

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, N. J.

BULLETIN 487

DECEMBER 23, 1941.

1. DISCIPLINARY PROCEEDINGS - FAILURE TO DISCLOSE INTEREST IN LICENSE
IN APPLICATION FOR EMPLOYMENT PERMIT - UNLAWFUL EXERCISE OF THE
RIGHTS AND PRIVILEGES OF A LICENSE - EMPLOYMENT PERMIT REVOKED.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH LaGRECA,)
138 West 63rd Street,)
New York City,)

CONCLUSIONS
AND ORDER

Holder of Employment Permit)
No. 2368 issued by the State)
Commissioner of Alcoholic)
Beverage Control.)

Abraham Merin, Esq., Attorney for State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon defendant alleging, in substance,
(1) that in his application for employment permit filed on June 23,
1941, he suppressed a material fact by failing to disclose his in-
terest in Plenary Retail Consumption License C-166 for the year
1941-42, issued to Malcolm Enterprises, Inc., in violation of
R. S. 33:1-25, and (2) that from June 1941 until August 20, 1941 he,
not being a licensee, exercised the rights and privileges of the
license issued to Malcolm Enterprises, Inc., in violation of
R. S. 33:1-26.

Defendant did not appear at the hearing scheduled to be
held herein and advised in writing that he did not wish to contest
these proceedings.

In view of the evidence set forth in Re Malcolm Enterprises,
Inc., Bulletin 486, Item 10, I find the permittee guilty as to both
charges.

As to penalty: The facts disclose that defendant, a non-
resident, actually operated the licensed business under a license
issued to the corporation for a period of more than three weeks. No
mitigating circumstances appear. I shall revoke the permit.

Accordingly, it is, on this 10th day of December, 1941,

ORDERED, that Employment Permit No. 2368, heretofore issued
to Joseph LaGreca by the State Commissioner of Alcoholic Beverage
Control, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

New Jersey State Library

2. APPELLATE DECISIONS - SUN VALLEY TAVERN, INC. v. BOGOTA.

OBJECTIONS OF RESIDENTS IN MIXED RESIDENTIAL AND BUSINESS
NEIGHBORHOOD -- PUBLIC NECESSITY NOT SHOWN - DENIAL OF TRANSFER
AFFIRMED.

SUN VALLEY TAVERN, INC.,)
a corporation of the State)
of New Jersey,)

Appellant,)

-vs-)

BOROUGH COUNCIL OF THE)
BOROUGH OF BOGOTA,)

Respondent.)

-----)

ON APPEAL
CONCLUSIONS AND ORDER

Ford & Savona, Esqs., Attorney for Appellant.
Harold W. Gammon, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the refusal of the Borough Council of Bogota to grant a transfer of appellant's plenary retail consumption license from 20 East Fort Lee Road to 74 West Main Street.

Respondent assigns as one ground for such refusal the residential character of the neighborhood to which the appellant proposes to transfer and the overwhelming opposition of the citizens in that vicinity to such transfer.

It appears from the evidence that Main Street between Elm and Larch Avenues, which is the street where appellant seeks to locate, contains in the main the usual small neighborhood stores, almost all of which have living quarters above them. The streets to the west are strictly residential with no business of any kind situated there. To the east, there are scattered business structures, but they are greatly outnumbered by the private residences.

Respondent's Mayor testified that at a meeting of the Borough Council, at which appellant's application was unanimously denied, only one person appeared in favor of granting the transfer. On the other hand, there were many objectors present and, in addition, a petition bearing 327 signatures of persons opposed to the transfer was presented to the Council.

Appellant does not dispute the fact that the vicinity of its proposed location is, at best, mixed residential and business. Although it may be, as appellant contends, that Main Street is tending to assume greater business proportions with the passage of time and may eventually become a strictly business thoroughfare, the fact nevertheless remains that respondent's decision may properly be made only on the current status of affairs and not on some remote and speculative situation in the future.

