

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

BULLETIN NUMBER 89

September 26, 1935

1. SPECIAL PERMITS -- GERMAN CONSULATE IS NOT ENTITLED TO SPECIAL PRIVILEGES IN IMPORTING OF LIQUORS EXCEPT ON SAME BASIS AFFORDED AMERICAN CITIZENS

September 21, 1935.

Lansen-Naeve Corp.,
New York City

Gentlemen:

Your inquiry as to whether members of the German Consulate, resident in New Jersey, may import alcoholic beverages into this State without a special permit has been considered.

The regulations promulgated on July 2, 1934 (Bulletin #39, Item #1) prohibit importations of alcoholic beverages by consumers except under special permit. The regulations apply to Consuls as well as all other persons unless they are in conflict with any Treaty between the United States and the respective countries represented by such Consuls. An examination of the Treaty of Friendship, Commerce and Consular Rights between the United States and Germany, concluded on December 8, 1923, discloses no provision inconsistent with the regulations and the Secretary of State has advised that in his opinion "German Consular officers may properly be required to obtain a special permit from the New Jersey State Department of Alcoholic Beverage Control before such shipments of alcoholic beverages are brought into the State of New Jersey and that such action would not contravene the provisions of Article XXVII of the Treaty with Germany".

It has been suggested that, despite the legal propriety of the regulations, an exception be drawn in favor of foreign Consuls as a matter of comity. I see no reason, however, why they should not be subject to the same restrictions applicable to citizens of the United States and all other persons.

It is my ruling that the regulation prohibiting importations by consumers without a special permit applies to members of the German Consulate.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

New Jersey State Library

2. APPEALS - INTERIM RELIEF - DENIED WHERE FACTS ARE ALLEGED ON HEARSAY AND NOT FULLY AND SPECIFICALLY VERIFIED

MARCUS H. GREIFINGER,)

Appellant,)

-vs-

ON PETITION
CONCLUSIONS

MUNICIPAL BOARD OF ALCOHOL)
BEVERAGE CONTROL OF NEWARK)
NEW JERSEY and JACOB ALBOUM,)

Respondents)

BY THE COMMISSIONER:

The petitioner alleges that he filed an objection with the respondent Board on September 17, 1935, against the issuance of a plenary retail distribution license to Jacob Alboom for premises 167 Ferry Street, Newark; that on September 18, a special meeting of the Board was called, conducted behind locked doors and without notice to petitioner or permission to enter the hearing or object; that the Board granted the license application on the 18th of September without affording petitioner any opportunity to present any of his objections.

The petitioner further alleges, on information and belief, matters which, if true, would disqualify respondent Jacob Alboom from obtaining a license.

The petitioner prays for an order staying the issuance of a license to said Jacob Alboom and staying him from proceeding to exercise any right under any license until an appeal can be prosecuted and heard before the State Commissioner.

The affidavit attached to the petition is a mere general form to the effect that he has read the contents and believes the same true. There is no specific verification of the essential facts. The affidavit, while signed by the petitioner, does not appear to have been sworn to before anyone. The jurat is blank.

The denial of a hearing to one entitled thereto is contrary to the first principles of due process of law. The question before me now, however, is not to determine if the petitioner was entitled to a hearing. That point can be adjudicated in orderly procedure on appeal. The only question presently to be decided is whether petitioner is entitled to the extraordinary relief for which he prays.

Where a petitioner, in advance of the decision of an appeal in normal orderly course, asks for the extraordinary relief of staying the issuance of a license and the exercise of all rights conferred thereby, he must at least present a strong,

cogent and convincing case, fully and specifically verified as to every essential point on which he relies. There is nothing before me to demonstrate that, even if the respondent Board had granted a hearing to petitioner, his objections would have been sustained. The petitioner does not swear that the disqualifying facts which he alleges are true; he merely alleges them on information and belief - mere hearsay for aught that appears before me.

The petition is, therefore, denied without prejudice to appeal on the merits.

D. FREDERICK BURNETT
Commissioner

Dated: September 21, 1935.

