

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

BULLETIN 243.

MAY 9TH, 1938.

1. DRUGGISTS - SALE OF WINE FOR ALLEGED "MEDICINAL PURPOSES" - NOT IN FASHION SINCE REPEAL - HEREIN OF YES-MEN.

Gentlemen:

I, the holder of a Bonded Limited Winery License and producer of 100% pure grape wine, have found the opportunity to sell wine to a drug store. This drug store does not have a beverage license, for until the present date the owner did not have a liquor department.

I wish to know if I can sell to this drug store and if the owner of this drug store, in turn can sell this wine for medicinal purposes. But the owner does not wish to obtain a beverage license merely for our wine, because he will not sell any other wine or liquor.

Yours truly,

COLES ST. WINERY  
V. DiStanlo, Proprietor.

May 2nd, 1938.

Coles Street Winery,  
Jersey City, N. J.

Gentlemen:

Att: V. DiStanlo, Proprietor.

Replying to yours of April 25th:- Your limited winery license does not permit you to sell wine to a druggist unlicensed to sell alcoholic beverages, knowing that the druggist intends to resell it. That is cause for the suspension or revocation of your license.

The fact that the druggist intends to sell this wine for "medicinal purposes" makes no difference. That gag went out of fashion upon Repeal. It's an antique now along with corporate surpluses. A registered druggist may, without a liquor license, purchase and use alcoholic beverages for the compounding of physician's prescriptions and for the preparation of mixtures and medicines, unfit for use as beverages. I take it that the underlined requisite does not apply to your estimable products.

If your druggist friend wants to go into the business of selling wine, he will have to take out a license and then he won't have to ask his customers (I suppose they would all be yes-men) whether the wine is for "medicinal purposes."

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

New Jersey State Library

2. ENFORCEMENT DIVISION ACTIVITY REPORT FOR APRIL 1 TO 30, 1938, INCL.

To: D. Frederick Burnett, Commissioner.

ARRESTS: Total number of persons - - - - - 65  
 Licensees - - 12 Non-Licensees - 53

SEIZURES:  
 Still - total number seized - - - - - 21  
 Capacity 1 to 50 gal. - - - - - 13  
 Capacity 50 gal. and over - - - - - 8  
 Motor Vehicles - total number seized - - - 6  
 Trucks - - 1 Passenger Cars - - 5  
 Alcohol  
 Beverage alcohol - - - - - 1012 Gallons  
 Mash - total number of gallons - - 30,431  
 Alcoholic beverages  
 Beer, ale, etc. - - - - - 4 gallons  
 Wine - - - - - 595 "  
 Whiskies and other hard liquors 71 "

RETAIL INSPECTIONS:  
 Licensed premises inspected - - - - - 2,427  
 Illicit (bootleg) liquor - - - - - 16  
 Gambling violations - - - - - 194  
 Sign violations - - - - - 61  
 Unqualified employees - - - - - 201  
 Other violations - - - - - 60  
 Total violations found - - - - - 532  
 Total number of bottles gauged - - - - - 16,755

STATE LICENSEES:  
 Plant Control Inspections completed - - - 141  
 License applications investigated - - - 17

COMPLAINTS:  
 Investigated and closed - - - - - 265  
 Investigated, pending completion - - 146

LABORATORY:  
 Number of samples submitted - - - - - 193  
 Number of analyses made - - - - - 177  
 Number of poison liquor cases - - - 0  
 Number of cases of denaturants - - - 0  
 Number of cases of alcohol, water  
 and artificial coloring - - - - - 12  
 Number of cases of moonshine (home-  
 made finished product of illicit  
 still) - - - - - 26

Respectfully submitted,

E. W. Garrett,  
 Deputy Commissioner.

## 3. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of An Application )	
to Remove Disqualification because )	
of a Conviction, Pursuant to the )	
Provisions of R.S. 33:1-31.2	CONCLUSIONS
(Chapter 76, P.L. 1937) - )	AND
	ORDER
Case No. 24. )	

Frederic M. P. Pearse, Esq., by Max Mehler, Esq.,  
Attorney for Petitioner.

BY THE COMMISSIONER:

In December 1921 petitioner pleaded non vult to the crime of breaking, entry and larceny, and was fined \$1,000. In February 1927 he pleaded non vult to the crime of carrying concealed weapons and was sentenced to sixty days in jail and fined \$300. The crime for which he was convicted in 1921 unquestionably involved moral turpitude. It is unnecessary to determine whether the second crime involved moral turpitude because petitioner is disqualified unless the relief for which he prays is granted.

