

LEGISLATIVE HISTORY OF N.J.S.A. 33:1-26

(Paragraph 2 - Transfer of Retail Alcoholic Beverage License)

Laws 1933, Chapter 436, sec. 23 - A-611 - Introduced November 28, 1933 by Mr. Muir

This paragraph has been changed since the original 1933 law only to change the word "comissioner" to "director", therefore we have not researched any later amendments.

On November 9, 1933, the New Jersey Legislature created an Alcoholic Beverage Commission to study proposed legislation for New Jersey should the U. S. repeal the 18th Amendment. The Commission held at least one hearing (we have no transcript) and issued its report: G.L. No. 1211-12

974.90 L767 1933	N. J. Alcoholic Beverage Commission. Report on Alcoholic Beverage Control and Taxation. November 20, 1933.
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This report does not discuss transfer of retail licenses.

We also consulted the following study:

Micro. No. 3055 J 363.41 T877	Ts'ai, Kuo-Ying Alcoholic Beverage Control in New Jersey. Ann Arbor, University Microfilms, 1952. (Doctoral dissertation, Princeton University)
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According to Ts'ai, the Legislature accepted the legislation substantially as suggested by the Commission. Assembly 611 was amended during passage in the Assembly, but this paragraph was not changed. Assembly 611 was passed in both houses on November 28, 1933 and vetoed by Governor Moore on December 5th. His veto message (Journal of the Senate, 1933, p. 1108) states that the Attorney-General believed the bill to be unconstitutional. The message did not deal with the transfer of retail licenses,

On December 6, 1933 both houses passed the bill over the Governor's veto. It became Chapter 436 on that date.

None of the above sheds any lights on the reasons behind paragraph 2, but should you wish to see any of the materials cited, we shall be glad to lend them to you. The New York Times Index for 1933 under "Alcoholic Beverages - New Jersey" cites many articles on the passage of this bill. Possibly you may wish to consult some of them.

RS/jmg

DEPOSITORY COPY
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March 13, 1963

33:1-26

Copy 1

SUPPLEMENT TO
LEGISLATIVE HISTORY OF R. S. 33:1-26
(Property rights in liquor license)

Laws 1933, Chapter 436, sec. 23 (Section 17 of original bill) - A-611
No statement on this bill.

The bill was greatly expanded after its introduction (the OCR is 50% longer than the original). The last sentence of paragraph 2 has not been changed, however, since the original bill.

The Commission (see report enclosed) held a number of private meetings. Its only public hearing was in Newark on October 26, 1933. Newspaper accounts (Newark News and Trenton Times) indicate that very few persons attended. The only municipal official to speak was Mayor LaBarre of Trenton. His interest was in local control of licenses. A newspaper article he wrote on the subject was reprinted in New Jersey Municipalities for March, 1934. (photostat enclosed)

We are unable to locate the draft legislation which the Commission indicates on page 11 of its Report, which is appended.

We are also enclosing a photostat of the Governor's Veto of A-611.

RS/jmg

needed for the restriction of the sale of liquor, and non-political control.

The Attorney-General points out objections to the bill from the standpoint of constitutionality, which objections I am sure you may wish to consider, and I am therefore incorporating them in this message.

In our State the function of appointing to office is an executive function. The constitution, and almost invariably the statutes of our State, vest this power in the Governor. He is elected by and responsible to the whole people, and when powers and duties State-wide in character are to be exercised by an official, the person so selected should be the executive appointee.

The Liquor Control Commission, composed of outstanding citizens, after careful thought and deliberation, incorporated in the commission bill a provision that the State Commissioner of Alcoholic Beverage Control should be appointed by the Governor, by and with the advice and consent of the Senate. While I have no objection to the man whom you have selected, and believe him well qualified, yet I must object, on principle, to your action in depriving the Governor of what is properly an executive function.

The bill creates a Board of Alcoholic Beverage Appeals, consisting of the Governor, President of the Senate and Speaker of the House of Assembly.

