

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

BULLETIN 330

JULY 10, 1939.

1. APPELLATE DECISIONS - BURACK v. LIVINGSTON.

WALLACE C. BURACK,)
Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LIVINGSTON,)
Respondent)
- - - - -)

John A. Matthews, Esq., by Paul J. O'Neill, Esq., Attorney
for Appellant.
Alfred J. Grosso, Esq., Attorney for Respondent.
Sidney Finkel, Esq. and Benjamin Mayer, Esq.,
Attorneys for Objectors.

BY THE COMMISSIONER:

This is an appeal from denial of transfer of appellant's plenary retail consumption license for the fiscal year 1938-1939 from 290 East Northfield Avenue to 71 East Northfield Avenue, Livingston. At present, there is no building at the latter address but plans and specifications for such a building were filed with the application to transfer.

Respondent gave no reasons for the denial at the hearing below but, in its answer filed herein, it sets up numerous grounds, only two of which need be considered, namely:

"13. The respondent has limited by ordinance the plenary retail consumption licenses to 11 in number and has issued 11 such licenses; therefore, it would be to the best interests of the Township to retain the licenses now issued at the present locations rather than make any transfers and thus create new locations for Taverns or places of business for the retail consumption of alcoholic beverages.

* * *

"15. The citizens of the Township of Livingston, in and about the area to which the said license is sought to be transferred, have unanimously protested to the Township committee against the creation of a new Tavern in that vicinity and protested the granting of the transfer of said license as being inimical to the public welfare and against the best interests of the community."

The evidence shows that the eleven consumption licenses are distributed throughout the Township, the premises at 290 East Northfield Avenue being located in close proximity to the boundary line between the Township of Livingston and the Town of West Orange, and approximately eight thousand feet from the nearest outstanding license of a similar character. Appellant seeks to

transfer his license to premises which are about 6,000 feet westerly from his present place, and within about 2,000 feet of premises on South Livingston Avenue presently licensed for consumption to a Mrs. Pitscher.

The section of the Township surrounding 71 East Northfield Avenue is sparsely settled. It cannot be seriously contended that a consumption license, in addition to Mrs. Pitscher's license, is necessary to take care of the needs of those residing in that section of the Township. Licensee, however, testified that he caters to both transient trade and local customers.

The evidence shows that East Northfield Avenue is zoned for business purposes for a distance of 750 feet easterly from Northfield center. The plot of ground at 71 East Northfield Avenue, to which appellant seeks to transfer, has a frontage of 190 feet on said Avenue, the westerly 150 feet of said plot being zoned for business and the easterly 40 feet thereof being zoned for residential purposes. Aside from the question of zoning, this section of East Northfield Avenue has not yet been developed for business purposes although there are a number of stores at Northfield center.

The right to transfer is not inherent in a license. Such denial cannot be arbitrary or unreasonable, but where a denial is based on reasonable grounds, the action of respondent will be upheld. It has likewise been settled that general objections of persons who reside on side residential streets are not sufficient to justify refusal of a transfer to premises which are located in an ordinary business neighborhood. Guenther v. Parsippany-Troy Hills, Bulletin 121, Item 8; DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1; Conway v. Haddon, Bulletin 191, Item 9. It has not been established, however, that the premises to which appellant herein seeks to transfer are located in an ordinary business district, as defined in the above cases. Moreover, transfer of a license may reasonably be denied even to a business neighborhood, where it is determined that there are already sufficient licensed places in the vicinity. DeBlasio v. Trenton, Bulletin 175, Item 6; Delbono v. New Brunswick, Bulletin 322, Item 12. In the present case it appears that Mrs. Pitscher's license is capable of taking care of the needs of the persons who reside in that section of the Township and, further, that, while it does not appear that the citizens residing in that area of the Township have unanimously protested, it does appear that there is a strong local sentiment against the transfer sought herein. Appellant has failed to sustain the burden of proof in showing that respondent's determination, under the facts as set forth above, was arbitrary or unreasonable, especially in view that respondent apparently has adopted the policy of spreading licensed places throughout the Township.

