

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

BULLETIN NUMBER 199.

AUGUST 5, 1937

1. RETAIL LICENSES - LIMITATION - RENEWAL - AN APPLICATION ON BEHALF OF A PERSON WHO HAS NOT HELD A LICENSE FOR OVER A YEAR CANNOT BE DEEMED A RENEWAL.

July 30, 1937.

August J. Perry,  
Borough Clerk,  
Carteret, New Jersey.

My dear Mr. Perry:

I have before me your letter of July 23rd re Mrs. Mollie Berger's application for a plenary retail consumption license; also, the resolution limiting the number of plenary retail consumption licenses adopted by the Borough Council on April 20, 1936.

I note that the resolution limits the number of consumption licenses in Carteret to two per 1,000 population, with the proviso that the limitation shall not affect those holding licenses at the time it was enacted or renewing same.

According to the 1930 Federal Census, the population of Carteret was 13,339. The quota, therefore, exclusive of those which may be issued pursuant to the exceptions, is 26. My records disclose that there are 41 consumption licenses presently outstanding.

The question, then, is: Does Mrs. Mollie Berger come within either of the two exceptions?

Mrs. Mollie Berger held a plenary retail consumption license from December 27, 1933 until June 30, 1935. Mr. Harry Berger held a plenary retail consumption license from July 1, 1935 to June 30, 1936. Neither has been licensed since.

The resolution limiting the number of licenses, which the April 20, 1936 resolution amends, was enacted November 18, 1935. Mrs. Mollie Berger did not hold a license on November 18, 1935. She does not, therefore, come within either of the exceptions. She did not hold a license at that time; there was none then outstanding in her name which could at any time be renewed.

It would, therefore, be contrary to the resolution to issue any plenary retail consumption license to Mrs. Mollie Berger until the number outstanding is reduced to less than 26.

As regards any application for a consumption license on behalf of Mr. Harry Berger, who, it appears, was the holder of such a license at the time the regulation was adopted, the question would be whether or not his application at this late date could be said to be a renewal. Almost thirteen months have elapsed. A whole licensing period has gone by. The chain has been broken. It is, therefore, not a renewal. Hence, it would also be contrary to your resolution to issue any consumption license to him until the number outstanding is reduced to twenty-six.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

New Jersey State Library

2. BREWERY - WAREHOUSE - CONCLUSIONS ON OBJECTIONS TO LOCATION.

In the Matter of an Application )  
 by EDELBRAU BREWERY, INC., #1 )  
 Bushwick Place, Brooklyn, New )  
 York, to Transfer Warehouse and )  
 Salesroom from #1 Bushwick Place,) )  
 Brooklyn, New York to #79-91 )  
 Chester Avenue, Irvington, New )  
 Jersey. )  
 . . . . . )

RECOMMENDATIONS

Bertrand Ettinger, Esq., Appearing for Applicant.  
 Charles C. Wohlreich, Esq., Appearing for Objectors.

Written objections containing fifty-two names having been filed against the issuance of the transfer applied for, hearing was held on July 21st, 1937, at which nine objectors appeared.

It appeared from the evidence given at the hearing that the premises in question are located on a plot of ground which runs along Mount Vernon Avenue, between Chester Avenue and Medbourne Avenue. There are two buildings erected on this plot - one designated throughout the testimony as the "storage house", the other designated as a "garage."

The so-called "storage house" has a frontage on Mount Vernon Avenue with two loading platforms on said Avenue. It also has three doors which open on to Medbourne Avenue. The so-called garage is a brick structure approximately 30 x 100 feet built against the easterly wall of the "storage house." There is no direct means of access from the garage to the "storage house." There are doors on both the southerly and the northerly end of the so-called garage so that trucks may enter from Chester Avenue, pass through the garage and leave the premises by way of Medbourne Avenue. The garage contains a loading platform and two refrigerators which applicant intends to use for the storage of beer in kegs and cases.

The entire plot of ground is located in a residential district, but the buildings erected thereon have been used for business purposes for many years. The "storage house" was originally a tannery. About eight years ago the "storage house" came into the control of the International Milk Company and was used as a milk plant for about six years. The property has been idle for the last two years. From the evidence it appears that while the milk company was in control, residents of the neighborhood were constantly complaining because of the noise from the handling of cans and the danger to children from trucks which loaded and unloaded at the platforms on Mount Vernon Avenue.

The objectors fear that the granting of this transfer will  
 (1) result in the recurrence of the objectionable noises, and  
 (2) create a traffic hazard for school children.

