The Pennsylvania Liquor Control Board - Administrative Procedure Relating to Licensing and Enforcement

Fred W. Morgenthaler
THE PENNSYLVANIA LIQUOR CONTROL BOARD
Administrative Procedure
Relating to Licensing and Enforcement

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INTRODUCTION

The Pennsylvania Liquor Control Board was created by an act of the Legislature\(^1\) which was approved by Governor Gifford Pinchot on November 29, 1933. This act provides for a three-member authority, appointed by the Governor, by and with the consent of the Senate. The term of membership is six years and a member may be reappointed.

The Pennsylvania system of control is a combination of the "monopoly" or "authority" and the "licensing" systems. All alcoholic beverages sold in Pennsylvania, except malt or brewed beverages only, must be obtained from a State Liquor Store operated by the Board. These State Stores sell by the package for consumption off the premises only. Two classes of retail licenses are granted by the Board, namely: Retail Malt Beverage (which permits the sale of malt beverages for consumption on the licensed premises and also the sale for consumption off the licensed premises in quantities not exceeding 72 fluid ounces) and Retail Liquor Licenses, which give the same privilege and, in addition, permit the sale of liquor and wines for consumption on the licensed premises.

The Liquor Control Act\(^2\) which was originally approved November 29, 1933, provides for the system of operation in Pennsylvania and grants certain powers to the Board. The Board's powers may be divided into two main functions, namely: (1) The operation of State-owned liquor stores and (2) the issuance of licenses and the enforcement of the alcoholic beverage laws. More specifically the powers granted to the Board by the Liquor Control Act are:

a. To buy, import, possess and sell liquor and alcohol.

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\(^1\)1933 Sp. Sess., P. L. 15, 47 P. S. secs. 744-901 et seq.

\(^2\)1937 P. L. 1762, 47 P. S. secs. 744-1 et seq.
b. To control the manufacture, possession, sale, consumption, importation, use and transportation of liquor, alcohol and malt beverages.

c. To determine the location of State Stores.

d. To grant, issue, suspend and revoke licenses and permits.

e. To lease and equip such buildings as may be required.

f. To appoint, fix the compensation, and define the powers and duties of employes.

g. To determine the nature, form, and capacity of packages and original containers of liquor, alcohol and malt beverages.

h. To make such regulations, not inconsistent with the laws as are deemed necessary for the essential administration thereof.

These functions of the Board are performed by an organization consisting of five bureaus: Bureau of Licensing, Bureau of Enforcement, Bureau of State Stores, Bureau of Accounts and Service, Bureau of Personnel.

The Board operates approximately 580 liquor stores with sales, in 1940, of $83,937,305. Annual profits average nearly $15,000,000 and in 1940 were $18,730,715. In addition a 10% emergency sales tax is collected which amounts to more than $7,000,000 annually.

In the stores system, the Board has more than 3,000 employes; in the administrative service, nearly 800, and in the Bureau of Licensing and Enforcement, approximately 400. The Bureau of Licensing issues more than 26,000 licenses and permits each year, collecting therefrom, in 1939, nearly $6,800,000. Of this sum, nearly five and a half million dollars was returned to the municipalities in which the licensed establishments were located. $1,300,000 was paid into the State Stores Fund, the profits of which are turned into the general fund of the Commonwealth, available for relief and other purposes as provided by the Legislature.

Practically all employes of the Board are appointed and hold tenure of office under a merit system. The only exceptions are the members of the Board itself, the Secretary of the Board, selected by the Board itself, the hearing examiners, who are appointed by the Governor, and the deputies attorney general, who are appointed and assigned to the Board by the Attorney General. Examinations for positions under the Board are given by the Department of Public Instruction and lists of eligibles are furnished to the Board from which appointments are made in accordance with the rank of the examinees, preference being given to persons with war service records.
It is the purpose of this publication to give specific information in some detail concerning the operations and procedures of the Bureaus of Licensing and Enforcement and of the Board itself insofar as they relate to licensing and enforcement activities.

PART I—LICENSING

General

The authority to issue licenses and permits relating to the manufacture, transportation and sale of alcoholic beverages is granted to the Board by several different statutes. The following list includes all licenses and permits issued by the Board, and indicates the authorizing statute.

Pennsylvania Liquor Control Act

Retail Liquor Licenses

Restaurant-Hotel—Issued to bona fide establishments, permitting sales for on-premises consumption of liquor and malt or brewed beverages and off-premises consumption of malt or brewed beverages not exceeding 72 fluid ounces.

Club—Issued to legitimate non-profit organizations for on-premises consumption of liquor and malt or brewed beverages to members only.

Catering Club—Issued to legitimate non-profit organizations for on-premises consumption of liquor and malt or brewed beverages to members but privileged to serve groups of non-members by prior arrangement.

Public Service—Issued to railroad, pullman or steamship companies operating within Pennsylvania for on-premises consumption of liquor and malt or brewed beverages.

Amusement Permit—Issued to liquor licensed restaurants and hotels permitting dancing by patrons, floor shows, theatricals, motion pictures, etc.

Importer—Allows importation of liquors, from outside Pennsylvania and resale to Board or persons outside Pennsylvania only.