Appellant argues that the only real objector in this case is his present landlord, the owner of 290 East Northfield Avenue, who wants a license for his place when the present lease expires. If it appeared that no one had objected except the landlord, and that the transfer was denied to keep licenses only at "present locations", I would reverse the action below. For no one place is entitled to a license rather than another. Re Konesky, Bulletin 217, Item 7. However, numerous other citizens have objected, and the action of respondent, in denying the transfer into a section already adequately provided for, is not unreasonable.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 3, 1939.

as the said copartnership is in a good financial condition. This said money is to be deposited into a bank account under the name of the 'BROADWAY TAVERN' and checks drawn on said account shall be signed by James Roselli as manager. This arrangement shall exist until July 1st, 1939, after which it will be necessary for all checks to be signed by James Roselli and counter-signed by Theresa Brune.

"And it is agreed that the said plenary retail consumption license to be issued by the City of Newark shall be issued in the name of Vincenzo Roselli until July 1st, 1939, after that date, the said plenary retail consumption license shall be issued in the name of both parties hereto, Vincenzo Roselli and Theresa Brune."

Considering first the situation as it existed on March 18, 1939, when the application was filed: Licensee testified that he discussed the question of partnership with Mrs. Brune for the first time on March 28th in the office of James Giuliano, an attorney of the City of Newark. It is clear that the agreement, which was signed on March 30th, was drawn on March 28th in Mr. Giuliano's office. If the licensee's testimony is to be believed, there is nothing to show that any other person was interested in the license or the business on March 18, 1939. Mrs. Brune, however, testified that on some date prior to March 15, 1939 she met Mr. Roselli at her home and agreed to become a partner in the business, at which time she turned over Three Hundred Dollars in cash to her husband to satisfy a judgment against the former owner of the licensed premises at 192 Broadway, Newark. There is no evidence to corroborate Mrs. Brune's testimony, and, clearly, there was no written agreement between the parties until March 28, 1939.

The first charge is, therefore, dismissed.

As to the second charge: Licensee contends that the agreement entered into on March 30, 1939 never became effective because Mrs. Brune failed to contribute the additional sum of One Hundred Fifty Dollars, as required by the terms of said agreement. There is serious dispute in the testimony as to the time at which Mrs. Brune was to advance said sum of One Hundred Fifty Dollars. The agreement, however, fixes no time for the payment thereof. The license was transferred to Vincenzo Roselli on March 30, 1939. Testimony shows that, on the following night, Mrs. Brune called at the licensed premises, attempted to discharge one of the bartenders and was told by Mr. Roselli that he would not permit her to do so. Mrs. Brune further testified that, at some unspecified time after the agreement was signed, the bartender in the licensed premises told her that Mr. Roselli had advised him to recognize no one except Mr. Roselli as the owner of the place. The licensee testified that he requested Mrs. Brune to pay the additional One Hundred Fifty Dollars; that she told him "I haven't got it", and that he thereupon said to her, "Well, you cannot become a partner; I don't recognize the agreement." In fact Mrs. Brune has never paid the One Hundred Fifty Dollars, although she testified that she offered to do so.

There is nothing in the high-handed tactics recited which excused Roselli from notifying the local Excise Board of the fact that someone other than he was interested as a partner in the enterprise. The written agreement by its express terms declares that the partnership is "to commence on the first day of April, in the year of Our Lord, One thousand nine hundred and thirty-nine, and to continue indefinitely." The fact that he

refused to recognize the agreement does not cancel it automatically. The agreement did not make the payment of the money a condition precedent. The agreement took effect the moment it was signed and delivered. At that very moment, which, as above noted, was prior to the issuance of his license, he thereby became a partner with Mrs. Brune. If she failed to carry out her end of the agreement, he may have acquired rights as against her but that is a matter of mere private concern. She was not to pay him but to loan to the partnership. Unless the partnership subsisted, there was nobody to whom her payment was to be made. The fact that Roselli, in violation of his partnership agreement, never treated Mrs. Brune as a partner confers no immunity upon him to fail to notify the license issuing authority of the changes in interest required by the Statute. Taking the law into his own hands and counting her out because she failed to contribute \$150.00 "as a loan to said partnership" confers no warrant upon him to adjudge that he is not required to comply with the alcoholic beverage law himself. Two wrongs do not make a right.

