

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

BULLETIN NUMBER 157

JANUARY 7, 1937

1. DISCIPLINARY PROCEEDINGS - WARNINGS - FUTILITY - HEREIN OF
MISPLACED SYMPATHY

January 2, 1937.

Edward DuPree, Esq.,
City Clerk,
Paterson, N.J.

Dear Mr. DuPree:

I have staff report of the proceedings before the Board of Aldermen of Paterson against the following licensees:

1. James Cornett, 465 - 21st Street,
2. John Tartarone, 375 Straight Street,

both charged with having sold alcoholic beverages on Election Day - November 3, 1936 - while the polls were open for voting.

I note that both these licensees were adjudicated "not guilty" but were, nevertheless, reprimanded.

3. Meyer Frishman, 74 Hamilton Avenue, charged with sales to minors. I note a plea of "guilty" was entered, and that the Board suspended sentence with a warning to the licensee that any similar violation in the future would be dealt with severely.

4. Kate Ebersbach, 108 Barclay Street, charged with having possessed on the licensed premises a device in the nature of a slot machine in violation of the State Rule. I note this licensee also pleaded "guilty" and that sentence was again suspended with a warning that any future offense of this sort would be dealt with very severely.

Experience has taught that warnings fall far short of desirable effect. You can warn and reprimand until Kingdom come but nothing will be accomplished until the Aldermen really put their foot down on violators by closing them up. Sympathy is misplaced with those who bring the traffic into disrepute. Far-sighted, law abiding licensees throughout the State realize they have been given a privilege and that if the traffic is to remain legitimized, their fellow licensees must be made to live up to the rules. Clemency to the few hurts the many, for it will eventually destroy the business of all of them. What the people have given, the people can take away.

A suspension, even though but for a few days in minor cases, is the only medicine to cure a disease which spreads like the plague unless determinedly checked.

Having in mind the past fine work of your Board, I respectfully request that in future cases of the above nature, penalties of suspension be imposed.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. NIPS - THE STATE RULES EXPLAINED

SALES TO PERSONS ON PAROLE - NOT PROHIBITED BY LAW - CONSIDERATIONS INVOLVED.

Hon. Sir:

Kindly advise the present status of "Nips" in the State. I have been requested by licensees to seek this information due to the fact that salesmen are informing their customers that "Nips" can be sold providing the seal is broken at the bar. My understanding is, that Retail Plenary Consumption Licensees cannot dispense alcoholic beverages in this form. I may be wrong but I try to keep informed from your Bulletins and the last I remember is that it was stated "to sell liquor in that quantity (Nips) was illegal at all times, under the then existing statutes.

Also please advise if "paroled prisoners" are by law or otherwise prohibited from purchasing drinks at a bar. We have two paroled young men, both of legal age, (21) who frequent licensed places and other patrons contend "a sale to such persons is illegal" and are complaining as regards it.

Very truly yours,
E. LEROY GRANT,
City Clerk.

January 4, 1937.

E. LeRoy Grant
City Clerk
Beverly, New Jersey.

Dear Mr. Grant:

Alcoholic beverages may not be sold in nips for consumption off the licensed premises. Nips, may, however, be sold for on-premises consumption. See the Rules Concerning Size of Containers of Alcoholic Beverages, compiled Rules, Regulations and Instructions, March 1936, Page 58. Thus, plenary retail distribution licensees, who may sell only for consumption off the licensed premises, may not purchase, possess or sell nips nor may licensed New Jersey manufacturers or wholesalers deliver nips to them. Club licensees may, however, sell nips for on-premises consumption. And plenary or seasonal retail consumption licensees may also, provided the sales of the nips are confined to on-premises consumption. But neither club, plenary nor seasonal retail consumption licensees may sell nips for off-premises consumption.