Importer Warehouse—Allows additional storage place.

Sacramental Wine—Permits importation and sale of wine for sacramental purposes, to priests, rabbis and clergymen.

Sales Permit—Issued to vendors, allowing sales to Board, of distilled liquors manufactured outside Pennsylvania.

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Vendor’s Permit—Qualifies out-of-state vendor for registration of agents.

Alcohol—Issued to doctors, dentists, veterinarians, pharmacists, manufacturers, hospitals, governmental agencies, colleges, etc., permitting and limiting purchases of alcohol from Board at wholesale.

Pharmacy—Issued to registered pharmacists allowing purchase at discount of certain liquors and sale on prescription only.

Hospital Pharmacy—Issued to certain hospitals permitting purchase of certain liquors at discount.

Special Permit—Issued to manufacturers of non-beverage products allowing purchase at discount of liquors required in manufacture of their products.

**Beverage License Law**

Retail Dispenser Licenses

- Eating Place-Hotel—Issued to bona fide establishments permitting on-premises consumption, and off-premises consumption, not exceeding 72 fluid ounces of malt or brewed beverages.

- Club—Issued to legitimate, non-profit organizations for on-premises consumption of malt or brewed beverages to members only.

- Public Service—Issued to railroad, pullman or steamship companies operating within Pennsylvania for on-premises consumption of malt or brewed beverages.

- Amusement Permit—Issued to retail dispenser licensed eating places and hotels permitting dancing by patrons, floor shows, theatricals, etc.

- Brewery—Permits manufacture, sale and distribution of malt or brewed beverages.

- Malt Beverage Distributor—Permits sale of malt or brewed beverages in not less than case lots to retail licensees and individuals.

- Malt Beverage Importing Distributor—Permits importation from outside Pennsylvania and purchase of malt or brewed beverages, and sale in not less than case lots to other distributors, retail licensees, and individuals.

- Transporter for Hire Class “B”—Permits transportation, for hire, of malt or brewed beverages.

**Manufacturing, Storing, Transporting Alcoholic Liquids**

- Distillery—Permits manufacture and rectification, sale and distribution of whiskey, gin, alcohol, etc.

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41937 P. L. 1827, 47 P. S. secs. 84 et seq.
51937 P. L. 1811, 47 P. S. secs. 121 et seq.
Winery—Permits manufacture, sale and distribution of wine.

Transporter for Hire "Class A"—Permits transportation for hire of any alcohol or alcoholic liquid.

Bonded Warehouse—Permits storage in bond of any alcohol or alcoholic liquid.

Bailee-for-Hire—Permits storage for hire of any alcohol or alcoholic liquid.

Manufacture of Wine

Winery—Class B—Permits manufacture, sale and distribution of wine from grapes grown in Pennsylvania.

Distillery Bonded Warehouse Certificate Act

Distillery Certificate, Broker Permits and registration of agents—Grants permission to buy, sell, deliver and handle distillery warehouse certificates.

Regulations adopted by the Board provide for the registration of agents of vendors of liquor and sacramental wine licensees, who are then permitted to promote the sale of their employers' products in accord with the Regulations; and for the issuance of vehicle identification insignia.

The information in this publication deals mainly with retail licenses which account for more than 80% of all licensing activity.

Licensing Districts

To facilitate and expedite the issuance of retail liquor licenses (restaurant, hotel and club), retail dispenser licenses (eating place, hotel and club) and distributor and importing distributor licenses, the Board has divided the State into four geographic license districts, each originally having approximately the same number of licenses. Regulation R-37-21A lists the various counties, as well as the effective and expiration dates of licenses, which differ for each of the licensing districts.

Notice of Application

The two acts authorizing the issuance of retail licenses provide for the posting of a "Notice of Application" on the premises for a fifteen-day period at the time the application is made. (Applicable only to new licenses and transfers to new addresses).

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6 1937 P. L. 1811, 47 P. S. secs. 122, 123.
7 1939 P. L. 764, 47 P. S. secs. 801 et seq.
Limitation of Licenses

An act passed by the last session of the Legislature prohibits the Board from issuing any additional retail licenses, except to hotels which meet the requirements of the aforementioned act, in any municipality in which the ratio of one license to each 1,000 inhabitants is equalled or exceeded. The requirements for hotel licenses of this act relate to sleeping accommodations and exceed those of the original Liquor Control Act. This recent act is not effective in areas which the Board determines to be "resort areas." The Board maintains complete up-to-date information on the number of licenses in effect in each municipality in the state. Only slight changes in quotas were caused by the 1940 census figures, released late in that year.

Local Option

No retail license may be issued or renewed in any municipality or township in which a majority of the electors voted against the issuance of such licenses. Separate votes are required on retail liquor and retail malt beverage licenses. Local option votes may be taken at primary elections immediately preceding a municipal election which therefore provides for local option votes in odd numbered years only. When a local option vote has been taken, no subsequent election on local option may be held for four years.

The action of electors in any municipality in disapproving the issuance of retail licenses does not prohibit the Board from opening or maintaining a State Liquor Store in such municipality.

