

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

BULLETIN 368

DECEMBER 19, 1939.

1. NEW YEAR'S CELEBRATION - SALES OUT OF HOURS ARE ILLEGAL EVEN FOR A PRIVATE GROUP SHARING EXPENSE IF THE PARTY IS HELD ON LICENSED PREMISES.

Dear Mr. Burnett:

Will you please advise if there is anything in the A. B. C. Act or rules and regulations governing the same, whereby it would be illegal for a private group to hold a New Year's Party, serving a dinner and of course liquid refreshments all during the party and then at the close of the affair all parties present would pay an equal share of the entire expense of the evening. Having in mind at all times that this is strictly a private affair.

A prompt reply will be appreciated as this question has been asked of me and I thought I had better secure your opinion.

Very truly yours,
O. B. Mathews,
Borough Clerk.

December 5, 1939

Oliver B. Mathews,
Borough Clerk,
South Bound Brook, N. J.

My dear Mr. Mathews:

As the proposition is stated, it appears illegal.

The real essentials are not yet disclosed. The fact is that the participation of each member of the group is conditioned upon paying his share. To whom does he pay it? Where is the party to be held? Who sells the liquor and serves the food? Who gets the money? Who does the work? Who makes the profit? Who and what is back of all this?

Let's see what this generality might lead to: Suppose T. has a tavern which he knows must be closed on Sunday night before New Year's. The ordinance so provides. So he calls in A, B and C and seven others, and offers them a dinner with liquid refreshments, the expense to be shared equally. Oh, yes, the dinner itself will be but three dollars. The rest depends on the thirst. And pass the word along - this affair is strictly private.

Then comes the dawn, and the champagne is totaled at \$70.00 - that's seven a piece - and three for the dinner makes an even ten for each of the "underwriters."

If this scheme could get by, anything would go provided only it were called a private party and there were touching allusions to mutuality, equality and fraternity.

New Jersey State Library

No, Mr. Mathews, these people have not told you the whole story or the real essentials. I'm therefore glad you transmitted the question. You are welcome to refer them to me if they will answer all questions and supply the missing information. Perhaps they may have facts to present which might change the result.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a conviction, pursuant)
to R. S. 33:1-31.2 (as amended by)
Chapter 350, P.L. 1938).)

Case No. 71)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

In Eligibility Case No. 40, Bulletin 151, Item 2, it was determined that petitioner herein had been convicted of a crime involving moral turpitude in October 1934. The section of the Alcoholic Beverage Law under which these proceedings are brought provides that any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of conviction, apply for an order removing the statutory disqualification. Accordingly, petitioner herein filed his present application within a short time after the said period of five years had elapsed.

At the hearing, however, it appeared that as a result of his conviction, petitioner had been confined in prison until July 31, 1935.

In exercising the discretionary power granted to me in these proceedings, I have adopted a uniform policy that an applicant must show that he has conducted himself in a law-abiding manner for at least five years since his release from prison. The five year period of law-abiding conduct under the statute contemplates voluntary action by the applicant. Admitting that petitioner's conduct in jail was "law-abiding", he gets no credit for something he has to do anyway. Re Rehabilitation Case No. 16, Bulletin 222, Item 12; Re Rehabilitation Case No. 38, Bulletin 279, Item 7.

Petition to remove disqualification is, therefore, denied, with leave to file a new petition on or after July 31, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 5, 1939.

3. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

| | |
|--------------------------------|-----------------------|
| In the Matter of the Seizure) | Case 5312 |
| of a motor vehicle at 318) | |
| Pleasant Avenue, City of) | |
| Pleasantville, County of) | ON HEARING |
| Atlantic and State of New) | CONCLUSIONS AND ORDER |
| Jersey.) | |
| -----) | |

David R. Brone, Esq., Attorney for Dominick Perri (Perry)
 Harry Castelbaum, Esq., Attorney for the Department of
 Alcoholic Beverage Control.