There is no law in New Jersey which prohibits the sale of alcoholic beverages to or the purchasing of alcoholic beverages by persons out on parole. No doubt, if circumstances warranted, a parole could be expressly so conditioned but generally such is not the case. When a person is paroled, he is expressly cautioned to conduct himself properly. Paroles are conditioned on good behavior. In the discretion of the parole board, for misconduct the person paroled may be recommitted. Your proper course, then, in the case of the two paroled young men is to take the matter up with their parole officer who may be able by his recommendations to have disciplinary action taken by the Board.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. NIPS - THE STATE RULES PROHIBITING NIPS ON PLENARY RETAIL DISTRIBUTION PREMISES STILL IN EFFECT - NO NEED NOW TO "CARRY YOUR OWN."

Dear Sir:

I have been advised that a new regulation has been issued permitting the use of "Nips" for display purposes by liquor package stores.

If this be so, might I ask you to forward to me the necessary form of application for such use.

I have about 175 different types which I believe would make a very effective display. I should like to incorporate them in my New Years Display.

Very truly yours,
ANNIE HUPPERT

January 4, 1937.

Mrs. Annie Huppert
Jersey City, New Jersey.

My dear Mrs. Huppert:

There have been no new Regulations issued regarding nips. The Rules Concerning Size of Containers of Alcoholic Beverages, set out in the pamphlet of the Compiled Rules, Regulations and Instructions last March, are still in force and effect. A copy of the Rules is enclosed.

Note particularly Rules 2, 3 and 4. As you hold a plenary retail distribution license you may not purchase nips nor possess or sell them on your licensed premises, nor may any manufacturer or wholesaler lawfully sell or deliver them to you.

There is no occasion nowadays to "carry your own". Nips are merely a modern version of the hip flask. They are out of line except for strictly on-premises consumption.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. SPECIAL PERMITS - NOT REQUIRED AT CLUB MEETINGS IF THE DELIVERY OF ALCOHOLIC BEVERAGES IS REALLY GRATUITOUS IN EVERY RESPECT.

Dear Sir:

We have a bowling league in our town, Millburn, N.J., consisting of about 46 young men.

We hire the 4 alleys which are located in the St. Rose of Lima School basement, every Monday night for the complete bowling season.

We bowl in shifts, one shift starts at 7 o'clock and bowls until 9 o'clock, and the other shift starts at 9 o'clock and bowls until they have bowled their three games. So you can understand that we have complete possession of these alleys every Monday night.

Our boys would like to know if each man would pay a small fee to our treasurer, whether he could buy a keg of beer and some lunch so that we might have a little party once a month while we are bowling, this beer will be purchased from a local distributor who is a member of our league. Or do we have to secure a license to dispense this beer.

We have the permission of Father Hobson who is pastor of this church but were advised to write you for your instructions.

Very truly yours,
THOMAS W. MILLER

January 4, 1937.

Mr. Thomas W. Miller,
Millburn, New Jersey

My dear Mr. Miller:

The Control Act, Section 2, prohibits the sale of alcoholic beverages without a license and in Section 1 defines sale as, "Every delivery of an alcoholic beverage otherwise than by purely gratuitous title." So, if the beer which you intend to serve at the weekly meetings of your Bowling League is to be given away really gratuitously in every respect and no admission is charged nor tickets required, nor beer sold, it is not a sale within the contemplation of the Act, but an out and out gift. There is nothing to prevent a group of people from chipping in and buying themselves beer or a club purchasing beer and serving it to its members at their club meetings. See re Gallicchio, Bulletin 113, Item 2, copy enclosed.

Under such circumstances no special permit or license is required.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. MUNICIPAL ORDINANCES - MUNICIPAL REGULATIONS MAY NOT DEPRIVE LICENSEES OF REFUNDS TO WHICH, UNDER THE STATUTE, THEY ARE LAWFULLY ENTITLED.

REFUNDS - AUTHORITY TO DENY IN FAIR DISCRETION OF LICENSE ISSUING AUTHORITY - THE REASON MUST RELATE TO ALCOHOLIC BEVERAGE CONTROL AND MUST BE FOR THE PURPOSE OF ACCOMPLISHING THE OBJECTS OF THE CONTROL ACT OR SECURING COMPLIANCE WITH ITS PROVISIONS.