Petitioner has lived in the community where he now resides for the past five years, and for seven years prior thereto he lived in a nearby municipality. From 1927 to 1931 he was engaged in the trucking business in his own name. From 1931 to 1936 he was employed as a cooper by a firm manufacturing kegs. Since 1936 he has been engaged in the business of buying and installing coils and refrigerators in saloons, and at the same time has been selling second hand automobiles on a commission basis for a reputable dealer. He is married and has two children.

At the hearing testimony as to his good character was given by a rabbi, who has known him for fifteen years; an automobile dealer by whom he is employed and who has known him for eight years, and by a public accountant and auditor who has known him for six years. The rabbi testified that, during the whole time he has known him, petitioner has been a hard worker, working day and night to support his family. The other two witnesses testified that his conduct has been excellent during the time that they have known him, and that his general reputation is good.

From the evidence, I believe that petitioner, prior to 1927, associated with beer runners and that both of his convictions arose out of the activities of his associates at that time, in which he participated. However, for the past ten years he seems to have been associating with a law abiding class of citizens, and his fingerprint records disclose that he has not been convicted since 1927. I shall, therefore, remove the disqualification.

It is, therefore, on this 1st day of May, 1938,  
ORDERED that petitioner's disqualification from holding a license or being employed by a licensee, because of the convictions of the crimes set forth herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2 (Chapter 76, P.L. 1937).

D. FREDERICK BURNETT  
Commissioner

4. LIMITATION OF LICENSES - NO POWER IN MUNICIPALITY TO ENACT BY MERE RESOLUTION - MUST BE ENACTED BY ORDINANCE.

HOTELS - DISTINCTION BETWEEN HOTELS BASED ON NUMBER OF ROOMS, DISAPPROVED - VALIDITY OF CONFINING ISSUANCE OF SEASONAL CONSUMPTION LICENSES TO HOTELS WHILE ALLOWING THE ISSUANCE OF PLENARY RETAIL CONSUMPTION LICENSES TO TAVERNS, QUESTIONED.

MUNICIPAL ORDINANCES - INTERFERENCE WITH STATE LICENSES - PROHIBITION OF ALL SALES UNLESS LICENSED PURSUANT TO THE ORDINANCE, DISAPPROVED - SUCH REGULATIONS MUST CONTEMPLATE SALES BY STATE LICENSEES AS WELL AS BY RETAILERS.

SCREENS - PUBLIC VIEW - MUNICIPAL REGULATION REQUIRING VIEW OF INTERIOR OF LICENSED PREMISES MUST PROVIDE A REASONABLE AND ADEQUATE STANDARD BY WHICH COMPLIANCE CAN BE MEASURED.

EMPLOYEES - FEMALES - MUNICIPAL REGULATION PROHIBITING FEMALE EMPLOYEES, EXCEPT MEMBERS OF IMMEDIATE FAMILY OF THE LICENSEE, DISAPPROVED FOR INDEFINITENESS - THE CLASSES OF RELATIVES MUST BE SPECIFIED.

SERVICE TO WOMEN DIRECTLY OVER THE BAR - HEREIN OF GODFATHERS AND MISPLACED COMMAS.

MINORS - LICENSED PREMISES - MUNICIPAL REGULATION PROHIBITING MINORS ON LICENSED PREMISES UNLESS ACCOMPANIED BY A PARENT - IF MINOR'S PARENT IS NOT SPECIFIED, ANY PARENT WILL DO.

RESTRICTIVE COVENANTS ON USE OF PROPERTY - NO RELATION TO ALCOHOLIC BEVERAGE CONTROL.

MUNICIPAL ORDINANCES - PENALTY CLAUSES - CONSIDERATIONS APPLICABLE.

LIMITATION OF LICENSES - EXCEPTIONS IN FAVOR OF PARTICULAR PERSONS NOT PERMISSIBLE - ALL SIMILARLY SITUATED MUST BE TREATED ALIKE.

May 2, 1938.

James A. Joeck,  
Borough Clerk,  
Belmar, N. J.

My dear Mr. Joeck:

I have before me the two resolutions adopted by the Board of Commissioners on April 12th, 1938, limiting the number of plenary retail consumption licenses and providing that no seasonal retail consumption license shall be issued to any applicant unless the place licensed shall have at least thirty-five rooms or more.

I am not considering the resolution limiting the number of plenary retail consumption licenses because the proposed ordinance to limit the number of licenses which will be introduced on May 3rd will, upon final adoption, repeal it. The introduction of the ordinance and the repealer are well advised. There is no power in the Board of Commissioners to limit the number of licenses by resolution. Since July 1, 1937, all limitations of licenses have been required to be enacted by ordinance. See Bulletin 185, Item 3; Re Livelli, Bulletin 235, Item 15.