I find him guilty on the second charge.

The license will be suspended for twenty days.

Accordingly, it is, on this third day of July, 1939,

ORDERED, that Special Permit A-1 No. 22 be and the same is hereby cancelled, effective July 6, 1939, at midnight (Day-light Saving Time); and it is

FURTHER ORDERED, that no renewal or other license be issued to Vincenzo Roselli or for the aforesaid premises prior to July 27, 1939.

D. FREDERICK BURNETT,
Commissioner.

3. SEIZURES - CONFISCATION PROCEEDINGS -- PADLOCK WAIVED.

In the Matter of the Seizure)
on April 4, 1939, of a still)
on premises occupied by George)
Torchio, located off Kettle Run)
Road, in the Township of Evesham,)
County of Burlington and State)
of New Jersey.)
-----)

ON HEARING
CONCLUSIONS AND ORDER

Appearances:

Daniel Lichtenthal, Esq., Attorney for George Torchio.

Investigators of this Department discovered an unregistered alcohol distillery, partially dismantled, in various buildings on premises occupied by George Torchio, in the vicinity of Kettle Run Road, in the Township of Evesham. The still equipment, appurtenant paraphernalia and a quantity of illicit alcohol (described in Schedule "A" annexed hereto) were seized as unlawful property under the provisions of R. S. Title 33, Chapter 2.

At a hearing duly held to determine whether the seized property should be confiscated and the premises padlocked, no one appeared to contest the proceedings.

Under the statute, unregistered still parts, articles used or adaptable for use in connection therewith, and illicit alcohol, are subject to confiscation and, in addition, a padlocking penalty may be imposed upon the premises in or upon which such still parts are found. No cause was shown at the hearing why confiscation and padlocking should not result in the instant case.

However, after the hearing, George Torchio sought to avoid padlocking of his dwelling and was afforded a supplemental hearing to present proof of the facts which he urged in extenuation of the offense.

At the outset, he admitted that he knew the still was on his property at least two weeks prior to the seizure. He claimed that approximately three months prior to the seizure he rented the buildings in which the various still parts were found to a stranger for storage purposes; that when he discovered the still, he told the tenant to remove it, but did not notify the law enforcement authorities. He does not contest the padlocking of the various buildings in which the still equipment was found, but claims that he was not personally implicated in the operation of the illicit still and that if he loses his home he will have no place to go.

Since Torchio knew that the illicit still was on the premises, he will not be entirely relieved of the padlocking penalty. However, extenuating circumstances will be given due consideration in determining to what extent the penalty shall be imposed.

George Torchio testified that his dwelling is a four room, tar paper covered structure, which he occupies with his aged mother; that he is in possession of the premises since 1932 under an agreement to purchase the property; that he has previously never been arrested or involved in connection with illicit liquor activities; that he is in straitened financial circumstances, being employed on a WPA project; that he was arrested in connection with the seizure, pleaded non vult, and will have difficulty in paying the fine which he anticipates will be imposed upon him; that his removal from the premises may cause him to lose the payments which he has already made on account of the purchase price of the property. After the hearing, counsel advised that Torchio had been sentenced to pay a fine of \$100.00.

Under these circumstances and in view of the other penalties provided for by law, the interests of society would seem to be best served by permitting him to remain in his dwelling.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:2-5, and shall be retained for the use of hospitals, and State, County and municipal institutions, or may be destroyed in whole or in part, at the direction of the Commissioner.

It is the Commissioner's further order that all the buildings, except the dwelling, on premises occupied by George Torchio, located off Kettle Run Road, in the Township of Evesham, County of Burlington and State of New Jersey, being the premises on which the still was found, shall not be used or occupied for any purpose whatsoever for a period of six months commencing the first day of August, 1939 and terminating the first day of February, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 1, 1939.

SCHEDULE "A"

- 9 - wooden vats
- 3 - galvanized receiving tanks
- 6 - steel drums (empty)
- 1 - galvanized gravity tank
- 1 - steel pressure tank
- 2 - steam boilers
- 1 - galvanized cooling tank
- 1 - set copper coils
- 1 - 25 gallon copper cooker
- 2 - containers alcoholic beverages
- Miscellaneous personal property.

4. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on)
 May 26th, 1939 of a Dodge Sedan)
 and 40 - 5 gallon cans of alco-)
 hol contained therein, on the)
 public highway designated as)
 Route 30 (between Hampton and)
 Washington), Washington Town-)
 ship, Warren County and State)
 of New Jersey.)
 -----)

ON HEARING
 CONCLUSIONS AND ORDER

No Appearances.

On May 26th, 1939, New Jersey State Troopers discovered Bruno Alexander transporting forty 5-gallon cans of alcohol in Frank Vitale's Dodge Sedan, on the public highway designated as Route 30 (between Hampton and Washington) in the Township of Washington, Warren County.

Since the cans bore no Federal tax stamps or other indication that the alcohol was tax paid, and further since the motor vehicle was not licensed to transport alcoholic beverages, the Troopers seized the motor vehicle and alcohol as unlawful property under the provisions of R. S. Title 33, Chapter 1.

Thereafter the motor vehicle and alcohol were turned over to this Department and samples of the alcohol were analyzed by the Department's chemist, and found to be high proof alcohol having an alcoholic content of 90.0% by volume, fit for beverage purposes when diluted with water.

At a hearing duly held to determine whether the Dodge Sedan and alcohol should be confiscated, no one appeared to contest the proceedings.

The absence of Federal tax stamps on the cans raises a presumption that the alcohol is illicit. Under the Statute, illicit alcohol and the vehicle used in its transportation, are subject to confiscation. No cause is here shown why confiscation should not result in the instant case.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec.33:1-66, and shall be retained for the use of hospitals and State, County and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner,

Dated: July 1, 1939.

D. FREDERICK BURNETT,
 Commissioner.

5. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on)
May 26th, 1939, of 32 - 5 gallon)
cans of alcohol in a garage lo-)
cated at 1327 Atlantic Avenue,)
in the City of Camden, County of)
Camden and State of New Jersey.)
- - - - -)

ON HEARING
CONCLUSIONS AND ORDER

No Appearances.

On May 26th, 1939, Investigators of this Department discovered thirty-two 5-gallon cans of alcohol stored in a garage at 1327 Atlantic Avenue, Camden. Since the cans bore no Federal tax stamps or other indication that the alcohol was tax paid, they seized such alcohol as unlawful property under the provisions of R. S. Title 33, Chapter 1.

Thereafter a sample of the alcohol was analyzed by the Department's chemist and found to be fit for beverage purposes, having an alcoholic content of 39.20% by volume.

At a hearing duly held to determine whether the alcohol should be confiscated, no one appeared to contest the proceedings.

The absence of Federal tax stamps on the cans raises a presumption that the alcohol is illicit, and it is therefore subject to confiscation. No cause is here shown why confiscation should not result in the instant case.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:1-66, and shall be retained for the use of hospitals and State, County and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

Dated: July 1, 1939.

D. FREDERICK BURNETT,
Commissioner.

6. LICENSED PREMISES - WHAT CONSTITUTES - FULL AND ACCURATE DESCRIPTION IS NECESSARY.

July 3, 1939

Harry S. Reichenstein, Secretary,
Municipal Board of Alcoholic Beverage Control,
Newark, N. J.

My dear Mr. Reichenstein:

My attention has been directed to yours of June 3rd, re Hearn's Liquor Store, Inc., reporting that the Municipal Board has consented to the reduction of the licensed premises to the 13 West Park Street entrance, and yours of June 14th, enclosing copy of letter of March 20, 1939 from Rothschild & Rothschild, 744 Broad Street, describing the reduced premises as "Store on 13 West Park Street as presently laid out, together with means of access and egress via the entrances of Hearn Department Stores, Inc. on Halsey Street, Cedar Street and 689 Broad Street."

I take it that the Board in authorizing the reduction has acted in accordance with the procedure established in Re Daly, Bulletin 171, Item 3.

I do not, however, consider the description of the licensed premises as reduced, which Rothschild & Rothschild have given, to be adequate.