Dear Mr. Burnett:

As you know --- ----- has surrendered his license to our Township Clerk, Walter H. Stull and as Chairman of the Pemberton Township Committee I want to explain the whole thing to you.

First, when the Township Committee granted the license it was given out at our meeting that all licenses would be \$250.00 and no money was to be refunded and a resolution passed at that time was put on our minutes. This man has been giving bad checks before he turned his license in and has been arrested and put in jail on account of the bad checks. The checks he gave to the

-----were as follows:

Dated	Sept. 24,	1936		\$11.98
"	Oct. 31,	"	"	5.98
"	" "	"	"	8.21

Is this man entitled to any money back?

Very truly yours,
VICTOR BUSH
Chairman Township Committee

January 4, 1937.

Victor Bush, Chairman,
Township Committee
Pemberton, New Jersey

Dear Mr. Bush:

As I promised in my letter of December 20th, I am writing you further re ----'s refund.

On November 23d Mr. Stull, the Township Clerk, wrote to me about it, and on December 3d I replied to him as per copy attached. Mr. Stull also spoke of the Township Committee's resolution purporting to prohibit refunds, I have not received it as yet. In any event, however worded, it could not legally deprive a licensee of any refund to which, under the statute, he may be lawfully entitled.

As you will note from my letter of Dec. 3d to Mr. Stull, the statute provides in part that refund may be withheld if the licensee has done anything which in the fair discretion of the issuing authority should bar it. But the reason for the denial must relate to alcoholic beverage control. The denial must be based on a reason which accomplishes the objects of the Control Act or secures compliance with its provisions. Cf. Balaniz vs. East Newark, Bulletin 156, Item 1. It cannot be supported by matters arising through controversies of a purely private nature. The obligations for which ----- is indebted to the ----- are of the latter class. They have accrued to the ----- Company, not to Pemberton Township. Any refund which may be due ----- under the statute has accrued to him and is not subject to deduction on account of -----'s private debts unless after civil judgment duly entered and levy duly made on the refund. Your Township Committee is not a collection agency for the private debts incurred by licensees.

The method of computation of the refund is set forth in re Schneider, Bulletin 48, Item 6, and re Jones, Bulletin 48, Item 9. Mr. Stull has these bulletins in his files.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. SALES - MAY BE MADE ONLY ON THE LICENSED PREMISES - PREMISES LEASED TO SOMEONE OTHER THAN THE LICENSEE ARE NOT PART OF THE LICENSED PREMISES.

Dear Sir:

Is it permissible to serve alcoholic beverages in an adjoining dance hall of a tavern, the dance hall to be leased to a different party than the one holding the license.

Very truly yours,
WALTER H. TILTON,
Little White House Tavern,
Farmingdale, New Jersey

January 4, 1937.

Mr. Walter H. Tilton,
Little White House Tavern,
Farmingdale, New Jersey.

Dear Mr. Tilton:

Sales of alcoholic beverages by licensees may be made only on the licensed premises. None may be made off the licensed premises. In order to determine what constitutes the licensed premises refer to the application for the license which contains a description thereof.

Alcoholic beverages may not be served in a dance hall adjoining a tavern when the dance hall is leased to someone other than the person holding the license for the tavern. It is not a part of the licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. MUNICIPAL ORDINANCES - DISCRIMINATION - EXCEPTIONS TO REGULATIONS IN FAVOR OF RESTAURANTS MUST APPLY TO ALL RESTAURANTS WHICH ARE RESTAURANTS IN FACT.

LIMITATION OF LICENSES - EXCEPTION IN FAVOR OF BONA FIDE RESTAURANTS

LICENSED PREMISES - MUSIC AND DANCING - REGULATION REQUIRING PERMIT MUST DEFINITELY SET OUT THE PROCEDURE AND CRITERIA FOR OBTAINING SAME.