If the section in question were devoted solely to business, mere general objections by residents would not ordinarily be a sufficient reason for denying the transfer. DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 175, Item 1;

Drucker v. Trenton, Bulletin 474, Item 9. Where, as here, however, the neighborhood is mixed residential and business, it is within the sound discretion of the issuing authority to determine, in the first instance, the desirability of placing a saloon within that neighborhood. In view of the substantial sentiment of the residents in the vicinity against the granting of appellant's application and the failure of appellant to prove any public necessity for a tavern at the proposed site, it cannot be said that respondent abused its discretion in denying appellant's application for transfer. Cf. Morrovitz v. Bellmawr, Bulletin 329, Item 9; Drucker v. Trenton, supra.

The action of respondent is affirmed.

Accordingly, it is, on this 10th day of December, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING CONVICTIONS OF CRIMES - EMPLOYMENT PERMIT REVOKED.

In the Matter of Disciplinary)
Proceedings against)

BENIAMINO MARIANO,
106 James Street,
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Employment Permit)
No. 6326 issued by the Commis-)
sioner of Alcoholic Beverage)
Control.)

Richard E. Silberman, Esq., Attorney for State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This is a proceeding to suspend or revoke an employment permit because defendant's application for said permit contained a false statement.

After the employment permit referred to in these proceedings had been issued to defendant, fingerprint returns disclosed that, on July 28, 1914, he had been convicted of embezzlement and placed on probation for three years, and that, on October 14, 1918, he had been convicted of receiving money from a prostitute and sentenced to State's Prison for not more than seven years nor less than three and one-half years. In his application for said employment permit, dated September 8, 1941, defendant failed to disclose either of said convictions.

Charge was prepared against defendant alleging that, by reason of the facts set forth above, he had committed a violation of R. S. 33:1-25. A copy of said charge was sent by registered mail

to defendant at his place of residence as set forth in the application for permit, but the letter was returned by the Post Office Department with the notation that it could not be delivered because "removed." The licensee by whom defendant was employed when he obtained his permit thereafter advised an investigator of this Department that he had discharged defendant and that defendant's whereabouts were unknown to him.

Defendant did not appear at the hearing scheduled to be held in this matter. The proof introduced at said hearing disclosed that defendant had been convicted of both crimes heretofore mentioned. I shall revoke the permit.

Accordingly, it is, on this 10th day of December, 1941,

ORDERED, that Employment Permit No. 6326, heretofore issued to Beniamino Mariano by the Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

4. APPELLATE DECISIONS - WARDACH AND JASKULSKI v. CAMDEN AND OREB.
OREB v. CAMDEN.

APPLICATIONS FOR LICENSES - OBJECTIONS - HERETOIN OF NOTICE OF HEARING TO BE AFFORDED OBJECTORS.

SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.

RENEWALS - EQUITABLE RELIEF AFFORDED GIVING NEW APPLICATION THE STATUS OF A RENEWAL APPLICATION FOR THIRTY DAYS FROM DATE OF ORDER.

JOSEPH WARDACH and PHILIP JASKULSKI,)
Appellants,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CAMDEN AND ADELLA OREB,)
Respondents.)

-----)
ADELLA OREB,)
Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CAMDEN,)
Respondent.)
-----)

CONCLUSIONS
AND ORDER

C. Richard Allen, Esq., Attorney for Appellant, Joseph Wardach.
Eugene Edward Wales, Esq., Attorney for Appellant, Philip Jaskulski.
Maurice L. Praissman, Esq. and Thaddeus Borz, Esq., Attorneys
for Adella Oreb.

Edward V. Martino, Esq., Attorney for Respondent, Municipal Board.

BY THE COMMISSIONER:

In the first case, Joseph Wardach and Philip Jaskulski appeal from the action of respondent Board, on June 30, 1941, transferring plenary retail consumption license C-27, then held by Adella Oreb, from 2101 Broadway to 1148 Atlantic Avenue, Camden. In the

second case, said Adella Oreb appeals from the subsequent action of respondent Board, on August 4, 1941, denying her application to renew said license for the present fiscal year for 1148 Atlantic Avenue. These appeals, having been heard together, will be decided at the same time.