Under our Constitution, Article III, paragraph I, the powers of the government are divided into three distinct departments—the legislative, executive and judicial, and no person or persons belonging to, or constituting one of these departments, shall exercise any of the powers properly belonging to either of the others, except as expressly therein provided, which exceptions need not here be noted, but are pointed out in the case of *Clifford vs. Heller*, 63 N. J. Law, page 105.

What is the significance of the words in the constitutional clause, "except as herein expressly provided?" The framers of this article said by this exception, in unmistakable language:

"There are some powers belonging to one department of the government which it is expressly provided in this Constitution shall be exercised by a person or persons belonging to one of the other departments."

It is significant that where such powers are to be exercised by a person belonging to another department, they can all be found in the Constitution.

The President of the Senate and the Speaker of the House, it is needless to say, belong to the legislative branch of the government which enacted the law, and these members of such branches are now to execute it, at least in part. That this cannot be done is clearly pointed out in *Saint, Attorney-General, et al. vs. Allen, et al.*, 126 Southern Reporter, page 548. In that case certain members of the Legislature of the State of Louisiana were officers or employees in the highway department of that State. The Louisiana Constitution provides as follows:

“The powers of the government of the State of Louisiana shall be divided into three distinct departments—legislative, executive and judicial. No one of these departments nor any person or collection of persons holding office in one of them, shall exercise powers properly belonging to either of the others except in the instances hereinafter expressly directed or permitted.”

An examination of our Constitution and of that of Louisiana will show that the language of the two constitutional provisions are quite similar. In the Louisiana case, the Supreme Court of that State held that:

“It is not necessary, to constitute a violation of the article, that a person should hold office in two departments of government. It is sufficient if he is an officer in one department and at the same time is employed or performs duties or exercises powers properly belonging to another department; the words ‘exercises powers’ speaking officially, means performance of duties or function.”

The Liquor Control Commission constituted the State Commissioner of Alcoholic Beverage Control as the official to hear and determine appeals. This is, I believe, as it should be. Any abuse of his discretion or power is subject to review by certiorari to the Supreme Court, where it can hardly be said that politics would avail.

The last purely legal matter to which I desire to call your attention is the manner in which the act delegates to municipalities legislative powers under the guise of local self-government.

Section 37 of the act authorizes the governing body of a municipality, by resolution, to absolutely prohibit the sale or retailing of alcoholic beverages within the municipalities and makes such resolution instantly effective in such municipalities upon its adoption. This is a clear violation of the law. The Legislature may impose its will as law upon municipalities, but, if some other will is to intervene, it must be that of the people who are to be governed by such municipal law and not an alien will, even though it be that of the governing body, for the time being, of such municipality. *Attorney-General vs. McGuinness*, 78 N. J. Law, 346.

The subject of alcoholic beverage control is a matter of deep and vital concern to all of our citizens. Its proper regulation under liberal, but wise and fair laws, is our immediate concern. I bespeak for these views which I communicate to you your thoughtful and intelligent consideration.

Respectfully submitted,
A. HARRY MOORE,
Governor.

Attest:

JOHN J. TOONEY, JR.,
Secretary to the Governor.

Mr. Cole assumes the chair.

The Assembly message was taken up, and

Mr. Powell moved that Assembly Bill No. 611 be passed, the Governor's objections thereto notwithstanding.

Upon the question, "Shall this bill pass, the Governor's objections thereto notwithstanding?" it was decided as follows:

In the affirmative were—

Messrs. Albright, Barbour, Camp, Durand, Loizeaux,
Powell, Read, Reeves, Richards (President),
Wolber, Woodruff—11.

In the negative were—

Messrs. Ely, Kuser, Leap, Loder, Prall, Stout—6.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that

20 issuance of the license, nor to the issuance and/or renewal of any license
 21 where such premises have been heretofore licensed for the sale of alcoholic
 22 beverages or intoxicating liquors, and such church or school house was con-
 23 structed and/or established during the time said premises were operated
 24 under said previous license.

1 42. This act shall take effect immediately.

A304 (1934)
~~A 611 (1933)~~

STATEMENT

Section 1. To modify the definition of governing board or body so as to provide for municipalities having boards of public works which exercise general licensing powers.