Dear Mr. Burnett:

I want to thank you so many times for the very thorough manner in which you have considered our proposed new liquor ordinance. (Bulletin 154, Item 10) To say that "I think" you have given the matter a great deal of thought, would be putting it too mild, for it is apparent from your letter and the suggestions and comments you have offered, that you have put considerable time to make for a better code.

I have, in compliance with your suggestions, all of which I think good, revised Sections 7, 8, 9, 10, 11, 15, 16, 19, 20, 21, 22, 33 and 35 and enclose new typewritten sections therefor, which I wish you would insert in the copy of the code which I sent you, and destroy the sections being replaced.

We agree with your recent ruling regarding sales on credit, which we set up as Section 27, and have decided to eliminate that feature, so you will please take out of the code which I sent you, that section.

That leaves only two phases of our proposed code still unsettled, and these relate to Section 17 and Section 31.

As regards Section 17, what we endeavored to accomplish was this. We feel we have sufficient plenary retail consumption licenses and seasonal retail consumption licenses either issued now or permitted to be issued under Section 15, and these classes of licensees as now permitted to operate, constitute what might be commonly called a saloon. We feel we have enough of these, but do not like to restrain any individual who would care to open a legitimate restaurant within 500 feet of an existing place (plenary retail or seasonal licensee), from so doing, and in order to afford such person an opportunity to open a legitimate restaurant and still serve liquors, provided Section 17. We feel that this section would keep out any one who would open a bar under the guise of having a restaurant, when in fact the restaurant was only a cover-up to meet the requirements for obtaining a liquor license. We do not want to prevent a legitimate restaurant from opening, and the sub-divisions (a) to (f) would stipulate what in our opinion was a bona fide restaurant. We do not see where we could permit any applicant who says he is opening a restaurant to have a liquor permit, when the restaurant he would open would be one of these make-shift things where the same loaf of bread would be his only supply from the beginning of the year to the end.

I can appreciate your comments, but rather than open the door for the granting of liquor licenses to restaurants in general, we would eliminate the section entirely. We want to accommodate a legitimate restaurant keeper in being able to serve his guests with the every day demanded liquor, but we are not going to make it easy for some smart individual to get a liquor license on the strength of opening a restaurant, when the restaurant was nothing short of a place where tables, chairs and a gas stove were found to exist but never used.

Everything mentioned in Section 17 relates solely to the granting of a liquor license beyond the limits of sub-divisions (a) to (e) of Section 15, and entitles the individual who would open a legitimate restaurant to meet the qualifications of sub-divisions (a) to (f) in securing such a license. It does not relate to restaurants in general and I can see no harm in permitting the Council to be authorized to grant these additional licenses, provided they are coupled up with a real restaurant, and a real restaurant we say, would be one that would meet the qualifications of sub-divisions (a) to (f). Sub-division (f) we are satisfied to eliminate.

I hope I have not been too lengthy in trying to bring to you what we have in mind. I should welcome your aid in furnishing me with the phraseology of a section to supplement our Section 17, which would carry out our ideas.

As regards Section 31 relating to music, we desire only to have the Council to be able to control the type of entertainment to be offered on the premises of any plenary or seasonal retail consumption licensee. You know perhaps better than I, that the playing of music alone is not detrimental, it is the character of dancing and the entertainment given that is generally good or bad. Further, what might be unobjectionable music in one licensed premises because of its isolation from residences, might be objectionable in another place, and where to play music until one or two o'clock in the morning would be proper in one place, would be objectionable if played until twelve o'clock in

another place.

The Council does not want to charge any fee for the permit required, and I would welcome any phraseology that you might draw up to carry out our purpose. The applicant would have to apply in writing to the Mayor and Council, specifying the dates and time when the music is to be given, and set forth whether it is music alone or to be accompanied by other entertainment, and such other information would be required as would only be necessary to elicit for what purpose the music is required and what might be expected to take place.

We have suspended the introduction of our code until we get these two matters straightened out to your satisfaction.

Very truly yours,
ALBERT J. WUYTACK
Borough Attorney.

January 4, 1937.

Albert J. Wuytack, Esq.,
Dumont, New Jersey.

Re: Borough of Dumont.