On May 28, 1941 Adella Oreb applied to respondent Board for transfer of her consumption license from 2101 Broadway to 1148 Atlantic Avenue. On June 24, 1941, while said application was still pending, Joseph Wardach and Philip Jaskulski, who hold consumption licenses in Camden, and approximately one hundred residents of Camden, filed with the City Clerk written objections, in the form of a petition, to the proposed transfer. At the hearing herein, Deputy City Clerk Sayres testified that he did not know the man who brought the petition to the City Clerk's office but that he had inquired from a man whose name appeared on the petition in order to find out who "took it around from door to door." Apparently, as a result of information received by Mr. Sayres, a letter was sent to a Mr. Stanley Bogacki advising him of a hearing to be held on said objections on June 30, 1941, at 7:30 P. M. The letter requested Bogacki to have the objectors present at the hearing and also contained the following paragraph:

"It will be impossible for us to notify each and every person whose name appears upon the petition and, since we understand that you circulated the petition, will you make every effort to have all the persons who signed the protest present at the time and place set for the hearing so that the evidence may be properly presented."

No objectors appeared at the hearing on June 30th, but Adella Oreb was present with a number of witnesses, and her application to transfer the license was thereupon approved by respondent Board. On July 1, 1941 the Assistant City Counsel of the City of Camden wrote to this Department advising that, since the meeting on the previous evening, it had been brought to the attention of the members of the Board that many of the objectors knew nothing of the hearing due to the neglect of the person who had distributed the original petition, and asked for advice. On July 2, 1941, the Assistant City Counsel was advised by this Department that, since the local Board had taken formal action granting the transfer and since there was no question of fraud having been perpetrated upon the issuing authority, the local Board had no jurisdiction to reconsider its action, citing Plager v. Atlantic City, Bulletin 80, Item 1. He was further advised that the only remedy the objectors might have would be to appeal within thirty days from the date upon which the transfer was granted and was requested to so notify the objectors. An appeal was filed by Joseph Wardach and Philip Jaskulski on July 29th.

Rule 8 of State Regulations No. 3 provides that, upon the receipt of a written objection, it shall become the immediate duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant, the licensee and the objector of the date, hour and place thereof. Where individual written objections are filed, it seems clear that each objector must be notified of the hearing. Where a petition containing a large number of signatures is filed, I would not, ordinarily, disturb the action of a local issuing authority merely because individual notices had not been sent to each person whose name appeared on the petition if, in fact, it appeared that the objectors knew of the hearing. However, in the present case I am satisfied that neither of the appellants

herein had any notice of the hearing held on June 30th and that their failure to appear at the hearing was due either to the fact that Bogacki did not receive the letter of June 25th or that Bogacki failed to notify the other objectors. Under these circumstances, the objectors were, without fault on their part and perhaps without fault on the part of the local Board, deprived of the substantial right to be heard.

The objections alleged that there were a sufficient number of licenses in the immediate vicinity, and the determination of that question rested within the sound discretion of the local issuing authority. Kalish v. Linden, Bulletin 71, Item 14. The right of appellants to present evidence and argument for consideration by the local Board on a question involving the exercise of discretion was a particularly valuable one. The first case should, therefore, be either remanded or reversed. If it were not for the facts herein-after set forth, I would remand the first case for a rehearing before the local Board. Corado v. Camden and Maiese, Bulletin 159, Item 13.

It appears, however, that, on August 4, 1941, the application of Adella Oreb to renew her license for the present fiscal year at 1148 Atlantic Avenue was heard below. The matter was then fully contested, and respondent Board denied the application to renew. Adella Oreb has appealed from said action. I am not impressed by her argument that, because the local Board had granted the transfer, it was estopped from denying renewal. The propriety of the action granting transfer was then the subject of a pending appeal. I have examined the evidence given at the hearing herein and conclude that respondent Board did not abuse its discretion in view of the fact that there are already seven places licensed for consumption in close proximity to the premises at 1148 Atlantic Avenue. I find also that there is no evidence of undue discrimination, since the other sections of the city where a greater congestion of licensees is alleged to exist do not compare in character with the essentially residential section of the city in which the premises in question are located.

The action of August 4th clearly discloses the present attitude of respondent Board and it would be a meaningless gesture to remand the question of transfer and to affirm the denial of the renewal. I shall, therefore, reverse the action of June 30th in granting the transfer, and affirm the action of August 4th in denying the renewal. The net result will be that Adella Oreb will be considered the holder of a plenary retail consumption license for premises known as 2101 Broadway, Camden, as of June 30, 1941.