The second resolution provides that whereas the Board deems it best that seasonal licenses be issued only to hotels

having thirty-five or more rooms, it is therefore resolved "that no Seasonal Retail Consumption License shall be issued to any applicant unless the place licensed shall have at least 35 rooms or more." The operative portion of the resolution, which I have quoted does not restrict the issuance of seasonal licenses to hotels. It doesn't even mention hotels. It says merely that such licenses shall not be issued unless the place has thirty-five or more rooms. I see no reason for arbitrarily requiring that every place have thirty-five rooms in order to qualify for a license. Moreover, even if it specified that they were to be hotels, I doubt that it would be proper. What is there in the mystic number thirty-five that entitles a hotel with that many rooms to a license, but denies a license to a hotel with only thirty-four rooms. A hotel is not a hotel because it contains an arbitrary number of rooms. If it is a bona fide hotel, it is so because it is operated as such regardless of the number of rooms it contains. The resolution, if it confined seasonal licenses to hotels, would be bad because it would allow the issuance of licenses only to certain hotels, excluding others equally bona fide, and therefore would be discriminatory. See Re Butera, Bulletin 180, Item 3, Cf. Re Bond, Bulletin 125, Item 4; Re Jeffrey, Bulletin 115, Item 11.

Furthermore, there are grave doubts in my mind as to the validity of confining seasonal licenses to hotels while at the same time permitting the issuance of plenary retail consumption licenses to applicants other than hotels. If your Board of Commissioners had adopted a policy prohibiting the issuance of any consumption license, either plenary or seasonal, for premises not conducted as a hotel, it would be wholly proper. See Re Hubbard Bulletin 94, Item 9, and the items cited therein. But if a tavern can get a plenary retail consumption license in the Borough, why can't it also get a seasonal retail consumption license? Both of these licenses confer the same kind of privilege. The only difference is in the length of the term. If taverns are permitted at all, what difference does it make that the license they hold is for a longer or a shorter term?

In connection with the foregoing, I have reviewed Ordinance No. 298 again today. I find that there are several matters requiring comment, which I now bring to your attention.

Section 3 provides:

"It shall be unlawful to sell or distribute alcoholic beverages in the Borough of Belmar, in the County of Monmouth, without a license previously applied for and granted, pursuant to the provisions of this ordinance and said Act."

The only licenses which are applied for and granted pursuant to the provisions of both the ordinance and the Act are plenary retail consumption, seasonal retail consumption, plenary retail distribution and club. But Section 3, as worded, would purport to make unlawful all sale or distribution of alcoholic beverages unless the license had been applied for and granted pursuant to the ordinance. By its terms, it applies to licenses issued by the State Department as well as to those issued pursuant to the ordinance. I doubt that it was your intention to constitute sale and distribution by State licensees whose licenses are not applied for and granted pursuant to the ordinance, as a violation thereof. It would not be legal in any event. Hence, I suggest that the words "this ordinance and" be excised. The section will then read: "pursuant to the provisions of said Act." It will not prejudice you, for, in so

far as the issuance of your own licenses is concerned, you are fully protected to the extent necessary by statute. Re Laurel Springs, Bulletin 55, Item 6.

Section 8 requires that all premises in which alcoholic beverages are sold shall have reasonable access of light from the public highway. The proposed test is whether or not a normal sized adult can, on inspection from the exterior, view the interior. I don't know how tall a normal sized adult is. Furthermore, I doubt that anyone else does. I think, therefore, that the section as presently worded is bad for indefiniteness, and, as a practical matter, is unenforceable. See Re Handelman, Bulletin 227, Item 9, Re Bormuth, Bulletin 236, Item 1. The only way your licensees could comply with, or the police could enforce, such a regulation, would be for the regulation itself to specify the exact height from the public highway at which full view was required. You would then have an adequate standard by which to measure compliance. As it stands, I do not approve it.

I note that Section 10 is designed to prohibit females, except the licensee or members of the immediate family of the licensee over the age of twenty-one years, from serving, selling or dispensing alcoholic beverages.

The exception "members of the immediate family of the licensee" is bad. Just what the term "immediate family" encompasses is uncertain. Does it mean wives and daughters, or does it also include aunts, and nieces, and wife's relatives who may be living with the licensee? The proper way to indicate these persons is to specify the classes of relatives, e. g., wives, daughters, sisters, etc.

I suggest that Section 10 be amended to read:

"No licensee shall allow, permit or suffer any female to serve, sell, or in any manner engage in the actual dispensing of alcoholic beverages, except the licensee",

thereinafter indicating the classes of relatives to which the exception applies.

Section 11 provides that

"No women shall be served with alcoholic beverages directly over any bar, nor shall minors be allowed in any room in which any bar is located, unless accompanied by a parent."