Dear Mr. Wuytack:

I have your letter re the proposed liquor ordinance.

Sections 7 through 11, 15, 16, 19, 20, 21, 22, 32 and 35 as now revised will be approved.

I appreciate what you desire to accomplish by Section 17 and will approve it if it is made to apply to all restaurants which are restaurants in fact. All I want to make sure is that in the effort to exclude the unworthy you do not include the worthy. I cannot approve it as drawn because it makes arbitrary and discriminatory exceptions in favor of some bona fide restaurants as against others which are, by the nature of their business and the manner in which they are conducted, equally well qualified. The statute defines a restaurant. See Section 1, sub.(ss). It declares it to be:

"An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted."

So long as the definition has been provided by the Legislature, that is the group which must constitute the class. It embodies many of the same safeguards that you have included in your Section 17 without the purely arbitrary tests of seating capacity and space.

I offer for your consideration a section reading as follows:

"No plenary or seasonal retail consumption license shall be granted for any premises

within 500 feet of any other premises wherein business is carried on under an existing plenary retail consumption license or an existing seasonal retail consumption license; provided, however, that this restriction shall not apply to the renewal of such licenses already issued, or to the granting of a license for any premises wherein applicant for said license desires to conduct such a restaurant as shall be defined by the Alcoholic Beverage Control Act. Licenses issued to restaurants by virtue of the foregoing exception are hereby expressly conditioned that such restaurants shall continue to be bona fide restaurants. Violation shall be cause for the revocation of the license."

Then, of course, if it is also the wish of the Council that restaurants be exempt from the numerical limitation imposed in Section 15 there might be added to Section 15 a paragraph reading, for example:

"The limitations hereinabove imposed shall not apply to such restaurants as shall be defined by the Alcoholic Beverage Control Act. Licenses issued to restaurants by virtue of the foregoing exception are hereby expressly conditioned that such restaurants shall continue to be bona fide restaurants. Violation shall be cause for the revocation of the license."

Now, as regards Section 31 and your well thought out comments on the special dancing and music permit:

I would like to go along with you on this but hesitate to approve something so indefinite as would lead to almost inevitable complaints by licensees, however, unjustified, that the Council was making fish out of one and fowl out of the other. Therefore, please set out your proposed procedure, the criteria and the requirements with which the Council wants licensees to comply so that I can get a measure of what the Council considers adequate and proper and I shall be glad to go over it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - REPORT ON CASES TRANSMITTED TO MUNICIPALITIES DURING THE HALF YEAR ENDING DECEMBER 31, 1936.

To: Commissioner D. Frederick Burnett
From: Jérôme B. McKenna, Attorney.

Report on Cases transmitted by the Department of Alcoholic Beverage Control to Municipal Issuing Authorities from

July 1, 1936 to December 31, 1936

for proceedings touching upon revocation or suspension of license or other disciplinary action.

SUMMARYCases Transmitted
(80 Municipalities)

157

Disposition

Revocations	5	
Suspensions	77	
Pending	35	
Dismissals	13	
Dismissals with warning	10	
Decisions reserved	4	
No Renewal applied for	2	
Reprimanded (found guilty)	3	
Reprimanded (no hearing)	1	
Operation of sentence suspended	3	
Discontinued	4	157

The above 157 cases involved violations as set forth below.

1. Possession of Illicit Alcoholic Beverages.Transmittals - 49Disposed of as follows:

Revocations	2
Suspensions	20
Periods covered by suspensions:	
45 days	1
31 "	1
30 "	7
14 "	1
10 "	3
7 "	1
5 "	2
2 "	2
1 day	2
	<u>20</u>
Dismissals	5
Dismissals with warning	4
Pending	14
Decision Reserved	1
No Renewal applied for	1
Reprimanded (found guilty)	1
Reprimanded (no hearing)	1
	<u>49</u>

2. Sales to MinorsTransmitted - 24Disposed of as follows:

Suspensions	11
Periods covered by suspensions:	
60 days	1
14 "	1
10 "	1
5 "	2
4 "	1
3 "	1
2 "	2
1 day	2
	<u>11</u>

