

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

BULLETIN 289

DECEMBER 22, 1938

1. DISCIPLINARY PROCEEDINGS -- FAIR TRADE -- SALES AT CUT RATES --
NOTICE.

A writ of certiorari was today allowed by Mr. Justice Perskie, of the New Jersey Supreme Court, to review the order made by the Commissioner of Alcoholic Beverage Control on December 14, 1938, against John Gaine, 104 Hillside Avenue, Neptune City, Monmouth County, N. J., which order suspended the license of John Gaine for 20 days commencing December 19th.

The writ was "allowed upon condition that prosecutor (John Gaine) shall not further violate Regulations No. 30 of Respondent (the Fair Trade Regulations) and that this cause shall be brought on for hearing at the next term of court, namely, Jan. 17, 1939."

Accordingly, I have lifted temporarily the suspension of John Gaine to abide the decision of the Supreme Court.

I have also been served with an order to show cause and temporary restraining order in a suit instituted in the Court of Chancery by the Ace Beverage Company, Inc. against me as Commissioner. The object of the bill is to have the Court declare Chapter 208 of the Laws of 1938 (the Statute under which the Fair Trade regulations were made) unconstitutional and void and to restrain the Commissioner from prosecuting pending charges against the Ace Beverage Company for alleged violation of the Fair Trade regulations.

The order to show cause was issued by Vice Chancellor Malcolm G. Buchanan. He imposed the restraint therein "expressly on the condition, assented to by complainant by its Solicitor that unless and until the restraint herein directed against the said Commissioner shall be discharged or terminated, the said complainant shall desist or refrain, and it is hereby restrained, from any violation of rule or paragraph 6 of regulations No. 30."

It will be noted that both the Supreme Court and the Court of Chancery have made their orders expressly conditioned upon observance of the Fair Trade Regulations until the questions of constitutionality which have been raised are determined by the respective courts.

I mention this so that licensees do not get the erroneous impression that they are now at liberty to sell alcoholic beverages in disregard of the Fair Trade regulations. The opposite is the fact. Licensees who violate do so at their peril, for if the constitutionality of the act and of the Regulations is sustained, appropriate penalties for interim violations will be strictly administered the same as heretofore.

There are now four licensees in the State under suspension for violation of the Fair Trade Regulations, viz., (1) Isadore C. Horn, 379 Centre Street, Nutley -- 10 days expiring December 21st at midnight; (2) Joseph Levine, 591 Orange Street, Newark -- 10 days expiring December 22nd at midnight; (3) William S. Guskind, 500 Jersey Avenue, Jersey City -- 20 days expiring December 22nd at

2 A.M.; and (4) Paul D. Rappaport, 205 Madison Street, Passaic - 10 days expiring December 23rd at midnight.

In view of the possibility that the courts may not sustain the constitutionality of the Act and of the Regulations and that pending any decision two licensees are, by virtue of the court orders above recited, permitted to sell alcoholic beverages at Fair Trade prices during the holiday season which, it is common knowledge, is the best selling season of the year, I deem it unfair that the four licensees now under suspension as aforesaid should be deprived of the same privilege. Accordingly, on my own motion, I have today lifted temporarily the suspension of each of the four licensees whose places are now closed as aforesaid and notified them accordingly by telegram.

If and when the constitutionality of the Act and the Regulations is sustained, further orders will be entered requiring the licensees to serve the balance of their respective suspensions.

Hereafter, to obviate further applications to the courts raising the same questions now at issue and in order to treat all licensees on a parity, the effective date of any suspension imposed in all disciplinary proceedings now pending or hereafter instituted, if guilt shall be adjudicated for violation of the Fair Trade Regulations, will not be fixed unless and until the questions of constitutionality shall have been resolved favorably to the Act and the Regulations.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 17, 1938.

2. NEW YEAR'S EVE - HOURS OF SALE - DISPENSATION NOT EXTENDED -
HEREIN OF HOW NEW YEAR'S EVE COMES BUT ONCE A YEAR.

Dear Sir:

Inquiry has been made to the Township Committee by the licensed beverage holders asking the committee for the extension of closing hours from 2 A.M. continuing on throughout the morning of January 2, 1939.