The application for license (your Question No. 5) directs the applicant to describe in detail the floors, rooms and grounds where alcoholic beverages are to be sold, served or stored. This description must be given with such exactness that it is apparent just what the licensed premises comprises. Just how the store is presently laid out may very well, in a matter of months or even weeks, be sheer conjecture. The area is uncertain. There is no indication whether it covers additional floors, or storage facilities in the cellar, or only the street floor. It is so inadequate that for all legal or practical purposes it is useless.

Descriptions of premises must be in terms of specific rooms or areas. They must cover the entire area that is to be licensed. They must be such that any person reading the description and viewing the premises can accurately and readily ascertain exactly what the license covers, without the necessity for further explanation or clarification of what was meant.

Please bring this matter to the attention of the Board with my request that the licensee be instructed to file an accurate description of the licensed premises at once. When the description has been presented to and approved by the Board, kindly certify it to me for my records.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. PLENARY RETAIL CONSUMPTION LICENSES - PERMISSIBLE TO ISSUE FOR THE SALE OF PACKAGE GOODS IN A GENERAL FOOD MARKET PROVIDED THE LICENSED PREMISES ARE SET OFF BY PERMANENT PARTITION AND THERE IS SEPARATE ACCESS TO THE STREET.

My dear Commissioner:

My clients operate a general food market in the City of Hackensack where the number of licenses are limited. My clients desire to sell package liquor in their market and are in a position to purchase a Plenary Retail Consumption License. The act, however, provides that a Plenary Retail Consumption License does not permit the sale of alcoholic beverages in a place where a grocery, delicatessen or other mercantile business is carried on.

In this food market there is a grocery department, separate and distinct from other departments, operated by a concessionaire. Delicatessen is sold as part of the dairy department of a separate concession. The liquor department, if established, will also be operated by a separate concessionaire, but all of the departments are under the same roof.

Under the Plenary Retail Consumption License, should we acquire the same, would we be permitted to sell alcoholic beverages in the original packages?

Sincerely yours,
Chas. Hershenstein

July 3, 1939

Hershenstein, O'Brien & Tartalsky,
Jersey City, N. J.

Gentlemen:

The holders of plenary retail consumption licenses are prohibited by the statute from conducting on the licensed premises any mercantile business except the sale of alcoholic beverages, cigars and cigarettes as an accommodation to patrons and non-alcoholic accessory beverages. The license is issuable only to taverns, hotels and restaurants and not for any premises on which any other mercantile business is carried on. See R. S. 33:1-12.

It is true that a plenary retail consumption license authorizes the holder to sell for on-premises consumption, off-premises consumption, either or both, as he wishes; and there is no requirement that he have a bar. Re Salomon, Bulletin 159, Item 6; Re Boyce, Bulletin 183, Item 5; Re Lee, Bulletin 232, Item 8; Re Altman, Bulletin 248, Item 8; Re Whitman, Bulletin 312, Item 6.

But if your clients operate under a plenary retail consumption license, no mercantile business may be conducted on the licensed premises other than the sale of alcoholic beverages. Thus, if it is sought to transfer the consumption license to premises in a general food market, it will be necessary, in order to comply with the statute, to set the licensed premises off from the rest of the food market by permanent partition and provide separate access thereto from the street.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. ADVERTISING - CRYPTOGRAMS - COME-ON ADVERTISEMENTS DISAPPROVED.

July 5, 1939

Mr. F. A. DeGiuli,
Brooklyn, N. Y.

My dear Mr. DeGiuli:

I have before me an advertising display card, submitted by you on June 30th, with illustration of a man, a woman and a bartender, at a bar, behind which, in large sized red letters, is the legend "WYBADIITY", designed to cause the customer to ask "What does that mean?", to which the answer is "Will you buy a drink if I tell you?"

There is no question but that the advertisement arrests attention, leads to action and thereby serves its purpose. It probably would work once with anybody!

But after that - what? Is the drinking public to be deluged with cryptograms to decipher so to stimulate sales? If this is allowed, others will follow and soon the nut factories will be working overtime.

There is nothing decorative about your advertisement. Except for the ultra red, it doesn't brighten a corner. It serves only to induce the gullible to tarry and gulp.

"Come-on" advertisements of this kind are disapproved. ^X

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. FAIR TRADE - THE NATURE OF THE PROBLEM - HEREIN OF SUGGESTED
MAXIMUM PRICES.