As to (1), the proposed operation differs radically from that carried on by the milk company. In the first place, applicant has no control over the storage building and its activities will be restricted to the garage building above described. If its

activities are confined to that building and the loading and unloading of kegs and cases occurs at the platform within that building, there seems to be no reason to fear that the premises would become objectionable on account of noise.

As to (2), there is a public school located on the westerly or opposite side of Mount Vernon Avenue, a short distance to the north of the premises in question. While the loading or unloading of merchandise at the platforms located on Mount Vernon Avenue might create a hazardous condition in so far as the children attending this school is concerned, applicant does not intend to use said platforms and could not use said platforms because they are not included within the description of the premises sought to be licensed.

Testifying as to the proposed activities of applicant, its Manager testified that his Company intends to transport beer from its brewery in Brooklyn to its warehouse in Irvington late in the afternoon. The merchandise will be unloaded at its platform within the garage building and stored over night in its refrigerators. The beer will be removed from the refrigerators to its trucks early in the morning, and said trucks will leave the warehouse before 7:30 A. M. and not return to the warehouse until between 5:00 and 6:00 P. M. The trucks will not create any greater hazard for the school children than would be created by the use of the premises for any other industrial purpose.

The last objection made is that the premises for which the licensee seeks transfer are within two hundred feet of a school. Undoubtedly the doors in the storage building which open on Medbourne Avenue are within the prescribed distance of the nearest gate to the school. As set forth above, however, the storage building is not part of the licensed premises. The distance from the northern door of the garage building, measured as an ordinary person would walk, to the nearest gate leading to the school yard is 213'1" according to a survey presented by objectors, and 216'5" according to measurements made by the investigators from this Department. It thus appears that the licensed premises are not within two hundred feet of a school.

It is recommended that the objections filed shall not prevent the issuance of the transfer sought herein.

Edward J. Dorton,  
Attorney-in-Chief.

Dated: July 28th, 1937.

APPROVED

D. FREDERICK BURNETT  
Commissioner

3. RETAIL LICENSES - LIMITATIONS - EXCEPTION IN FAVOR OF PERSONS HOLDING LICENSES AT THE TIME OF ADOPTION OF THE LIMITATION - EXCEPTION IN FAVOR OF RENEWALS - EXCEPTION PERMITTING THE ISSUANCE OF PLENARY RETAIL CONSUMPTION LICENSES TO REPLACE CLUB LICENSES THEN OUTSTANDING.

July 30, 1937.

August J. Perry,  
Borough Clerk,  
Carteret, New Jersey.

My dear Mr. Perry.

I have carefully considered the resolution adopted by the

Council on April 20, 1936 limiting the number of plenary retail consumption licenses.

Municipal regulations limiting the number of licenses do not, strictly speaking, need my approval in the first instance in order to be effective. See Bulletin 43, item 2. So long as duly enacted in accordance with the statutes, they would become legally operative without it. They are, however, as provided in Section 38 of the Act, subject to review on appeal, after which they may be amended, set aside, or otherwise modified as I may order. I thought, nevertheless, that I should give you my thoughts in connection with the resolution now, in order that the Council may make such changes as may be necessary, and thus possibly avoid the expense and inconvenience of appeals.

The resolution first provides that the maximum number of consumption licenses shall be two per 1,000 population. So far, so good.

It then goes on to declare that the limitation shall not affect those persons, firms or corporations who are now holding such licenses (the effect of which is to create a special class of persons who may come in, despite the limitation, at any time in the future, and regardless of the fact that they may not have held licenses for years) or those renewing such licenses. I take it that all the Council was interested in doing was to permit renewals from year to year of licenses then outstanding. All that was necessary to effect that purpose was to exempt renewals. I suggest that in the tenth line you strike out "or" and in its place insert "and."

The section further provides:

".....that this limitation shall not affect any club, officer or member of such club at present holding a 'Club License' where such club license is replaced by a 'Plenary Retail Consumption License.'

"BE IT FURTHER RESOLVED that this resolution shall also reserve to the issuing authority sole right to allow the granting of such license and that the replacement of a club license by a plenary retail consumption license shall be by consent of the duly authorized officers of said club,".

The underlying idea of this section is excellent in that it encourages clubs to take out full-fledged consumption licenses but there are certain necessary changes that I feel ought to be pointed out to you.