The hours at present are from 1 P.M. on Sundays until 2 A.M. the next morning. The licensed beverage holders feel that New Year's being Sunday, Jan. 1, a good many of their patrons will celebrate starting on Sunday night.

Kindly advise if you will approve of the extension.

Very truly yours,
Thomas Quinn,
Township Clerk.

December 19, 1938

Thomas Quinn, Clerk,
Deptford Township,
Westville, N. J.

My dear Mr. Quinn:

New Year's Eve is universally accepted as the time to celebrate the passing of the old and the birth of the new year. It

is only because New Year's Eve is unique that I have approved any extension of hours beyond 3:00 A.M. As a matter of general regulation, I am opposed to sales of alcoholic beverages after 3:00 A.M.

The evening before January 2nd is not New Year's Eve. I doubt whether anyone, who would refrain from celebrating on New Year's Eve because the early morning hours of January 1st fall on Sunday, would feel any less constrained to festivity on the night of New Year's Day which is still Sunday. Nor do I have inordinate expectations that these wet martyrs will await the turn of midnight on January 1st with stoical restraint so that they can espouse the early morning hours of January 2nd with wild abandon, belated though they be. Rather, I surmise that the objective is to prolong the dispensation on New Year's Eve to create a marathon souse over the weekend.

I advise against it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against
EMIL SAWCZUK and MIKE SZARKO,
158 Ferry Street,
Newark, New Jersey,
Holder of Plenary Retail Distribution License No. D-91, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
-----)

CONCLUSIONS
AND ORDER

Kanter and Kanter, Esqs., by Elias A. Kanter, Esq.,
Attorneys for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensees alleging that, on or about November 7, 1938, they sold a pint bottle of Wilson "That's All" whiskey below the minimum retail price, in violation of State Regulations No. 30.

Investigator Wagi, of this Department, testified that he visited the licensed premises on November 7th; that he asked Emil Sawczuk to sell him three bottles of beer; that he paid twenty-five cents after Sawczuk had told him that the cost of three bottles of beer was twenty-five cents; that he later asked the price of a pint of Wilson "That's All" whiskey and was told that the price was \$1.16; that thereupon he told the licensee he could not pay more than a dollar and that the whiskey was then sold to him for one dollar.

Licensee Sawczuk admits selling the beer and whiskey. He testified that the beer usually sells at three bottles for nineteen cents; that, after Wagi placed \$1.25 on the counter, he sold him

both the beer and the whiskey for that sum of money. Licensee's argument is based on the contention that this was a combination sale; that he charged \$1.16 for the pint of Wilson "That's All" whiskey, and that the balance of nine cents represented the price at which he sold the three bottles of beer. Licensee testified: "I give him a break on the beer", although he admits that he did not disclose to the Investigator that he was selling the beer for nine cents.

First, I believe the testimony of Investigator Wagi, that these were two separate transactions, rather than a single sale as Sawczuk contends.

Second, combination sales have been prohibited by Rule 19 of State Regulations No. 20 for a long period of time.

The mental process, whereby licensee resolved, as an undisclosed fiat, that this was a single transaction, does not excuse him. The evidence shows that the pint of Wilson "That's All" whiskey was sold for One Dollar. Such sale was in violation of the Fair Trade Regulations. I am not interested in ingenious excuses trumped up in vain effort to protect price chisellers.

I find the licensee is guilty as charged.

Accordingly, it is on this 18th day of December, 1938,

ORDERED that Plenary Retail Distribution License No. D-91, heretofore issued to Emil Sawczuk and Mike Szarko by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - HACKENSACK TAVERN KEEPERS ASSOCIATION ET AL.
v. HACKENSACK ET AL.

HACKENSACK TAVERN KEEPERS ASSOCIA-)	
TION and P.B.K. CORPORATION,)	
)	
Appellants,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
CITY COUNCIL OF THE CITY OF)	
HACKENSACK and BALE HOLDING COR-)	
PORATION, trading as MANSION)	
HOUSE,)	
)	
Respondents.)	

Landau & Mehler, Esqs., by William B. Mehler, Esq.,
Attorneys for Appellants.
Horace F. Banta, Esq., Attorney for Respondent City Council.
LeRoy VanderBurgh, Esq. and I. William Aronsohn, Esq.,
Attorneys for Respondent Bale Holding Corporation.