BY THE COMMISSIONER:

On March 23, 1939, an Ocean City police officer stopped a Chevrolet Truck owned and driven by Dominick Perri (Perry). Concetta Perri, Dominick's wife, who was riding on the truck, threw or dropped two bottles to the pavement, breaking the bottles and destroying the contents. The officer said that the contents smelled like whiskey. The officer found in the truck another bottle containing about two quarts of untaxed alcohol, which subsequent analysis showed had a proof of 88.1% by volume, and was fit for beverage purposes when diluted.

This alcohol was turned over to the Department and thereafter Dominick Perri was arrested on the charge that he possessed and transported illicit alcoholic beverages, and his motor vehicle was seized.

The alcohol is prima facie illicit. R. S. 33:1-1(i). Its illicit nature is confirmed by the testimony of Concetta Perri, who says that she purchased it and another bottle of alcohol for \$2.50 from a strange man peddling liquor from house to house. I find, as a fact, that the alcohol is illicit. Hence, it and the vehicle in which it was transported are unlawful property, subject to forfeiture. The instant proceeding only involves the motor vehicle which was seized in Atlantic County. The alcohol, having been seized in Ocean County, will be disposed of at a later collective hearing of seizures in that county.

Dominick Perri, claiming that he is not a bootlegger but a reputable individual, and that he did not know that the alcohol was illicit or its transportation illegal, seeks the return of his automobile. Under the provisions of R. S. 33:1-66(e), I am authorized to return forfeited property to a person who has satisfied me that he has acted in good faith and unknowingly violated the provisions thereof.

Perri has no criminal record, is a World War veteran, works occasionally as a watchman, and at other times peddles produce. He testified that his wife informed him that she had purchased the alcohol; that later in the day when they decided to drive to her sister's home in Ocean City, his wife placed the alcohol in the truck, intending to bring it to her sister as a present. He admits he knew that tax-paid liquors could be purchased only from licensed dealers. Indeed, when his wife informed him of her purchase, he expressed his opinion that persons did not ordinarily sell liquor from house to house, to which he testified his wife responded, "We have it now, what are we going to do?" I accept as true the statement of the police officer that Mrs. Perri threw two bottles from the truck and hence find, as a fact, that she attempted to destroy the evidence. I am therefore satisfied that both Perri and his wife knew that the alcohol was illicit.

Even if Perri did not know that it was illegal to transport illicit alcohol, that in itself would not be a sufficient reason to grant him relief. However, the attempt to destroy the evidence leads me to conclude that Perri and his wife knew that they were violating the law.

Dominick Perri has not convinced me that he acted in good faith. Hence, the vehicle will not be returned to him.

Accordingly, it is ORDERED that the Chevrolet truck hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 5, 1939.

SCHEDULE "A"

- 1 - Chevrolet Truck, Serial No. 2DB0545130,
Engine No. K4326816, New Jersey 1938
Registration LX 19006

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
 LEE'S WINE & LIQUOR CO., INC.,)
 211 Broad Street,)
 Elizabeth, New Jersey,)
)
 Holder of Plenary Retail Distribution License D-22, issued by)
 the Municipal Board of Alcoholic Beverage Control of the City of)
 Elizabeth.)
 -----)

CONCLUSIONS
AND ORDER

Lewis D. Busch, Esq., Attorney for the Defendant-Licensee.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on November 17, 1939, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 6th day of December, 1939,

ORDERED, that Plenary Retail Distribution License D-22, heretofore issued to Lee's Wine & Liquor Co., Inc. by the

Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, be and the same is hereby suspended for a period of five (5) days, effective December 11, 1939 at 2:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - PAY-OFF ON BAGATELLE MACHINE.

In the Matter of Disciplinary Proceedings against)
SUSIE GRUNWALD,)
33 West Street,)
Newark, New Jersey,)
Holder of Plenary Retail Consumption License C-210, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)
-----)

CONCLUSIONS
AND ORDER

Susie Grunwald, Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charge of allowing and permitting gambling on the licensed premises in that pay-offs in cash were made for winning scores obtained on a bagatelle machine.

The usual penalty for this violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three days.

Accordingly, it is, on this 12th day of December, 1939,

ORDERED, that Plenary Retail Consumption License C-210, heretofore issued to Susie Grunwald by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, commencing December 15, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

C. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED -
PREMISES PADLOCKED - HEREIN OF WATER FOR MINK.