To modify the definition of sale so as to cover expressly deliveries from without this State and deliveries outside of this State intended for shipment into this State where the alcoholic beverage is brought within this State.

To enlarge the definitions of unlawful alcoholic beverage activity and unlawful property so as to include all types of prohibited acts.

Section 2. To enforce the act against bootleggers and racketeers by eliminating the wide open exception in the act relating to personal consumption and to substitute therefor a provision authorizing the mixing of drinks for immediate personal consumption, the transportation of alcoholic beverages in limited quantities for personal consumption and authorizing the issuance of special permits for the transportation of larger quantities for personal consumption.

To make it unlawful to warehouse alcoholic beverages except in accordance with the act.

To clarify the act so as to provide expressly that bottling shall be unlawful except in accordance with the act.

Section 3. To provide that the bond of the Commissioner shall be given to the State of New Jersey and shall be approved as to form and sufficiency.

To increase the compensation of the commissioner.

Section 4. To authorize the Commissioner to create and alter such divisions in his department as he considers advisable.

To change the salaries of deputies.

To provide for bonds by deputies, inspectors and investigators only if required by the Commissioner.

To confer upon the Commissioner, his deputies and investigators the powers of peace officers.

To confer upon the Commissioner power to appoint such counsel and legal assistants as he deems necessary for the carrying out of the provisions of the act and to fix their powers, duties, salaries and terms of office.

Section 5. To enable municipalities to appoint excise boards, but in the interest of economy, the members thereof shall receive no salaries.

To omit the special proviso relating to boards of public works since the definition of "governing board or body" as amended refers to boards of public works.

Section 6. To eliminate the authority conferred on municipal boards to appoint inspectors, etc., in the interest of economy and to the end that local police and other enforcing agencies shall enforce the act.

Section 7. To provide that bonds other than the Commissioner's shall be given to the Commissioner, approved by him and be conditioned for the proper accounting of public funds intrusted to the care of the bonded person.

Section 8. To include the new type of license known as public warehouse license to be provided in a supplement to the act.

Section 9. To authorize holders of manufacturers' licenses to sell and distribute outside of this State and to increase brewery license fees to four thousand dollars (\$4,000.00) after July 1, 1934.

To create a new type of license to be known as a limited brewery license.

To reduce the fees after July 1, 1934, for limited distillery licenses.

To increase the fees of rectifier and blender licenses after July 1, 1934.

To increase the fees after July 1, 1934, for limited winery licenses authorizing the manufacture of less than two hundred (200) gallons.

Section 10. To clarify the act so as to insure to wholesalers the right to distribute and sell to other licensed wholesalers as well as retailers.

To create new types of licenses known as plenary and limited export wholesale licenses.

Section 11. To change the limits of fees for retail consumption licenses from \$350 minimum and \$1,500 maximum to \$200 minimum and \$2,000 maximum in order to afford needed latitude according to local conditions.

To lower the minimum fee for retail distribution licenses from \$200 to \$100 so that the maximum and minimum fees for this license shall be one-half the maximum and minimum for retail consumption licenses.

To provide that fees fixed for retail distribution licenses shall be one-half the fees fixed by any particular municipality for retail consumption licenses.

To create a new type of license to be known as seasonal consumption license.

To create a new type of license to be known as club license and to afford to the Commissioner broad powers in order to prevent mushroom and false clubs from obtaining the advantage of club licenses.

Section 12. To eliminate the provision requiring that vehicles transporting alcoholic beverages shall carry a transit receipt in order to enable the Commissioner to substitute such rules and regulations in this connection as experience shall dictate.

Section 13. To authorize the establishment of an additional separate office as well as warehouse or salesroom and to provide that the fee for an additional warehouse, salesroom or separate office of a licensee shall be 25% of his license fee instead of 100%.

Section 14. To provide for the giving by public warehouse licensees of a bond conditioned upon the payment of taxes, penalties and interest.

To provide that the bond given by licensees shall be conditioned for the payment of interest as well as taxes and shall be held by the State Tax Commissioner.

Section 15. To provide that the Commissioner shall administer the issuance of public warehouse licenses.