Application Filing Dates

Applications for the renewal of retail liquor and retail dispenser licenses, as well as distributor licenses, must be filed not less than sixty days prior to the expiration date for each of the districts. Applications for new licenses, except distributor licenses, must be filed at least thirty days prior to the effective date of the new license year or six months thereafter. Applications for new distributor licenses may be filed at any time.

All other licenses and permits issued by the Board expire December 31 of the calendar year in which issued with the exception of pharmacy and hospital pharmacy permits which expire June 30 and special permits which are valid until either cancelled or revoked. Applications for any of these types of licenses may be filed and the licenses issued at any time during the year.

81939 P. L. 806, 47 P. S. secs. 744-1001 et seq.
Most licenses may be transferred from one person to another and from one address to another within the same municipality. Applications for transfer may be filed at any time except in the case of retail licenses, for which applications may not be filed during the thirty-day period immediately prior to the expiration date of the license to be transferred.

Applications

Applications in writing are required for all types of licenses and permits issued by the Board. The application forms themselves are provided by the Board and require specific, pertinent information, taken under oath, relating to the type of business which the applicant desires to operate and to his past history. Most applications must be filed in duplicate and may be prepared by the applicant or his attorney only. Renewal application forms are usually shorter and contain less information than applications for new licenses.

Surety bonds are required with most applications for licenses and are usually provided for in the statutes. Photographs of the establishment and the applicant are required in the case of retail licenses and other descriptive matter may be necessary for other types of licenses.

Licenses and filing fees as provided for in the statutes are usually required with the applications, and filing fees are retained by the Board regardless of the subsequent disposition of the application.

Inquiries are frequently received at the offices of the Bureau of Licensing regarding the status of certain pending cases. It is the policy of the Board that such information be given only to the applicants themselves or their attorneys-of-record. Copies of all correspondence to an applicant are mailed to his attorney, if such attorney's name and address are given on the application. No other attorney will be recognized unless the Board is notified by the applicant of the change in counsel.

Investigations

Before issuing any new license, permit or registration (excepting sales and alcohol permits, etc.) an investigation is conducted to determine the eligibility of the applicant and usually, also, the premises for which application has been made. Investigations are not required for the approval of applications for vehicle identification insignia, vendors', special, sales, alcohol, pharmacy, and hospital pharmacy permits, except in isolated cases. The authority for making such investigations is directed from the Central Office executives of the Bureau of Licensing, to Enforcement supervisors of the various enforcement district offices, which are maintained in the following cities: Philadelphia, Wilkes-Barre, Harrisburg, Pittsburgh, Altoona, Williamsport, Punxsutawney, Erie and Allentown.
In the case of applicants for new licenses, investigating officers submit standard type reports to central office executives who must determine definitely that the statutory and regulatory requirements for the type of license desired are met. Reports submitted by officers of the Board on applications for retail licenses must include information as to the length of residence, citizenship, area, sanitation, seating accommodations, equipment and food supply for regular service, sleeping accommodations (if a hotel), reputation of applicant and establishment, ownership, etc. If the applicant is a club, the report must indicate whether or not it is a legitimate organization. In the case of investigations for malt beverage distributor and all types of manufacturing and storage licenses, the qualifications of the applicant himself, such as his reputation, citizenship, financial responsibility and past methods of operation, are more important than the qualifications of the establishment. Some investigation is made before an agent is registered for a vendor, etc.

The time required for a decision on a new application for license approximates three to four weeks. If investigations are rendered more difficult because of obstructive tactics on the part of the applicant or attempts to conceal pertinent information, re-investigations may be required and this causes further delay.

Disposition of Applications

After a report of investigation is received in the Central Office, it is carefully reviewed and if it is indicated that all statutory and regulatory requirements are met, issuance of the license or permit is approved by the Board. If certain minor deficiencies are indicated, the applicant may be given an opportunity to make the necessary adjustments or alterations. If more important objections are found, the Board may either refuse the application or schedule a hearing which provides the applicant with an opportunity to answer specific objections listed in the notice of hearing.

Refusals

If the Board is satisfied that the applicant or the establishment do not meet the statutory and regulatory requirements, or if, in the case of renewal applications, violations have occurred while a license was in effect, the Board refuses to issue or renew the license applied for. The applicant is then notified of the refusal by registered mail and the specific objections for the refusal stated. The bond filed with the application, together with the necessary forms for obtaining a refund of the license fee, are returned. The filing fee, however, is retained by the Board.

The statutes provide that the refused applicant may request the Board to fix a time and place for a hearing. Such request must be in writing over the signature of the applicant and must be made not later than twenty days after the notice of refusal is mailed to the applicant.
Appeals

The statutes governing the operations of the Pennsylvania Liquor Control Board provide that any applicant who is aggrieved by the refusal of the Board, after a hearing, to issue, renew or transfer a license, may appeal from the decision of the Board, within twenty days from the date of refusal, to the Court of Quarter Sessions of the county in which the premises are located. A notice of appeal must be sent to the Board at least ten days prior to the hearing which is heard de novo. The Board's witnesses are again in attendance and the evidence is given in a similar manner to that of the original hearing. In appeal hearings the Board is represented by a special deputy attorney general. The court may either sustain or reverse the Board. If the court orders the Board to issue the license, a certified copy of the court order must be submitted to the Board and the license fee and an acceptable bond must also be submitted.