3. LICENSES - TRANSFER - WHERE A CORPORATION WOULD NOT QUALIFY AS AN ORIGINAL APPLICANT FOR A CLASS C LICENSE IT MAY NOT OBTAIN SUCH LICENSE BY TRANSFER

Dear Sir: Re: Acker, Merrall & Condit Company - Proposed Transfer of Municipal Retail License

Our client, Acker, Merrall & Condit Company of 44 West 18th Street, New York, N. Y., is interested in opening a retail liquor store in Montclair, New Jersey. Since the quota of municipal retail licenses that may be issued in that municipality is exhausted, our client proposes to acquire such a license by transfer from another licensee. The question upon which we request that you give us an opinion is whether our client, which does not qualify under P. L. 1935, Chapter 254, Section 5, in that it has some holders of 10% or more of its stock who are non-residents of New Jersey, would be barred under that section from acquiring a license by transfer.

In your bulletin of June 20, 1935, on the subject of this law addressed to municipal issuing authorities the following language appears in explanation of the text of the section:

"This Act is effective July 4, 1935. It has no application to licenses issued to corporations prior to such date."

The statute refers solely to the issue or renewal of licenses to corporations and does not in its terms embrace the transfer of licenses already issued prior to the effective date of the Act.

To state our inquiry more specifically, are the words of the statute "No Class C license shall be issued or renewed to any corporation", etc., to be construed so broadly as to embrace the transfer of a license which was issued prior to the effective date of the statute.

Very truly yours,

BREED, ABBOTT & MORGAN

August 19, 1935

Breed, Abbott & Morgan, Esqs.,
New York City

Gentlemen:

Section 22A of the Control Act (P.L.1935, c. 254) provides that no Class C license may be issued or renewed to any corporation, except for premises operated as a bona fide hotel, unless each owner of 10% of its stock qualifies in all respects as an individual applicant. Section 23 provides that where a license is sought to be transferred, the proposed transferee must comply with all requirements of the act "pertaining to an original application for license".

Since a corporation having a stockholder who would not qualify as an individual applicant and who owns more than 10% of its stock would not qualify as an original applicant for a Class C license, it may not obtain such license by transfer.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

4. SOLICITOR'S PERMIT -- MISSIONARY MEN -- MUST OBTAIN SOLICITOR'S PERMIT AND HENCE DISTILLERY EMPLOYING THEM MUST FIRST OBTAIN A NEW JERSEY LICENSE

August 15, 1935

Dear Mr. Burnett: Re: Distilled Spirits Insitutute

One of the members of our Institute has requested advice as to its liability for a solicitor's permit under the practice followed by it in securing business in New Jersey. The particular distiller is a Kentucky organization with a warehouse stock in New York. It sells only to wholesalers in New Jersey. As a means of creating demand for its products it has a crew of missionary men who contact retailers in New Jersey and other parts of the country with a view to interesting the retailer in making purchases from the wholesaler, but not direct from the distiller. Should retailers, upon being contacted by any of these missionary men, desire to make an immediate purchase the order is turned over to the wholesaler. In order that our member may be correctly advised it will be appreciated if you will let me have your views as to whether or not, under the circumstances set out above, the distiller would be required under your law to take out a solicitor's permit.

Yours very truly,

HOWARD T. JONES
Counsel

August 19, 1935.

Distilled Spirits Institute,
Washington, D. C.

Gentlemen:

Att: Howard T. Jones, Esq.,
Counsel

I have your letter of August 15th.

The rules and regulations governing solicitors' permits, (Bulletin #81, Item #2) provide that no individual shall offer for sale or solicit any order in this State for the purchase or sale of any alcoholic beverage unless such person has a solicitor's permit. They further provide that solicitors' permits may be issued only to agents or employees of duly licensed New Jersey manufacturers or wholesalers.

It seems entirely clear that "missionary men" employed by a foreign distiller solicit the purchase or sale of alcoholic beverages within the meaning of the rules and the statute upon which they are based. See P. L. 1935, c. 256. Their solicitation is, in reality, on behalf of their employer, despite the fact that the ultimate sale to the retailer solicited is made through a New Jersey wholesaler.

Accordingly, it is the ruling of the Commissioner that "missionary men" employed by foreign dealers may not solicit the purchase or sale of alcoholic beverages within this State except pursuant to solicitors' permits, which will be issued to them only after their employer first obtains a New Jersey manufacturer's or wholesaler's license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

5. SOLICITORS' PERMITS - POWER OF STATE COMMISSIONER TO DENY APPLICATION FOR SUCH PERMIT BY EMPLOYEE OF A FOREIGN CORPORATION NOT LICENSED IN NEW JERSEY

August 20, 1935.