BY THE COMMISSIONER:

This is an appeal from the issuance of plenary retail consumption license No. C-53 for the 1938-1939 period to respondent Bale Holding Corporation for premises known as the Mansion House and located at 50 Main Street, Hackensack.

The 1937-1938 license for the Mansion House was held by the B.B. & B. Corporation, which occupied the premises as a tenant. In June 1938 that corporation was declared insolvent by the Court of Chancery and a receiver was duly appointed. On June 13, 1938 the Bale Holding Corporation, which owned the premises, made an offer to the receiver for an assignment to it of the license originally issued to the B. B. & B. Corporation and thereafter an order was entered by the Court of Chancery authorizing the receiver to execute such assignment. On June 18, 1938 the Bale Holding Corporation filed a formal application for a plenary retail consumption license for the Mansion House for the 1938-1939 license year and on June 23, 1938 it sent to the City Manager of the City of Hackensack license certificate C-15 originally issued to the B. B. & B. Corporation and the assignment thereof by the receiver and a copy of the Court's order. On June 29, 1938 the application was granted by the respondent City Council of the City of Hackensack.

The appellants contend that the granting of the license to Bale Holding Corporation was contrary to (1) R.S. Sec. 33:1-26, which prohibits the sale of a license; and (2) Section 9 of Ordinance 247 of the City of Hackensack, which prohibits the issuance of licenses for premises within five hundred feet of other licensed premises, and further provides that no new licenses shall be granted until the aggregate number of consumption licenses in Hackensack drops below thirty.

The first contention is not pertinent since the action being reviewed is not the transfer or renewal of license C-15, which expired on June 30, 1938, but is the issuance of a new license to Bale Holding Corporation. The statutory provision against sales of licenses has no bearing where, as here, the sole issue presented is the propriety of the issuance of a new license by a municipal issuing authority.

With respect to the second contention, respondents admit that the Mansion House is located within five hundred feet of other licensed premises and that there are now fifty-five consumption licenses outstanding in Hackensack. They point out, however, that although Section 9 contains comprehensive provisions against the issuance of licenses for premises within five hundred feet of other licensed premises and for a limitation of licenses (expressly inapplicable to renewals and transfers), it also contains the following qualifying provisions:

"Nothing contained in this ordinance shall be construed to prevent the sale of a going business or the succession of a going business to the family or heirs.

"Neither is it the purpose of this ordinance to prohibit the sale of the license by a trustee in bankruptcy to a new owner in order to attempt to liquidate the business."

Although inartistically drawn, the intent is fairly evident, to wit: persons who succeed to licensed establishments (a) as purchasers inter vivos of going businesses, (b) by testacy or intestacy, and (c) as purchasers from judicial officers who are engaged in liquidation, shall not be excluded from obtaining licenses by the provisions of the ordinance. In so far as these three special situations are concerned, there is no requirement in the ordinance that the applicant first obtain a transfer of the old license and then apply for renewal. He may, as in the instant case, apply for a new license while the old license is permitted to expire.

The practical construction placed upon the ordinance by the City authorities has been in fulfillment of the foregoing intent.

Thus, the City Council of the City of Hackensack has, on several occasions, granted new licenses to purchasers of going businesses where the old licenses were not transferred but were permitted to expire under their terms; and, indeed, in the instant matter the City Manager advised the Bale Holding Corporation that, under the facts presented, it could properly apply for a new license for the Mansion House without any transfer to it of the license originally issued to the B. B. & B. Corporation. Presumably, the City Council, in issuing the license to Bale Holding Corporation, agreed fully with this position.

The issuance of the license to Bale Holding Corporation did not increase the aggregate number of licenses outstanding in Hackensack and I am satisfied that it is within the authority of the ordinance as reasonably construed in the light of the underlying intent and the practical construction consistently placed thereon.

The action of the respondent, City Council of the City of Hackensack, is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 18, 1938.