The Liquor Control Act and Beverage License Law provide that any appeal shall act as a supersedeas unless, upon sufficient cause shown, the court shall determine otherwise. However, the Board does not issue a license pending appeal unless directed to do so by the court. These acts and the Manufacturing, Storing, Transporting Alcoholic Liquids Act (supra) prohibit any further appeal.

PART II—ENFORCEMENT

Interpretation of Act

The following quotation from the Pennsylvania Liquor Control Act indicates its purpose, with respect to law enforcement:

"Section 3.9 Interpretation of Act.—(a) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, health, peace and morals of the people of the Commonwealth, and to prohibit forever the open saloon; and all of the provisions of this act shall be liberally construed for the accomplishment of this purpose."

Police Power of Officers

The following quotation from Section 201 (f)10 of the Liquor Control Act indicates the authority granted to enforcement and investigation officers of the Board:

"Such employes of the Board as are designated 'enforcement officers,' or 'investigators,' are hereby declared to be peace officers, and are

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947 P. S. sec. 744-3.
1047 P. S. sec. 744-201(f).
hereby given police power and authority, throughout the Commonwealth, to arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale, importation, manufacture or transportation or having unlawful possession of, liquor, alcohol, or malt or brewed beverages, contrary to the provisions of this act, or any other law of this Commonwealth. Such officers and investigators shall have power and authority, upon reasonable and probable cause, to search for and to seize without warrant or process, except in private homes, any liquor, alcohol, and malt or brewed beverages unlawfully possessed, manufactured, sold, imported or transported, and any stills, equipment, materials, utensils, vehicles, boats, vessels, animals, aircraft, or any of them, which are or have been used in the unlawful manufacture, sale, importation or transportation of the same."

Complaints

The enforcement activities of the Board may be roughly separated into two classes; the first is enforcement activity relating to Board licensees and the second, enforcement activity among non-licensees. Some of the violations in the first category are: sales after hours and on Sundays, sales on election days, etc., sales to minors, intoxicated and insane persons, sales for off-premises consumption, sales or possession of illegal liquor, sales on credit, illegal signs or advertising, indecent floor shows, adulteration of liquor, failure to break bottles, employment of minors, sales to non-members (by a club), etc. Violations by non-licensees includes: manufacture, sale, possession, importation and transportation without a license or of illegal liquor, alcohol or malt or brewed beverages.

Complaints are received in the district enforcement offices, in the central office, by enforcement officers and by members of the Board itself. Such complaints come from licensees, trade associations, civic-minded individuals, other law enforcement agencies, etc. Some complaints are received concerning disorderly operation which may be annoying to neighbors. While the Bureau of Enforcement takes cognizance of such complaints and may make some investigation, it is generally felt that local police authorities are better able to cope with such disturbances. Although thousands of complaints are received annually, each is carefully investigated.

Investigations

Complaints received in the district offices are investigated by them without any further orders from the central office, although a copy of the complaint is forwarded to that office. Complaints received in the central office are referred to the respective district offices for investigation.
An enforcement investigation may require months of careful and painstaking effort. Violators, realizing that the Board’s agents are active in the performance of their duties, naturally attempt to conceal their violations. Illegal sales may be made by licensees only to known individuals. Clubs may not admit any non-member except those known personally to the club officials. Operators of speakeasies may immediately recognize an officer because he is not the usual type of patron. Board officers attempt to obtain evidence of repeated violations in order to show a common practice. A report is made, however, after each visit and even though no violation may have been discovered on the original visit, a second or third attempt may be made. There is no attempt at persecution of either licensees or non-licensees in the enforcement activities of the Board. Enforcement officers realize that their duty is to detect violations and at a subsequent Board hearing or in criminal court, prove that they occurred.

Enforcement officers of the Board cooperate and collaborate with the agents of the several Federal enforcement agencies and the State and local police organizations.

In addition to a group of 200 enforcement officers, the Board also employs 30 auditors known as Enforcement Examiners who operate from offices in Harrisburg, Philadelphia and Pittsburgh. These Enforcement Examiners make audits of the records of various types of licensees such as malt beverage distributors, club liquor and malt beverage licensees, breweries, distilleries, wineries, importers, vendors, sacramental wine licensees, etc.

Citations

When reports of investigation disclose that a particular licensee is violating the law and that it is apparently a practice rather than merely an occasional or accidental lapse, the Board, after a consideration of the reports, orders a citation against such licensee to show cause why his license should not be revoked. In the notice of citation appears the specific charges or averments on which the citation is based and the approximate times the violations are alleged to have occurred. A hearing is then scheduled and heard in accordance with the procedure outlined in Part III of this publication.