In the Matter of the Seizure of :
a still on Abraham C. Clarke's : Case #5230
property on Springfield Avenue, :
in the Town of Westfield, County : On Hearing
of Union, and State of New Jersey. : CONCLUSIONS AND ORDER

Abraham C. Clarke, Pro se.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

On January 20, 1939, police officers discovered that an illicit still had been operated in a barn on Abraham C. Clarke's property located on Springfield Avenue, in the Town of Westfield. The discovery was made after an explosion and fire had completely wrecked the barn. Investigators of this Department were notified and seized the items set forth in Schedule "A" annexed hereto.

At the hearing, Clarke applied for the return of two water pumps and, in addition, sought to avoid padlocking of the premises. Forfeiture of the balance of the articles seized was not contested.

Since an illicit still was seized on the premises, all personal property found thereon is likewise subject to seizure and confiscation. R.S. 35:2-2.

Clarke testified that he had rented the dwelling to a Mrs. Murphy, and had rented a bungalow and the barn to a Mr. Meyers; that thereafter he left the premises to reside temporarily in New York; and that he did not discover the still on his occasional visits to the property.

There are many suspicious circumstances. For years Clarke had obtained water from his own wells, which had in the past been sufficient for the ordinary needs of the dwelling, the bungalow and the barn. Shortly after he rented his property to Murphy and Meyers, Clarke arranged to obtain water from the municipal water system. His explanation is that Meyers told him he was going to raise mink and needed a plentiful supply of water.

It is quite general knowledge that it requires a large amount of water to operate a still.

Clarke had ample opportunity to discover the presence of this large still. He says that he visited the property on the first of every month for four consecutive months preceding the seizure. On each occasion he spoke with Mrs. Murphy, visited a bunk house (which is within a few feet of the still), but did not see Meyers; made no effort to see what was in the barn or the bungalow, and did not inquire of Mrs. Murphy as to Meyers' activities.

And is it not strange that after all these arrangements to obtain water in especially large quantities that Clarke never once thought of visiting the minkery or even inquiring about it!

Wouldn't one naturally want to see all the Mamma minks at play with their babies and learn firsthand if the minks were contented, appropriately watered and their fur thick and glossy so that one who had bestowed this new industry upon Westfield could admit paternity with pride!

Yet, for all the evidence in the case, there never was a mink on the Clarke farm.

I find that Clarke knew or should have known of the existence of the still on his property. Hence, since he could have anticipated the illegal use of his property, his request for return of the pumps is denied.

As to padlocking: Clarke is elderly, has a meagre income and a large mortgage on his property. He has no criminal record. So far as appears, he was not operating the still. He has already been punished by the complete destruction of his barn. Hence, I shall not padlock the dwelling house, but will impose a padlock on all other buildings on his property.

It is determined that all the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the seized property described in Schedule "A" annexed hereto be and hereby is forfeited, in accordance with the provisions of R.S. 33:2-5, and that it be retained for the use of hospitals, and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

It is further ORDERED that the premises in which the illicit still was found, including all of the buildings, except the dwelling house, owned by Abraham C. Clarke, located on Springfield Avenue, in the Town of Westfield, County of Union and State of New Jersey, shall not be used or occupied for any purpose whatsoever for a period of six (6) months, commencing the 12th day of January, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 12, 1939.

SCHEDULE "A"

- 1 - 750 gallon steel cooker with copper coils
- 1 - 250 gallon steel cooker with copper coils
- 1 - 100 gallon galvanized iron cooler with copper coils
- 3 - sections copper column
- 1 - copper dephlegmator
- 2 - electric pumps
- 1 - double action pump
- 1 - gasoline motor
- 1 - steel water tank
- 1 - steel boiler
- 4 - wood vats
- 750 gallons mash
- 1 - 50 gallon drum alcohol
- Miscellaneous personal property.