Section 16. To simplify the definition of governing board or body and to provide appropriate language to cover retail licenses other than distribution and consumption licenses being administered by municipalities, for example club licenses.

Section 17. To provide that the Commissioner shall investigate applicants for public warehouse licenses.

Section 18. To provide that no licenses shall be given to a person who has committed two or more violations of the act.

To set forth requirements with respect to club licenses which are similar to the requirements relating to applications by corporations.

To provide that only such photostatic copies of Federal licenses and stamps as relate to alcoholic beverages must accompany license applications.

To provide that applications for public warehouse licenses need not be published.

Section 19. To provide for a fee of \$5.00 in connection with the transfer of licenses.

To permit the issuance of one plenary retail consumption license to the holder of a wholesale license.

Section 20. To provide that the Commissioner shall promptly pay all fees collected by him to the State Treasurer.

Section 21. To provide that a fee of two dollars (\$2.00) shall be paid to the Commissioner for each additional transit insignia to be attached to vehicles owned by licensees and used by them in connection with their business.

Section 22. To assure to the Commissioner power to investigate and prescribe rules and regulations with respect to alcoholic beverages sold or dispensed pursuant to this section.

Section 23. To clarify the act so as to permit the sale of alcohol unfit for use as a beverage and intended for commercial purposes, but to provide that such sales shall be subject to investigation and rules and regulations in order to enable the enforcement of the act.

Section 24. (1) To confer power upon Commissioner to enforce the act and rules and regulations by revoking, if necessary, any license.

(2) To provide for voluntary surrender of license and refund the fee in proper cases subject to suitable deductions.

Section 25. To make imposition upon licensees of special conditions by municipalities subject to approval by the Commissioner.

Section 26. To provide that no license shall be issued to any person who has not paid taxes, penalties or fees accrued under this act and its accompanying tax act as well as persons who have not paid fees under the old beer act.

Section 27. To enlarge the Commissioner's power of examination and subpoena to all types of proceedings appropriate for the administration and enforcement of the act.

Section 28. To provide that the Commissioner may fix the fees to be charged for authenticating any copies commensurate with the services rendered instead of a fixed fee of \$1.00.

Section 29. To abolish the Alcoholic Beverage Appeals Board and to provide that all appeals shall be to the Commissioner.

Section 30. To subject regulations by local boards of the conduct of licensees' business and the condition of licensed premises to the approval of the Commissioner, to the end that conflicts of authority may be avoided, uniformity of rulings insured in proper cases and interference avoided with the development of rules and regulations as a consistent whole to meet new and changing conditions.

To remove the power of local governing boards to declare by resolution and prior to submission to the electorate prohibitions on matters which should await determination by popular referendum.

Section 31. To adjust the right and method of appeal from limitations by local issuing authorities of the number of licenses or hours of sales pursuant to section 37 as amended.

Section 32. To prohibit expressly the practice of brewers and other manufacturers of lending money to retailers upon their agreement to sell only the products of the lender and to guard against subterfuges intended to accomplish the same effect.

To carry out the true intent of the section by prohibiting retailers from having any interest in wholesalers.

Section 33. To permit officers and persons acting under their instructions to procure illicit beverages to be used as evidence against the offenders.

Section 34. To provide that each of the types of conduct declared unlawful by section 2 shall constitute a misdemeanor.

Section 35. To provide that search warrants shall be returned within 48 hours if not served, instead of 10 days, in order to eliminate the possibility of abuse by a dishonest officer.

Section 36. To provide that illicit beverages need not be destroyed but may be sold or retained for the use of State institutions and all free hospitals.

To eliminate the necessity of having a hearing before a magistrate and to provide that the commissioner shall conduct a hearing upon due notice before ordering that unlawful property be sold or illicit beverages be sold, destroyed or retained for the use of State institutions.

Section 37. To eliminate the necessity of having a hearing before a magistrate pursuant to the amendment which provides for a hearing before the commissioner in place thereof.

Section 38. To insure enforcement of this act by local police and other enforcing agencies in the interest of economy and effective control.

Section 39. To provide a sufficient appropriation which will enable a proper enforcement of the act.