I suggest that you excise the comma which follows the word "located." I take it that you want to prohibit minors from being in barrooms unless the minor is accompanied by a parent, but that you want to prohibit the serving of alcoholic beverages to women directly over the bar regardless of whether or not the woman is accompanied by a parent. A misplaced comma does strange things. It would, in the instant case, undoubtedly produce for the women in Belmar who wished to be served over bars, a great many "godfathers." See Re Plainfield, Bulletin 161, Item 6.

The section also provides that minors shall not be allowed in rooms in which bars are located unless accompanied by "a parent." It does not require that the parent be the minor's parent. Hence, any parent will do. Should not the ordinance also be amended to cover the point exactly? See Re Field, Bulletin 197, Item 8.

I am expressing no opinion as to Section 14. Whether or not a licensee, by the acceptance of the license, can be bound to indemnify the Borough or the Board or the members thereof for loss resulting from suit arising out of its issuance in violation of a restrictive covenant, is a matter wholly apart from alcoholic beverage control as to which your Borough Attorney should advise. I have held on appeal that restrictive covenants against the sale of alcoholic beverages on specific properties were no bar to the issuance of licenses, but were purely private matters cognizable only in the civil courts. See Methodist Episcopal Church v. Verona, Bulletin 101, Item 5; Re Blank, Bulletin 49, Item 7; Gamble v. Avon-by-the-Sea, Bulletin 35, Item 6.

As regards the exception in Section 15 permitting the issuance of licenses within one hundred feet of Ocean Avenue only to hotels having at least thirty-five rooms, see the discussion of your second resolution of April 12, 1938, above.

Section 16 purports to penalize by fine or imprisonment or both any person, except a police officer acting in the course of duty, who shall knowingly purchase, receive or procure any illicit alcoholic beverage. Section 17 purports to penalize by fine or imprisonment or both any person who shall manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport any alcoholic beverage in violation of the ordinance, or who shall possess alcoholic beverages with intent to do so or who shall possess implements for that purpose with intent so to use the same or who shall aid or abet another in so doing. Section 18 purports to penalize by fine or imprisonment or both any person who shall knowingly violate any of the other provisions of the ordinance. Section 19 purports to fix for second and subsequent offenses limits of penalties twice those otherwise imposed.

R.S. 33:1-40 (Control Act, Sec. 37) confers the authority upon municipal governing bodies to make, enforce, amend and repeal such ordinances as they deem necessary to prevent "the possession, sale, distribution and transportation of alcoholic beverages within its municipality in violation of this act." That is as far as the statute goes. The very fact that the Legislature has specified certain conduct, viz., possession, sale, distribution and transportation, in regard to which local ordinances may be enacted, excludes, by implication, all other conduct such as the manufacturing, bottling, rectifying, blending, treating, fortifying, mixing, processing or warehousing referred to in your ordinance. Municipalities may not prohibit, by ordinance, conduct not expressly included in the grant of power. See Re Plainfield, Bulletin 161, Item 6; Re Red Bank, Bulletin 91, Item 2; Plainfield v. Pereira, (Union County C.P., Section 3, 1935), Bulletin 91, Item 3.

It follows that Section 17 for the most part is beyond your statutory authority.

Further, Sections 16, 17, 18 and 19 prescribe both minimum and maximum penalties of fine and imprisonment which may be imposed for violations. It appears that the Home Rule Act prohibits mandatory penalties. Minimum penalties are mandatory penalties. Hence, if your municipality is governed by the Home Rule Act, it may be that in your case the minimum penalties should be omitted. See Re Hillside, Bulletin 69, Item 9. There is also the thought that the maximum penalties set forth may be in excess of those allowed by statute. It occurs to me that the

most the Home Rule Act authorizes is \$200.00 and ninety days. Inasmuch as the Alcoholic Beverage Control Act is silent with respect to the nature and extent of penalties of fine or imprisonment which may be imposed pursuant to municipal ordinances adopted in accordance therewith, all such penalties should be controlled by the statutes which govern your particular municipality.

It is my suggestion that Sections 16 through 19 be repealed, and that in their place you insert a section reading as follows:

"No person, as defined in said Act, shall possess, sell, distribute or transport any alcoholic beverage in the Borough of Belmar in violation of said Act.

"Any person who shall violate any of the provisions of this ordinance shall, upon conviction thereof, be punished by a fine of not more than \$200.00 or imprisonment for not more than ninety days or by both such fine and imprisonment in the discretion of the court."