An individual, even though he be an officer or a member of a club, can't hold a club license. Club licenses are issuable only to corporations, organizations or associations. See in the Act, Section 13, sub. 5. I take it that what the Council wants to do is provide for an exception enabling a club which held a club license at the time the regulation was adopted to convert it into a plenary retail consumption license notwithstanding the limitation. If such is the case, why not say, simply:

"Provided, however, that this limitation shall not prevent the surrender of any club license outstanding at the time the limitation was adopted and the issuance and renewal of a plenary retail consumption license in its place."

The very fact of surrender implies the club's consent.

As the limitation of the number of licenses herein discussed has been adopted by resolution, I call to your attention Chapter 135, P. L. 1937, which amends Section 37 of the Control Act to provide that after July 1, 1937 all limitations of licenses must be enacted by ordinance. While the limitation imposed in the resolution continues in effect so long as it stands as at present, it may be amended, repealed or otherwise superseded in the future only by ordinance. Any new limitation which may be imposed must likewise be enacted by ordinance. See Bulletin 185, Item 3.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

4. LICENSES - SPECIAL CONDITIONS MAY BE IMPOSED ONLY IN THE MANNER PRESCRIBED IN AND FOR THE PURPOSE OF ACCOMPLISHING THE OBJECTS OF THE CONTROL ACT

Dear Sir:

Mr. James Martin and Mrs. Beatrice Elizabeth Martin, of the Borough of Highlands, for a number of years have conducted a general store at 408 Navesink Avenue, Highlands, New Jersey.

Alongside of the grocery store, at 410 Navesink Avenue, they constructed a new building in which Mr. Martin desires to conduct a tavern.

The new building in which the tavern is to be conducted, while it is immediately adjacent to 408 Navesink Avenue, where the grocery building is located, is an entirely separate building. There are no connecting doors, but each place has a separate entrance, the same as any two stores alongside of each other, with the exception that they happen to be owned by the same people.

Mr. Martin applied to the Mayor and Council of the Borough of Highlands for a plenary retail consumption license. During the meeting I understand one of the Councilmen said he would not favor granting a license to Mr. Martin unless he went out of the grocery business.

The motion was thereupon carried that the license be granted to Mr. Martin. Whether any conditions were contained in the motion granting the license I do not know. In any event before Mr. Martin received the actual license from the Borough he had to sign an agreement with the Borough, of which the following is a copy:

"Highlands, New Jersey  
June 30th, 1937

I, James Martin, 410 Navesink Avenue, Highlands, New Jersey do hereby agree to dispense with my store and grocery business within the next ten (10) days as agreed with the Mayor and Council, in consideration of the granting of a plenary retail consumption license for the said premises at 410 Navesink Avenue, Highlands, New Jersey.

"Otherwise, I further agree to surrender my license to the Mayor and Council of the Borough of Highlands without any further complaint of action taken.

Sworn and subscribed before  
me this 30th day of June,  
A.D. 1937

James Martin.

Thelma R. Hall,  
Notary Public of N.J."

Personally, I do not see how the Borough could impose a condition precedent to the grant of a license, but Mr. Martin having made an agreement, I think he should live up to it.

The grocery store was heretofore conducted and operated by Mr. Martin and his wife. We are now making a bill of sale from Mr. James Martin and Beatrice Elizabeth Martin, his wife, to Mary M. Carroll of our office, and she is making a bill of sale to Beatrice Elizabeth Martin.

Mrs. Martin is filing a Certificate of Trade Name for the grocery store, known as "Handy Store," and I enclose herewith a copy of the Certificate of Trade Name. This is being filed in the office of the Secretary of State and the office of the County Clerk.

While I think that the agreement on the part of James Martin is null and void as to the license, as I stated above I think he should follow out the agreement.

However, I see nothing in the agreement to prevent his wife from carrying on the business.

I understand that his wife is actually going to control the business in her name. It is going to be her property and Mr. Martin is to have nothing to do with the grocery business and is not to tend store; and will confine his operations to the conducting of the tavern.

We would appreciate a ruling on this question, as Mrs. Martin does not want to do anything that will jeopardize Mr. Martin's tenure to the license.

Very truly yours,

Howard W. Roberts.

July 30, 1937.

Howard W. Roberts, Esq.,  
Atlantic Highlands, N. J.

My dear Mr. Roberts:

I understand that before the Mayor and Council of the Borough of Highlands would issue the plenary retail consumption license to Mr. Martin, they compelled him to promise in writing to dispose of the store and grocery business he had theretofore conducted with his wife. As I get the picture, the grocery business was being conducted on premises utterly separate and apart from those for which the liquor license was sought.