7. DISCIPLINARY PROCEEDINGS - ASSORTED OFFENSES, SOME SECOND - 3 WEEKS.

In the Matter of Disciplinary Proceedings against
 PATSY KLINE,
 10 Treat Place,
 Newark, New Jersey,
 Holder of Plenary Retail Consumption License C-522, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

Patsy Kline, Pro Se.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges that on November 3, 1939, during prohibited hours, he (1) sold alcoholic beverages on his licensed premises and (2) his licensed premises were open both in violation of Section 1 of Newark Ordinance #3930, adopted December 21, 1938; (3) that on November 3, 1939 he allowed and employed a female other than his wife to serve alcoholic beverages to patrons on his licensed premises in violation of Section (a) of Newark Resolution #4889, adopted May 24, 1939 and (4) that on Sunday, October 1, 1939, between 10:00 A.M. and 10:45 A.M., curtains or screens obscured the view from the street to the interior of his licensed premises in violation of Newark Ordinance #3930 adopted December 21, 1938.

The licensee has entered his plea in ample time prior to the hearing and the Department has been saved time and expense for which the licensee deserves consideration.

The usual penalty for sale of alcoholic beverages and licensed premises being open during prohibited hours is five (5) days on each charge. However, departmental records disclose that this is the licensee's second violation on each charge and accordingly the penalty is doubled, making a total of twenty (20) days less five (5) days for the guilty plea.

The usual penalty for employment of a female other than a licensee's wife is five (5) days less two (2) days for the guilty plea.

The usual penalty for the curtain violation is five (5) days less two (2) days for the guilty plea.

Accordingly, it is, on this 12th day of December, 1939,

ORDERED, that Plenary Retail Consumption License C-522, heretofore issued to Patsy Kline by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for twenty-one (21) days, effective December 16, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,
 Commissioner.

8. ADVERTISING - WINES - COPY APPROVED.

December 12, 1939

J. Walter Thompson Company,
New York, N. Y.

Gentlemen:

I have yours of December 4th and proposed newspaper advertisement #6525-H, for the Wine Advisory Board of California, comprising illustration of a wine glass and holly wreath and copy reading:

"With your Holiday meals
serve Wine

"A fine table wine like ruddy Burgundy or golden Sauterne -- its soft fragrance mingled with the savory aroma of good food! Each piquant, appetizing taste invites you to enjoy dinner to the full. Why don't you try it, this year? You'll find that wine adds to enjoyment of your main course -- and flatters your most important guests!

"This advertisement is printed by the wine growers of California, acting through the Wine Advisory Board, 85 Second Street, San Francisco

"The Wines of California."

which is approved as submitted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - BEER TAP MARKERS - LICENSEES BY NOW SHOULD KNOW THAT MARKERS MUST BE IN FULL VIEW OF THE PURCHASER AND HENCE SHOULD NOT RECEIVE SUSPENDED SENTENCE ON CONDITION OF MAKING APPROPRIATE ALTERATIONS.

December 13, 1939

Thomas M. Madden, Esq.,
Bellmawr Borough Attorney,
Camden, N. J.

My dear Mr. Madden:

I have before me staff report and your letter of November 25th re disciplinary proceedings conducted by the Bellmawr Borough Council against Harry Helduser, T/a Royal Oak, 6 Park Ave., charged with being open after hours and failure to afford public view of beer tap markers, and note that his license was suspended for five days on the first charge and two days on the second, with a proviso that the latter sentence would be suspended if the licensee made appropriate alterations to the beer dispensing apparatus.

Please express to the members of the Council my appreciation for their conduct of these proceedings and the penalties imposed. I am not, however, enthused about the proviso attached to the two-day suspension. By now every licensee in the State knows that beer tap markers must be in full view of the purchaser.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - RETAIL DISTRIBUTION LICENSEES - SALE FOR ON-PREMISES CONSUMPTION - HEREIN OF A FRUSTRATED ATTEMPT TO MATCH PENALTIES.

December 14, 1939

Frank Sahl, Esq.,
West Deptford Township Attorney,
Woodbury, N. J.

My dear Mr. Sahl:

I have before me staff report and your letters of October 21st and November 9th re disciplinary proceedings conducted by the West Deptford Township Committee against Walter McAuley, 60 - 1st Avenue, Mantua Terrace, Mantua, charged with sale of alcoholic beverages for on-premises consumption in violation of the terms of his plenary retail distribution license and permitting containers of alcoholic beverages to be opened on his licensed premises, and note that his license was suspended for ten days.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the penalty imposed.