Dear Sir:

I want to express my thanks for your prompt answer to my letter of August 14th. I have examined Bulletin #81 which you were kind enough to enclose. You are entirely correct in stating that Rule #4 of the Regulations provides that solicitor's permits may be issued only to agents or employees of duly licensed New Jersey manufacturers or wholesalers.

However, I have made a careful examination of the New Jersey Liquor Law (S.B. 291) and I can find no basis in the law itself to support such a regulation. The Sections of the

Statute relied upon by the Commissioner in promulgating his regulations, specifically provide for the issuance of a solicitor's permit, but contain no provision whatsoever that in order for a solicitor's permit to issue the solicitor's employer must obtain a New Jersey License. Nor, in my opinion, can this requirement be inferred by the provision in the Statute giving the Commissioner the right to issue rules and regulations relating to solicitor's licenses. I have no doubt under the law that the Commissioner may issue any reasonable regulation relating to the person applying for a solicitor's license, such as regulations dealing with his moral character, prior employment, etc., but it seems to be clear that this power to issue regulations does not warrant the Commissioner issuing regulations dealing not with the solicitor himself, but with the solicitor's employer, and requiring the latter to take out licenses, which the Act itself does not specifically require them to do.

Certainly, if the Legislature had intended to license non-resident Distillers and Rectifiers engaged in shipping merchandise in interstate commerce to New Jersey, the Act would have contained a specific provision to this effect.

Under the circumstances, I must again renew my request for the application forms for a solicitor's license, in order that my client may send its solicitor into your State to solicit orders along the lines set out in my letter of August 14, 1935.

Yours very truly,

ARTHUR J. GOLDBERG

August 28, 1935

Arthur J. Goldberg, Esq.,
Chicago, Ill.

Dear Sir:-

I have your letter of August 20th, in which you question the right of the Commissioner to deny an application for a solicitor's permit by a person employed by a foreign corporation not licensed in New Jersey.

Section 1(v) of the Control Act defines "sale" to include:

"Every delivery of an alcoholic beverage, otherwise than by purely gratuitous title, including deliveries from without this State and deliveries by any person without this State intended for shipment by carrier or otherwise into this State and brought within this State, or the solicitation or acceptance of an order for an alcoholic beverage. ***"

Under the foregoing definition, a foreign corporation which sends salesmen into this State to solicit orders for alcoholic beverages and causes deliveries herein in fulfillment of

such orders, is selling alcoholic beverages in New Jersey. Such activity may not be engaged in by the foreign corporation without a license pursuant to the Control Act.

Since the described activities of the unlicensed employer-corporation would be unlawful, the authority of the Commissioner to decline to issue solicitors' permits to employees acting on behalf of such corporation can hardly be questioned, even apart from rules and regulations promulgated pursuant to section 36 of the Control Act and P. L. 1935, c. 256.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

6. REFERENDUM - SAME QUESTION - A REFERENDUM ON A QUESTION WHICH THE STATUTE PROVIDES MAY BE SUBMITTED TO THE ELECTORATE IS NOT BARRED FOR THREE YEARS BY REFERENDUM PREVIOUSLY HELD ON A DIFFERENT QUESTION

My dear Commissioner:

Will you please advise us as to your interpretation of the recent amendment, Chapter 254 P.L. 1935, empowering our governing body to construct in their own way the phraseology to be incorporated in a referendum as regards the revision of hours of sale, namely 12 o'clock midnight to 2:00 A. M. Sundays.

A referendum for Sunday selling was held in this City as of November 6, 1934 and was voted negatively. The State Act we know provides that another referendum cannot be held for three years, however, in some quarters it is held that by virtue of the amendment referred to above it would nullify the referendum of last year. In short, is another referendum possible this year of 1935?

We will be governed by your ruling, for which we thank you in advance.

Very truly yours,

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL

Jacob L. Bock
Secretary

September 9, 1935.

Municipal Board of Alcoholic Beverage Control
East Orange, N. J.

Gentlemen:

The referendum held in your City on November 6, 1934, was pursuant to section 44 of the Control Act and re-

sulted in a negative vote on the question "shall the sale of alcoholic beverages be permitted on Sundays in this municipality?". Under the act a further referendum "on the same question" is barred for a period of three years. Referenda on other questions permitted by the statute are not barred.