I note that besides the two resolutions of April 12, 1938, I have not heretofore written to you in regard to the resolution adopted by the Board on February 2, 1937 providing for an exception from your limitation in favor of the Belmar Casino. As this resolution will also be repealed by the enactment of the proposed ordinance, I am not considering it now. I merely point out that the exception permitting the issuance of a license, notwithstanding the limitation, to the Belmar Casino was without any authority in law. Class legislation arbitrarily discriminating against some and in favor of others is prohibited. In general, all those similarly situated must be treated alike. There is no reason why the Belmar Casino should be entitled to a liquor license any more than any other applicant. If there is a quota, it will have to take its chances in making application along with the rest. The exception is without legal foundation and could not be sustained.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

5.

#### N O T I C E

#### RETAIL LICENSES EXPIRING JUNE 30, 1938 - - INSTRUCTIONS

May 4, 1938.

All licenses except Seasonal Retail Consumption licenses, will expire at midnight, June 30, 1938. Licensees must obtain their renewal licenses on or before that date in order to continue business without interruption.

The revised forms of application, promulgated April 6, 1938 in Bulletin 237, must be used for all retail licenses for the next fiscal year.

Applications should be filed promptly in order that all licensees obtain their renewal licenses by July 1, 1938. A day's delay may mean that some licensee will have to close up shop.

A licensee who seeks to renew must comply with all requirements pertaining to his original application. Accordingly, he



must (1) file a new application, accompanied by a full annual license fee for the period from July 1, 1938 to July 1, 1939 and satisfactory evidence that a new Federal tax stamp has been obtained, and (2) publish a notice of application once a week for two weeks successively. This is only the mechanical part of the procedure. In addition, investigation must be made by municipal issuing authorities and hearing held, if necessary. This will require time.

Following are the prescribed forms of applications for Class C licenses:

- |  |   |                                      |
|--|---|--------------------------------------|
| 1. PLENARY RETAIL CONSUMPTION LICENSE              | } | Use form in Bulletin 237,<br>Item 2. |
| 2. PLENARY RETAIL DISTRIBUTION LICENSE             |   |                                      |
| 3. LIMITED RETAIL DISTRIBUTION LICENSE             |   |                                      |
| 4. SEASONAL RETAIL CONSUMPTION LICENSE             |   |                                      |
| 5. CLUB LICENSE: Use form in Bulletin 237, Item 3. |   |                                      |

Following are the official forms of licenses to be used:  
See Bulletin 237, Items 4-8 inclusive.

1. PLENARY RETAIL CONSUMPTION LICENSE, Item 4.
2. PLENARY RETAIL DISTRIBUTION LICENSE, Item 5.
3. LIMITED RETAIL DISTRIBUTION LICENSE, Item 7.
4. CLUB LICENSE, Item 8.
5. SEASONAL RETAIL CONSUMPTION LICENSE, Item 6.

Applicants should note particularly the following regulations:

Regulations No. 2, RULES APPLICABLE TO ALL MUNICIPAL LICENSES FOR ADVERTISING NOTICE OF APPLICATION FOR LICENSE. Note particularly that application must be filed at or before the first insertion of the advertisement and that a hearing is to be set when an objection is filed, without the necessity of any request therefor by the applicant.

Regulations No. 11, RULES GOVERNING THE EMPLOYMENT BY LICENSEES OF PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE OR CITIZENSHIP. Note particularly that all licensees must apply directly to the State Commissioner for permission to employ persons coming within these rules. Violation will subject the licensee to revocation of his license.

Regulations No. 16, RULES GOVERNING THE ISSUANCE OF TRANSPORTATION INSIGNIA. Concurrently with the expiration of all municipal retail licenses (except Seasonal Retail Consumption), all transportation insignia likewise will expire. New transportation insignia must be obtained by all licensees (including Seasonal Retail Consumption licensees) who intend to transport alcoholic beverages in connection with their respective businesses. No insignia will be issued until the issuance of the license has been certified to the State Department. Only vehicles operated under commercial motor vehicle licenses are eligible to receive insignia and such vehicles must be either owned or leased by the applicant. If leased, certified copy of the lease must accompany the application.

TRANSPORTATION INSIGNIA FOR THE NEXT FISCAL YEAR MUST NOT BE AFFIXED TO THE WINDSHIELD OF VEHICLE.

Insignia will be furnished in sets of two, bearing the same numbers. One insignia of each set must be affixed on each side of the vehicle for which the insignia is obtained, in a conspicuous and readily observable place on the vehicle. The initial

set of insignia for one vehicle is furnished free of charge. The charge for additional insignia is \$2.00 per set for each vehicle. Application therefor must be made direct to this Department, accompanied by cash, money order or certified check drawn to the order of D. FREDERICK BURNETT, Commissioner. Application forms for Transportation Insignia, Form NJABC 102-R 238, will be forwarded to all issuing authorities immediately to be distributed to the licensees requiring same. These applications also must be executed forthwith and forwarded to this Department, 744 Broad Street, Newark, N. J., in order to operate thereunder after June 30th.