Waivers

When a licensee has received a citation, he is notified that he may waive the hearing which has been scheduled by admitting in writing the violations charged in the citation and agree to accept whatever punishment the Board may inflict. The waiving of a hearing naturally saves considerable time and is given the same consideration by the Board as a plea of “guilty” by the court.
Disposition after Hearing

When the report of the hearing examiner is received in the central office, it is carefully considered by officials of the Bureau of Enforcement and by members of the Board before any decision is made. If the averments charged are not proved, the citation is dismissed and no further action is taken against the licensee. If the averments in the citation are proved, the Board may order a suspension of the license for a period commensurate with the violations committed. If the violations are of a serious nature it may revoke the license and possibly forfeit the bond as well. Heavier penalties are usually imposed for the second and third violations.

If an order of suspension or revocation is issued, a copy is sent to the district enforcement office with instructions to lift the license and return it to the central office. If an offer-in-compromise has been made by the licensee in lieu of suspension and is accepted by the Board in sufficient time, the license may not be lifted.

If a license is revoked, the licensee becomes ineligible to be granted another license for three years and the premises, if owned by the licensee or a member of his immediate family, become ineligible to be licensed for a period of one year.

Offers in Compromise

In the case of suspension of a license, when the suspension period does not exceed one hundred days, the Board is authorized to accept offers-in-compromise at specified rates, ranging from $10.00 to $100.00 per day, depending upon the type of license involved. When the Board accepts an offer-in-compromise, the suspension period is ended and the license returned to the licensee if it had been lifted.

The offer-in-compromise provisions have caused some criticism. The general public, learning of the violation by a particular licensee and knowing of the Board's action against such licensee, may not learn of the offer-in-compromise and may feel that the licensee has not been punished.

Appeals

An appeal from an order of revocation or suspension by the Board may be taken by the licensee to the Court of Quarter Sessions in the same manner as appeals from refusal to grant a license. Such an appeal acts as a supersedeas unless the court determines otherwise. While the Act is generally interpreted to permit the court to simply affirm or reverse the Board's penalty, in many instances, the court actually modifies the order, reducing it in severity.

The Superior Court has held that an appeal may be taken from the lower court's decision in cases of suspension or revocation.
Criminal Proceedings

In addition to a citation being issued against a licensee who has allegedly committed violations, he may also be arrested by officers of the Board and charged criminally with such violations. While such action may seem to indicate some duplication of punishment, the courts have held that the issuance of a citation does not bar criminal proceedings against the same individual. Thus a licensee may have his license suspended or revoked and/or be found guilty criminally and pay a fine or be imprisoned.

Violations of the liquor laws are misdemeanors. The Liquor Control Act provides that upon conviction, a fine of from $100 to $300 shall be imposed, or, upon failure to pay such fine, an imprisonment of from one to three months shall be inflicted. Subsequent offenses carry a fine of from $300 to $500 and imprisonment of from three months to one year. Section 61011 states "The right of the Board to suspend and revoke licenses granted under this act shall be in addition to the penalty set forth in this section."

Forfeitures

Section 61112 of the Liquor Control Act provides for the forfeiture of alcoholic liquor illegally possessed and of equipment, vehicles, etc., used in the illegal manufacture or transportation of alcoholic beverages. The section further provides that such property in the custody of the law may not be seized therefrom on any writ of replevin. The Act also provides that such property may be forfeited by the respective Courts of Quarter Sessions, upon petition, and that alcoholic liquids may be delivered to a hospital for its use. Forfeited vehicles may be delivered to the Board for its use or for sale or other disposition by the Board in its discretion.

If a license is revoked by the Board, the various Acts specify that any bond filed in support thereof may be forfeited. The Board does not forfeit bonds in all revocation cases but only in those instances where it feels this additional penalty should be inflicted.

Press Releases

Regular press releases are issued by the Board listing the suspension or revocation of licenses. If it is felt that public interest is involved, press releases may be made at the time citations are issued. This occurs infrequently, however.

While no regular press releases are issued on the refusal of licenses, the information is obtainable on specific cases upon request of news-gathering agencies.

1147 P. S. sec. 744-610.
1247 P. S. sec. 744-611.
Time and Place

Licensing hearings are scheduled at the direction of the Board itself or on the request of an applicant; citation hearings are ordered by the Board. They are held in Philadelphia, Wilkes-Barre, Harrisburg, Pittsburgh, Altoona, Williamsport, Punxsutawney, Erie and Allentown, and are open to the public. In most cities hearings are held in Board hearing rooms; in other cases, they are held in court rooms. At least ten days notice is given for both license and citation hearings; in the case of the former, notice is mailed to both applicant and any attorney of record; in the latter, only the licensee receives a notice. Each hearing requires the attendance of an examiner, a special deputy attorney general, a hearing stenographer and the investigating officers as well as other witnesses who may be required to prove the Board's case. Because these persons are not always available and also because of the impossibility of obtaining a full schedule of hearings for a particular day, hearings in the smaller cities cannot be held as promptly as might be desired.

Right to Counsel

The applicant or licensee may be represented by counsel, although this is not absolutely necessary, and he or his attorney may cross-examine the witnesses for the Board and present witnesses who are likewise subject to cross-examination by the Board's attorney. Documentary evidence may also be submitted.

Hearing Examiners

Nearly all hearings are held before an examiner of the Board who represents the Board in a judicial manner only and with certain further restrictions. Examiners possess no executive authority; they may not request investigations nor enter into any agreements, promises or stipulations in behalf of the Board.