Pursuant to the provisions of section 44A (P.L. 1935, c. 254) a referendum may be held on the question of whether the sale of alcoholic beverages may be permitted between the hours of 12 midnight and 2 A. M. on Sundays. This is not "the same question" as was voted upon at the last referendum, but has a substantially different effect. The vote on the last referendum indicated that a majority of the populace preferred a complete prohibition of Sunday sales as against blanket authority to operate on Sundays without restriction as to hour. It contained no indication as to what the majority vote would be on the question of whether sales should be permitted on Sundays until 2 A.M. but not thereafter.

The ruling of the Commissioner is that the proposed question does not fall within the statutory three year restriction and may be submitted for referendum in accordance with the provisions of the Act.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

7. LICENSES - TRANSFERS - WHEN PERMISSIBLE

September 6, 1935.

Dear Sir:

Aaron Cohen, holder of Plenary Retail Consumption License C-123 for premises located at 125 South Warren Street, has made arrangements for the use of the adjoining property in the rear of 123 South Warren Street intending to enlarge his licensed premises thereby. Mr. Cohen is leasing 125 South Warren Street from one party and the rear of 123 South Warren Street from another.

Mr. Cohen tells me that he has discussed the matter with you and was advised to make application for a transfer, costing \$5.00, to include the rear of 123 South Warren Street. He is now making an application for such transfer, and I am mailing you a copy of his application and sketch showing present premises and proposed alterations with request for a ruling on whether or not a transfer of this license to include the present premises plus the rear of 123 South Warren Street is the proper procedure.

Very truly yours,

JOHN L. HANEY
City Clerk

September 9, 1935

Mr. John L. Haney,
City Clerk,
Trenton, N. J.

Dear Sir:

I have your letter of September 6th.

The original application for a license contains a description of the premises where the alcoholic beverages are to be sold and this, in general determines what constitutes the licensed premises. See Bulletin #35, Item #15. As thus defined, the present licensed premises are located at 125 Warren Street. I understand that the licensee has enlarged his dining room located in the rear of 125 Warren Street by removing a portion of the party wall between 123 and 125 Warren Street. As presently constituted, the rear of 123 Warren Street and 125 Warren Street may be operated as a single unit, there being free access to all portions thereof.

If the original application had included a description of the dining room as presently constituted, a license could properly have been issued thereon. This being so, there is nothing in the statute to prohibit the licensee from applying for a transfer of the licensed premises described in his original application to the premises described in his present application for transfer. The fact that the premises now sought to be licensed are not entirely separate and distinct from the old premises but constitute an enlargement thereof is immaterial.

The duty rests upon the municipal issuing authority to determine in the first instance whether the transfer should be granted in accordance with section 23, and its determination will not be reviewed by the Commissioner except on an appeal duly taken under the Act.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

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

8 MUNICIPAL ORDINANCES - ORDINANCE PROHIBITING THE EMPLOYMENT OF WOMEN BARTENDERS OR ATTENDANTS DOES NOT PREVENT A WOMAN, WHO IS A LICENSEE, FROM SERVING LIQUOR AT HER OWN BAR.

September 19, 1935.

Joseph Narrow, Esq.,
97 Market Street,
Salem, New Jersey.

Dear Sir:

You asked if Section 6 of the ordinance adopted on June 15, 1934 by the Township Committee of the Township of

Lower Penns Neck reading:

"No licensee may employ or have any woman bartender or woman barmaid, nor any woman attendants or employees who shall serve liquor either at the bar or elsewhere on the licensed premises."

would permit Mrs. Edith Hobbs, a licensee in the Township of Lower Penns Neck, to act as bartender in the operation of her own liquor business.

The section, by its wording, appears to control only with respect to employees of licensees and not to apply to individual licensees themselves. It would then appear not to prevent Mrs. Hobbs acting as bartender in the business conducted under her own license.

The very fact that the Township Committee issued a license to a woman to sell liquor would, by implication, give her the right to tend her own bar.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. REVOCATION PROCEEDINGS - DISQUALIFICATION OF MUNICIPAL OFFICIALS TO SIT IN JUDGMENT AND TO PARTICIPATE WHEN INTERESTED IN ALCOHOLIC BEVERAGE BUSINESS AS A STOCKHOLDER OF A RETAIL LICENSEE

September 6, 1935.