In effect, the Borough has imposed a special condition.

Municipal license issuing authorities may impose special conditions to the issuance of licenses deemed necessary and proper to accomplish the objects of the Act and secure compliance

with the provisions thereof. The power is expressly conferred by Section 29. All such conditions, however, must be imposed by resolution of the issuing authority and must have the approval of the Commissioner before they can be effective.

In the adoption of the Control Act the Legislature contemplated a comprehensive scheme of control of the liquor traffic. All regulation of the liquor traffic is, therefore, delimited by the Act.

Under the Act there is but one means of conditioning licenses. That is the method indicated above. Conditions imposed in any other manner are absolutely void and of no effect.

The certifications I have received from Mr. Johnson, the Borough Clerk, report the issuance of Martin's license free from any such condition. No resolution imposing any has been submitted. None has been approved. Hence, none is presently in effect.

Licenses issued subject to conditions properly imposed and duly approved are revocable for subsequent breach of the condition. For breach of a condition otherwise imposed, the license cannot be attacked.

The so-called agreement may, of course, be enforceable civilly independent of the Control Act. That is a question for you, as attorney for Martin, to decide.

As to whether such a condition as the agreement contemplates could lawfully be imposed on a license, I express no opinion. In Balaniz v. East Newark, Bulletin 156, Item 1 (copy enclosed) the denial of license by respondent was reversed because the condition endeavoring to force appellant to allow the use of his property to make repairs on adjacent property was held bad.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

5. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - INTERPRETATION OF CLAUSES PROHIBITING INCREASE OF PRESENT NUMBER OF LICENSES BY ALLOWING A PURCHASER OF A BEVERAGE BUSINESS TO OBTAIN A NEW LICENSE.

August 2, 1937

Hon. Percy A. Miller,  
Mayor,  
Irvington, N. J.

Dear Mr. Miller:

After my letter to you of July 25th (Bulletin 198, Item 2), William Newman, Esq. telephoned me that he would like to be heard on the power of the Irvington Commissioners to reverse their previous action in denying transfer to Machino and also upon the interpretation of the Irvington Ordinance, which request I granted, and thereupon stayed the order to the Chief of Police to pick up the Machino license.

Accordingly, the matter has been argued before me this morning. I have also had the benefit of the presentation of Henry P. Bedford, Esq., who appeared as attorney for the objectors.

The material paragraphs of Section 10 of the Irvington Ordinance of August 14, 1934 read:

"No new license of any class authorized to be issued by the municipality. . . . shall be issued, the result of which will be to increase the number of licenses issued and outstanding over the number existing up to the date of the issuance of such new license until the number issued and outstanding is less than sixty.

"Upon the sale or transfer of a business and application made therefor in the same manner as for any other new license, qualification of the applying licensees and surrender of the license under which the seller transacted business, a license may be issued to the purchaser or transferee of such licensed beverage business.

"No new licenses authorized to be issued by the municipality shall be issued except to those now holding licenses and those acquiring licenses as provided in this ordinance unless after the adoption of this ordinance the number of licenses issued and outstanding shall have been reduced by revocation or surrender to less than sixty (60), in which case licenses may be issued until the total number of licenses issued and outstanding shall number sixty (60)."

I have heretofore ruled that the Board of Commissioners had no power to transfer the Felsenfeld license to Machino on June 29th. The argument of Mr. Newman this morning to the contrary was overruled for the reasons stated in Plager v. Atlantic City, Bulletin 80, Item 11.

Mr. Newman thereupon contended that the license was properly issued as a new license under the express reservation of the ordinance in that Felsenfeld had sold and transferred his beverage business by bill of sale to Machino, even though the license itself had not been transferred, so that Machino was the purchaser of the business under the second paragraph of Section 10; that Felsenfeld had offered to surrender his own license; that such new license did not violate the first paragraph of Section 10 because it did not increase the number of licenses issued and outstanding; and hence the new license was properly issued.

In view of the wording of the Irvington Ordinance, I find that this argument is sound, subject to two questions which must be disposed of:

1. There was no actual surrender of the license but merely an offer to abandon it. The issuance of a new license, however, would have increased the number of licenses if the old one were still in force. There is no presumption that the Commissioners intended to violate their own ordinance. The act of issuing the new license may, therefore, fairly be construed to be an acceptance of the offer to abandon the old. The Machino license is, in effect, a substitute for the Felsenfeld license, and does not increase the number outstanding and hence does not violate the first paragraph of Section 10.

