

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN 24

April 24, 1934

#1 ENFORCEMENT--COMPLAINTS--NAMES OF COMPLAINANTS HELD CONFIDENTIAL

OFFICE OF THE CITY CLERK  
CITY HALL  
NEWARK, N. J.

April 20, 1934.

D. Frederick Burnett, Commissioner,  
State of New Jersey  
Department of Alcoholic Beverage Control  
744 Broad St.  
Newark, N. J.

Dear Sir:

On or about February 15th we received from your office a copy of a complaint against\*\*\*located at\*\*\*, the copy being unsigned and referring to more than one person.

I telephoned your office and asked that a photostatic copy of the complaint be sent me that I may know who the complainants are. This was refused our office.

It is customary in holding our hearings to notify the complainants of the date set for the hearing that they may appear if they so desire. This, you can readily see, we are unable to do in this case.

In this particular matter the hearing has been adjourned to April 25th that we may have an opportunity to notify the complainants, if you in your judgment, see fit to reveal who they are. Police investigations do not reveal that\*\*\*, complained of, has been convicted of a crime. The Police Department advises me that the name of the signer of the complaint would help them materially in further investigating it.

In the face of these facts, will you kindly arrange that in this case and in future cases, we be given photostatic copies of the complaints rather than typed copies with the names of the complainants omitted.

Very truly yours,

(Signed) H. S. Reichenstein

City Clerk

HSR/BRF.

April 22, 1934.

Harry S. Reichenstein, City Clerk,  
City Hall,  
Newark, N. J.

Dear Sir:

I have yours of the 20th and appreciate your offer to give notice to our complainants of your hearings. If they are interested enough to complain, they will undoubtedly follow the proceedings. Just notify us. We will tell them.

New Jersey State Library

You can much better cooperate by following up the leads which these complainants have disclosed. The duty of taking the initiative, verifying the allegations and prosecuting the case is upon the municipal officials, not upon private citizens who have been good enough to furnish us the facts. The names of such citizens will be held in sacred confidence and never be disclosed without their express written consent. This office therefore correctly refused to give you the names of the complainants or photostatic copies of the complaints.

The first duty of this Department is to transmit the information to you for action. Whether other duties must be discharged depends upon the actual facts and upon your action or non-action in the premises.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

DFB:L

#2 LICENSES- PRESCRIBED FORM OF APPLICATION FOR SEASONAL RETAIL  
CONSUMPTION LICENSE

Bulletin 23, item 6, while correctly captioned as above, inadvertently omitted from the text the underlined words in the following collocation and hence is amended to read:--"What was said... in reference to printing or other copying of prescribed form of application for limited retail distribution license applies equally to form of application for seasonal retail consumption license except that the latter is Form A-7."

#3. RECTIFIERS AND BLENDERS - RULES - NECESSARY REPORTS

To All Holders of Rectifier and Blender Licenses:

Effective May 1st, and every month thereafter, each holder of a rectifier and blender license must file with D. Frederick Burnett, Commissioner, Department of Alcoholic Beverage Control, 744 Broad Street, Newark, N. J., one copy each of United States Treasury Department Forms 338, 52 A, 52 B, and 45, duly filled out under oath, on or before the 10th day of each month, showing all business transacted during the preceding month.

These forms are in addition to and separate from any other reports required by the State Tax Commissioner, or any Federal Departments.

The objective is to put the State Control Department in possession of complete production records in addition to the sales reports made to the Tax Department, a copy of which has been transmitted regularly to me.

Each above licensee shall forthwith acknowledge receipt of this rule.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner

April 24, 1934.

## #4. LICENSES - SUSPENSION IN EMERGENCIES - EXISTENCE OF THE POWER AND LIMITS THEREON.

DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF CHIEF OF POLICE  
BAYONNE, N. J.

March 28, 1934

Hon. D. Frederick Burnett,  
State Director of Alcoholic Beverage Control,  
744 Broad Street,  
Newark, New Jersey.

Dear Sir:

On Sunday, March 4th, 1934, about 1 A.M., a homicide was committed in a tavern operated by one Anna White, 102 Avenue E, Bayonne, a seventeen year old son of the proprietress having shot the bartender, supposedly in defence of his mother. This boy has since been released under \$10,000. bail.

The local police took charge of the premises until the completion of their investigation and then turned the place over to the owner, who is not a defendant in the case.

The Director of Public Safety, who is also Chairman of the Municipal Alcoholic Beverage Control Board, ordered this tavern closed and the police, in keeping with this order, have continued to do so.

