to the consumer.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

3. WAREHOUSE RECEIPTS LICENSE - TRANSFER OF RECEIPT TO PURCHASER IN LIEU OF ALCOHOLIC BEVERAGES CONSTITUTES "SALE" WHICH MAY NOT BE EFFECTED WITHOUT WAREHOUSE RECEIPTS LICENSE.

Dear Sirs:

We refer to your communications of January 6th relative to Warehouse Receipt Licenses.

We hold Plenary Export Wholesale License EW-16 issued by your Department, and Importer's Basic Permit I-306 issued by the Treasury Department at Washington.

We would explain that we will not handle any domestic beverages. Our operations will consist exclusively of importing and selling the products of South Africa. We do not intend to sell any material in bulk, but by authority received from the Federal Alcohol Administration at Washington we propose to import wines and brandy in bulk, and employ the services of a duly licensed rectifier acting as our agent to bottle the material for us.

The shipments will be placed in U.S. Customs Bonded Warehouse on arrival and then when we have received approval of labels from Washington, the duty and internal revenue taxes will be paid and the material in bulk will be moved to the premises of the licensed rectifier (probably the Dominion Distilleries, Inc. located in Harborside Terminal, Jersey City) who, acting as our agent, will filter and bottle the material for us. It will then be removed from the rectifier's premises to Bonded Section of the Harborside Warehouse, N.J. #X19, awaiting sale and shipment.

It is not our intention to sell warehouse receipts to the public. Naturally our sales will be confined to licensed dealers. If we sell say ten cases to a licensed wholesaler and he prefers to send his truck to the warehouse to take delivery, and if accordingly we give him an order on the warehouse for delivery, we do not believe you would consider this as dealing in warehouse receipts.

Our understanding is that we do not require a Warehouse Receipt License covering this method of operation.

Kindly confirm this understanding.

Yours very truly,

SOUTH AFRICAN WINE FARMERS IMPORT CORP.

February 4, 1936.

South African Wine Farmers Import Corp.,
Jersey City, N. J.

Gentlemen:

Section 73 of the Control Act prohibits the sale of liquor warehouse receipts except pursuant to a warehouse receipts license. In Bulletin #103, Item #3, copy of which is enclosed, the Commissioner ruled that where a rectifier and blender sells alcoholic beverages stored in its own government bonded warehouse and issues warehouse receipts to the purchaser of the alcoholic beverages, it is not violating the provisions of section 73. This ruling, however, does not apply to a situation where a wholesaler causes alcoholic beverages to be rectified and stores such beverages in a government bonded warehouse, not its own, obtains a receipt and thereafter delivers the receipt to a purchaser in lieu of the alcoholic beverages. Delivery of the receipt to the purchaser in this situation is "a sale" as distinguished from "an issuance" of the receipt.

Consequently, section 73 is applicable and such sale may not be effected without a warehouse receipts license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

7. BREWERIES - PROHIBITED INTERESTS - BREWERIES AND WHOLESALERS DISTRIBUTING BEER MAY CLEAN BEER COILS FOR RETAIL LICENSEES.

February 8, 1936.

Mr. William J. Bullman,
Phillipsburg, N. J.

Dear Sir:

I have your letter of February 1st inquiring whether beer distributors may lawfully clean beer coils for their customers.

P. L. 1935, c. 254, Control Act Reprint, section *40A provides that no brewery shall furnish, repair or replace fixtures, except that the cleaning and repairing of

pipes and similar matters may be permitted by rules and regulations. The purpose of this provision was to reenforce the legislative policy evident in section 40 of the Act against "brewery controlled saloons". The cleaning of beer coils by a brewery can hardly be said to afford control over the retail licensee in any substantial sense. This is implicit in the statutory language quoted above.

It is the Commissioner's ruling that breweries and wholesalers distributing beer, may clean beer coils for retail licensees without violating any of the provisions of the Control Act.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

8. REVOCATION PROCEEDINGS - PENDENCY OF CRIMINAL PROCEEDINGS -
ISSUING AUTHORITIES HAVE THE RIGHT AND SHOULD PROCEED TO
REVOKE OR SUSPEND THE **CIVIL** PRIVILEGES OF A LICENSED
VIOLATOR WITHOUT WAITING FOR THE COURTS TO ADMINISTER CRIMINAL
PUNISHMENT.

Dear Sir:

I have been directed by the Board of Aldermen to communicate with you and request that you advise us whether or not our Board has the right to, or should take action against violators of the Alcoholic Beverage Control Act, whose cases are now pending in the Courts or before the Grand Jury.

Very truly yours,

Edw. Du Pree
City Clerk.

February 18, 1936.

Edward Du Pree, Esq.,
City Clerk,
Paterson, New Jersey.