Gentlemen:

Will you kindly send me copy of Bulletin 320, May 31, 1939, showing prices to consumers.

If these prices are minimum, why are they not also maximum? In other words, if it is a fixed price, why does it not work to the consumer's advantage as well as to his disadvantage?

Yours very truly,
Edwin B. Sewall

June 30, 1939

Mr. Edwin B. Sewall,
Clinton, N. J.

Dear Sir:

I have your letter, and, as requested, have forwarded to you, under separate cover, a copy of Bulletin 320.

The minimum price legislation was prompted not by any direct consideration for the consumer, but rather in a desire to stabilize the retail industry generally. I can do no better to give you an indication of the legislative intent than to cite the preamble to the law (P. L. 1938, c. 208), which reads as follows:

"Whereas, Alcoholic beverage licensees have been unduly stimulating the sale of alcoholic beverages by indiscriminate price cutting, resulting in price wars, and by excessive advertising of bargain values and cut prices; these practices 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;***"

Thus, you will see that the problem is a social one, rather than economic. The ultimate legislative goal, and my primary aim, is the sound and efficient enforcement of liquor traffic in such manner as to control the undue stimulation of alcoholic beverage activity. The establishment of maximum prices would not fit in with that purpose, or with the philosophy of Fair Trade legislation which is based on the protection of the good will of the manufacturer or distributor of an article by preventing its sale at less than the prices established by him.

As to whether or not a restricted maximum would enure to the advantage of the consumer presents considerations beyond my jurisdiction. The law does not fix the prices. All that it does is to maintain such prices as are determined by the manufacturers, each for himself. If a manufacturer does not wish to be protected

by the law, there is no requirement that he must file a minimum price. He does that, if at all, voluntarily. There is no law which compels him to fix his top price nor anybody whom the law delegates to do this for him if he refuses or fails to do so. The spirit of competition is so keen in these days that, even if maximum prices were fixed, they would hardly ever be reached. Such competition is a greater safeguard to the pocketbook of the individual than the adoption of maximum prices.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on)	
May 16, 1939 of a Ford Sedan and)	
16 - 5-gallon cans of alcohol)	
found therein, at the intersection)	ON HEARING
of Delsea Drive and High Street,)	CONCLUSIONS AND ORDER
in the Borough of Glassboro, County)	
of Gloucester and State of New)	
Jersey.)	
-----)	

No Appearances:

On May 16, 1939, a police officer of the Borough of Glassboro discovered James Bryant transporting sixteen five-gallon cans of alcohol in Herbert Jennings' Ford Sedan, in the vicinity of Delsea Drive and High Street, in Glassboro. Since the cans of alcohol bore no Federal tax stamps or other indication that the alcohol was tax paid, and further, since the motor vehicle was not licensed to transport alcoholic beverages, the officer seized such motor vehicle and alcohol, as unlawful property under the provisions of R. S. Title 33, Chapter 1.

Thereafter the Ford Sedan and the alcohol were turned over to this Department and a sample of the alcohol was analyzed by the Department's chemist, who found it to be fit for beverage purposes, having an alcoholic content of 39.0% by volume.

At a hearing duly held to determine whether the motor vehicle and the alcohol should be confiscated, no one appeared to contest the proceedings.

The absence of Federal tax stamps on the cans raises a presumption that the alcohol is illicit. Under the statute illicit alcohol and the vehicle used in its transportation are subject to confiscation. No cause is here shown why confiscation should not result in the instant case.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:1-66, and shall be retained for the use of hospitals and State, County and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 5, 1939.

11. EXCISE BOARDS - THE SALUTARY STAND FOR LAW ENFORCEMENT BY THE MORRISTOWN MAYOR AND ALDERMEN - HEREIN OF FIXING RESPONSIBILITY ON THE POLICE AND THE NECESSARY BACKSTOPPING BY THEIR SUPERIORS.

July 5, 1939

Nelson S. Butera,
Town Clerk,
Morristown, N. J.