It is gratifying that the Committee was not impressed by the licensee's objection to the length of the suspension for the reason that somebody in a nearby Township had gotten less for what seemed to him a greater offense. If another municipality is too lenient or isn't standing up to the guns, the remedy is not to surrender all along the line but rather to stiffen the penalties that are inadequate. I'll take care of that in due course even if the power has to be taken away from the municipality. Chairman Pickering was therefore 100% right when he declared that he was not concerned with what any other Township Committee did but that the West Deptford governing body proposed to do their full duty.

The desire of yourself and the Township Committee to continue cooperation with this Department is gratefully respected.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. ALIENS - WHEN BARRED AS LICENSEES - NO DECLARATORY JUDGMENT AS TO EFFECT OF WAR.

Dear Sir:

I am writing to inquire whether or not an individual not a citizen of the United States can legally obtain a liquor license for on the premises consumption in the State of New Jersey. If such individuals can obtain licenses, what would be the status of the license in the event that the United States became involved in war with the country of the alien's origin? In other words, could the alien sell his license in a bona fide transaction or would it be cancelled and revoked by the proper authorities?

Very truly yours,
George Huling.

December 15, 1939

Mr. George Huling,
New York, N. Y.

Dear Mr. Huling:

One not a citizen of the United States may not obtain any liquor license in New Jersey unless he be a national of one of the foreign countries which have entered into treaty with the United States conferring reciprocal privileges of citizenship. See Re Guskind, Bulletin 130, Item 5 and Re McGuigan, Bulletin 228, Item 2.

As regards the effect of war: No opinion is presently expressed. It would be a mere speculation as to emergency legislation. Let us hope it doesn't happen.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLS - 30 DAYS - EFFECTIVE WHEN PREMISES ARE REOPENED NEXT SPRING.

December 15, 1939

Howard W. Roberts, Esq.,
Keansburg Borough Attorney,
Atlantic Highlands, N. J.

My dear Mr. Roberts:

I have before me staff report and your letters of November 29th and December 9th re disciplinary proceedings conducted by the Keansburg Borough Council against Frank A. Vetrano, T/a "Lefty's Chateau", 95-97 Beachway, charged with refilling a liquor bottle, and note that his license was suspended for thirty days.

Please express to the members of the Council my appreciation for their conduct of these proceedings and the penalty imposed, which accords with the recommended minimum for cases of this kind. I was glad to see that the Borough Council was on its toes in making the suspension effective next Spring, when the licensed premises will be reopened after being closed for the winter.

When the effective date is fixed, kindly certify that date to me for the completion of my records.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. BAGATELLE - HIGH SCORE - HEREIN OF THE DIFFERENCE BETWEEN GAMBLING AGAINST THE HOUSE AND OF COMPETITION BETWEEN PLAYERS.

December 15, 1939.

Mr. Denny Guitan, Manager
Edward's Tavern
Boonton, New Jersey

My dear Mr. Guitan:

It is permissible, so far as the State Alcoholic Beverage Law and Regulations are concerned, for the holders of retail liquor licenses to have bagatelle or pin ball machines on their premises, provided there is no pay-off, no playing against the house and they are not used in any way for gambling. Re Hime, Bulletin 311, item 1; Re Benson Novelty Co., Bulletin 161, item 8. For what happens to licensees who pay off on bagatelle, see Re Rabino, Bulletin 307, item 3; Re Avergon, Bulletin 305, item 15; Re Bloomenthal, Bulletin 255, item 6.

It is also permissible, at the present time, for a licensee to give a prize for the highest score made within a given period of time. Re Bernards Inn, Bulletin 51, item 1; Re Albright, Bulletin 51, item 2.

I learn from reports which have come to me lately that there is some misunderstanding on the part of licensees as to just what is meant by "high score" and "playing against the house."