Licensees who fail to obtain their renewal licenses on or prior to June 30, 1938 will not be permitted to operate until all legal requisites have been completed and licenses actually issued.

THE LAW WILL BE ENFORCED.

D. FREDERICK BURNETT,  
Commissioner.

6. SOLICITORS' PERMITS -- MORAL TURPITUDE -- FACTS EXAMINED --  
CONCLUSIONS.

May 3, 1938

Re: Case No. 220

Applicant admitted he was convicted in 1931 for possession of liquor; in November 1937 for possession of lottery slips, and in April 1938 for gambling.

Investigation discloses the following as to the last mentioned conviction: Applicant was arrested in January 1938 and indicted for maintaining a disorderly house; in April 1938 he pleaded non vult to said indictment, was fined \$750.00 and sentenced to serve one year in a workhouse, the sentence being suspended pending good behavior.

At the hearing applicant admitted that he was unemployed during 1937; that in July 1937 he rented a store in which he conducted a "social club"; that the store had a front and rear room; that when the police entered, at the time of his arrest, they had to batter down the back door. The Prosecutor of the Pleas in said County has advised by letter that his records show that:

"At the time of the raid the police seized horse race charts, slips on which bets were recorded and other gambling paraphernalia. Several witnesses arrested upon the premises signed statements admitting that they had resorted to said place for the purpose of betting on horse races."

In view of applicant's plea of non vult to the indictment, it must be concluded that he was guilty of maintaining a disorderly house where gambling was carried on.

Gambling may or may not involve moral turpitude. A conviction arising from commercialized gambling should, under the circumstances of this case, be held to involve moral turpitude. Bulletin 2, Item 8; Re Ulhich, Bulletin 70, Item 2; Re Case No. 176, Bulletin 203, Item 10.

It is recommended, therefore, that the application for a solicitor's permit be denied and that applicant be advised that he is

not eligible for employment by any liquor licensee in the State.

Edward J. Dorton,  
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,  
Commissioner.

7. RETAIL LICENSEES - ELECTION DAYS - STATE RULES PROHIBIT SALES WHILE POLLS ARE OPEN - A MUNICIPAL REGULATION MAY IN ADDITION REQUIRE THAT THE LICENSED PREMISES BE CLOSED - HEREIN OF THE ORANGE ORDINANCE TO THAT EFFECT WITH RESULT THAT A PHARMACY WHICH SELLS LIQUOR MUST BE ENTIRELY CLOSED WHILE THE POLLS ARE OPEN.

May 2, 1938

Felix J. Verlangieri, Esq.,  
Orange, N. J.

My dear Mr. Verlangieri:

I have your letter re Mr. Emanuel Salzberg, who holds plenary retail distribution license No. 18 for premises 219 Central Avenue, Orange.

The State regulations do not require that on election days, during the hours the polls are open, the licensed premises shall be closed. Regulations No. 20, Rule 2 (Pamphlet Rules, page 61) provides:

"2. No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

The State rule prohibits merely sales, offers of sale and deliveries to consumers.

I find, however, that in Orange there is a local regulation in point. According to my records, Section 12 of ordinance adopted by the Board of Commissioners on July 7, 1936, provides:

"Section 12. All licensed premises for which a license has been issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange shall be closed on any day of a general, municipal, primary or special election during the hours when the polls are open."

The ordinance requires that during the hours the polls are open all licensed premises shall be closed. There are no exceptions made.

If, therefore, Mr. Salzberg's pharmacy is his licensed premises, he will have to close from the time the voting begins until it is over.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

## 8. REVISED FORMS - FORM OF WAIVER BY CHURCH.

The following form is hereby promulgated superseding the form in Bulletin 4, Item 1. This revised form may also be used for waiver by a school upon making appropriate changes.

## "FORM OF WAIVER BY CHURCH.

"WHEREAS, \_\_\_\_\_  
 (Name of applicant for license)  
 has applied to \_\_\_\_\_  
 (Name of issuing authority)  
 for a \_\_\_\_\_ license, for the  
 (Type of license)  
 period expiring \_\_\_\_\_, for premises lo-  
 (Date)  
 cated at \_\_\_\_\_;  
 (Address of premises sought to be licensed)  
 and

"WHEREAS, the aforementioned premises are located with-  
 in two hundred (200) feet of the \_\_\_\_\_;  
 (Name of Church)  
 and

"WHEREAS, R.S. Sec. 33:1-76 prohibits, in general, the issuance of any license for the sale of alcoholic beverages within two hundred (200) feet of a church except where the church waives the benefit of the statutory protection; and