My dear Commissioner:

The issuing authority in the City of Atlantic City is the Board of Commissioners of the municipality. The Board of Commissioners consists of five officials two of whom including the Mayor are members of separate corporations, which corporations have liquor licenses. Mayor White is a stockholder in the Marlborough-Blenheim Hotel Company which operates a large hotel on the Boardwalk and Commissioner Frank B. Off is a stockholder in a corporation which operates the Brighton Hotel also a large institution on the Boardwalk in Atlantic City. In view of the fact that these Commissioners are not themselves license holders but are interested in concerns which have licenses, is it your opinion that these Commissioners are disqualified from voting upon the granting or rejecting of licenses?

If your opinion is that they are disqualified, are they further incapacitated from hearing applications for transfers of licenses, for rejection of licenses and in passing upon ordinances and changing or modifying the existing ordinances with respect to the granting of licenses?

Furthermore, if your ruling is that the Commissioners in question are disqualified in all of the above matters, are they further prevented from sitting at hearings in any of

the above matters even though they do not vote upon the question involved? For example, Mayor White has presided at a meeting held for the purpose of considering the transfer of a license from one place to another but did not vote upon the same. However, he was called upon to rule on evidence and other questions that were involved.

I would appreciate your answer as soon as convenient because at your request the Board of Commissioners of this City are meeting for the purpose of considering the revocation of six licenses previously granted by it.

Very truly yours,

Anthony J. Siracusa
CITY SOLICITOR

September 10, 1935

Anthony J. Siracusa, Esq.,
City Solicitor,
Atlantic City, N. J.

Dear Sir:-

I have your letter of September 6th.

The Commissioner has, on numerous occasions, ruled that a member of an issuing authority who is in anywise interested in the alcoholic beverage business may not participate in matters arising before that body pertaining to the administration of the Control Act. See Bulletin #53, Item #5. The fact that the members in question are not interested directly as licensees is immaterial. Their interests as stockholders in the profits of corporations holding retail licenses in Atlantic City disqualify them. Bulletin #39, Item #3.

The policy involved clearly necessitates the conclusion that the disqualification is not limited to the passing upon applications for licenses. On the contrary, it extends to all proceedings pertaining to alcoholic beverages, including applications for transfers, ordinances and regulations governing the sale and distribution of alcoholic beverages, etc. Nor may the disqualified members satisfy the requirements merely by refraining from voting on the issue presented. They must withdraw entirely from the proceeding for otherwise the purpose of the disqualification will in large part be nullified. See Bulletin #80, Item #7, where the Commissioner quoted the following language by the court in Stevens vs. Haussermann, 172 Atl. 738 (Sup. Ct. 1934) in support of its decision that the concurrence of an interested member in the action taken by the body taints it with illegality, and that it is immaterial that the result reached was not produced by the vote of the disqualified member:

"It is supported by a twofold reason, viz.: First the participation of the disqualified member in the discussion may have influenced the opinion of the other members; and, secondly, such participation may cast suspicion on the impartiality of the decision. It being impossible to determine whether the virus of self-interest affected the

result, it must needs be assumed that it dominated the body's deliberations and that the judgment was its product."

It is the ruling of the Commissioner that Mayor Charles D. White and Commissioner Frank B. Off, being stockholders of corporations holding retail licenses in Atlantic City may not participate in any proceedings arising before the Board of Commissioners and pertaining to alcoholic beverage administration.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

10. REVOCATION PROCEEDINGS-- GROUNDS -- POSSESSION OF ILLICIT BEVERAGES AWAY FROM LICENSED PREMISES

REVOCATION PROCEEDINGS-- SHOULD BE PROMPTLY INSTITUTED IN ALL PROPER CASES WITHOUT Awaiting DETERMINATION OF CRIMINAL PROCEEDINGS BASED ON SAME OFFENSE.

September 5, 1935.

Dear Sir:

Will you kindly advise me whether or not you have any adjudicated cases wherein there is a revocation or suspension of a retail consumption license wherein the licensee is charged with illegal transportation and possession of illicit alcoholic beverages. The licensee was caught with illegal liquor in his automobile which was parked in front of his place of business.

Do you know of any provision in the act which gives the licensor the right to revoke a license if liquor is found outside of the licensee's premises?

If you have any cases on this question, I would appreciate it if you will advise me the citations thereof.

Do you think it advisable in cases of this kind to withhold making charges until the criminal matter is disposed of?

Thanking you for the courtesy of an early reply, I am,

Very truly yours,

JOSEPH J. WEINBERGER
City Counsel

September 6, 1935.