An examiner simply presides over the taking of testimony, takes the necessary notes, questions witnesses to clarify certain points and subsequently prepares his report to the Board.

Conduct of Hearings

Board hearings are conducted in a dignified and judicial manner, in an atmosphere similar to that of a properly conducted court-room and rules of evidence are adhered to as closely as possible. Only competent and relevant testimony is admitted. In case an objection is made by either attorney, the examiner, after considering the matter carefully, gives his decision and instructs the hearing stenographer to indicate such action and also any exceptions taken. The respondent's
attorney is not permitted to examine any part of the file of correspondence except that offered in evidence. An examiner is not permitted to discuss any case which he has heard, or which he will hear, with any person not an employe of the Board, except at the public hearing.

The same criticism may be leveled at the Pennsylvania Liquor Control Board that has been charged against other quasi-judicial boards and commissions, both State and Federal, namely—that it is prosecutor, judge and jury. Actually, this is true; however, in practice it has not worked to the detriment of the respondents. Hearing examiners, while considering themselves employes of the Board, have, nevertheless insisted that the Board's cases, as prepared by the Bureau of Enforcement, be founded on definite evidence, before making a recommendation to the Board, of refusal, suspension or revocation. Their recommendations have been made in accordance with the evidence produced at the hearing and in a judicial and unbiased manner.

The Board itself, before administering any penalty, seeks to ascertain the truth of the matter and if it is not satisfied that the objections raised have been proven or that violations have been definitely established, no disciplinary or penalizing action is taken.

**Subpoenas**

When outside witnesses are required by the Board to support its case, subpoenas are issued and served by enforcement officers. Such subpoenas have usually been complied with and no case involving subpoenas has ever been taken before any court.

**Continuance of Hearings**

All requests for continuance of hearings must be made directly to the Board and in sufficient time for the required witnesses to be notified. Only in cases where time does not permit such a request may an examiner continue a hearing and then only when both he and the special deputy attorney general agree that the reason for the continuance could not have been discovered in sufficient time for a request to be made to the Board.

**Record of Proceedings**

All testimony at hearings is taken by hearing stenographers of the Board and subsequently transcribed. Copies of such testimony are available to applicants or attorneys at established prices.
Hearing Examiners' Reports

As promptly as possible after a hearing, an examiner prepares his report in uniform style and submits it to the Board. Each report includes general information concerning the case, lists the objections to the issuance of the license or the averments in the citation and a discussion of the testimony on each objection or averment. At the conclusion of the report the examiner indicates which objections or averments were sustained and which were not established and makes a recommendation, based on the testimony taken at the hearing, for Board action. In citations, the examiner's recommendation follows a definite penalty schedule which, however, gives wide latitude for varying circumstances.

Subsequent Procedure

The Board is under no compulsion to follow the examiner's recommendation but, in practice, usually does. If there appears to be any discrepancy between his recommendation and his discussion of the testimony, and in many other cases, as well, the transcribed testimony is examined.

If the Board refuses a license after a hearing, the statutes require that an opinion and order be made, a copy of which is sent to the applicant by registered mail. If a license which was previously refused is approved after a hearing, the applicant, if he has not already done so, must resubmit the license fee and an acceptable surety bond before the license may be issued.

PART IV—FORMULATION OF REGULATIONS

Preliminary Stages

The need or demand for a regulation covering some particular subject under the control of the Board is felt in various ways. Requests may be received from individual members of the industry, from licensee associations, from civic-minded organizations or from officials of the Board who may have discovered new problems requiring quasi-legal action. The need for regulations arises from the extension of the Board's control powers and from certain methods of operation adopted by licensees which may be harmful to the general welfare.

There are at the present time fifty-one regulations in effect on such widely varied subjects as alcohol, wine decanters, employment of minors, lighting conditions and visibility in licensed places, catering, etc. Each regulation covers a specific subject or group of closely related subjects.

Drafting of Proposed Regulation

When an apparent need for a new regulation or a revision of an existing regulation has been indicated, the task of preparing a rough draft of the proposed regu-
lation is given to the official among the Board employees who is most familiar with the subject involved. When the rough draft has been prepared, it is submitted to other Board employees who comment or criticize the original draft. The proposed regulation, which must be approved by a deputy attorney general, is then discussed at a meeting of the members of the Board and other executives, and the proposed regulation revised in accordance with the suggestions made and approved.

Public Hearings

Occasionally, prior to adoption of a proposed regulation, a public hearing may be held, to which all interested members of the industry are invited. The practice of holding public hearings before the adoption of regulations has not been followed so frequently in the past; however, the Board, as at present constituted, feels that the public hearing policy is productive of more satisfactory regulations. This practice will, therefore, probably be followed to a greater extent in the future. In cases where the members of the industry interested in the proposed regulation may be limited in number, such proposed regulation may be sent to these members by mail with a request for their comments and criticisms.

The Board is cognizant of the fact that public hearings will cause more objections to be made to the adoption of a proposed regulation, particularly in fields where the Board feels it necessary to extend its control. While desirous of learning of these objections and the resultant effects of the adoption of the proposed regulation, the Board will not necessarily withhold a proposed regulation simply because of objections based on personal or selfish interests.