Section 40. (1) To amplify and make more flexible the power to issue temporary permits to fit emergency cases and contingencies that cannot be foreseen.

(2) To provide a scale of fees from \$5.00 to \$500.00 commensurate with the value of the permit instead of the rigid fee of \$10.00 as at present.

Section 41. To provide that the two hundred (200) feet provision shall apply to private schools not conducted for pecuniary profit as well as churches and public schools.

REPORT

ON

Alcoholic Beverage Control and Taxation

*prepared and
submitted by*

THE ALCOHOLIC BEVERAGE COMMISSION

THOMAS N. McCARTER
Chairman

TO THE ONE HUNDRED AND FIFTY-SEVENTH LEGISLATURE
OF THE STATE OF NEW JERSEY

974.90
L767
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copy 2

MacCrellish & Quibley Co
Printers
Trenton, New Jersey

1933

November 20, 1933.

*To the Senate and General Assembly of
the State of New Jersey:*

Pursuant to the direction of the Commission created by Joint Resolution to investigate, inquire into and report concerning proposed legislation for the regulation and taxation of traffic in alcoholic beverages, I herewith transmit to your honorable bodies the report of the said Commission, together with a draft of proposed statutes to carry out the provisions recommended in said report.

Very truly yours,

THOMAS N. McCARTER,

Chairman,

Alcoholic Beverage Commission.

There is no pg. 4

REPORT

November 20, 1933.

*To the Senate and General Assembly of
the State of New Jersey:*

On the 9th day of October, 1933, the following Joint Resolution was passed by the Legislature and signed by the Acting Governor:

"BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

1. There is hereby created a commission to investigate, inquire into and report concerning proposed legislation for the regulation and taxation of traffic in alcoholic beverages. Said commission shall consist of seven citizens of the State, to be appointed by the Governor.
2. The said commission shall organize by the selection of a chairman and secretary, and is authorized to obtain from the Attorney-General such assistance as may be necessary.
3. The said commission shall embody its recommendations in a report to be submitted to the Legislature on November fourteenth, one thousand nine hundred and thirty-three.
4. There is hereby appropriated the sum of five thousand dollars (\$5,000.00) for the expenses of said commission.
5. This resolution shall take effect immediately."

And on the same day the Acting Governor appointed the following Commission:

Dr. Robert C. Clothier, New Brunswick
Dr. Harvey N. Davis, Hoboken
Wm. C. Heppenheimer, Jr., Jersey City
Dr. Andrew F. McBride, Paterson
Thomas N. McCarter, Newark
Mrs. Reeve Schley, Far Hills
Col. H. Norman Schwarzkopf, Trenton

On Tuesday, the 17th day of October, the members of the Commission were summoned to Trenton by the Governor for purposes of organization. The Commission organized by the election of Thomas N. McCarter as Chairman; Dr. Andrew F. McBride as Vice-Chairman, and Frank J. Davis as Secretary, and immediately thereafter commenced to hold meetings in connection with the performance of its duties. These meetings have been held frequently and as often as the other engagements of the commissioners would admit. There have been in all eight (8) meetings. On Thursday, October 26th, the Commission held an all-day public hearing in the Public Service Auditorium, 80 Park Place, Newark, notice of which hearing was given the widest publicity in all the newspapers of the State. The hearing was attended by eighty-three persons. Those present included some who represented themselves only; others represented various organizations and thus spoke for considerable numbers of people. One member of the Assembly and one municipal official attended. The Commission feels constrained to record its disappointment at the relatively small number who attended this hearing upon a subject of such vital consequence to all the people of the State, and especially that there were not more municipal officials suf-

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their views.

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ficiently interested in the matter to aid the Commission with their views.

The Commission has gone about its labors with a deep realization of the seriousness of the problem entrusted to it and with a determination to perform so far as has been within its power in the time allotted a piece of constructive work for the benefit of the State. It has been greatly handicapped by the shortness of the time within which it can function. It quickly found that it would be impossible to make its report upon November 14th, the date mentioned in the Resolution, but was equally determined that the report must be filed as soon as possible thereafter in order that the Legislature might have time to act on or before December 5th, when it is anticipated that the repeal of the Eighteenth Amendment will have been consummated.