Joseph J. Weinberger, Esq.,
City Counsel,
Passaic, N. J.

Dear Sir:

I have your letter of September 5th.

Section 28 of the Control Act sets forth various grounds upon which a license may be revoked. Among these grounds is "violation of any of the provisions of this act". Under this provision a license may clearly be revoked where the licensee possesses illicit beverages, even though the beverages are located outside the licensed premises. In Bulletin #76, Items #10 and #11, licenses were revoked on the ground, among others, that the licensees possessed illicit beverages away from the licensed premises.

The Commissioner does not consider it advisable to defer revocation proceedings until after the disposition of the criminal case. If the licensee has committed the alleged violation, it would be highly undesirable to permit him to continue in business for the extended period of time incident to a completion of the criminal proceeding. As a matter of practice, revocation proceedings have been instituted and completed throughout most of the municipalities in the State without awaiting determination of the criminal proceeding.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

11. DELIVERIES -- WHOLESALERS MAY NOT DELIVER ALCOHOLIC BEVERAGES DIRECT TO CONSUMER EVEN THOUGH THE ORDER IS PLACED THROUGH A RETAILER

September 12, 1935.

My dear Commissioner:

Will you please advise us whether it is permissible for us to deliver a 50 gal. keg to the consumer as an accommodation to the licensee?

The licensee is the purchaser, but is unable to profitably traffic this goods, if he absorbs delivery charges. On the other hand, it is just as easy for us to traffic the wine direct to the consumer as to the licensee, and thereby save the licensee drayage costs.

I would appreciate an immediate reply.

Very truly yours,
MAJESTIC WINE & SPIRITS, INC.

September 25, 1935.

Majestic Wine & Spirits, Inc.,
Camden, N. J.

Gentlemen:

Manufacturing and wholesaling licensees, except limited winery and State beverage distributor licensees, are not permitted to deliver alcoholic beverages directly to consumers even though the beverages are charged to a retailer and delivered on his order. Such direct deliveries by manufacturer or wholesaler open the way for subterfuge and evasion through "wash" sales. Furthermore, Section 1 of the Control Act defines a sale to include a delivery. Deliveries by manufacturers and wholesalers to consumers are in effect, therefore, sales to such consumers, which, with the statutory exceptions noted, are prohibited.

Your question is therefore answered in the negative.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. APPELLATE DECISIONS - RETAIL LIQUOR DISTRIBUTORS vs REPETTI-MODIFICATION OF ORDER

Retail Liquor Distributors Association)	
of Atlantic City, a corporation of)	
New Jersey,)	
)	Appellant,
)	
-vs-)	On Petition
)	<u>ORDER</u>
Board of Commissioners of the City of)	
Atlantic City and Peter Repetti,)	
)	Respondents

On September 24, 1935, a petition verified by the licensee, Peter Repetti, and consented to by the City Solicitor of Atlantic City, was filed, alleging that the petitioner will remove all delicatessen articles from the licensed premises and conduct his business exclusively as a restaurant and praying for a suspension of the Commissioner's order herein for twenty (20) days within which to make the necessary alterations.

In Retail Liquor Distributors Association vs. Kornblau, Bulletin #88, Item #11, the Commissioner found that the licensee operated a restaurant business and a delicatessen business and afforded the licensee twenty (20) days within which to separate the premises so that the restaurant business will be conducted independently. In the instant case, however,

the Commissioner found that the licensee did not conduct a restaurant business, but operated a delicatessen and grocery store with incidental tables at which food could be consumed on the premises. See Bulletin #88, Item #12. Since it did not appear that two independent businesses were conducted which might readily be separated, the order of the Commissioner took effect immediately and no period within which alterations might be made was allowed. The present petition discloses that the licensee desires to convert the premises into a restaurant and remove all prohibited articles therefrom, and the prayer is that he be permitted to continue the sale of alcoholic beverages pending the completion of the necessary changes.

No good cause appears why such relief should not be allowed. The licensee obtained his license from the issuing authority in good faith and without intent to circumvent the law. Upon being advised of the Commissioner's determination that he could not sell alcoholic beverages in connection with his delicatessen business, the licensee has promptly taken steps to comply with all requirements of law. No useful purpose would be gained by forfeiting the license without opportunity to make appropriate alterations, thereby compelling him to file a new application for license.