5. APPELLATE DECISIONS - GRUBER v. ATLANTIC CITY.

ALOIS GRUBER,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
BOARD OF COMMISSIONERS OF THE CITY))	
OF ATLANTIC CITY,)	
)	
Respondent.)	
-----))	

Morris Bloom, Esq., Attorney for the Appellant.
Samuel Backer, Esq., by Daniel J. Dowling, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

On June 2, 1938, appellant, holder of a plenary retail consumption license for 910 Atlantic Avenue in Atlantic City, was granted a renewal of his license for the now current term. On June 8, he applied for a place-to-place transfer of that renewal license to 12 North North Carolina Avenue, which was denied on June 23. Thereafter, on July 27, he re-applied for the transfer. This new application, without being passed upon by respondent, was returned (together with the transfer fee) to appellant on August 8 by a municipal liquor license inspector on direction of respondent's chairman, who believed it was improper for appellant to re-apply after the denial of his original application. In consequence, appellant filed the present appeal.

The proposed premises are located in a mixed residential and business section, the residences being largely devoted to the renting out of rooms to summer vacationists. Within a 4-block radius there are thirteen consumption establishments (one being devoted exclusively to a "package goods" trade). A tavern was conducted at the premises in question from Repeal until February 1936,

when the licensee transferred to a location elsewhere in the city. Thereafter, one Lillian Goodman applied for transfer of her consumption license to the vacated premises. This application was denied, and the denial sustained on appeal, because of the disturbing effect of the previous tavern upon the immediate neighborhood. Goodman v. Atlantic City, Bulletin 128, Item 8.

That immediate neighborhood has remained substantially unchanged since the time of the Goodman matter. In accordance therewith, respondent denied appellant's first application to transfer to the premises in question in apparent pursuance of its policy, formulated in the Goodman case, to preserve the peace of the neighborhood against such disturbance as resulted when a tavern was previously operated there.

Although respondent may have been of the same mind when appellant's new application was filed, it was nevertheless technical error for it not to deliberate and pass upon that application and for the chairman, whether acting on his own or by authority of respondent, to cause it to be returned to appellant. An issuing authority may not refuse to consider any application, but should deliberate and pass judgment upon it. The fact that, as here, the application is exactly similar (as to both subject matter and applicant) with one previously denied by the issuing authority a month and a half before does not alter the case. There is nothing which prohibits an applicant from filing an application as often as he pleases. Lilly v. Way, Bulletin 220, Item 1. Conditions may change between the time of successive applications; the issuing authority may in good faith change its mind; or, in the instance of a restrictive regulation, the issuing authority may, when considering the application, decide that the regulation should be modified or repealed.

Hence, respondent was in error in not passing upon the new application.

The error, however, was not prejudicial to appellant for, the case having been since fully heard on appeal, the application for transfer must be denied in any event because the premises to which appellant seeks to transfer are within 300 feet of an existent consumption place and the Atlantic City ordinance prohibits such a transfer.

That the regulation is reasonable, is beyond doubt.

Appellant contends, however, that it cannot be applied in his case since it was adopted subsequent to the filing of his present application. The facts are that on July 28 (the day after filing of that application) respondent introduced an ordinance, finally adopted on August 11 (three days after the application was returned), prohibiting the transfer of consumption licenses to premises within 300 feet of an existing consumption place. This restriction was amended (by ordinance introduced on August 26 and finally adopted on September 8) to include issuance as well as transfer of such licenses. Hearings on the present appeal occurred on September 15 and October 7.

A municipal limitation adopted, as here, in good faith, is effective retroactively upon applications theretofore filed but not yet passed upon, unless the regulation exempts them. It is immaterial which came first, the application or the limitation. For recent cases illustrating this rule, see Widlansky v. Highland Park, Bulletin 209, Item 7; Cocciolone v. West Deptford, and Trovato v. West Deptford, Bulletin 247, Item 3; Galluccio and Sciarabone v. Belmar, Bulletin 255, Item 8.

Since nothing would be accomplished by remand and it appears on the record that the transfer applied for would, if granted, be in violation of a valid local ordinance, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 18, 1938.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES AFTER HOURS -
HEREIN OF THE REFRESHING ABSENCE OF A COCK AND BULL STORY.

In the Matter of Disciplinary)
Proceedings against)
)
PATSY KLINE,)
10 Treat Place,)
Newark, New Jersey,)
)
Holder of Plenary Retail Consump-)
tion License No. C-445 Issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

CONCLUSIONS
AND ORDER

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

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of keeping his tavern open, and selling and serving liquor therein, after 3 A.M. on Thursday, December 1, 1938, in violation of Newark Ordinance #6579, which (with certain exceptions here not material) forbids licensed premises from being open or sales of liquor being made therein between 3 A.M. and 7 A.M. on weekdays (and 3 A.M. and noon on Sundays).