The underlying purpose of the Commission has been to recognize that within a short time some form of the liquor industry would be legal, and it has been the aim of the members of the Commission to so harmonize their various views upon this most difficult subject as to enable the Commission to recommend some kind of legislation that would be in the interest of true temperance. To that end we have set up a plan which if enacted into law and carried out according to its true intent by the officials entrusted with the operation thereof will make relatively easy the sale and consumption of beer, ale and natural light or fermented wines; and make relatively difficult the sale and consumption of distilled liquors and fortified or treated wines. We have provided for the issuance of licenses by State authority for brewers of beer and ales and for the manufacturers of fermented wines, and for the distribution thereof at moderate rates. And we have provided for the issuance of retail licenses for the sale thereof by reputable concerns at li-

cense fees of \$100, reserving, however, to the governing body of a municipality in which the licensed place is located the right either to lower this license fee to a minimum of \$50 or to raise it to a maximum of \$200, as the character of the locality, the population, the density thereof, and various other factors are considered. Said licenses to be issued to taverns, hotels, restaurants and clubs, for consumption upon the premises; with provision for the issuance of licenses for the sale of these articles by reputable concerns not for consumption on the premises. We have provided for the issuance of licenses by State authority to distillers and manufacturers of fortified wines. And then we have likewise provided for the issuance of retail licenses of an all-inclusive character; that is to say, for the sale not only of beers, ales and fermented wines, but for distilled liquors and fortified or treated wines at much higher rates, the license fee being \$1,000, reserving also to the governing body of a municipality in which the licensed place is located the right either to lower this license fee to a minimum of \$500 or to raise it to a maximum of \$1,500, depending upon similar conditions to those hereinabove set forth in reference to licenses for beers, ales and fermented wines. Here again we have provided for licenses for the sale of these articles by reputable concerns not for consumption on the premises. It is part of our plan that all these retail license fees shall inure to the benefit of the municipality within which the licensed place is located. The brewers' or manufacturers' license fee and the distributor license fee will inure to the benefit of the State at large. We also recommend the imposition of an excise tax of $3\frac{1}{3}\phi$ per gallon for beers and ales; and 10ϕ per gallon for naturally fermented wines, to accrue to the benefit of the State; and 40ϕ per gallon for all other wines, and \$1.00 per gallon for

distilled and all benefit of the State taxes and elastic recommend among prices to the consumers of bootlegging and the desirability of fit of the State revenue to be set the destruction of tax-easies. We have cars and boats.

We have been the setting up of entrusted with that kind. In every three persons, not the same political a woman. We population of formunicipal board of by the Mayor of other municipalities county board of three persons, a case by the Justice the circuit in which retail licenses at these local boards until approved and for the creation of a Beverage Control, consisting of a

distilled and all other liquors, likewise to accrue to the benefit of the State. In the fixing of these various excise taxes and elastic license fees, our first thought has been to recommend amounts that would not result in prohibitive prices to the consumer and thus encourage the continuation of bootlegging and speakeasies. We are not unmindful of the desirability of revenue from this business for the benefit of the State and the municipalities, but we believe revenue to be secondary in importance as compared with the destruction of bootlegging, racketeering and speakeasies. We have also provided for the licensing of dining-cars and boats.

We have been very careful in our recommendation as to the setting up of local boards of alcoholic beverage control, entrusted with the power to grant retail licenses of any kind. In every case we recommend a board to consist of three persons, not more than two of whom shall belong to the same political party, and at least one of whom shall be a woman. We provide that in municipalities having a population of forty thousand or more there shall be a municipal board of alcoholic beverage control, to be appointed by the Mayor of such municipality. And that as to all other municipalities, there shall be set up in each county a county board of alcoholic beverage control, consisting of three persons, as above set forth, to be appointed in each case by the Justice of the Supreme Court presiding over the circuit in which the particular county is located. The retail licenses are in the first instance to be granted by these local boards, but they do not become fully effective until approved as hereinafter set forth. We have provided for the creation of a State Department of Alcoholic Beverage Control, with an executive and administrative head consisting of a single person known as the Commissioner,

to be appointed by the Governor, by and with the advice of the Senate, for a term of seven years, at a compensation of \$15,000 per year. We recommend that this Commissioner be given the most important powers, such as the approval of all licenses issued by the local boards; the right to revoke the same; and in extreme cases the right to grant licenses where the local board has in the Commissioner's judgment arbitrarily or improperly refused to grant a license.