Dear Mr. Du Pree:

You state that the Board of Aldermen desires to know if it has the right or should take action against licensees charged with a violation of the Alcoholic Beverage Control Act whose cases are now pending in the Courts or before the Grand Jury. You mention four such cases, reports of which have been forwarded to the Board by this Department with

the Commissioner's recommendation that revocation proceedings be instituted.

The revocation proceedings should be instituted at once. It is not the desire of the Commissioner that such proceedings be held up pending the disposition of criminal charges even though the same facts are the basis of both charges.

Revocation proceedings are separate and distinct from any criminal action against a licensee and are directed mainly against the privilege that has been accorded by the municipality to the licensee. If that privilege has been abused the issuing authority has the right, conferred by Section 28 of the Control Act, to take action. The fact that the civil privilege has been abused makes it, in the Commissioner's opinion, the duty of the issuing authority to punish that abuse by appropriate suspension or revocation.

What the Board may have in mind relative to its inquiry is Section 82 (P.L. 1935, Chapter 254) of the Control Act which provides for the automatic suspension of a license upon conviction of the licensee for a violation of the Act. Under the express terms of this section, proceedings by the issuing authority to revoke or suspend the license are not barred by an automatic suspension that might result from a conviction. See Re: Weinberger, Bulletin #98, Item #6. There the Commissioner stated that a municipal issuing authority may, even after the statutory automatic suspension has taken effect, institute revocation proceedings and conduct a hearing on the charges preferred; that any order of revocation would take full effect in accordance with its terms and that any order of suspension for a period less than the balance of the term will not supersede the statutory suspension but would indicate the determination of the issuing authority as to what constituted reasonable punishment in the event of a petition to the Commissioner (as is also provided for in Section 82 above) for a lifting of the automatic suspension; the judgment of the issuing authority on question of punishment simply being advisory to the Commissioner. See Re: Weinberger, supra; Re: Morris, Bulletin #98, Item #10.

As stated above, Section 28 of the Control Act clearly vests in the Commissioner or other issuing authority (the Board of Aldermen of Paterson) the right to suspend or revoke a license for causes enumerated and in accordance with procedure set forth in said section and in Bulletin #52, Item #9. Believing it to be their duty to act without waiting for the Grand Jury to look into the criminal angle, the Commissioner will welcome your cooperation and advice as to the time and place set for hearings.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Jerome B. McKenna
Attorney.

9. SPECIAL PERMIT - TO PURCHASE LIQUOR OTHERWISE THAN IN DUE COURSE - DENIED WHERE OBJECTIVE IS TO DISRUPT FAIR PRICE MAINTENANCE AND THE SAME LIQUOR CAN BE OBTAINED BY COMPLIANCE WITH UNIFORM CONDITIONS AVAILABLE TO ALL RETAILERS.

February 28, 1936.

J. Harry Barth, Esq.,
Hackensack, N. J.

Dear Sir:

The petition filed on behalf of Simon's Delicteeessen, Inc. for special permit to purchase whiskeys therein described from retailers in New Jersey and retailers and wholesalers outside New Jersey, and the arguments advanced in support and in opposition thereto at the hearing held yesterday have been carefully considered.

Petitioner's application is grounded upon the contention that it is unable to obtain the whiskeys sought from New Jersey wholesalers and that consequently it is entitled to a special permit upon furnishing a bond to insure payment of taxes under the ruling in Bulletin #100, Item #9. It appears, however, that petitioner can readily obtain, within New Jersey, the whiskeys desired upon entering into a Fair Trade Contract (see P. L. 1935, c. 58), which has been required of other retailers similarly situated.

Representatives of wholesale and retail liquor dealers associations contended at the hearing that price maintenance is essential to the proper conduct of the industry and that price cutting will inevitably lead to bootlegging, trade abuses and improper practices. Whether this Department has any authority to regulate prices may be seriously questioned. In any event, no attempt has been made to do so and the regulations of this Department, confining purchases by retailers to New Jersey wholesalers and manufacturers, are not designed to aid in the maintenance of prices. Nevertheless, no affirmative aid will be given to a disruption of the policies sought to be effected by substantially all phases of the industry, with a view towards placing the conduct of the liquor business on a proper plane.

A manufacturer or wholesaler may elect to sell to whom he pleases, and in so far as the Control Act is concerned, may impose conditions to his sales. Whether a particular condition is economically desirable or proper is not our concern. So long as a retailer may obtain the merchandise sought within this State upon complying with conditions uniformly imposed, he has failed to bring himself within the situation justifying the issuance of a special permit under the principles set forth in Bulletin #100, Item #9.

Accordingly, you are advised that the Commissioner has denied the application for special permit.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

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

10. RULES CONCERNING IDENTITY OF ALCOHOLIC BEVERAGES SOLD ON LICENSED PREMISES - BIRCH BEER - NOT APPLICABLE TO DRAUGHT BIRCH BEER WHICH IS NON-ALCOHOLIC

March 1, 1936

Mr. John Otterstedt, Jr.,
Westwood, N. J.