"High score" does not mean any old score, providing only that it is high. It means the highest score, whatever that score may be, and no strings attached by way of a minimum that must be exceeded, or anything else of the like. Offering a prize to players exceeding a certain score, or illuminating a specified number of disks or indicators on the machine, is something quite different. That is not a prize for highest score, but rather is playing against the machine or playing against the house. It is sheer gambling because it is nothing more than a bet by the house that the player cannot beat the machine and a bet by the player that he can.

The prize which is a true prize and which is permissible, is a prize in unrestrained competition where one player competes against all others who play the machine over a given period of time, say a week, the prize being awarded to the one who scores the highest.

I am planning shortly to revise and restate the regulations regarding the giving of prizes. When the new rules are formulated, all licensees will be duly advised. In the meantime, until the present rules are changed, you may give so far as I am concerned one weekly prize to the person who makes the highest score during the calendar week and that is all.

Very truly yours,
D. Frederick Burnett,
Commissioner.

14. CORPORATE LICENSEES - EFFECT OF CHANGES IN STOCKHOLDINGS --
HEREIN OF THE NORMAL RULE OF CORPORATE ENTITY AND THE OCCASIONS
WHEN THERE IS GOOD CAUSE TO DEPART FROM IT.

December 13, 1939

Mr. John McNair,
Chairman of Police Committee,
North Plainfield, N. J.

My dear Mr. McNair:

Changes in officers, directors or stockholders of corporations do not require formal transfers. It is the corporation, not the individuals, which has been licensed. In legal contemplation, the corporate entity, which is the licensee, continues the same irrespective of such changes. No transfer is required because no transfer is made of the license itself.

The municipal license issuing authority must, however, be notified of the changes in the constituent personnel pursuant to R. S. 33:1-34. Mr. Clement tells me that in the case to which his letter refers this has been done.

If so, then upon receipt of such notice it is the duty of the municipality to cause to be made such investigations as may be necessary to determine whether or not the new officers, directors and stockholders are properly qualified. The statutory qualifications and the procedure are set out at length in ruling in Re Roberts, Bulletin 366, Item 2, a copy of which is enclosed.

If, perchance, you find some one or more not to be properly qualified, I cordially suggest that you then take the matter up direct with me, so that I can advise you specifically just what to do.

A corporation is a strange creature! The law treats it as if it were a person of itself, separate and distinct from the individuals who compose it. Hence, if, as in the instant case, every stockholder sold out and a brand new bunch of people come into the business, the law would still regard the corporation as being the same old person that it was in the beginning. Now that is the general rule and will obtain unless there is good cause to depart from it. Sometimes there is. If, for instance, the concept of imputing a fictitious personality to a group of men who constitute a corporation is utilized for the purpose of perpetrating a fraud or evading a statute, that's a horse of a different color, and in such a case the courts will allow evidence to show what was the real purpose or objectives of the men behind the corporation and thereupon treat it as any other combination of malefactors. Fraud against a person or fraud on the law is, however, never presumed. It must always be proved. Hence, everything depends on the facts.

Presumptively, therefore, the transfers of stock which have been made are proper and will have to be honored unless and until the contrary appears.

But, as you see, the hands of the license issuing authorities are in nowise tied and they are free to take appropriate action if once they find facts which affirmatively justify it.

Otherwise a mere fiction valuable for the public convenience for which it was invented, would become a cast iron rule under which fraud could be perpetrated, laws evaded and the public interest defied.

When the reason fails, the rule itself must fall.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

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| In the Matter of the Seizure of) | Case #4998 |
| Hollie Douglas' Ford Coach, and) | |
| two 1-gallon jugs of alcohol) | |
| found therein, on Plane Street,) | ON HEARING |
| in the City of Newark, County of) | CONCLUSIONS AND ORDER |
| Essex and State of New Jersey.) | |
| -----) | |

Harry Castelbaum, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

On August 31, 1938, investigators of this Department observed a Ford Coach, in which two men, later identified as Hollie Douglas and Willie Jackson, were seated, parked in the vicinity of 353 Plane Street, Newark. Douglas started to drive away, after a third man, identified as Harry Pittman, entered the vehicle carrying a paper bag.