Dismissals	3
Pending	5
Operation of suspension suspended	1
No Renewal applied for	1
Discontinued (licensee warned)	1
Discontinued	1
Reprimanded (found guilty)	1
	<u>24</u>

3. Sales on Election Day While Polls were Open for Voting

Transmitted - 27

Disposed of as follows:

Suspensions	20
Periods covered by suspensions:	
7 days	1
5 "	3
4 "	1
3 "	4
2 "	8
1 day	3
	<u>20</u>
Dismissals	3
Dismissals with reprimand	2
Pending	2
	<u>27</u>

4. Cases Involving Fraud, Misrepresentations, False Statements, Etc., in Securing Licenses.

Transmittals - 7

Disposed of as follows:

Revocations	2
Suspensions	2
Periods covered by suspensions:	
5 days	1
3 "	1
	<u>2</u>
Dismissals	1
Pending	2
	<u>7</u>

5. Violations of Rules #5, 6 and/or 7 of State Rules Concerning Conduct of Licensees and Use of Licensed Premises (brawls, nuisances, lotteries, gambling on licensed premises, etc.)

Transmittals - 11

Disposed of as follows:

Suspensions	5
Periods covered by suspensions:	
10 days	1
7 "	1
5 "	3
	<u>5</u>
Dismissals	1
Pending	3
Decision Reserved	2
	<u>11</u>

6. Violations of Rule #4 of State Rules Concerning Conduct, etc. (allowing criminals, prostitutes and persons of ill repute upon the premises).

Transmittals - 1

Disposed of as follows:

Suspension	1
Period covered by suspension:	
5 days - 1	

7. Violations of Rule #8 of State Rules Concerning Conduct, Etc. (slot machines).

Transmittals - 1

Disposed of as follows:

Reprimanded (found guilty)	1
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8. Violation of Local Ordinances and Resolutions Relative to Closing Hours.

Transmittals - 26

Disposed of as follows:

Revocations	1
Suspensions	13
Periods covered by suspensions:	
29 days	1
25 "	1
13 "	1
10 "	2
8 "	1
5 "	1
3 "	1
2 "	5
	13
Dismissals with warning	3
Pending	7
Operation of suspension suspended	1
Discontinued	1
	26

9. Sales by Club Licensees to Non-Members.

Transmittals - 3

Disposed of as follows:

Suspensions	1
Period covered by suspension:	
30 days - 1	
Dismissal with warning	1
Pending	1
	3

10. Sales of Alcoholic Beverages Without the Scope of Privileges Granted by Terms of License.

Transmittals - 2

Disposed of as follows:

Suspensions		2
Periods covered by suspensions:		
90 days	1	
14 "	<u>1</u>	
	2	

11. Cases Involving Possession of Unregistered Stills by Licensees.

Transmittals - 1

Disposed of as follows:

Decision reserved	1
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12. Violations of Local Ordinances Prohibiting Hostesses on Licensed Premises.

Transmittals - 1

Disposed of as follows:

Suspension		1
Period covered by suspension:		
2 days	- 1	

13. Miscellaneous (Sales on Credit, Violations of Rules Governing Size of Containers, Transfers, etc.)

Transmittals - 4

Disposed of as follows:

Suspensions	1
Pending	1
Discontinued	1
Operation of Suspension suspended	<u>1</u>
	4

TOTAL 157

January 5, 1937.

Respectfully submitted,
JEROME B. MCKENNA, Attorney.

9. TAX REVOCATION PROCEEDINGS - REPORT FOR THE HALF YEAR ENDING DECEMBER 31, 1936.

January 6, 1937.

MEMORANDUM TO: D. Frederick Burnett, Commissioner.
FROM: Edward J. Dorton, Esq.