While these proceedings were pending, Adella Oreb filed a petition with me requesting that an order be entered herein granting her the right and privilege to apply for a renewal of her license for the present fiscal year at any time within a period of thirty days from and after the determination of the pending appeals. After the transfer of her license to 1148 Atlantic Avenue, she duly applied for a renewal of said license at said premises within the thirty-day period provided for in P. L. 1939, c. 281. If the relief she prays for herein is not granted, any application now filed by her for a license must be considered an application for a new license and hence barred by the local ordinance. Her present position is not due to any fault or neglect on her part. In reliance upon the transfer granted, she may have lost possession at 2101 Broadway. The situation is not one contemplated by the limiting ordinance or by P. L. 1939, c. 281. Equity requires that she be given the relief

for which she prays and to which respondent Board consents. Under the powers granted to me by R. S. 33:1-39, I shall enter an order permitting her to file application for a license at 2101 Broadway, or at any other premises in the City of Camden, within thirty days from the date hereof, and the Municipal Board shall consider such application on its merits as a renewal application.

Accordingly, it is, on this 12th day of December, 1941,

ORDERED, that the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Camden on June 30, 1941, transferring License C-27 then held by Adella Oreb from 2101 Broadway to 1148 Atlantic Avenue, be and same is hereby reversed, and that its action on August 4, 1941 in denying a license to Adella Oreb for the present fiscal year for premises at 1148 Atlantic Avenue be and same is hereby affirmed; and it is further

ORDERED, that any application filed within thirty days from date hereof with the Municipal Board of Alcoholic Beverage Control of the City of Camden by Adella Oreb for premises at 2101 Broadway, or any other premises in the City of Camden, shall be considered by said Board on its merits as a renewal application within the meaning of the local ordinance.

ALFRED E. DRISCOLL,
Commissioner.

5. APPELLATE DECISIONS - GELBER v. FREEHOLD.

APPLICATION FOR PLENARY RETAIL DISTRIBUTION LICENSE DENIED BECAUSE OF ORDINANCE PROHIBITING ISSUANCE OF ALL SUCH LICENSES - DENIAL AFFIRMED.

WILLIAM GELBER,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF FREEHOLD,)
Respondent.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Frankel and Frankel, Esqs., by Charles Frankel, Esq.,
Attorneys for Appellant.
McDermott and Finegold, Esqs., by Harold McDermott, Esq., and
Andrew J. Conover, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's action in refusing to issue a plenary retail distribution license to appellant to open a "package" store on State Highway 33 in Freehold Township.

The Township has an ordinance (adopted June 28, 1941) which, among other things, specifically prohibits the issuance of any plenary retail distribution license in the Township.

The authority for such an ordinance is wholly clear. For the Alcoholic Beverage Law has, since June 8, 1935, expressly provided that "each municipal governing body may, by ordinance, enact that no plenary retail distribution license shall be granted within its respective municipality." See P. L. 1935, ch. 257; R.S.33:1-12 (5a).

When such a prohibitory ordinance is adopted, its reasonableness is not subject to review by this Department. See Tenenbaum v. Salem, Bulletin 109, Item 1; Bascove v. Magnolia, Bulletin 397, Item 9, and cases there cited.

The only substantial question as to the ordinance in the present case is whether, since actually introduced and adopted while the application in question was pending, it is therefore necessarily inapplicable against appellant. The sole argument in favor of such a view is that, to deem it applicable, would give the ordinance an unwarranted "retroactive" effect.

I cannot agree with such a contention. When adopted, the ordinance, being a blanket prohibition against any "package" store license, necessarily became fully and immediately effective against all applications whether then pending or thereafter filed. See Bascove v. Magnolia, *supra*, for a case exactly in point. Also see Tenenbaum v. Salem, *supra*; Forest Hill Boat Club v. Cinnaminson, Bulletin 372, Item 7; Italian American Citizens Club v. Greenwich, Bulletin 392, Item 9. Any other view would be contrary to the public interest and hence unsound. For, a municipality may frequently not contemplate or come to grips with the question whether licenses of a particular type should be permitted until an application for such a license is filed and thus squarely raises the issue before it. To hold that the municipality, with the practical problem then actually at hand, may not adopt an effective ordinance fully barring that type of license, would seriously and unduly cripple the municipality's discretion over the types of licenses it wishes to have.