Public hearings on proposed regulations should be the means of developing constructive criticism, resulting in more satisfactory regulations, and it is for this reason that they will be held.

Subsequent Disposition

When the members of the Board and other officials involved in the enforcement of a proposed regulation are satisfied that it meets the requirements and the indicated need, the regulation is adopted at an executive meeting of the Board. Regulations usually do not become effective until thirty days or more after adoption. This is almost necessary because of occasional radical changes which may affect certain operations, both of the Board and of members of the industry.

Issuance of Regulations

Until the publication of this article, the regulations of the Board have never appeared in print in complete form. Copies of individual regulations have always been mailed to interested and affected licensees and other individuals and Board
regulations appear in certain publications of other agencies. Requests for complete copies of the Board’s regulations have not, therefore, been filled and it is usually unlikely that the individual asking such request would be interested in the wide variety of subjects covered by the regulations. Requests for regulations on specific subjects are always honored.

SURVEY OF BILLS INTRODUCED IN THE LEGISLATIVE SESSION OF 1941 RELATING TO LIQUOR CONTROL

1.—HOUSE BILL No. 38
Amends the Liquor Control Act to permit hotel and restaurant licensees to sell liquor for consumption off the premises in quantities not exceeding 1 quart after 9:00 P.M. on any day when liquors may be sold.

2.—HOUSE BILL No. 43
Amends the Liquor Control Act to prohibit the Board from issuing a citation against a licensee for any violation of the law or regulation if the licensee or his agent had been prosecuted in the courts and had not been convicted.

3.—HOUSE BILL No. 99
Amends the “Quota” law to permit the issuance of licenses to clubs located in municipalities where the quota is exceeded.

4.—HOUSE BILL No. 120
This Bill provides for the issuance of liquor licenses by the Courts of Quarter Sessions. It abolishes the Liquor Control Board completely and all sales of liquor are made through wholesalers and retailers. License fee of $1,000 is required in cities of first and second class and $500 in cities of third class.

5.—HOUSE BILL No. 156
Amends the Liquor Control Act to permit the retail sale of liquors and malt beverages until 2:30 A.M. and on Sundays after 2:00 P.M. and until 12:00 midnight and until 4:00 A.M. on New Year’s Day.

6.—HOUSE BILL No. 195
This bill makes it a misdemeanor for any person or officer to present himself at a licensed club and falsely pretend to be a member thereof in order to purchase liquor or malt or brewed beverages.

7.—HOUSE BILL No. 216
Amends the Liquor Control Act to repeal paragraph D of Section 302 of

13None of these have been enacted at the time of this writing.
Article 3, which now provides for the removal of any employe of the Board by the personal action of the Governor.

8.—HOUSE BILL No. 235

Re-enacts the 10% sales tax on all liquors sold in the State Stores until June 1, 1943.

9.—HOUSE BILL No. 259

Amends the Liquor Control Act to permit hotel and restaurant and public service licensees to sell liquors and malt beverages after 6:00 A.M. on any week day and until 2:00 A.M. on Sundays. This bill also provides for a fine of $1,000 to $2,000 for violators and imprisonment of one year. For subsequent offenses the fine is from $2,000 to $3,000 and imprisonment of two years.

10.—HOUSE BILL No. 264

Provides for all fines imposed by justices of the peace for violations of game laws, fish laws and the Liquor Control Act, to be turned over to the County Treasurers.

11.—HOUSE BILL No. 318

This bill creates licensing zones in cities for the sale of liquor and malt beverages. In the business zone, licensees are permitted to make sales from 6:00 A.M. until 1:00 A.M. In the resident zone, sales are permitted from 7:00 A.M. to 2:00 A.M. A night club license is permitted sales from 9:00 A.M. until 3:00 A.M.

12.—HOUSE BILL No. 323

Amends the Liquor Control Act to prohibit the Board from establishing, operating or maintaining State Liquor Stores in any municipality which voted against the issuance of liquor licenses.

13.—HOUSE BILL No. 329

Amends the Liquor Control Act to eliminate the requirement for restaurants to be habitually and principally used for the purpose of providing food. Also provides for present hours of sale in cities of the first and second class only; in cities of third class, boroughs and townships, local authorities may designate the hours during which liquors may be sold. Such authorities may not require the discontinuance of sales prior to 11:00 P.M. nor permit such sales between 2:00 and 7:00 A.M.

14.—HOUSE BILL No. 334

Amends the Liquor Control Act to provide that an application for liquor license by the holder of a retail dispenser license shall be deemed to be a transfer of an existing license and not an application for new license. Provides that the Board shall, within 10 days after a hearing, grant or refuse a license.
also that applicant for renewal shall be notified immediately upon receipt of application of Board's objection to the granting of the renewal and statement as to whether or not it will be granted. Also provides for the issuance of temporary license when a case is pending. Provision is made for appeals to the Superior Court on refusals of applications and on revocations.

15.—HOUSE BILL No. 397

Authorizes the Board to grant limited licenses to established and reputable religious, charitable, fraternal, military or patriotic organizations, permitting the sale of malt beverages for one calendar week, excluding Sundays and Holidays. Filing fee of $2.50 and $100 bond required.

