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

BULLETIN 304 MARCH 21, 1939.

1. APPELLATE DECISIONS - BROST vs. EAST AMWELL.

JOHN BROST, t/a ROCKTOWN INN,
:
Appellant,
: ON APPEAL
-vs-
: CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EAST AMWELL,
:
Respondent. :

Hendrickson, Greenberg & Jacobs, Esqs., by Oscar Greenberg, Esq., Attorneys for Appellant.
A. O. Robbins, Esq., by Nathan Duff, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located on State Highway #30, Rocktown, East Amwell Township.

An applicant for a plenary retail consumption (or other municipal liquor) license is required by R.S. 33:1-25 to advertise in a proper newspaper, on two occasions a week apart, his "notice of intention" to obtain a license. Rule 1 of State Regulations No. 2 requires that his application actually be on file with the local issuing authority at or before the first advertisement of that notice.

The purpose of the State Rule requiring such antecedent filing of the application is threefold - (1) to provide persons reading the advertisement of "notice of intention" with the opportunity of examining the application itself in order better to determine whether or not they should object thereto; (2) to enable the local issuing authority readily to identify objections filed with it as pertaining to specific pending applications, and hence to avoid confusion in the records and failure to notify objectors when an application comes up for decision; and (3) to prevent the practice of applicants sending up "trial balloons" by first advertising their "notice of intention" and, if objections are filed, thereupon withholding their applications (together with the attendant license fee) and perhaps re-advertising a new set of notices in the hope that the objectors may fail to renew their protests. Cf. Re Evesham Township, Bulletin 184, Item 6.

Appellant, contrary to the State Rule, filed his application for license two days after the second advertisement of his "notice of intention." Such defect is substantial, and warrants an affirmance of the denial of his application. Cf. North Hudson Yacht Club v. Edgewater, Bulletin 95, Item 1.

Quite apart from this defect, the merits of the case lead to the same result.

East Amwell is a rural and wooded Township, approximately 25 square miles in area, with a population of 1,210. Its only center of population and business is at Ringoes, an unofficial community of some 325 persons, where State Highways #29 and #30 join. A tavern is there located at the Ringoes Hotel on the converged road of the two highways. Appellant's premises are on State Highway #30, approximately a mile and a half to the south, in a rural farming section known as Rocktown. (Two and a half miles farther south on the highway, but in Hopewell Township, there is another consumption establishment).

The tavern at the Ringoes Hotel has been the only retail liquor place in East Amwell since Repeal, except for a period of some nine or ten months (viz., from September or October, 1936 to July 1, 1937), when a tavern was also conducted by appellant at the premises in question under a license which he then held. This license was automatically suspended in June, 1937 by reason of his conviction in criminal court of selling liquor to a minor. R. S. 33:1-31.1, 77. Although appellant did not himself seek to renew his license for the next (1937-38) term, three applications, either formal or informal, were made during that term by other persons for license for the premises, all being unsuccessful.

The present application - by appellant himself - was filed on July 16, 1938. Respondent denied this application on the basis of its ordinance of January 22, 1938, which provides:

> "There shall not be more than one license issued to sell alcoholic beverages at retail within the Township of East Amwell, in the County of Hunterdon."

At the time of the application and denial thereof, this quota of one retail license was filled by the tavern at the Ringoes Hotel.

In explanation of the ordinance, respondent's Chairman testified that there is substantial dry sentiment in East Amwell (estimated by him to be 40% of the population); that respondent wishes to avoid a repetition of the municipal fights which developed when applications were made for a second consumption establishment in the Township after appellant had discontinued his tavern; that it believes the existing tavern in Ringoes to be a sufficient number of consumption places to meet the needs of the Township; that the purpose of the ordinance was to restrict taverns to one. The other two members of the Township Committee were not called to testify because their testimony was deemed to be merely corroborative.

The ordinance, however, is invalid, because it merely restricts all retail licenses in aggregate, of whatever class, to a given number instead of fixing a quota for each specific class of license. There is so great a difference between a consumption, a distribution and a club license, in so far as liquor privileges and problems are concerned, that a mere aggregate quota reflects no definite municipal licensing policy in regulation of the liquor traffic. Such a roving quota, filled by any type of retail license, is unreasonable and hence invalid. Re Somerville, Bulletin 110, Item 6; Re Hightstown, Bulletin 117, Item 5; Re West Deptford, Bulletin 198, Item 11.

However, it does not follow from the invalidity of the ordinance that the denial of appellant's application is likewise erroneous. The testimony of respondent's Chairman reveals that

respondent believes the existing tavern in Ringoes to be sufficient to meet the needs of the Township. He further testified that, had there been no ordinance, the application would nonetheless have been denied.

Where a local issuing authority deems a sufficient number of taverns to be existing in its municipality, it may thereupon reach the salutary result of denying an additional consumption license even though no formal limitation is in existence. Cf. Goff v Piscataway, Bulletin 234, Item 5; Widlansky v. Highland Park, Bulletin 209, Item 7; Dunster v. Bernards, Bulletin 121, Item 11; Haycock v. Roxbury, Bulletin 101, Item 5. Hence, in the instant case, although the ordinance fails, respondent's fair and reasonable conclusion that an additional tavern is unnecessary in East Amwell still prevails and is itself sufficient to sustain the denial of a consumption license to appellant.

Nor is there merit to appellant's contention that he is equitably entitled to a license because, when obtaining his license for the 1936-37 term, he invested considerable money in his premises. A person who builds or renovates premises for use as a liquor establishment does so at his own risk. Rainbow Grill v. Bordentown, Bulletin 245, Item 4; Ninety-one Jefferson Street, Inc. vs. Passaic, Bulletin 255, Item 9.

