

(Series 1937)  
Bulletin #1  
January 12, 1937

STATE LIQUOR AUTHORITY  
TO ALL ZONE OFFICES AND LOCAL BOARDS

The enclosed copy of an opinion of the  
Attorney-General with respect to an ordinance passed  
by the Village of Voorheesville granting such village  
the power to prohibit the sale of alcoholic beverages  
in premises located in trade areas is sent to you for  
your information.

STATE LIQUOR AUTHORITY

BY *Henry E. Bruckman*  
HENRY E. BRUCKMAN,  
Chairman

C  
O  
P  
Y

STATE OF NEW YORK  
DEPARTMENT OF LAW

Page 2  
Bulletin #1

ALBANY

December 22, 1936

Hon. Henry E. Bruckman  
Chairman, State Liquor Authority  
80 Centre Street  
New York City

My dear Commissioner:

This will answer your letter in which you ask to be advised whether a village may, by ordinance, prohibit the use of any house, store, building or other structure, situated on certain designated streets within the village, for the sale of alcoholic beverages.

In 1923 the Legislature of the State of New York enacted a law, known as Chapter 564 of the Laws of 1923, being Article VI-A of the Village Law, by which, among other things, a grant of power was given to villages to establish building zones. For the purposes of this inquiry we need make reference only to the first three sections of said Article, reading as follows:

"Sec. 175. Grant of power. For the purpose of promoting the health, safety, morals, or the general welfare of the community, the board of trustees of a village is hereby empowered, by ordinance, to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes. Such regulations may provide that a board of appeals may determine and vary their application in harmony with their general purpose and intent, and in accordance with general or specific rules therein contained.

"Sec. 176. Districts. For any or all of said purposes the board of trustees may divide the village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures of land. All such regulations shall be uniform for each class or kind of buildings throughout each district but the regulations in one district may differ from those in other districts.

"Sec. 177. Purposes in view. Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality."

To the end that the health, safety, morals and the general welfare of villages in the State may not be unnecessarily imperiled and endangered by the indiscriminate erection and use of buildings in such communities, the Legislature has empowered trustees to regulate, among other things, the use and location of buildings.

The provisions of Section 175, standing alone, might well lead to the conclusion that the power so delegated is general and unlimited, and that the trustees may prohibit the use or erection of buildings for a particular purpose anywhere within the village. However, reading the two sections immediately following, as above quoted, we discover a studied purpose to provide for the segregation of buildings intended for particular uses in appropriate districts or zones. In other words, the board of trustees may, by ordinance, prohibit the use and erection of buildings within a given zone or district for the purpose of trade or industry, by restricting such area to residential purposes. They may not, however, in those districts where buildings are being used for the purposes of trade, prohibit the carrying on of a particular trade. Such regulation would be arbitrary and discriminatory and might in a given case be even confiscatory. (Dobbins v. Los Angeles, 195 U.S. 223; and Yick Wo v. Hopkins, 118 U. S. 356. I do not believe that the Legislature intended to vest trustees of a village with any such power.

It is my opinion that an ordinance which prohibits the carrying on of a lawful business within a trade area is invalid. Therefore, it follows that the State Liquor Authority may exercise the discretion contemplated by the provisions of the Alcoholic Beverage Control Law in passing upon applications for the sale of alcoholic beverages within such area.

Very truly yours,

JOHN J. BENNETT, JR. (Signed)  
Attorney-General