My dear Mr. Butera:

I have before me yours of June 28th and resolution adopted by the Mayor and Board of Aldermen on June 27th, reading:

"BE IT RESOLVED, that it is the sense of the Mayor and Board of Aldermen of the Town of Morristown, now being the issuing authority on all alcoholic beverage licenses, that violations of the Rules and Regulations and/or Ordinances of said Town will subject the offending licensee to immediate revocation of his license.

"BE IT FURTHER RESOLVED that the Police Department of said Town be and is hereby instructed to immediately inform the Mayor and Board of Aldermen of all violations found."

These resolutions set a standard worthy of Morristown and its Aldermen. They are a plain declaration that the Board means business. The instruction to the Police fixes responsibility which should produce admirable results.

The continual backstopping of the Board is essential, however, for we cannot expect the police to do their full duty if personal or political influence is allowed to "kill the tickets", glorify the malefactor and make a monkey out of the cop. A good one doesn't have to be "let down" more than once before his vision becomes dimmed, his ears waxed and his morale broken. If a cop is going to be demoted to a beat in the sticks just because he did his duty, enforcement will stop at the point where disrespect for those in authority begins.

I take it that the Board has used the term "revocation" generically, that is to say, as meaning not only outright revocation, but also suspensions which in nature are revocations of all privileges for the time being.

Of course, I am not suggesting that the Board pull its punches. All I mean is that the punishment should reasonably fit the offense. For instance, it is not necessary to send a licensee to the guillotine because he closed his place five minutes late. A five days' suspension will afford him ample time to reflect and to repair his clock.

Please express to the Morristown Mayor and Board of Aldermen my deep respect.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

12. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1938
TO JUNE 30TH, 1939 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club No. Issued	Fees Paid	Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Paid Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid			No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	471	175,689.57	62	20,232.88	13	1,000.00	2	50.00	5	701.90	4	549	197,674.35
Bergen	801	260,533.22	236	54,282.47	47	4,350.53	43	1,909.53	15	1,549.53	15	1,127	322,625.28
Burlington	183	58,847.52	16	3,576.72	27	3,085.94	1	25.00	1	146.96	2	226	65,682.14
Camden	461	191,406.25	47	17,310.20	62	5,448.12	1	50.00	6	1,948.98	7	570	216,163.55
Cape May	123	42,727.70	10	3,500.00	5	500.00					1	137	46,727.70
Cumberland	77	22,341.86	9	1,813.97	23	2,450.00					0	109	26,605.83
Essex	1,456	746,510.58	349	167,958.00	74	10,458.70	25	1,245.72	2	510.00	7	1,899	926,683.00
Gloucester	111	30,276.02	10	1,350.00	5	300.00					1	125	31,926.02
Hudson	1,661	682,774.20	276	109,767.03	53	6,154.77	70	2,775.34			9	2,051	801,471.34
Hunterdon	84	22,079.95	1	200.00	1	150.00					2	84	22,429.95
Mercer	450	187,582.17	42	7,072.58	37	4,690.00			1	85.85	4	526	199,430.60
Middlesex	606	239,190.09	40	10,394.58	32	2,610.87	1	25.00	9	1,539.99	12	676	253,760.53
Monmouth	522	199,424.81	79	22,954.59	25	2,773.00	10	425.00	47	13,496.63	35	648	239,074.03
Morris	340	97,977.30	70	16,998.40	29	2,498.50	1	35.00	21	3,054.45	26	435	120,563.65
Ocean	188	88,527.90	30	10,524.00	7	700.00					8	217	99,751.90
Passaic	902	337,423.14	120	33,122.06	36	4,249.83	19	828.22	10	506.25	12	1,075	376,129.50
Salem	51	16,000.00	4	550.00	7	600.00					0	62	17,150.00
Somerset	184	64,253.53	22	5,738.00	12	1,225.00					1	217	71,216.53
Sussex	166	34,165.09	10	1,590.00	5	260.00			7	1,050.00	4	184	37,065.09
Union	554	269,644.42	117	39,854.17	61	6,682.36	21	979.72	1	260.00	3	751	317,420.67
Warren	140	37,857.80	10	1,907.50	17	1,863.70	2	70.00	5	406.00	7	167	42,105.00
TOTALS	9,531	3,805,233.12	1,560	530,697.15	578	62,051.32	196	8,418.53	130	25,256.54	160	11,835	4,431,656.66

D. FREDERICK BURNETT, Commissioner.

Report for the fiscal year ending June 30th, 1939.