This is the defendant's first offense of record.

This is all he had to say:

"By the Hearer:

"Q What is it that you wish to testify to?

A I made a mistake; it was a little tough, and I know I made a mistake, so I take the consequence. I only made a mistake; I should not have done it. Things have been so tough that is the only reason I done it.

Q You mean business was so bad you remained open?

A Yes.

Q Is that the only thing you wish to say?

A Yes."

His license will be suspended for five (5) days for keeping his tavern open during prohibited hours, and for an additional

five (5) days for selling and serving during those hours. However, five (5) days will be remitted because of his frankness in pleading guilty and admitting his mistake without presenting a "cock and bull" story.

Accordingly, it is, on this 18th day of December, 1938,

ORDERED that plenary retail consumption license No. C-445, heretofore issued to Patsy Kline by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of five (5) days, commencing December 25, 1938, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - BERNSTEIN v. HILLSIDE.

JACOB BERNSTEIN,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE TOWNSHIP)	
OF HILLSIDE,)	
)	
Respondent)	

Gustave G. Kein, Jr., Esq., Attorney for Appellant.
Sigurd A. Emerson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located at 1283 Liberty Avenue, Township of Hillside.

The pertinent parts of the resolution denying the license are as follows:

"WHEREAS the Board has rejected other applications in the past on ground that sufficient licenses are now in force in that locality, it is therefore

"RESOLVED that this applicant be denied a license on the same grounds that sufficient licenses are now in effect in that locality, ***."

The Township, with a population of approximately twenty thousand, has four distribution and nineteen consumption licenses, outstanding at the present time. At the time the present application was denied, there was a vacancy under the ordinance which then provided that the number of distribution licenses outstanding at the same time should not exceed five. Despite the existence of a vacancy at that time, the respondent had the right to consider whether there already existed sufficient licenses in the immediate vicinity of the place for which the license was sought and, if it appears that such opinion or decision is backed by facts, the action of respondent, in denying the present application, should be affirmed. Young v. Pennsauken, Bulletin 114, Item 2.

Distribution licenses outstanding are located at 33 Coe Avenue, 249 Hollywood Avenue, 1576 Maple Avenue and 1315 Liberty Avenue. The vacancy under the ordinance as it existed at the time the application was denied was caused by the fact that a former distribution licensee, whose premises were located on Maple Avenue about two hundred feet from 1576 Maple Avenue, failed to renew his license on July 1st, 1938 because his premises had previously been destroyed by fire. Coe Avenue, Hollywood Avenue, Maple Avenue and Liberty Avenue are business districts which are widely separated from one another. The distribution premises at 1315 Liberty Avenue are on the same side of the street, a trifle over one block from the premises for which appellant seeks a license.

In the absence of strong and convincing evidence as to the necessity for another distribution license in this section of Liberty Avenue, it would appear that the distribution license at 1315 Liberty Avenue would be sufficient to take care of the needs of persons residing in that section of the Township. That this has been the consistent attitude of respondent appears from the fact that, as long ago as 1935, it denied a distribution license to one Romanyshyn for premises located on Liberty Avenue, directly across the street from appellant's premises. That denial was based on the alleged reason that there were sufficient licensed premises in said locality. The fact that respondent formerly granted two distribution licenses in close proximity to each other on Maple Avenue is not a sufficient reason for concluding that it must create the same condition on Liberty Avenue. Issuing authorities, believing in good faith that overcrowded conditions should be corrected, should not be bound by past mistakes. The good faith of respondent herein is evidenced by the fact that, on October 26, 1938, subsequent to the date on which it denied appellant's application, it amended its ordinance to provide that the number of plenary retail distribution licenses outstanding in the Township of Hillside at the same time shall not exceed four. The amendment to the ordinance is a factor because I ought to take it into consideration in determining whether the license should be granted now. In cases, however, where the ordinance is amended after an application is denied, appellant should have an opportunity to contest the reasonableness of the municipal regulation and its application to him. Widlansky v. Highland Park, Bulletin 209, Item 7.