16.—HOUSE BILL No. 399

Amends the Liquor Control Act to permit club licenses to be granted in local option areas.

17.—HOUSE BILL No. 411

Amends the Liquor Control Act to provide that any glass or other container in which liquors or malt beverages are sold shall be clearly marked to indicate the volume content in ounces.

18.—HOUSE BILL No. 416

This bill creates licensing zones in cities for the sale of liquor and malt beverages. In the business zone, sales may be made between 6:00 A.M. on one day and 1:00 A.M. of the following day. In the resident zone, sales may be made between 7:00 A.M. of one day and 2:00 A.M. of the following day. Night club licensees may make sales from 9:00 A.M. of one day to 3:00 A.M. of the following day. Sales are prohibited on Sundays and on election days until one hour after the closing of the polls. Violations of this Act call for a suspension for 30 days.

19.—HOUSE BILL No. 442

This Act amends the Liquor Control Act to provide that for the first offense the suspension shall be for a period not exceeding 15 days and for the second offense within a year, for a period not exceeding 30 days and for the third offense within a year, for a period not exceeding 60 days. It is further provided that a third offense within one year may be cause for revocation and when violations have occurred which may be cause for revocation the Board shall present a petition to the Court of Quarter Sessions of the county of the licensee and a hearing on such petition shall be heard before that court.
20.—HOUSE BILL No. 473  
Amends the Beverage License Law by removing from the definition of "eating place" the words "regularly and customarily prepared and," which refer to food.

21.—HOUSE BILL No. 474  
Amends the Liquor Control Act by removing from the definition of "restaurant" the words "habitually and principally," which refer to the service of food.

22.—HOUSE BILL No. 476  
Amends the Beverage License Law by adding the following sentence to the definition of "eating place": "Food may but need not be sold in such premise according to the desires of the person owning or occupying it." The words "where food is regularly and customarily prepared and sold" are eliminated from this same definition. A further provision is that permitting the sale of malt beverages until 1:00 A.M. every day in the week, including Sunday.

23.—HOUSE BILL No. 477  
Amends the Liquor Control Act by adding to the definition of "restaurant" the words: "Food may but need not be sold or served in such place, according to the desires of the person owning or occupying it." Further amends this Act to permit sales of liquor and malt beverages until 1:00 A.M. of each day of the week, including Sunday.

24.—HOUSE BILL No. 508  
Amends the Liquor Control Act by adding to the definition of "club" the following italicized words: "... having some primary social or other interest and activity. ..." The definition of "club" is further amended by the addition of the following words relating to the maintenance of records "of its membership and its licensed business." The term "licensed business" is then defined as not being applicable to the transaction and operation of club business and affairs other than the handling and sale of liquor and malt or brewed beverages.

25.—HOUSE BILL No. 550  
Repeals an Act of 1878 which prohibited the employment of females in licensed establishments, which Act has not been enforced.

26.—HOUSE BILL No. 560  
Amends the Liquor Control Act by adding a new paragraph extending club licenses to picnic and outing grounds and banquet halls, used temporarily after a permit has been issued by the Board. Permit fee of $1.00 required with permit good for 24 hours only and each club limited to 3 permits in any one year.
27.—HOUSE BILL No. 585
(Referred to Committee on Ways and Means.) Amends the Capital Stock Tax Act by reducing the rate of tax on distillers of liquor from 10 to 5 mills.

28.—HOUSE BILL No. 594
Amends the Liquor Control Act by prohibiting local option elections during 1941 and permitting clubs to continue to be licensed in dry areas.

29.—HOUSE BILL No. 617
Amends the Beverage License Law by adding the following sentence to the definition for "eating place": "Food may but need not be sold in such premise according to the desires of the person owning or occupying it."

30.—HOUSE BILL No. 620
Amends the Liquor Control Act by eliminating the necessity for restaurants to habitually and principally serve food and adds the following statement to the definition of "restaurant": "Food may but need not be sold in such premise, according to the desires of the person owning or occupying it."

31.—HOUSE BILL No. 624
This Bill would prohibit any rule or regulation of the Liquor Control Board from becoming effective or enforced until it has been approved by the General Assembly. It would further require all rules or regulations previously adopted to be presented to the General Assembly within 30 days after enactment.

32.—HOUSE BILL No. 625
Amends the Liquor Control Act by adding Section 201 under "General Powers of the Board" the following sentences: "And provided further, however, that no liquor, unless otherwise excepted in this Act, shall be imported by the Board or any licensed importer unless such liquor is purchased from a manufacturer having a manufacturing establishment in this Commonwealth." Also amends Section 415 relating to "Importers' Licenses" by adding the following sentence: "The Board may, upon application, grant importers' licenses only to such persons that have manufacturing establishments in this Commonwealth." The reciprocal provision of this Act requires out-of-state manufacturers and domestic manufacturers selling liquors to the Board which have been manufactured in other States to obtain permits and pay the same fee therefor required by those States of manufacture from Pennsylvania manufacturers selling in such states.

HARRISBURG, PA. FRED W. MORGENTHALER