The said Commissioner should also have the power to prescribe in detail the conditions surrounding the legalized sale of liquor, such as, for example, the proper identification of all persons engaged in the business; the prohibition of screens; back-rooms; family entrances; sale of liquor to minors; the hours during which it shall be lawful or unlawful to dispense any kind of liquor on weekdays and Sundays where not prohibited; and all other rules and regulations legitimately concerned with the operation of this business. We have thought it best to clothe the Commissioner with these powers rather than attempt to set them all out in a statute. We have reached this conclusion because we are of the opinion that, as in almost every other walk of life, experience will be the best teacher.

We have not attempted to limit the sale of liquor in licensed places to any particular building with a certain number of rooms in it, or to any restaurant equipped to serve a certain number of people, because we are of the opinion that these distinctions are illusory and while they may actually exist at the time the license is granted they become a dead letter thereafter. We feel that the success or failure of the plan that we have set up will very largely depend upon the personnel of the local boards and their responsiveness to public sentiment in their respective localities; and even more especially to the personnel, to the

integrity and to be possessed and Alcoholic Beverages provided the machinery who desire to of licenses within popular vote so any such municipalities, it shall localities to the but under no circumstances provided similar municipality may by product and fermented wines, on Sundays

Submitted herewith three acts which foregoing recommendations generally administration of liquor taxation of liquor existing legislation our object being legislation composed of bills submitted general ideas for immediate action basic plan of the indulgence for may appear.

We do not feel in our recommendations a subject that has that we have pro

integrity and to the underlying purpose of temperance to be possessed and practiced by the State Department of Alcoholic Beverage Control. We have, in addition, provided the machinery whereby the people of any municipality who desire to forbid the issuance of either or both kind of licenses within the bounds of such municipality may by popular vote so determine, with the qualification that in any such municipality, notwithstanding such license prohibition, it shall be lawful to deliver liquors from licensed localities to the homes of residents for their personal use, but under no circumstances for sale. We have further provided similar machinery whereby the people of any municipality may by popular vote prohibit the sale of beers, ales and fermented wines, and of distilled liquors and fortified wines, on Sunday.

Submitted herewith and made a part hereof are drafts of three acts which we think, taken collectively, embody the foregoing recommendations. The first act covers the subject generally and provides for the machinery and administration of liquor control. The second act relates to the taxation of liquors; and the third act repeals all hitherto existing legislation inconsistent with the plan recommended, our object being so far as possible to make the new proposed legislation comprehensive of the whole subject. The drafts of bills submitted herewith embody in concrete form the general ideas above set forth and are, we believe, in shape for immediate adoption if it so please the Legislature. The basic plan of the Commission is properly set out and we ask indulgence for whatever relatively inconsequential errors may appear.

We do not feel that we are possessed of complete wisdom in our recommendations, made after so short a study, upon a subject that has rocked the world for ages, but we do feel that we have produced a well-balanced plan with which the

State may safely begin anew a rigid control over what should hereafter be a legitimate and not an outcast industry, and that it is a plan which while probably not satisfactory to extremists is one that we hope will meet with general approval. Furthermore, it will easily lend itself to amendment for purposes of improvement as experience thereunder may indicate to be wise.

The Commission desires to make acknowledgment of the assistance rendered by Mayor LaBarre of Trenton; Assemblyman McCampbell, of Monmouth County; and all others who participated in the public hearing; to those who have communicated with it in writing, and to Commissioner Mulrooney, of New York, and Dean Gauss, of Princeton, who personally appeared before the Commission and gave us the benefit of their judgment and experience. The Commission has had the co-operation and assistance of J. H. Thayer Martin, State Tax Commissioner, and is under a special obligation to Judge George W. Grimm, Jr., of the Beverage License Tax Division of the State Tax Department, for his invaluable assistance; to certain members of the clerical force of the New Jersey State Police and to the State Tax Department for their tireless efforts; to the Commission on Revision and Consolidation of the Public Statutes; to D. Frederick Burnett, whom the Commission employed as its counsel, and to the Secretary of the Commission.