2. The third paragraph of Section 10 provides that no new license shall be issued except to those now holding licenses and those acquiring licenses as provided in this ordinance. The words which I have underscored undoubtedly are intended to apply to

the second paragraph of Section 10. If literally construed, they are inapt, for a purchaser of a business does not acquire a license by that paragraph just because he is such purchaser or because the sale or transfer of a beverage business has been made in fact to him, but rather he gets a chance, if the local board of Commissioners are willing to go along with him, to acquire a new license in spite of the general limitation against the issuance of new licenses. Otherwise, these words mean nothing. Giving them a reasonable significance, I conclude that the italicized words mean that those who are in a position to acquire a new license on the ground that they are the purchaser of a beverage business, are those contemplated by the ordinance as acquiring licenses pursuant to it, and, therefore, come within the exception of the third paragraph.

Upon reconsideration, I conclude that the Irvington Ordinance as it is written permits the issuance of a new license to Machino. I was in error in previously saying that the Ordinance prohibited the issuance of new licenses "except renewals."

The directions to the Chief of Police to pick up the Machino license have, therefore, been cancelled.

I commend to your Board of Commissioners that they consider carefully a revision of their present ordinance in respect to the limitation of number of licensed places. Under the construction which I have had to make of the ordinance, the number presently outstanding will be reduced very, very slowly, if ever. To be sure, it will prevent any increase over the present number of 96, but the indicated goal of 60 lies in the distant future.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

6. CONSUMPTION LICENSEES - MAY NOT SELL ANYTHING ELSE ON SAME PREMISES LICENSED FOR SALE OF ALCOHOLIC BEVERAGES EXCEPT NON-ALCOHOLIC BEVERAGES AS ACCESSORIES AND CIGARS AND CIGARETTES - BUT THIS DOES NOT PRECLUDE GIVING AWAY CAKES AND COOKIES.

Dear Sir:

I am a salesman for Farm Crest Cake in this territory. I sell several taverns that have lunch rooms apart from the tap room. Some of them tell me that they are going to stop buying cake, as it is against the law to sell cake in a lunch room where they also have a separate tap room.

I would like to have you inform me in regards to this, as some of them sell quite some cake and cookies.

Yours truly,  
Lester Daniels.

August 2, 1937

Mr. Lester Daniels,  
Trenton, N. J.

Dear Sir:

Outside of hotels and restaurants, retail consumption licenses may not sell anything else on the same premises licensed for the sale of alcoholic beverages except non-alcoholic beverages

as accessories, and cigars and cigarettes as an accommodation to patrons.

Any tavern, however, may give away cakes and cookies to those who prefer them to pretzels and pickles.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

7. ENFORCEMENT DIVISION ACTIVITY REPORT FOR JULY 1 TO 31, 1937, INCLUSIVE.

To: D. Frederick Burnett, Commissioner

ARRESTS:

Total number of persons - - 75  
Licensees - 8 Non-Licensees - - 67

SEIZURES:

Still - total number seized - - 16  
1 to 50 gal. capacity - 5 Over 50 gal. capacity - 11

Motor Vehicles - total number seized - 2  
Trucks - 0 Pleasure cars - 2

Alcohol

Beverage alcohol - - - - - 109 Gallons  
Denatured alcohol- - - - - 0

Mash - total number of gallons - - - - 32,794

Alcoholic Beverages

Beer, Ale, etc.- - - - - 257 Bottles  
" " " - - - - - 3½ Barrels  
Wine - - - - - 3 Gallons  
Whiskies and other hard liquor - 105 Gallons

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1609  
Illicit (Bootleg) liquor - - - - - 7  
Gambling violations- - - - - 47  
Sign violations- - - - - 26  
Unqualified employees- - - - - 191  
Other violations - - - - - 46  
Total violations found - - - - - 317  
Total number of bottles gauged- - - - - 9,459

COMPLAINTS:

Investigated and closed - - - - - 280  
Investigated, pending completion- - - - - 389

LABORATORY:

Number of samples submitted - - - - -	181
Number of analyses made - - - - -	124
Number of poison liquor cases - - - - -	0
Number of cases of denaturants- - - - -	3
Acetone cases -	0
Isopropyl " -	3
Number of cases of alcohol, water and arti- ficial coloring - -	8
Number of cases of moonshine (Home-made finished product of illicit still) - - - - -	20

Respectfully submitted,  
E. W. Garrett,  
Deputy Commissioner.