However, appellant contends that the ordinance was actually adopted in "bad faith," meaning (I take it) that respondent enacted it, not from any sincere desire to keep "package" stores out of the Township, but merely as a device to prevent appellant from obtaining such a license.

The evidence fails to sustain this charge of "bad faith." The Township, an agricultural community, has never had any "package" stores (at least since Repeal). Indeed, on April 27, 1939, it adopted a resolution expressly purporting to bar the issuance of any such licenses. True, that resolution was invalid since the Alcoholic Beverage Law at that time did not confer authority on a municipality to adopt such a prohibition. Cf. Miller v. Greenwich, Bulletin 57, Item 9. True, also, the late Commissioner Burnett, when that resolution was passed, informed respondent there was grave question as to its validity. However, I am satisfied that respondent continued to view it as actually valid and that it bespeaks a long and consistent policy in the Township against "package" stores. The most that can properly be said to the contrary is that, at a preliminary discussion about appellant's application, one of the three Township Committeemen evinced a desire to change this policy in order to bring more revenue to the Township.

Appellant argues that he did not receive a proper hearing before respondent. This argument is without merit since a local issuing authority, when denying an application, need not conduct any hearing. The sole purpose of a local hearing is to insure that, before any application is granted, objectors have an opportunity to be heard. See Rule 8 of State Regulations No. 2; Gomulka v. Linden, Bulletin 294, Item 8; Lipman v. Newark, Bulletin 356, Item 6.

Moreover, appellant has had his full day in court on the present appeal, where the entire matter was threshed out de novo. Cf. Marsteller v. Somers Point and Hagenbucher, Bulletin 244, Item 7.

In view of the foregoing, respondent's action in the present case is affirmed.

Accordingly, it is, on this 18th day of December, 1941,

ORDERED, that the present appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

6. APPELLATE DECISIONS - ALBANO v. NEPTUNE.

APPLICATION FOR PLENARY RETAIL DISTRIBUTION LICENSE DENIED BECAUSE OF OPPOSITION OF RESIDENTS IN THE VICINITY, DESPITE A VACANCY IN THE LOCAL QUOTA - DENIAL AFFIRMED.

ANN ALBANO,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS AND ORDER
-vs-)	
)	
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF NEPTUNE,)	
)	
Respondent.)	

Alvin Newman, Esq., Attorney for Appellant.
Richard W. Stout, Esq., by William J. O'Hagan, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises at 407 Stokes Avenue, Neptune Township.

The premises for which the license is sought consists of a vacant store in a two-story building containing three stores on the first floor and living apartments above. The other stores in the building are occupied as a grocery store and a combined delicatessen and confectionery store. On the opposite side of Stokes Avenue there is a gasoline station. Aside from these business places, this section of Stokes Avenue is devoted to residential purposes and the side streets are strictly residential. Thus it appears that the premises sought to be licensed are located in a small business district containing neighborhood stores serving a community of homes.

Prior to the meeting at which the application was denied, the Township Clerk and the Chief of Police instructed Officer O'Rourke of the Neptune Police Department to find out what the residents of the neighborhood thought about the granting of the license. Thereafter, he reported to the clerk the information he had obtained. At said meeting there was also presented a petition containing ninety-eight names of residents of the vicinity who objected to the issuance of the license.

At the hearing herein, Harry A. Whitlock, a member of the Township Committee, testified that the Committee denied the license because of the report of Officer O'Rourke and because of the petition which had been filed. He also testified that he was not in favor of the application because two hundred school children pass the place going to and from a school located about a block and a quarter away. At the hearing herein, Mrs. Curtis, who circulated the petition, testified that she did not find anybody in that locality who favored the granting of the license.

The facts in this case are quite similar to those in Ely v. Long Branch, Bulletin 99, Item 2, wherein it was said:

"It does not follow that a license must issue merely because the premises are located on a street containing other stores. Sanford Drug Co. v. Maplewood, Bulletin 71, Item 6; Healey v. Orange, Bulletin 85, Item 9. There are other considerations to be weighed by the issuing authority. In the present case it appears that no licenses have been issued in the vicinity of the premises in question; that the Mayor and a Commissioner, as well as many others, testified that the issuance of the license was socially undesirable; that the issuance of the license was opposed by a large majority of the residents of the neighborhood; and that the premises are in close proximity to the Fresh Air Home maintained for the use of women and children."