The evidence introduced on behalf of appellant consists of his own evidence and that of a medical doctor. Appellant testified that he conducted a drug store at 1279 Liberty Avenue for about four years, until about September 1938 when he moved his drug store to his present premises at 1283 Liberty Avenue; that he has frequent calls for alcoholic beverages not for social purposes but for medicinal purposes; that many of his customers have an aversion to going into a tavern or package store. The Doctor testified that he occasionally writes a prescription for liquor and that he doesn't want the prescription filled anywhere else but in a drug store. Appellant, however, frankly admitted that, if granted a license, he would go into competition with anyone selling package goods. The sale of liquor for supposed "medicinal purposes" went out of fashion upon Repeal. Re Coles, Bulletin 243, Item 1. As to the Doctor's testimony, there appears to be no valid reason why a prescription for liquor which is fit for beverage purposes should necessarily be filled at a drug store. Appellant, who is a registered druggist, may, without a liquor license, purchase and use alcoholic beverages for the compounding of physicians' prescriptions and for the preparation of mixtures and medicines unfit for use as beverages. R. S. 33:1-29 (Control Act, Section 26).

Appellant has not sustained the burden of proof in showing that there is need for an additional distribution license in the section of the Township in which his premises are located, and has

failed to show that the amended ordinance is unreasonable in itself or as applied to him. Bell's Drug Store v. Cranford, Bulletin 141, Item 12; Lan v. Millburn, Bulletin 163, Item 11; Shor v. Linden, Bulletin 190, Item 9; Cf. Burdo v. Hillside, Bulletin 191, Item 10. The case of Hubert v. Linden, Bulletin 251, Item 6, is clearly distinguishable because it appeared therein that the nearest distribution license was located thirty-seven hundred feet away from appellant's premises and that an alleged policy of denying distribution licenses because of the existence of consumption licenses nearby had not been uniformly applied.

Appellant lastly contends that the answer and amended answer filed herein should be stricken because not filed within the time prescribed by Rule 4 of State Regulations No. 14 and appellant's case considered ex parte. Admittedly, these papers were not filed within time but the attorney for appellant, after being given an opportunity to apply for an adjournment if surprised by the contents of the answer or amended answer, did not request an adjournment but agreed to submit briefs on the question as to whether the answer and amended answer should be stricken. I have considered appellant's brief and, in view of the provisions of Rule 14 of State Regulations No. 14, permitting me to relax or dispense with said rules where strict adherence to them would result in injustice, I have decided to consider these papers as filed within time because appellant was given full opportunity to present his evidence at the hearing on appeal and because the merits of the case have been argued fully in the briefs submitted by both sides.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 18, 1938.

8. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to)
Remove Disqualification because of)
a Conviction, Pursuant to the) CONCLUSIONS
Provisions of R.S. 33:1-31.2 (as)
amended by Chapter 350, P.L. 1938.)

Case No. 42.)
-----)

Petitioner Pro Se.

BY THE COMMISSIONER:

In November 1924 petitioner, then 20 years old, was convicted of robbery and sentenced to a term of from four to fifteen years in State's Prison. He served three years and one month of that term, being paroled in December 1927. In March 1930 he was convicted of knowingly passing a counterfeit \$10.00 bill and was sentenced to, and served, a nine months' term of imprisonment. Later that year, he was also convicted of disorderly conduct and fined \$10.00 and costs.

Since his release from prison in 1930 petitioner, who is unmarried, has resided with his parents at his present address. For the first three years, he worked as a gasoline station attendant. Thereafter, he was employed as a bartender in his home town and in an

adjoining municipality. He continued this employment until September last, when adverse business conditions threw him out of a job. In October he made plans to obtain a retail liquor license and discovered, for the first time, that his convictions of robbery and for knowingly passing a counterfeit bill disqualified him (R. S. 33:1-25, 26; Control Act, Secs. 22, 23) from obtaining a license and from working for a liquor licensee in this State. He thereupon filed the present application for removal of that disqualification.

Petitioner presented four character witnesses at the hearing - a police captain of his home town, who has been a member of the police force for 13 years, has known petitioner for 15 or 20 years, and lives five blocks from his home; a police lieutenant of the same town, who has been a member of the force for 25 years, has known petitioner for 15 or 18 years, and lives six blocks from his home; the municipal clerk of that town, who has served as clerk for 13 years, has known petitioner for 20 years, and lives eight blocks from his home; and a police captain of the adjoining municipality (where petitioner has worked as bartender for a year and a half), who has been a member of the police force there for 11 years and has known petitioner for 6 years.