8. ALCOHOLIC BEVERAGES - WHAT CONSTITUTES - SOLIDS CONVERTIBLE INTO FLUIDS - HEREIN OF JELLY.

Dear Sir:

I am making some wine jelly and would like to know if I sell some of it will it be necessary for me to have a permit. I probably would not sell over 100 jars at the most, but I thought I should find out what ruling there is on this before I start.

Yours sincerely,  
Florence E. Hundley.

August 3, 1937

Mrs. Florence E. Hundley,  
South Orange, N. J.

My dear Mrs. Hundley:

If you use real wine, whether you need a license depends on whether the jelly is capable of being converted into a fluid, suitable for human consumption, with an alcoholic content of more than one-half of one per cent by volume. If not, no license is required.

As palatable as your jelly may be, I doubt if there will be any great run on it for libationary purposes. With an exceedingly limited knowledge of jelling and the higher culinary arts, and guided solely by early and persistent memories of what I had always considered a delectable food product, I deem it no slander to say that I believe your home-made jellies are unfit in fact for beverage purposes. As I understand it, the wine is merely to color and flavor the transparent, quivering delicacy. After all, jellies and jams are not among the pressing problems of alcoholic beverage control.

Best wishes.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

## 9. ELIGIBILITY FOR EMPLOYMENT OR SOLICITOR'S PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

Re: Case #71

This is to determine applicant's eligibility for employment by a licensee in this State and also his eligibility to hold a solicitor's permit.

Pursuant to a plea of guilty, applicant was convicted in January, 1935, for possessing and attempting to pass counterfeit money, and was sentenced to imprisonment for a year and a day.

Applicant states that during August, 1934, he was out of work and making the rounds of employment agencies in New York City; that at one agency he was accosted by a stranger who suggested the possibility of making "easy money"; that applicant, drawn by his conversation, accompanied him; that the proposition for making the "easy money" was the purchase of counterfeit money from the stranger for a few dollars; and that applicant, discouraged with his failure to obtain employment, heeded the ill advice of his beguiler. He further states that the counterfeit bills, amounting to \$50, were never passed by him; that he retained them for two days and, reconsidering his folly, determined to return them to the stranger if possible and obtain a refund of his money; that he was driving with a friend into New York for this purpose, when arrested at the entrance to the Holland Tunnel for a traffic violation; that because the Washington, D. C. license plates on the car aroused suspicion, he was held for further investigation on the technical charge of disorderly conduct; that the counterfeit bills were discovered on search; and that applicant was then accused, indicted and convicted of possessing and attempting to pass counterfeit money.

Applicant's repentance of his ill-advised purchase of the counterfeit bills and his endeavor to return them cannot be taken as the correct story. His statement to the police with respect to his acquisition of those bills was wholly different. To them he stated that he had won the bills in a "crap game" and was unaware of their falsity. In view of these decidedly different versions given by applicant, each to prove his ultimate innocence of spirit, his credibility is destroyed. There is indication in our investigation that applicant had passed or attempted to pass several of the counterfeit bills. Furthermore, applicant pleaded guilty not only to possession of counterfeit money, but also to the attempt to pass the same. No exceptional circumstances appear why any inquiry should be made behind that confessional plea. See In Re Case #122, Bulletin 184, Item 4.

Counterfeiting is a crime involving moral turpitude. See U. S. ex rel Alessio v. Day, 42 F. (2d) 217 (C. C. A. 2, 1930). Similarly, the crime of possessing and attempting to pass counterfeit money which was knowingly acquired, is a crime involving moral turpitude.

It is unnecessary to inquire into a charge of assault and battery which is now pending against applicant in police court.

It is further unnecessary to consider whether applicant is the same person who, in February, 1933, was convicted of possession of liquor and fined \$150, and also convicted of maintenance of a nuisance and sentenced to 15 days' imprisonment. Applicant claims that he was with the Marines from 1929 until December, 1933, when he was honorably discharged.

It is recommended that applicant be declared ineligible for employment by a licensee in this State and that he be declared ineligible to obtain a solicitor's permit.

APPROVED:  
D. FREDERICK BURNETT,  
Commissioner.

Nathan Davis,  
Attorney.

10. ILLEGAL CONTRACTS - TIED HOUSES - A MORTGAGE BY A WHOLESALER ON PROPERTY OWNED BY A RETAIL LICENSEE IS PROHIBITED EVEN THOUGH THE PROPERTY IS NOT PART OF A LICENSED RETAIL ESTABLISHMENT - SECTION 40 IS TO BE LIBERALLY CONSTRUED AND RIGIDLY ENFORCED - HEREIN OF BUSINESS DIVORCES IN NAME ONLY.