Respectfully submitted,
Erwin B. Hock

Deputy Commissioner.

13. SPECIAL PERMITS - VIOLATION OF ACT CONCERNING PROPAGANDA INCITING RACE, COLOR OR RELIGIOUS HATRED - HEREIN OF CAMP NORDLAND.

July 5, 1939

Mr. August Klapprott,
(Camp Nordland),
Andover Township,
Sussex County, N. J.

Sir:

On June 30th, upon your petition representing that you had not had your full day in court in respect to proceedings pending before the Andover Township Committee concerning objections filed to the issuance of a renewal license, I issued to you Special Permit SM-43.

This permit had the same force and effect as a plenary retail consumption license and enabled you to continue business until the merits of the pending controversy could be decided by the regular processes of the law in such case made and provided.

The permit provided, among other things:

"This permit may be cancelled by the State Commissioner in his absolute discretion at any time without notice or assignment of reason or cause."

On June 26th, Assembly Bill 593, introduced by Assemblyman R. Graham Huntington, which had passed the Assembly and the Senate, was approved by Governor Moore, and thereby became Chapter 98 of the Laws of 1939. By its terms it became effective immediately. It provides:

"AN ACT concerning propaganda inciting race, color or religious hatred, and supplementing chapter one hundred fifty-seven-B of Title 2 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Wearing of uniforms; prohibited.

"a. It shall be unlawful for any person to appear in any public place or in the public view attired in any uniform similar to that worn by the military, semi-military, naval, police, storm troop or other official or semi-official forces of any foreign State, nation or government, or attired in any distinctive part or parts of such uniform, or to assemble in any place with other persons similarly attired.

"b. It shall be unlawful for any person to appear in any public place or in the public view attired in the uniform or wearing the distinctive garment of any association of persons of whatsoever nature or form which engages in, adopts or imitates the drill formations, salutes or other methods or practices or the symbols of any foreign military,

semi-military, naval, police, storm troop or similar foreign organization, or to assemble in any place with other persons similarly attired.

"c. It shall be unlawful for the proprietor, manager or keeper of a public hall, public garden, theatre or any other place of public meeting, resort or amusement to permit therein any assemblage of persons attired as prohibited in this section.

"d. In any prosecution hereunder, there shall be presumption that the wearing of the uniform of a foreign State, nation or government, or of any of its official or semi-official forces, constitutes a violation of this section.

"This section shall not apply to the officers or members of the diplomatic, military, semi-military, naval, police or other official or semi-official forces of any foreign State, nation or government lawfully within the State of New Jersey, nor to any student of any school or academy recognized by the Board of Regents of the State of New Jersey, nor to the members of the cast of any stage or motion picture production characterizing the officials of a foreign State, nation or government, or the officers or members of any of the organizations specified in subdivision a of this section; nor to any duly recognized organization of American ex-service men and women.

"2. Any person violating any provision of this chapter shall be punishable by a fine of not more than five thousand dollars (\$5,000.00) nor less than two hundred dollars (\$200.00), or by imprisonment for not exceeding three years, nor less than ninety days, or both.

"3. This act shall take effect immediately.

I am this morning informed by Assemblyman Huntington that, in defiance of the law, every section of the statute last mentioned was openly and flagrantly violated yesterday on your licensed premises at Camp Nordland.

I also have before me this morning's issue of the Newark Ledger and of the New York Times which contain pictures purporting to show violation of the statute.

Notwithstanding the existence of the above quoted power reserved to me to cancel the permit at any time without notice or assignment of reason, I shall not exercise it without affording you fair and full opportunity to prove, if you can, albeit upon short notice, that Chapter 98 of the Laws of 1939 of New Jersey was not violated July 4, 1939.

You will, therefore, the premises considered, show cause before me at the Department offices, 744 Broad Street, Newark, N.J., on July 6, 1939, at 11:00 A.M. (Daylight Saving Time), why special permit SM-43 shall not be cancelled forthwith.

Very truly yours,

New Jersey State Library

D. Frederick Burnett
Commissioner.