These witnesses testified that petitioner has a good reputation; that he is, and since 1930 has been, an honest and law-abiding citizen; and that, in their opinion, his association with the alcoholic beverage industry will not be prejudicial to that industry or to the public interest in this State. Petitioner's fingerprint record shows that he has been convicted of no offense since 1930.

Normally, I would readily conclude from the foregoing evidence that petitioner has led an honest, decent and law-abiding life since 1930 and that his disqualification should therefore be lifted. What here gives me pause is the fact that he was continuously employed as a bartender (from Repeal until a few months ago) while actually disqualified from such employment.

However, I am satisfied that petitioner acted in good faith and in ignorance of his disqualification. He worked as a bartender with the full knowledge of the local police who were also aware of his record. His present application results, not from being "discovered" by any enforcement agent, but from his own motion on learning that his convictions disqualified him. In such circumstances, I shall, in fairness, judge him by his good reputation as an honest and law-abiding citizen since 1930 and by his clear record during the years he acted as bartender. I believe he has successfully lived down his past and has now become a worthy member of society. After all, that is what counts most. Accordingly, his disqualification will be removed.

It is, therefore, on this 19th day of December, 1938,

ORDERED that petitioner's disqualification from holding a license or being employed by a licensee because of the convictions referred to herein, be and the same is hereby removed, in accordance with R. S. 33:1-31.2, as amended.

D. FREDERICK BURNETT,
Commissioner.

9. RETAIL LICENSEES - HOURS - EXTENSION OF HOURS ON NEW YEAR'S DAY APPROVED - BUT QUARE AS TO EXTENSION OF HOURS ON THE DAY AFTER GENERAL ELECTION.

December 19, 1938

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

My dear Mr. DuPree:

I have before me resolution adopted by the Board of Aldermen on December 5th, amending Section 3 of resolution adopted June 28, 1935.

Section 3, as amended, authorizes sales of alcoholic beverages at all times on New Year's Day, except when New Year's Day falls on Sunday, and then not between the hours of 5:00 A.M. and 1:00 P.M., and at all times on the day following General Election Day each year. As it deals only with hours of sale, the section does not, for the reasons stated in Bulletin 43, Item 2, require my approval in the first instance in order to be effective. It is, instead, as provided in R. S. 53:1-41 (Control Act, Sec. 38), subject to review on appeal.

I am willing to go along with your Board in calling all wraps off on New Year's Day, and until 5:00 A.M. when New Year's Day falls on Sunday (Bulletin 286, Item 1), and thank you for the Sunday deference.

I am not so sure about the day following General Election. As a matter of general regulation, I think that 3:00 A.M. is plenty late enough, and am not at all sanguine that the day following General Election is one for paeans and feasting. It may well prove to be a day which ought to be set apart for prayer and fasting. I shall not, however, pass upon Section 3-b at this time, but shall watch its operation to see how it works out, reserving decision until it comes before me on appeal.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ADVERTISING - WHITEWASH AND SOAP ART ON BACK BAR MIRRORS - NOT A MONOPOLY.

December 20, 1938

William Spitznagel,
Union City, N. J.

My dear Mr. Spitznagel:

I am indeed sorry to learn that one of our licensees is making inroads upon your business of decorating back bar mirrors with candles and berries in whitewash and other exercises of the Yuletide soap-art.

It is not against the law for manufacturers or wholesalers to decorate back bar mirrors with seasonal greetings enmeshed with advertising matter so long as they stay within bounds both as to the subject matter and the cost.

You may continue to pick up odd jobs in taverns and this, because you are an independent contractor, without any permit from me, but you have no right to stop the amateur artists from "butting in", as you say, "on the painting business."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. MUNICIPAL REGULATIONS - HOURS OF SALE - GENERAL REGULATIONS
APPLICABLE TO ORDINARY WEEKDAYS APPLY ON DECEMBER 26th NOTWITH-
STANDING IT IS A LEGAL HOLIDAY - CHRISTMAS COMES BUT ONCE A YEAR
AND THEN ON DECEMBER 25th.