The investigators stopped the vehicle, found that the paper bag, held by Pittman, contained a gallon jug about half full of alcohol. In the rear of the car there was a burlap bag which contained six empty 1-gallon jugs and one 1-gallon jug full of alcohol.

Douglas, a repeated violator of the liquor laws, and his two companions were arrested, and the motor vehicle and alcohol were seized.

At the hearing held herein, no one appeared to contest the seizure or forfeiture of the alcohol or motor vehicle.

The alcohol is prima facie illicit because, although fit for beverage purposes, the jugs in which it is contained bore no tax stamps. R. S. 33:1-1(i). Hence, it and the vehicle in which it was transported are unlawful property, subject to forfeiture.

Accordingly, it is ORDERED that the seized property set forth in Schedule "A", annexed hereto, be and hereby is forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

Dated: December 15, 1939.

D. FREDERICK BURNETT,
Commissioner.

SCHEDULE "A"

- 2 - jugs of alcohol
- 1 - Ford Coach, Engine No. A4231569,
New Jersey 1938 Registration No. E96894.

16. ADVERTISING - CONTRIBUTIONS TO CHURCHES AND CHARITIES FOR TURNING IN BEER CAPS - DISAPPROVED.

Dear Sir:

We are contemplating making contributions to various churches and charitable organizations by paying them so much per hundred for beer caps.

Is there anything in this that would be regarded by the department as a violation?

Very truly yours,
Chester Distributing Company

December 16, 1939

Chester Distributing Company, Inc.,
Trenton, N. J.

Gentlemen:

If you wish to contribute to churches and charities, well and good, but don't mix it up with the redemption of beer caps.

The advertising scheme is wholly inappropriate and is hence disapproved.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

17. CONSUMPTION LICENSEES - OTHER MERCANTILE BUSINESS - SALE OF PIPES, BOX CANDIES, NOVELTIES AND FOUNTAIN PENS PROHIBITED.

December 15, 1939

Harborside Restaurants, Inc.,
Jersey City, N. J.

Gentlemen:

It is permissible, generally speaking, for you to distribute circulars advertising prices of alcoholic beverages, provided there is no advertisement of price under the established Fair Trade minimums.

I have not taken the pains or the time to check the prices on the circular you have submitted. That is entirely up to you. If there is no violation of the Fair Trade Regulations, the circular is acceptable so far as the liquor items are concerned.

I note at the bottom:

"AT OUR CIGAR DEPARTMENT WE ARE FEATURING:-

"CIGARS
CIGARETTES
PIPES

"CANDIES BY THE BOX
NOVELTIES
WATERMAN & PARKER FOUNTAIN PENS."

Now my records show that you hold a plenary retail consumption license. According to R. S. 33:1-12, such licenses may not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on. How come, then, the pipes, candies, novelties and fountain pens? The sale of such items involves the conduct of other mercantile business which the above section of the statute expressly prohibits. If they are being carried on the same premises for which your liquor license has been issued, they must be removed at once.

I shall expect your written assurance by return mail.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

18. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - 10 DAYS FOR THE MAN WHO FORGOT.

December 13, 1939

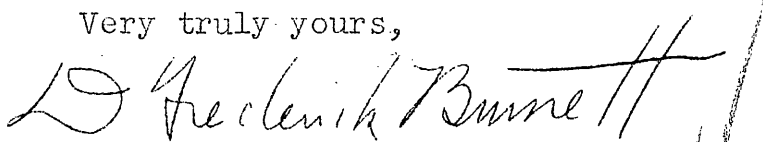
Leo P. Carroll,
Township Clerk,
Weehawken, N. J.

My dear Mr. Carroll:

I have before me staff report and your letter of November 27th re disciplinary proceedings conducted by the Township Committee against Jay-Dee Wine & Liquor Store, 88 Highwood Avenue, charged with sale of alcoholic beverages on Primary Election Day last past, and note that its license was suspended for ten days.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the appropriate penalty imposed notwithstanding the plea of the president of the licensee corporation that he "forgot" it was Election Day. It will give him plenty of time to mark his calendar for next year!

Very truly yours,



Commissioner.

New Jersey State Library