I would appreciate an opinion from your office as to the propriety of the action of this department in continuing to keep this place closed, in view of the fact that no hearing was had nor no notice given the licensee.

Very truly yours,

(Signed) C. J. O'Neill  
Chief of Police.

April 22, 1934.

Department of Public Safety,  
Office of Chief of Police,  
Bayonne, N. J.

Gentlemen:

I have yours of the 28th ult.

Section 28 of the Control Act provides that "no suspension or revocation of any license shall be made until a five day notice of the charges preferred against the licensee, which have been given to him personally or by mailing the same by registered mail, addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him."

Closing the place is, in effect, a suspension. A suspension is pro tanto a revocation. To accomplish this legally, the statutory requisites must be obeyed.

It is recognized, however, that situations may arise which requires immediate action by duly constituted police authorities. The health, safety and lives of the public are the supreme law, and, in cases of public emergency, warrant the exercise of the reserved police power of the State to protect its inhabitants. Rules and requisites laid down to govern the normal may have to give way in emergencies. Thus, an order to close instantly all saloons in case of a riot and to keep them closed until the mob was under control, is undebatably proper. But scrupulous caution must be exercised to make sure that a real emergency actually exists. And the dispensation is good only so long as the emergency continues.

Tested by these principles, the action of the Director of Public Safety in closing the place immediately upon commission of the homicide was eminently proper. On the other hand, there is no warrant whatsoever for keeping it closed after the investigation was completed. That order should be abrogated forthwith.

If the Police Department have valid grounds for revocation, the proper procedure should be taken. Unless and until the case is fairly adjudicated against the licensee, her rights must be honored.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

DFB:L

#5 LICENSES - ALIENS - JAPANESE ON EQUALITY WITH AMERICAN CITIZENS

April 20, 1934

Borough of Morris Plains  
Morris Plains, N. J.

Gentlemen:

Acknowledgment is hereby made of your letter dated April 16th inquiring whether a license may be issued to an alien Japanese.

Section 22 of the Control Act provides that no license of any class be issued to any alien. The treaty between the United States and Japan entered into on February 21, 1911, provides that citizens of each of the contracting countries shall be permitted to carry on trade upon the same terms as native subjects or citizens.

In Asakura vs. Seattle, 265 U.S. 332, the Supreme Court held that a local ordinance which forbade the issuance of a pawnbroker's license to an alien, violated the foregoing treaty provisions and was, therefore, void as respects alien Japanese. Referring to the treaty between the United States and Japan, the Court said:

"The rule of equality established by it cannot be rendered nugatory in any part of the United States by municipal ordinances or state laws. It stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States."

In an opinion rendered by the Attorney General of the United States on October 9, 1933, he held that Section 84 of the New

York Alcoholic Beverage Control law, which denies a license to any person who is not a citizen of the United States, could not be applied to citizens of friendly nations having treaties with the United States granting reciprocal rights to their respective citizens. This opinion has been accepted and followed by the New York Control Board.

The Commissioner, therefore, rules that an alien Japanese is eligible to hold a license issued under the Control Act.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By:  
Nathan L. Jacobs,  
Counsel-in-Chief

#6. WHOLESALESALE - RULES - NECESSARY REPORTS

April 24, 1934.

To All Holders of All Classes of Wholesale Licenses:

Effective May 1st, and every month thereafter, each holder of a wholesale license of any class, must file with D. Frederick Burnett, Commissioner, Department of Alcoholic Beverage Control, 744 Broad Street, Newark, N. J., one copy each of United States Treasury Department Forms 338, 52 A and 52 B, duly filled out under oath, on or before the 10th day of each month, showing all business transacted during the preceding month.

These forms are in addition to and separate from any other reports required by the State Tax Commissioner, or any Federal Departments.

The objective is to put the State Control Department in possession of complete production records in addition to the sales reports made to the Tax Department, a copy of which has been transmitted regularly to me.

Each above licensee shall forthwith acknowledge receipt of this rule.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

#7. WINERIES - RULES - NECESSARY REPORTS

April 24, 1934

To All Holders of Winery Licenses:

Effective May 1st, and every month thereafter, each holder of a winery license must file with D. Frederick Burnett, Commissioner, Department of Alcoholic Beverage Control, 744 Broad Street, Newark, N. J., one copy each of United States Treasury Department Form 702, and if engaged in the manufacture of champagne, sparkling wines, artificially carbonated wines, etc., in addition there must be filed

one copy of ~~United~~ States Treasury Department Form 702 A, duly filled out under oath, on or before the 10th day of each month, showing all business transacted during the preceding month.