ALCOHOLIC BEVERAGE COMMISSION OF
NEW JERSEY,

By THOMAS N. McCARTER, *Chairman*
ROBERT C. CLOTHIER
HARVEY N. DAVIS
WM. C. HEPPENHEIMER, JR.
ANDREW F. McBRIDE
KATE PRENTICE SCHLEY
H. NORMAN SCHWARZKOPF

R.S. 33 : 1-32 and 33

December 20, 1968

LEGISLATIVE HISTORY OF R.S. 33:1-32 and 33 (Intoxicating liquors - License issuance - Refusal of)

Source is: Chapter 436, 1933 - A611

COPY NO. 1

On November 9, 1933, the New Jersey Legislature created an Alcoholic Beverage Commission to study proposed legislation for New Jersey should the U.S. repeal the 18th amendment. The Commission held at least one public hearing (October 26 in Newark; we have no transcript) and issued its report:

974.90 N.J. Alcoholic Beverage Commission.
L767 Report on Alcoholic Beverage
1933 Control and Taxation. November 20, 1933.

On page 10 of this report: We recommend that this Commissioner be given the most important powers, such as the approval of all licenses issued by the local boards; the right to revoke the same; and in extreme cases the right to grant licenses where the local board has in the Commissioner's judgment arbitrarily or improperly refused to grant a license.

This appears to be the only statement in this report dealing with the conditions to issuance of licenses.

We also consulted the following study:

Micro Ts'ai, Kuo-Ying
No. 3055 Alcoholic Beverage Control in
OR New Jersey. Ann Arbor, University Microfilms,
J363.41 1952. (Doctoral dissertation, Princeton Univ.
T8??

This study has one entire chapter (Chapter IV) entitled N.J. Liquor Control Regulations which includes a section on licensing. However, there was no mention I could find of the refusal to license persons failing to pay the tax or license fee.

L. 1934, Chapter 85 - A304

Feb. 19 - Introduced by Muir.
March 5 - Passed in Assembly, amended.
April 10 - Passed in Senate, amended.
April 10 - Senate amendment passed in Assembly.
April 13 - Approved, Chapter 85

Statement: copy attached.
Amended during passage.
Section 25 and 26 were not amended after introduction.
(Enclosed a copy of Sect. 25 & 26 as introduced).

We located no official hearings or reports by the Alcoholic
Beverage Commission in 1934.

JH/PC

July 26, 1963

LEGISLATIVE HISTORY OF R. S. 33:1-77

(Sale to Minor)

Laws 1933, Chapter 436, sec. 77 - A-611

No statement on the bill. This section was not changed after bill introduced.

974.90 N. J. Alcoholic Beverage Commission
 L767 Report on Alcoholic Beverage Control & Taxation.
 1933 November 20, 1933.

at page 10 states:

The said Commissioner should also have the power to prescribe in detail the conditions surrounding the legalized sale of liquor, such as, for example ... sale of liquor to minors We have thought it best to clothe the Commissioner with these powers rather than attempt to set them all out in a statute. We have reached this conclusion because we are of the opinion that, as in almost every other walk of life, experience will be the best teacher.

Earlier bill:

In 1938 similar legislation was introduced and passed one house.

1938 - A-576 - Introduced March-7, 1938 by Mr. MuirMay 17 - Committee Substitute passed in Assembly
Died in Senate Committee

(Photostat of original and Committee Substitute enclosed.)

Laws 1939, Chapter 228, sec. 1 - A-220 - Introduced February 13 by Mr. Stokes
Bill not amended during passage. This bill had statement:

To provide that a person who sells alcoholic beverages to a minor shall not be prosecuted where the minor has falsely represented, in writing, that he was over age, appeared to be over age, and the sale was made in the reasonable belief that he was actually over age.

RS/jmk

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