In Re: Tax Revocation Proceedings

The following is a summary of tax revocations instituted between July 1st, 1936 and December 31st, 1936:

Total number of cases instituted 7

Cases are subdivided as follows:

Charge - Non-payment of taxes and penalty.
Disposition - Taxes and penalty paid before
date of hearing 1

Charge - Non-payment of taxes and penalty.
Disposition - License suspended for balance of
fiscal year (not restored) . . . 2

Charge - Failure to file report and pay taxes
within the time prescribed by law.
Disposition - Dismissed on payment of penalty
before date of hearing 3

Charge - Failure to file proper bond.
Disposition - License suspended for balance of
fiscal year (not restored) . . . 1

Total. 7

Respectfully submitted,

EDWARD J. DORTON.

10. FORFEITURE PROCEEDINGS - MOTOR VEHICLES HIRED FROM U-DRIVE-IT CO. SEIZED WHILE TRANSPORTING ILLICIT ALCOHOLIC BEVERAGES - WARNING OF OUTRIGHT FORFEITURE HEREAFTER.

In the Matter of the Seizure on)
March 23, 1936, of a still, etc.) ON HEARING
and two motor vehicles on premises)
known and designated as No. 366) CONCLUSIONS,
Prospect Street, in the City of) DETERMINATION AND ORDER
East Orange, County of Essex, and)
State of New Jersey.)
.)

Appearances:
Albert H. Vreeland, Esq., for U-Drive-It Co., Inc.

On July 15, 1936, an order was entered in the above entitled matter determining that all of the seized property described therein constitutes unlawful property. Included in the seized property were two motor vehicles owned by U-Drive-It Co., Inc. These vehicles were seized while being loaded with still parts, preparatory to their removal from the premises on which the still was located.

The U-Drive-It Co., Inc. applied to the Commissioner for the return of the vehicles on the ground that it had acted in good faith and had unknowingly violated the provisions of the Control Act. Pending determination of its application, the vehicles were released upon payment of the sum of \$1000.00 under protest.

The U-Drive-It Co., Inc. is engaged in the rental of motor vehicles to the general public, entrusting the operation of such

vehicles to its lessees. The trucks in question were rented to one of its lessees. The U-Drive-It Co., Inc. had no knowledge of the character and identity of such lessee or knowledge of the use he intended to make of the motor vehicles other than the information contained in the lessee's written application and his replies to a few casual inquiries.

The U-Drive-It Co., Inc. asserts that its usual practice is to require its customer to state his name, description and place of employment, and designate business references. This is supplemented by verbal inquiry of the proposed lessee as to the use he intends to make of the vehicle. No check is made of the facts contained in the application. The motor vehicle is immediately delivered to the customer if his demeanor, personal appearance, and answers do not disclose a situation which the company deems suspicious, as the lessee is generally unwilling to await delivery of the vehicle until an investigation is made of his character and identity. In the event of the loss or misuse of the vehicle, the company relies upon the information contained in the application to trace its customer, and to some extent safeguards itself against monetary loss by insurance.

Companies engaged in financing the purchase of motor vehicles do not generally rely upon the customer's unconfirmed statements, but conduct independent investigations. Indeed, the Commissioner has indicated that such investigation must be adequate to establish the good faith of the claimant within the meaning of the Act. Cf. Bulletin #116, Item #9. A similar requirement is imposed by Federal law. Cf. 27 U.S.C.A., Section 40 (a). See also State v. Waul, 59 S.D. 484, 240 N.W. 854; 59 S.D. 533, 241 N.W. 512.

The U-Drive-It Co., Inc. contends, however, that its situation is to be differentiated from ordinary finance companies. It urges that the very nature of its business requires immediate delivery of the vehicle upon request therefor. The necessities of its business can in nowise affect the legislative provisions and policies. It must adjust its affairs to comply with the law regardless of the extent of consequent economic disadvantage.

The Commissioner has not had occasion heretofore to announce the standard of care which will be expected of persons engaged in the "U-Drive-It" business. It would, therefore, be unfair to forfeit the amount deposited by the claimant since there is no dispute that the claimant did not intentionally violate the Act and has been conducting its business in accordance with usual and customary practices. The Commissioner has, therefore, concluded that the amount deposited may be returned to the claimant upon payment of reasonable costs.