These forms are in addition to and separate from any other reports required by the State Tax Commissioner, or any Federal Departments.

The objective is to put the State Control Department in possession of complete production records in addition to the sales reports made to the Tax Department, a copy of which has been transmitted regularly to me.

Each above licensee shall forthwith acknowledge receipt of this rule.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

#8 BREWERIES - RULES - NECESSARY REPORTS

April 24, 1934

To All Holders of Brewery Licenses:

Effective May 1st, and every month thereafter, each holder of a brewery license must file with D. Frederick Burnett, Commissioner, Department of Alcoholic Beverage Control, 744 Broad Street, Newark, N. J., one copy each of United States Treasury Department Form 103, duly filled out under oath, on or before the 10th day of each month, showing all business transacted during the preceding month.

These forms are in addition to and separate from any other reports required by the State Tax Commissioner, or any Federal Departments.

The objective is to put the State Control Department in possession of complete production records in addition to the sales reports made to the Tax Department, a copy of which has been transmitted regularly to me.

Each above licensee shall forthwith acknowledge receipt of this rule.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

#9. DISTILLERIES - RULES - NECESSARY REPORTS

April 24, 1934

To All Holders of Distillery Licenses:

Effective May 1st, and every month thereafter, each holder of a distillery license must file with D. Frederick Burnett, Commissioner, Department of Alcoholic Beverage Control, 744 Broad Street, Newark, N. J., one copy each of United States Treasury Department

Forms 338, 52 A and 52 B, duly filled out under oath, on or before the 10th day of each month, showing all business transacted during the preceding month.

These forms are in addition to and separate from any other reports required by the State Tax Commissioner, or any Federal Departments.

The objective is to put the State Control Department in possession of complete production records in addition to the sales reports made to the Tax Department, a copy of which has been transmitted regularly to me.

Each above licensee shall forthwith acknowledge receipt of this rule.

Very truly yours,

D. Frederick Burnett,  
Commissioner.

#10. LICENSES - CHAIN STORES - TRANSPORTATION AND WAREHOUSES.

April 24, 1934

Jacob E. Max, Esq.,  
22 Journal Square,  
Jersey City, N. J.

Dear Sir:

A acknowledgment is hereby made of your letter inquiring (1) whether a company operating chain stores, each of which is licensed to sell alcoholic beverages at retail, may use its own trucks to transport such beverages from one store to another, and (2) whether it may store alcoholic beverages in a warehouse and deliver such beverages from time to time to its respective stores.

The answer to your first question is in the affirmative. A retail license entitles its holder to sell alcoholic beverages but does not furnish him with any general authority to transport. Under Section 25 of the Control Act, however, licensees may deliver alcoholic beverages in their own vehicles for their own respective businesses in connection with and as defined in their respective licenses. Under this Section, a company operating chain stores may deliver alcoholic beverages in its own vehicles from one of its stores to another.

The answer to your second question is in the negative. The holder of a retail license has no authority to maintain a warehouse and, consequently, it may not lawfully store its alcoholic beverages in its warehouse and deliver such beverages from time to time to its respective stores.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By:  
Nathan L. Jacobs  
Counsel-in-Chief

#11. LICENSES - SEASONAL - 200 FEET RULE WHEN SCHOOL IS CLOSED  
FOR VACATION.

April 24, 1934

Theodore Rossey, Es.  
Hopatcong, N. J.

Dear Sir:

We have your letter inquiring whether you may apply for a license to sell alcoholic beverages at a location within 200 feet of a public school during the summer months when the school is not in session.

Under the recent amendments to the Control Act the municipal authorities may issue seasonal retail consumption licenses authorizing the sale of alcoholic beverages during the summer season, from May 15th until September 15th inclusive. The issuance of such licenses, however, must be in recognition of Section 76, which provides that no alcoholic beverages shall be sold within 200 feet of a church or schoolhouse.

The Commissioner has heretofore ruled, in Bulletin No. 8, a copy of which is enclosed, that Section 76 is intended for the benefit, not of Church or School properties, but of persons attendant therein, and this ruling was embodied in the recent amendment to Section 76. Accordingly, a municipality may properly issue a seasonal retail consumption license authorizing the conduct of business within 200 feet of a school provided the license is expressly conditioned, that no sales of alcoholic beverages be made except during the summer months and only when the school is actually closed. The application for such a license must be accompanied by the full fee payable for an ordinary seasonal retail consumption license.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

By:  
Nathan L. Jacobs,  
Counsel-in-Chief

D. FREDERICK BURNETT,  
Commissioner