Dear Mr. Burnett:

I have a client who is the holder of a wholesaler's license, who wishes to know if it is permissible for him to hold a mortgage on a property owned by a holder of a retailer's license, which property is separate and distinct from the premises where the retail business is conducted.

Very truly yours,  
Dan Lichtenthal.

August 3, 1937

Daniel Lichtenthal, Esq.,  
Riverside, New Jersey.

Dear Sir:

Section 40 of the Alcoholic Beverage Control Act is designed to eliminate one of the main objections to the distribution of liquor prior to prohibition, viz., the control and domination of the retail trade by brewers, distillers and wholesalers. It provides that it shall be unlawful for any person interested in any manufacturer or wholesaler to be directly or indirectly interested in the retailing of alcoholic beverages. Its purpose is to divorce completely the manufacture and wholesale of alcoholic beverages from their retail sale.

Section 76 provides:

"This Act is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

In the light of this Section and in view of the legislative purpose underlying Section 40, there can be no doubt that it should be liberally construed and rigidly enforced.

In Re Bade, Bulletin 127, Item 6, it was held illegal for a State beverage distributor to hold chattel mortgages on a retail liquor establishment.

So in Re Carabelli, Bulletin 174, Item 15, a wholesaler took a chattel mortgage on property of a retail licensee. For this his license was suspended, even though the chattel mortgage had been cancelled after his attorney woke up to the fact that it was a violation of the law.

In the instant case, the wholesaler purposes to get his grip on the retailer by loaning him money on property of the retailer other than the place where the retail business is conducted. What difference is there in principle? Suppose the mortgage was on the retailer's home? The statute is not to be evaded simply because the security offered happens to be unlicensed property. Suppose the collateral were U.S. Treasury Bonds? Would that purge a loan otherwise unlawful? The objective of the statute is to break up financial deals and hog-tied interests between wholesaler and retailer. It is

not concerned with the form of the collateral but with the substance of the transaction. A business divorce is in name only when financial intercourse continues wide open. Any other construction will let down the barrier against "tied houses" and fritter away its purpose by indirection.

You are accordingly advised that the acceptance and holding of a mortgage by a wholesaler on property owned by a retail licensee is prohibited as being an indirect interest in the retail business, even though the property covered by the mortgage is separate and distinct from the premises where the retail business is conducted.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

11. ADVERTISING - CONTESTS TO NAME A NEW CORDIAL DISAPPROVED - THE PUBLIC IS NOT TO BE MADE CORDIAL-CONSCIOUS FOR A MERE PRIZE.

Dear Mr. Burnett:

We have developed a truly American cordial of such unusual quality that we want to give it the most appropriate name it is possible to find.

Would we be permitted to run a contest offering a prize of \$100.00 for such a name?

As the product is not yet on the market, this contest could really not be looked upon as one to increase the sales of the product but would merely be the purchase of an appropriate name.

We would like your opinion regarding the matter.

Very truly yours,  
BROWN FRIAR INCORPORATED.

August 3, 1937

Brown Friar, Inc.,  
Lackawanna Terminal,  
Jersey City, N. J.

Gentlemen:

A contest such as you propose begets more than a name. The urge is to intrigue the contestant to try your brands, particularly the new little Friar - to taste, test, and tell. Of course, that is a legitimate object of advertising! But it is not good policy when the subject is liquor. The public is not to be made cordial-conscious for a mere prize.

The excessive promotion of liquor sales is distasteful. That is why all previous requests for permission to hold contests in connection with the sale or distribution of liquor have been refused. Re Gooderham & Worts, Bulletin 156, Item 5; Re WEST, Bulletin 159, Item 2; Re Donnelley, Bulletin 161, Item 1; Re Hartman, Bulletin 172, Item 5; Re Schneider, Bulletin 198, Item 8.

Your plan is, therefore, disapproved.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

## 12. LICENSED PREMISES - RESTAURANT CONCESSIONS - PRINCIPLES APPLICABLE.

Dear Sir:

I expect to operate the restaurant located under the grandstand at the Fair Grounds during week of Trenton Fair. Connecting this restaurant is the Bar operated by Mr. Art Goldman, who has the license for same. Am I permitted to serve drinks in my restaurant from his bar, or do I have to get a special permit for the week. It would be an asset to my business, but I want to make sure just how and if it can be done before arranging with Mr. Goldman.