"WHEREAS, the undersigned is \_\_\_\_\_ of the  
 (Title of Office)  
 \_\_\_\_\_ and has full power  
 (Name of Church)  
 and authority to consent to the issuance of the license applied for and to waive the protection of R.S. Sec. 33:1-76 on behalf of the aforesaid church, NOW, THEREFORE,

"KNOW ALL MEN BY THESE PRESENTS that the \_\_\_\_\_  
 (Name of  
 \_\_\_\_\_ does hereby consent to the granting  
 (Church)  
 of a \_\_\_\_\_ license to \_\_\_\_\_  
 (Type of license) (Name of  
 \_\_\_\_\_ for premises located at  
 applicant for license)  
 \_\_\_\_\_ for the period  
 (Address of premises sought to be licensed)  
 expiring \_\_\_\_\_ and does hereby waive  
 (Date)  
 the protection of R.S. Sec. 33:1-76 in so far as said license and sales of alcoholic beverages pursuant thereto are concerned.

IN WITNESS WHEREOF, the aforementioned church has caused these presents to be signed by its duly authorized official, and its seal to be hereunto affixed, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
 (Name of Church)  
 By: \_\_\_\_\_  
 \_\_\_\_\_  
 (Title of Office)

"STATE OF NEW JERSEY }  
 COUNTY OF \_\_\_\_\_ } SS

\_\_\_\_\_, being duly sworn, according to law, upon his oath, deposes and says:

"I am \_\_\_\_\_ of the \_\_\_\_\_  
 (Title of Office) (Name of Church)  
 and hereby verify that I am authorized to execute the foregoing  
 waiver and consent on its behalf and that the signature of no  
 other person is necessary to render the above consent and waiver  
 valid and effectual in all respects.

"Sworn to and subscribed  
 before me this \_\_\_\_\_ day  
 of \_\_\_\_\_, 19\_\_\_\_.

"

9. CLUB LICENSES - TRANSFERS - A CLUB LICENSE MAY BE TRANSFERRED TO  
 ANOTHER BONA FIDE CLUB.

May 6, 1938.

Joseph J. Weinberger, Esq.,  
 City Counsel,  
 Passaic, N. J.

My dear Mr. Weinberger:

The Act expressly provides for the transfer of licenses  
 from one person to another. See R. S. 33:1-26 (Control Act,  
 Sec. 23).

You will find the procedure in State Regulations No. 3,  
 Pamphlet Rules, page 37.

Club licenses are issuable only to bona fide clubs.  
 Hence, a club license could not be transferred from a club to an  
 individual. Since, however, the statute defines "person" (Section  
 1-r) as, among others, an association, corporation or organization,  
 there is no objection to the transfer of a club license to another  
 bona fide club.

Unless some member of either club is also on the Board  
 of Commissioners, in which event, pursuant to R.S. 33:1-20 (Control  
 Act, Section \*18A), the application would be made to me, the Board  
 of Commissioners has the authority to entertain the application  
 and make the transfer.

Very truly yours,

D. FREDERICK BURNETT  
 Commissioner

10. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS -  
HEREIN OF THE CHANCES TAKEN BY LICENSEES IN RELIANCE ON THE  
SPOKEN WORDS OF MINORS WHEN THEIR APPEARANCES OF YOUTH BELIE  
THE STATEMENTS MADE.

In the Matter of Disciplinary )  
Proceedings against )

NICHOLAS MARAD t/a RAINBOW TAVERN )  
53 Rankin Street, )  
Newark, New Jersey )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail )  
Consumption License C-50 )

. . . . .

Jerome B. McKenna, Esq., For the Department  
Arthur J. Connelly, Esq., Attorney for Licensee

BY THE COMMISSIONER:

The licensee is charged with sale and service of beer  
on April 2, 1938, to a girl admittedly 17 years old.

I find the licensee guilty as charged.

The only question is as to the punishment.

The girl testified that she had been to this tavern on  
Saturday nights to enjoy the dancing for about a month prior to  
the date in question; that she always came in the company of  
her mother who in fact was seated with her on the night in  
question at the time she was served beer by the licensee's  
wife. When first questioned by Investigators Anderson and  
Williams, she asserted she was 21 but upon further questioning  
stated she was 18. Her mother declared she was 17.

On the first occasion she entered the premises she told  
the licensee that she was 21 because, as she testified, "I thought  
maybe I could not go in for the amusement".

The Investigators testified that Mr. Marad, the licensee,  
declared that "she had not been served at the bar because she  
looked young and he made her drink in the back room."

Mr. Marad testified:

"Q. Did you ever tell anybody that you would not  
serve this girl at the bar, that you sent her  
back in the back part of the hall because she was  
small?