See also Norton v. Camden, Bulletin 97, Item 9; Welstead v. Matawan, Bulletin 133, Item 2; Hill v. Montville, Bulletin 148, Item 9; Zuckerman v. Camden, Bulletin 413, Item 9.

Appellant contends that she is entitled to a license because the Township ordinance permits the issuance of three plenary retail distribution licenses and no licenses of that class are now in existence in the Township. However, irrespective of a vacancy in any formal quota, a local issuing authority may always deny an application for good independent cause. Zakarew v. South Bound Brook, Bulletin 216, Item 4. The evidence herein satisfies me that respondent was justified in denying the application despite the vacancy in the ordinance.

The action of respondent is affirmed.

Accordingly, it is, on this 15th day of December, 1941,

ORDERED, that the appeal filed herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

7. MANUFACTURERS, WHOLESALERS, SOLICITORS - CHRISTMAS GIFTS TO RETAILERS AND THEIR EMPLOYEES - EXTENT PERMITTED.

December 13, 1941

The Taylor Wine Company,
Brooklyn, N. Y.

Gentlemen:

I have before me your letter of December 10th inquiring whether your salesmen may give bottles of Taylor wine to retail licensees and their employees as a Christmas gift.

So far as retail licensees are concerned, there is nothing in State Regulations No. 35 which would prevent such gifts; but State Regulations No. 34, Rule 4, prohibits manufacturers and wholesalers from making any gifts to retailers except as provided in Rules 7 and 8 of State Regulations 34 and State Regulations No. 21.

State Regulations No. 21 permits the gift, within limits, of certain equipment, signs and other advertising matter and, consequently, would not permit the gift of wine. Rule 8 of State Regulations No. 34 permits the giving of a sample to a retailer who has not previously purchased the particular product and requires that the label be overprinted to indicate that it is a sample and not for sale. I take it that since the wine is intended as a Christmas gift, it will not be given to retailers who have not previously made purchases from you.

Consequently, the wine may be given to retailers only if it comes within the purview of Rule 7 of State Regulations No. 34. But that rule permits only gifts of personal effects such as keyholders, wallets, neckties and pencils and the purchase from the retailer of tickets, subscriptions or admissions for dances, outings, picnics, dinners, and advertisements in periodicals or publications of retailers or retailers' associations to an extent not exceeding \$10.00 in aggregate cost or reasonable value for each retail premises in any one license year. Since wine can hardly be considered a "personal effect," its gift to retailers by wholesalers or their salesmen is prohibited even at Christmas time. After all, if you can give a retailer one bottle as a Christmas gift, one of your competitors can give him a case and another can give him a carload. And if you can give your wine as a Christmas gift, one of your competitors can give it for New Year's and another for Easter. If it were permitted, every day would be a holiday and State Regulations No. 34 a dead letter.

As far as retailers' employees are concerned, gifts of wine to them are prohibited for the reason that the employee is a consumer, gifts by licensees are sales under R. S. 33:1-1(w), and your license authorizes sales only to licensed retailers and wholesalers and not to consumers. See Re National Brewing Company, Bulletin 336, Item 7.

All things considered, it would seem that the sensible thing for you to do is to restrict your Christmas gifts both to retail licensees and to their employees to some personal effects such as the keyholders, wallets, neckties and pencils previously mentioned. I think that you will find that it will save you a lot of trouble in the long run.

Very truly yours,

ALFRED E. DRISCOLL
Commissioner

8. NOTICE TO MUNICIPAL ISSUING AUTHORITIES REQUESTING NAMES AND ADDRESSES OF CITIZENS OF GERMANY, AUSTRIA AND HUNGARY HOLDING OR INTERESTED IN RETAIL LICENSES .

With the involvement of the United States in the World War certain reciprocal treaties between the United States and foreign powers with whom our Country is now at War, may be terminated.

In the past aliens of certain nations which have had reciprocal trade treaties with the United States have, if otherwise qualified, been eligible either to obtain an alcoholic beverage license in New Jersey or to be an officer, director, stockholder or member of a governing board of a corporation or club holding such license. The question now arises as to what the status of such aliens is under the Alcoholic Beverage Law.