Very truly yours,  
(Mrs.) T. E. Kashner.

August 4, 1937

Mrs. T. E. Kashner,  
Trenton, N. J.

My dear Mrs. Kashner:

Unlicensed restaurants may not sell or serve alcoholic beverages under any pretext (Re Shamberg, Bulletin 186, Item 1; Re Bashover, Bulletin 184, Item 2; Re Murnane, Bulletin 153, Item 5; Re Shipman, Bulletin 123, Item 5; Re Vaccaro, Bulletin 87, Item 2), nor send out for alcoholic beverages as an accommodation to their patrons (Re Vaccaro, supra).

Special permits to sell alcoholic beverages for private profit on particular occasions are not issued as substitutes for regular licenses. Re Riedel, Bulletin 190, Item 1; Re Brown, Bulletin 118, Item 4; Re McLaughlin, Bulletin 92, Item 1.

If the restaurant space that you are going to take over is now part of Mr. Goldmann's licensed premises and he temporarily leases that space to you, he may not during the running of that lease sell or serve drinks in the restaurant because, as a matter of law, he would no longer have control over the restaurant premises. Re Tilton, Bulletin 157, Item 6. You may not sell in the restaurant because you hold no license.

If, on the other hand, instead of leasing the space, you merely operate the restaurant concession and the restaurant is part of Mr. Goldmann's licensed premises, then Mr. Goldmann may sell alcoholic beverages in the restaurant and they may be served by any of Mr. Goldmann's properly qualified employees.

To determine what constitutes Mr. Goldmann's licensed premises, refer to his application for the license which contains a description thereof.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

13. LICENSEES - OFFENSIVE CONDUCT - INELEGANT LINGUAL OUTBURSTS  
DISTINGUISHED FROM NUISANCE.

August 4, 1937

My dear Mrs. Blank:

I have your letter of July 27th, in which you write that the tavern owner for whom your husband worked owed him \$7.00 which you had attempted to collect on several occasions but had been stalled off by the debtor professing not to know whether you were the true wife or not. You then tell me:

"So on a Sunday morning (18th July) he gave my husband \$3.00. He said that I should come down Tuesday (July 20th), also to bring the Social Security card along, as he wanted the number of it. He said I had to sign my maiden name before he could give me the rest of the money, which I did. Whether it was necessary or not I did not know.

"So he puts \$2.55 on the table. I then said to him, 'You owe my husband \$4.00.' He said, 'I gave your husband \$3.00 on Sunday, and besides he got three packages of cigarettes.' I said, 'Even at that you still owe a dollar more.' All of a sudden he took the other dollar out of his pocket and threw it on the table and says, 'Oh, nuts!' Then I said to him if he were a gentleman he wouldn't talk to a lady like that. He walked away and went into the bar and said, 'Nuts for you.' I was going to swear out a warrant and have him arrested but I felt I could not afford it, and I hated to have the notoriety.

"So I was told to write to you about it, for you don't allow anything like that."

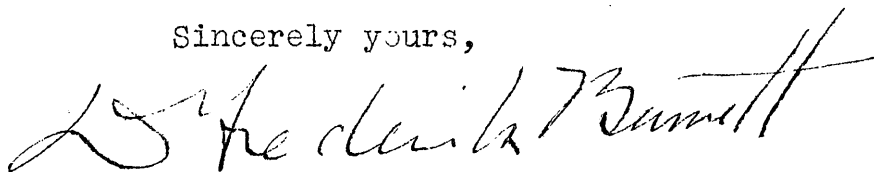
I am really sorry that you had such an unpleasant experience.

My aim has been to raise the standards so that eventually no one, let alone a lady, will have cause for reproach.

I do not, however, attempt to censor barroom language unless it is so revolting or offensive as to constitute a nuisance. The allusions to acorns and squirrel food were indeed ungentlemanly and inelegant, but such outbursts, in the nature of "Oh, Pshaw!", are more the expression of exasperation, the acknowledgment of frustration, the white flag of a cornered debtor, than abuse or insult. The fact that he grudgingly paid you and punctuated the delivery of the last dollar with a vulgar epithet, common to limited vocabularies, gave neither you nor me any grounds on which to take action.

You were, therefore, right in not attempting to swear out a warrant and have him arrested.

Sincerely yours,



Commissioner.

New Jersey State Library

Inspected by:

E. E. B. ANDERSON

and found O. K.