Hereafter, however, "U-Drive-It" companies must conduct adequate investigations of persons seeking to rent cars in order to insure that they do not propose to use the cars in violation of the provisions of the Control Act. In the event any vehicle is hereafter rented by a "U-Drive-It" company without such adequate investigation and the vehicle is thereafter seized in connection with a violation of the Control Act, claim for the return thereof by the "U-Drive-It" company will be denied.

It is, on this 6th day of January, 1937, ORDERED that the sum of \$1000.00 heretofore deposited by the U-Drive-It Co., Inc., less the reasonable costs incurred in connection with the seizure, shall be returned to it.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

11. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - EXCEPTION IN FAVOR OF BONA FIDE RESTAURANTS.

Dear Sir:

The resolution adopted by the Township Committee regulating the sale of alcoholic beverages in the Township of Neptune prohibits the issuance of more than ten (10) Plenary Retail Consumption licenses and three (3) Plenary Retail Distribution licenses.

This restriction has worked out very satisfactorily and the Committee are confident they have satisfied the residents of our municipality with the way in which the sale of liquor is being controlled.

Quite frequently, requests are received for licenses from some established restaurant operator or the owner of a building that is adapted only for restaurant business. The Committee feel these applicants are entitled to serious consideration and it is their wish to assist them. They are reluctant to increase the number of licenses in order to assist these people due to the fact that they are afraid the license may be surrendered within a short time and thus leave an opening for someone to apply for a license for the sale of liquor only.

The Committee would like to know if there is a legal way for them to aid the restaurant proprietors and in the event they surrender their licenses, to legally deny it to some other applicant.

Very truly yours,
JOHN W. KNOX
Township Clerk.

January 6, 1937.

John W. Knox
Township Clerk
Neptune, New Jersey.

Dear Mr. Knox:

As I understand the situation, the Township Committee wants to limit the number of consumption licenses which may be issued to taverns and saloons where the sale of alcoholic beverages for on-premises consumption is the exclusive or principal business, without the restriction of the issuance of such licenses to bona fide restaurants where the sale of liquor is merely incidental to the restaurant business.

Your present resolution limits the number of plenary retail consumption licenses to ten. There is, however, nothing to prevent the Township Committee from amending it at any time. The original regulation, at the time it was adopted, represented merely what the Committee then supposed to be the best common interest of the public at large. Now, if experience has shown to the contrary, it may be amended or rescinded outright. The right to change it is founded on the same power which vested in the Township Committee the right to enact it in the first place. Re Lamson, Bulletin 118, item 6.

According to my records, the full quota of ten has been issued. I cannot tell, however, how many of them are taverns and saloons and how many of them are restaurants. But it makes no difference. The number of taverns or saloons may be limited to the number outstanding at the time of the adoption of the new regulation. I offer the following for the Township Committee's consideration:

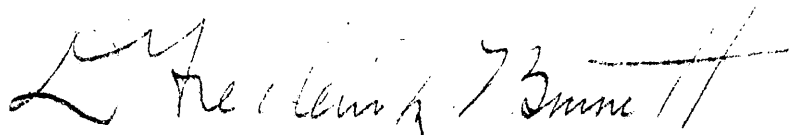
"RESOLVED that Section 4 of the resolution of June 16, 1934 be and hereby is amended to read:

"Not more than ---plenary retail consumption licenses, exclusive of bona fide restaurants as defined in Section 1 (ss) of 'An Act concerning alcoholic beverages,' c.436, P.L. 1933, as amended and supplemented, shall be issued and in effect in the Township of Neptune at any time. Restaurants as so defined shall not be subject to the foregoing limitation.

"Not more than three plenary retail distribution licenses shall be issued and in effect in the Township of Neptune at any time."

I think it will carry out what you have in mind. Insert in the space which I have left blank the number of plenary retail consumption licenses, exclusive of restaurants, which are now outstanding.

Very truly yours,



D. FREDERICK BURNETT,
Commissioner.