I have written to the Secretary of State at Washington, requesting information to assist in fixing the future status of such aliens, upon receipt of which I will issue a notice to all license issuing authorities. Until further notice, all applications for either the issuance to, or the transfer of a liquor license to or from, alien nationals of Germany, Austria or Hungary or corporations or clubs in which such aliens are interested, should be held in abeyance.

In the meantime, additional information is required by this Department and it is, therefore, essential that you forward to this Department the (1) name, (2) address of the licensed premises, (3) residence address and (4) nationality of every alien national of Germany, Austria or Hungary who is

1. - AAn individual licensee
2. - A member of a partnership licensee
3. - An officer, director or stockholder of a corporate licensee
4. - An officer or member of governing board of a club licensee

This necessary information may be obtained by examining the license applications presently on file in your municipality.

Please see to it that the requested information is forwarded to this office not later than December 23, 1941. If, in your municipality, there are no alien nationals of Germany, Austria or Hungary interested in licenses, please certify that fact.

Your fullest cooperation is requested because, as you can understand, it is almost impossible for this department to examine, with the necessary speed, all of the approximately 12,000 license applications scattered throughout the State. If each municipality does its part, the job can be done with a minimum of time and effort.

May I urge that all aliens, who may be affected, be treated with consideration and courtesy so that innocent persons will not be made to suffer unwarrantedly.

ALFRED E. DRISCOLI,
Commissioner.

December 15, 1941.

9. DISCIPLINARY PROCEEDINGS - CASH BONUS BY LIQUOR SALESMAN TO RETAILER FOR PURCHASE OF EIGHT CASES OF WHISKEY, IN VIOLATION OF REGULATIONS NO. 35 - SOLICITOR'S PERMIT REVOKED.

In the Matter of Disciplinary)
Proceedings against)

MAYER HERMELE,
200 Dyckman Street,
New York, N. Y.,)

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit)
No. 2415 issued by the Com-)
missioner of Alcoholic Beverage)
Control.)
- - - - -

Daniel G. Kasen, Esq., Attorney for Defendant-Holder of Solicitor's Permit.

Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, Mayer Hermele, holder of New Jersey Solicitor's Permit No. 2415 issued by the Department of Alcoholic Beverage Control, pleads guilty to a charge of having, on or about November 19, 1941, given a New Jersey licensed retailer an inducement in connection with the sale of alcoholic beverages other than malt alcoholic beverages, in that defendant offered said retailer a cash rebate of \$1.25 per case on the retailer's order of five cases of whiskey, in violation of Rule 3 of State Regulations No. 35. The defendant's plea of guilty covers the further charge of having, on or about December 3, 1941, given the same retailer a cash bonus, gift, rebate, allowance and inducement in connection with the sale of alcoholic beverages other than malt alcoholic beverages, in that he gave said retailer \$5.00 in cash because of his purchase of five cases of one brand of whiskey and three cases of another brand, in violation of Rule 3 of State Regulations No. 35.

In 1939 the New Jersey Legislature enacted Chapter 87 of the Pamphlet Laws of that year, known as the Anti-Discriminatory Price Law. This statute makes it unlawful for any "manufacturer, wholesaler or other person privileged to sell to retailers to discriminate in price, directly or indirectly, between different retailers purchasing alcoholic beverages other than malt beverages bearing the same brand or trade name and of like age and quality," R. S. Cum. Supp. *33:1-85.

Section 2 of Chapter 87 further provides:

"It shall be unlawful for any manufacturer, wholesaler, or other person privileged to sell to retailers to grant, directly or indirectly, to any retailer purchasing alcoholic beverages other than malt beverages, any discount, rebate, free goods, allowance or other inducement over and above any discount, rebate, free goods, allowance or other inducement available to any other retailer purchasing from him alcoholic beverages bearing the same brand or trade name and of like age, quality and quantity." R. S. Cum. Supp. *33:1-86.

The State Commissioner of Alcoholic Beverage Control is vested with power to promulgate such rules and regulations as may be necessary to carry out the legislative intent. R. S. Cum. Supp. *33:1-89.