It is, therefore, on this 25th day of September, 1935,

ORDERED that the order of reversal herein entered on September 20, 1935, be and the same hereby is suspended and shall take effect on October 15, 1935, provided that such reversal will be vacated and the appeal herein dismissed upon proof satisfactory to the Commissioner being furnished prior to said effective date that the licensed premises have been converted into a restaurant and that no delicatessen, grocery or other proscribed business is carried on therein.

D. FREDERICK BURNETT
Commissioner

13. SPECIAL PERMITS - FOR RETAIL LICENSE PENDING FORMAL ISSUANCE - WHEN DENIED

In the Matter of the)	
Application of)	
MAE WOLF,)	On Petition
for a Special Permit.)	<u>CONCLUSIONS</u>
)	

BY THE COMMISSIONER:

The affidavit filed by the petitioner, Mae Wolf, discloses that she holds a consumption license for premises in North Wildwood, Cape May County; that she is closing the licensed premises and has made an application to Judge Palmer M. Way for a license in Ocean View, Dennis Township, also in Cape

May County; that all of the statutory prerequisites for a new license have been completed except that the newspaper advertisement incorrectly, although inadvertently, recited that the applicant was seeking to transfer her license from Wildwood to Dennis Township, instead of declaring that she was seeking a new separate and distinct license; that because of such mistake, Judge Way delayed action on hearing the application for a period of two (2) weeks so that she might correctly publish notice of intention as required by law; that the special permit which she now seeks from the State Commissioner is to operate at Dennis Township during the aforesaid intervening two weeks and until the final hearing on her license application now pending before Judge Way.

Similar petitions praying for authority to do business pending the issuing authority's consideration of the petitioner's application for retail license have been heretofore presented. Such petitions have been granted where it appeared that there were no objections to the issuance of the license, that prima facie the applicant was entitled thereto, and that the issuing authority approved the granting of the special permit.

The present case does not, however, come within these rulings. The law prescribes that the applicant for a license must advertise before the license is granted so that objectors may be heard. Judge Way properly refused to conduct any hearing until the application was duly advertised. Although the petition bears the consent of Judge Way, it also discloses that verbal notice has been given to him that there are over 100 remonstrants upon a petition to be handed to him before the hearing. In addition, there is nothing to indicate that petitioner is prima facie entitled to the license sought.

The petition for a special permit is, therefore, denied.

D. FREDERICK BURNETT
Commissioner

Dated: September 25, 1935.

14. LICENSES - SUSPENSION - AN ORDER OF SUSPENSION REVOKES A LICENSE AND ALL PRIVILEGES CONFERRED THEREBY DURING THE TERM OF THE ORDER BUT DOES NOT PREVENT A LICENSEE FROM REPAIRING OR REDECORATING HIS PREMISES.

September 21, 1935.

Dear Sir:

Under a ruling made by the Mayor and City Council of the City of Garfield on September 19th, the license of Karl Lotopeich of 100 Somerset Street, Garfield, N. J. was suspended for a period of 30 days, commencing on September 23rd.

Mr. Lotopeich is desirous of repairing and re-decorating the interior of his premises.

Will you please advise me whether or not the suspension makes it impossible for the owner or the holder

of the license to enter the same for said purposes.

Very truly yours,

MORRIS M. SPINDEL

September 25, 1935.

Morris M. Spindel, Esq.,
Garfield,
New Jersey.

Dear Sir:

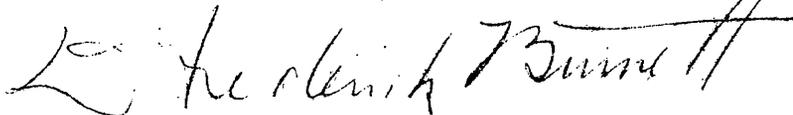
I have yours of the 21st re Karl Lotopeich.

A liquor license confers a privilege by entitling the holder to do the things specified in his license. A revocation extinguishes the license and, therefore destroys the privilege entirely. A suspension is a partial revocation, that is, it destroys the privilege during the term of the suspension. Hence, during that term, the licensee may not lawfully exercise any of the rights conferred by his license.

The right to repair and to redecorate the interior of one's premises is a common law right which every person has and is not a right conferred by the liquor license. Hence, it is not affected by the suspension.

The repairs and redecoration may, therefore, lawfully be made but the premises must not be open for liquor business in any sense while the suspension is effective.

Very truly yours,



Commissioner