A. When I saw her I didn't want to serve her any-  
where, and I asked her - I say, 'I don't think you  
old enough to be served'; and she say, 'I am old  
enough to be served'.

Q. Did you tell her she had to be served in the  
back rather than at the bar? A. When?

Q. At any time?

A. I told her I would not serve her, and she says,  
'Why not?' And I said, 'I think you are little too  
young'. And she said, 'I am 21 and over'."

On cross-examination he testified:

"Q. She looked young to you, didn't she?  
A. She looked young and tell me she is 21, and she in the company of the mother. Mother drink soda.  
Q. Did you believe her when she said she was 21?  
A. I did because she was with mother, and I ask mother and she shake her head."

Mrs. Marad, questioned as to whether she asked the mother how old her daughter was, replied: "I ask in front of the mother and mother didn't say nothing so I have to take her word".

The girl has since been convicted as a disorderly person under R.S. 33:1-81 (Control Act, \*77A) for misrepresenting her age to licensee and placed on probation for one year.

The girl is but 17. Her appearance evidently showed her youth. Both licensee and his wife when they first saw the girl considered that she was too young to be served. Too bad they didn't obey their first impulse and refuse to serve her at all! Instead of believing what they saw with their own eyes, they asked the girl her age and on receiving her reply, made in the presence of her mother, that she was 21, resolved their earlier qualms in favor of serving her. The doubt should have been resolved exactly the other way. When licensees serve customers who have the appearance of youth they take all the chances when it turns out, contrary to the spoken representation, that the youth is a minor. No mitigation is shown when appearances belie the statements made.

Accordingly, it is on this sixth day of May, 1938, ORDERED that plenary retail consumption license No. C-50, heretofore issued to Nicholas Marad, t/a Rainbow Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing May 10, 1938, at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT  
Commissioner

11. APPELLATE DECISIONS - FALGION vs. MORRIS TOWNSHIP.

ARTHUR V. FALGION,	)	
	Appellant, )	
-vs-	)	
TOWNSHIP COMMITTEE OF THE	)	ON APPEAL
TOWNSHIP OF MORRIS,	)	CONCLUSIONS
	)	
Respondent.	)	

Hillery & Young, Esqs., By David Young, 3rd, Esq.,  
Attorneys for Appellant.  
Elden Mills, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises known as 187 Speedwell Avenue, Morris Township, Morris County.

Respondent denied the license because the granting thereof would add hazardous perils to traffic and because one licensed place is sufficient to serve the people in the vicinity.

The premises for which license is sought is located in a one-story building containing three stores. This section of Speedwell Avenue is zoned for and devoted almost exclusively to business purposes. Nearby are gasoline stations, a barber shop, a grocery store, a lunch wagon and a restaurant which is operated by Hagerich. A consumption license is outstanding for Hagerich's restaurant, which is two hundred forty-three feet from appellant's premises.

Respondent contends that this section of Speedwell Avenue is hazardous for traffic because cars park at the various business places, leaving only two lanes for through traffic. In view of the evidence that appellant has arranged to park cars in the rear of his place of business, and the apparent failure of respondent to raise any question of a traffic hazard in granting Hagerich's license in the same locality, that reason seems to be without weight.

The serious question is as to the need of another licensed place in the vicinity. There are five or six hundred people living nearby. A petition containing fifty-three signatures was filed below objecting to the granting of this license on the grounds upon which the license was subsequently denied. The vote to deny was unanimous. Two members of the Township Committee testified at the hearing that, in their opinion, Hagerich's license was sufficient to supply the needs of residents in the immediate vicinity. Two nearby residents testified to the same effect.

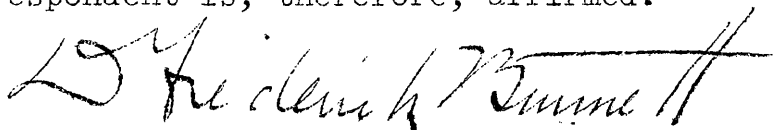
Aside from appellant, two witnesses testified on his behalf. One favored the granting of the license "to help bring a little business up there;" the other because he "would like to see the young man make a living."

Appellant relies also upon the fact that from 1934 to 1936 another consumption license was outstanding nearby for a restaurant known as Dixie Cottage. It appears, however, that Dixie Cottage was run by various licensees during that period; that the last owner "went broke" and that, about 1936, the building was torn down. The history of Dixie Cottage does not demonstrate the need for another licensed place.

Considering all the evidence, appellant has not sustained the burden of proof in showing that another licensed premises is needed in that part of the Township.

The action of respondent is, therefore, affirmed.

Dated: May 6, 1938.



Commissioner

New Jersey State Library

MAJORITY