Dear Mr. Otterstedt:

The rules concerning identity of alcoholic beverages sold on licensed premises do not apply to draught birch beer which is non-alcoholic.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

11. LICENSES - RESOLUTIONS AUTHORIZING THEIR ISSUANCE SHOULD SPECIFICALLY STATE THE TYPE OF LICENSE TO BE ISSUED, THE NAME OF THE LICENSEE, THE LOCATION OF THE LICENSED PREMISES AND SHOULD DIRECT ITS ISSUANCE BY THE MUNICIPAL OFFICER DESIGNATED BY THE LICENSE ISSUING AUTHORITY TO PERFORM THAT FUNCTION - SUGGESTED FORM OF RESOLUTION.

February 24, 1936

Mr. James M. Black
Clerk, Sandyston Township,
Hainesville, New Jersey

Dear Sir:

* * *

The resolution of January 18, 1936 grants a license to Harold Kozak, effective February 1, 1936. It says "moved, seconded and carried that application be received and license granted to Harold Kozak on February 1, 1936". Now, I am not passing on the question of whether or not Mr. Kozak is qualified to receive the license. That is a question which the Township Committee must decide. It would not come before me for consideration until such time as the issuance of the license would be brought up on appeal. But it is the form of the resolution to which I advert. It says merely that a license is to be granted to Harold Kozak. It does not state the kind of license which is to be issued. Nor does it fix the location of the licensed premises. Nor does it designate the municipal officer whom the Township Committee appoints to sign and deliver the license in its behalf. Nor does it direct the issuance of the license by that officer. Each of these is important and should be included in any resolution authorizing the issuance of a license. This is because the statute says that no one shall exercise the rights and privileges of a license except the licensee himself and then only with respect to the licensed premises; that a separate license is required for each specific place of business; that the operation and effect of every

license is confined to the licensed premises. Further, there being five classes of retail licenses, each conferring different privileges, which municipalities are authorized to issue, it is essential that the specific class of license to be granted be designated. And the authority to issue retail licenses being vested by the Act exclusively in your Township Committee, the Township Committee itself must expressly authorize the issuance of each license and no municipal officer has the right to issue any license until and unless the Township Committee has so directed.

I suggest that resolutions authorizing the issuance of retail licenses read, for example, somewhat as follows:

"Resolved: that the Township Committee hereby authorizes the issuance of a plenary retail consumption license, effective February 1, 1936, to John Jones for premises #262 Main Street, Hainesville, New Jersey, and designates and directs the Township Clerk to sign and deliver the license in its behalf".

If in country districts as often happens, there is no numbered street address, then describe the premises as best you can, for instance: "for premises on New Jersey Highway Route #50 about a quarter mile east of the road to Dingman's Ferry and known as the Black Horse Inn".

I suggest that some such resolution be used in the granting of the license to Harold Kozak and that a similar form be adopted for the issuance of all licenses in the future.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

12. MUNICIPAL ORDINANCES - REGULATION FIXING SUNDAY NOON AS OPENING HOUR HELD REASONABLE ALLOWANCE OF SUNDAY SELLING IN ACCORDANCE WITH REFERENDUM AND AT THE SAME TIME IMPOSING REASONABLE RESTRICTIONS UPON THE SPECIFIC HOURS OF SALE.

March 1, 1936.

Mr. Albert Numbers,
Trenton, N. J.

Dear Mr. Numbers:

Thanks very much for your frank letter of the 28th ult. re Ewing Township resolutions.

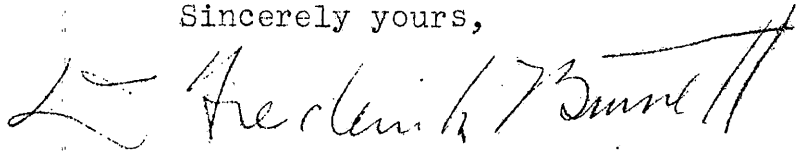
Herewith copy of my letter to Mr. Scudder of February 21st (Bulletin 108, Item 1), in which are set forth the exact reasons on which I based my disapproval of the hours formerly fixed by the Township Committee. Of course, you will see on reflection that I have to go by the result of the referendum and to give it effect irrespective of your and my own personal views

simply because it is the expressed wish of the majority of the electorate.

I have today approved the amended resolution of February 25th which fixes the opening hour on Sunday at 12:00 noon instead of 5:00 P. M. That allows Sunday selling in accordance with the wishes of the electorate and, at the same time, imposes reasonable restrictions upon the specific hours of sale.

I think the Township Committee and its counsel are entitled to credit for solving this matter quickly and wholly consonant to the spirit of the rulings which have been made.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "L. Frederick Burnett". The signature is written in dark ink and is positioned above the printed name of the Commissioner.

Commissioner