The preamble to Chapter 87 contains a significant statement of legislative intent, and reads as follows:

"WHEREAS, Many alcoholic beverage manufacturers and wholesalers have been granting discounts, rebates, allowances, free goods and other inducements to selected retailers; these practices have contributed largely to destructive price wars which have unduly increased the consumption of alcoholic beverages; they are deemed detrimental to the proper operation of the liquor industry and contrary to the interests of temperance; the sale of alcoholic beverages is unusually susceptible to abuse with resulting danger to the general public and should be strictly supervised and regulated to prevent undue stimulation of public demand for alcoholic beverages;".

For the better enforcement of Chapter 87, P. L. 1939 (R. S. Cum. Supp. *33:1-85 et seq.) and pursuant to the authority therein expressly given, and also pursuant to the authority vested in the Commissioner by R. S. 33:1-39, State Regulations No. 35 were promulgated on November 1, 1941. Rule 3 thereof as amended provides:

"No holder of a solicitor's permit or any individual or member of a partnership licensee shall, directly or indirectly, give to a New Jersey licensed retailer any cash bonus, gift, rebate, allowance or other similar inducement in connection with the sale of alcoholic beverages other than malt alcoholic beverages to such retailer; nor shall any manufacturer or wholesaler of such beverages, directly or indirectly, through its stockholders, officers, directors, solicitors, missionary men, or other employees or representatives, give to a New Jersey licensed retailer any such cash bonus, gift, rebate, allowance or other similar inducement."

Rule 6 thereof provides:

"Violation of any of the foregoing rules is cause for suspension or revocation of the license of the manufacturer or wholesaler and the permit of the solicitor."

At the time State Regulations No. 35 were promulgated, it was announced by the Department of Alcoholic Beverage Control, and

the trade and public were notified, that "Effective immediately, violations of the Anti-Discriminatory Price Law, State Regulations No. 34, and the new State Regulations No. 35, will be vigorously prosecuted and promptly punished."

There is no industry where respect for the law is more important, not alone to the general public, but to the industry itself, than the industry in which the defendant in this case sought employment. Continued violations of the Alcoholic Beverage Law and the regulations promulgated pursuant thereto, if not promptly punished, will ultimately lead to the destruction of the entire industry.

The defendant in this case is a salesman employed by the Belmont Distributing Company, a wholesaler licensed by the Department of Alcoholic Beverage Control, and is the holder of Solicitor's Permit No. 2415. His plea of guilty made it unnecessary for the prosecution to offer any evidence.

It is apparent from the record in this case that the defendant deliberately chose to pursue a course of action in violation of the law and of the regulations. Defendant is entitled to no sympathy and he will receive none. His activities in offering secret deals or inducements to a retailer notwithstanding the announced determination of the Department to enforce the spirit as well as the letter of the law as long as it remained upon the statute books, is reminiscent of the clandestine activities of bootleg days.

Defendant's illicit activity, as evidenced by his plea of guilty, if permitted to continue unpunished, would not only disrupt the industry, increase unfair competition and promote predatory price wars, but would also increase many times the enforcement problems confronting the Department of Alcoholic Beverage Control.

The defendant, having demonstrated his inability to comply with the law and the regulations of the Department, should no longer be permitted to participate in the business lest continued violation on his part tempt others to do likewise. I must assume that the great majority of those in the industry want the practices thereof to be kept clean and above board. Past experience indicates that violations of this type which were permitted to go unpunished bred additional violations in ever-increasing numbers. The far-reaching consequences of violations of the nature here presented require prompt and severe punishment.

Accordingly, it is, on this 19th day of December, 1941,

ORDERED, that Solicitor's Permit No. 2415, issued by the Department of Alcoholic Beverage Control to the defendant, Mayer Hermele, be and the same is hereby revoked, effective immediately.

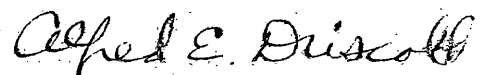
ALFRED E. DRISCOLL
Commissioner

10. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

December 23, 1941

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will become effective on or about Thursday, January 15, 1942. New items and changes in old items must be filed at the offices of this Department not later than Wednesday, December 31, 1941.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to all retail licensees.



Commissioner