Dear Commissioner:

A question has been raised in the Borough of North Plainfield if retail licensed taverns, etc. should be closed on Monday, December 26th.

Our regulations require closing on Sundays, but as Monday is celebrated as Christmas, have you any state regulations in regard to the matter?

Very truly yours,
C. M. Dolliver.

December 20, 1938

Dolliver & Feaster,
Plainfield, N. J.

Gentlemen:

Christmas is the 25th day of December. To say, when it falls on a Sunday, it is "celebrated" on the following Monday is not entirely correct. R. S. 36:1-1 provides that certain days, including "the twenty-fifth day of December, known as Christmas day..... shall, for all purposes whatsoever as regards the presenting for payment or acceptance, and of the protesting and giving notice of dishonor, of bills of exchange, bank checks and promissory notes be treated and considered as the first day of the week, commonly called Sunday, and as public holidays.....Whenever any of the days herein enumerated can and shall fall on a Sunday, the Monday next following shall, for any of the purposes herein enumerated be deemed a public holiday; and bills of exchange, checks and promissory notes which otherwise would be presentable for acceptance or payment on such Monday, shall be deemed to be presentable for acceptance or payment on the secular or business day next succeeding such holiday." Italics mine.

So you see, the 25th day of December remains Christmas Day. The statute doesn't make December 26th Christmas Day when the 25th day of December falls on a Sunday. It merely makes December 26th, under these circumstances, a "public holiday" but only for the purposes enumerated, i.e., banking and business in negotiable instruments. It does not purport to make December 26th a holy day or religious holiday. Good folk throughout the State and world will continue to look upon December 25th as Christmas Day. The date is too deeply steeped in biblical tradition and universal veneration to be so lightly interchanged.

I therefore conclude that Monday, December 26th, in so far as hours of sale and closing regulations pertaining to licensees are concerned, while it is a public holiday, is not the day known as Christmas Day.

Hours of sale for licensees on December 26th will, therefore, be governed by the general regulations applicable to ordinary weekdays.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against
HERMAN ADES,
73 Waverly Avenue,
Newark, New Jersey,
Holder of Plenary Retail Distribution License D-86, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
-----)

CONCLUSIONS
AND ORDER

Herman Ades, Pro Se.

BY THE COMMISSIONER:

The licensee having pleaded guilty to the charge of selling liquor at his licensed premises on December 1, 1938, in violation of Rule 6 of State Regulations No. 30; it is, on this 20th day of December, 1938,

ORDERED that Plenary Retail Distribution License D-86, heretofore issued to Herman Ades 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. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

13. UNLICENSED RESTAURANTS - SERVICE OF ALCOHOLIC BEVERAGES ON NEW YEAR'S EVE - SERVICE OF ALCOHOLIC BEVERAGES BY UNLICENSED RESTAURANTS CONSTITUTES UNLAWFUL SALE AND IS A MISDEMEANOR - SPECIAL PERMITS NOT ISSUABLE TO UNLICENSED RESTAURANTS TO DISPENSE ALCOHOLIC BEVERAGES FOR PRIVATE GAIN.

December 20, 1938

Baker House Grill,
Vineland, N. J.

Gentlemen:

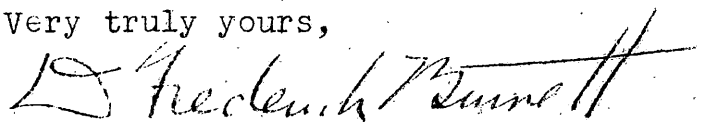
My records do not show that there is any retail liquor license in Vineland in the name of Baker House Grill or E. Keller or Mary A. Dean, or for premises 624 Landis Avenue, Vineland.

The serving of alcoholic beverages in restaurants not licensed to sell liquor is prohibited. Such service is, in the contemplation of the Alcoholic Beverage Law, a sale, and hence, if made without a license, is a misdemeanor for which the offender may be punished by fine or imprisonment or both.

Unlicensed restaurants may not sell or serve any alcoholic beverages in any manner or under any pretext.

Special one-day permits are not issuable to unlicensed restaurants to sell or serve alcoholic beverages for private profit. They are granted only to bona fide social organizations to dispense same in conjunction with their social activities, but not for private gain. If you want to have anything whatsoever to do with liquor, you must first take out the regular license.

Very truly yours,



Commissioner.