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 14, 1939.

2. APPELLATE DECISIONS - BARTOLE vs. HARRISON.

FRANK A. BARTOLE, :
Appellant, :
-vs- : ON APPEAL
: CONCLUSIONS
THE MAYOR AND COMMON COUNCIL :
of the TOWN OF HARRISON, :
Respondent. :

Saul G. Schulter, Esq. and Gerald A. Caruso, Esq., Attorneys for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of transfer of a plenary retail consumption license from Alfred R. Romano to appellant, and from premises at 211 North 3rd Street, Harrison to premises at 436 Harrison Avenue, Harrison.

At the time the transfer was denied, respondent gave no reasons for its action but, in the answer filed herein, numerous reasons are set forth which may be summarized as follows: (1) Appellant's premises are near Library Park and a new postoffice; (2) a promise was made by appellant that he would not apply for a li-

cense; (3) a proposed ordinance prohibits transfers of consumption licenses within 250 feet of other consumption licenses; (4) the granting of the transfer would frustrate the attempt of respondent to limit consumption licenses to forty in number, as evidenced by the proposed ordinance.

The transfer was denied by a vote of five against and two in favor; Councilmen Carey, Eckert, Rogers and Murphy and Mayor Gassert voting against, and Councilmen Giordiano and Taft voting in favor.

Joseph Bartole, a brother of appellant, testified that Councilman Carey is manager of licensed premises located at 209 John Street, Harrison. There is no proof in the record to the contrary. If Mr. Carey was manager of licensed premises at the time the application was considered, he was disqualified from voting on or participating in the consideration of the application. His voice and vote tainted respondent's action with illegality. Petrusha vs. Mine Hill, Bulletin #146, Item 8; Gardner vs. Seabright, Bulletin #171, Item 9; Skeba vs. Millstone, Bulletin #274, Item 1; Hill vs. Runnemede, Bulletin #296, Item 9. His vote and participation of itself constitutes prejudicial error because the transfer was denied in the exercise of the discretionary power of respondent and no binding ordinance is involved as in Skeba vs. Millstone, supra.

Councilman Rogers testified at the hearing of the appeal that he voted against the transfer "because I was approached by the Harrison Liquor Dealers Association not to issue any more licenses, that there were too many in town." He testified that he would have voted for the transfer had he not been approached by these saloon keepers. Councilman Murphy says that he voted against the transfer because he thought there were enough taverns and because the Council was considering a proposed ordinance to prohibit transfers of consumption licenses within 250 feet of existing consumption licenses. Mayor Gassert testified that he voted against the transfer because of the proposed ordinance and because the Town is attempting to develop that section of the Town into a civic center. He testified likewise that Council had discussed a statement alleged to have been made by appellant in May 1938, that he did not intend to apply for a liquor license. But what of it? According to my records, the proposed ordinance mentioned by Councilman Murphy and Mayor Gassert has not been adopted, although it was returned to the Town Clerk with my comments thereon on February 2, 1939.

The transfer to appellant, who is qualified to hold a license, could not be denied merely because respondent desired to cut down the number of consumption licenses outstanding. Kirschhoff vs. Millville, Bulletin #254, Item 8; DeMattia vs. Bellmawr, Bulletin #294, Item 4. The question as to the advisability of transferring the license to premises near the civic center would seem to have little weight, in view of the fact that these premises are located on the main business street where businesses of all types are presently located.

The record submitted makes it extremely difficult, if not impossible, for me to determine whether or not the action of respondent, in denying the transfer, was proper. It does not follow, however, that respondent's action should be reversed and that I should order the license to be transferred. The best thing under the circumstances is to remand it.

Accordingly, it is on this 14th day of March, 1939

ORDERED that the case be remanded to the Mayor and Common Council of the Town of Harrison for further consideration. I hope this will be done after wiping the slate clean and taking a fresh start to determine the case on its own merits. If Councilman Carey is disqualified, he should, of course, not participate in any way in the reconsideration of the application.

D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - BRESCHKA vs. CARTERET.

ANTON BRESCHKA, :
Appellant, :
-vs- :
BOROUGH COUNCIL OF THE BOROUGH OF CARTERET, :
Respondent. :

ON APPEAL

CONCLUSIONS.

Abe P. Friedman, Esq., Attorney for Appellant.
David S. Jacoby, Esq., Attorney for Respondent.

BY THE COMMISSIONER.

This appeal is from respondent's refusal to grant a place-to-place transfer of appellant's plenary retail consumption license to 540 Roosevelt Avenue, Carteret.

It is stipulated that appellant filed a proper application for transfer; that he is deemed personally fit to hold a license; that the premises to which he seeks the transfer are deemed to be suitable; and that no objections were filed against appellant's application nor were any voiced at the hearing on that application.

It is further stipulated, and corroborated by the Borough Clerk, that the Mayor and Borough Council met at an informal budget meeting on March 9, 1959 (the day before the hearing on appeal), and were there advised by the Municipal Attorney that the present appeal was to be heard the next morning; that the Mayor and Councilmen stated that they no longer had objection to granting the transfer being sought by appellant, and, in fact, desired to have such transfer immediately effected; that they authorized the Municipal Attorney to express this fact at the hearing on appeal; that, had they been assembled in ordinary session, they would have adopted a resolution consenting to a reversal in the present appeal; that their change of mind resulted from the fact that, at the time of denial of appellant's application, they were not familiar with his "financial hardship" and with his eviction from his licensed premises as the result of a foreclosure, and from the further fact that a plenary retail consumption licensee in the vicinity where appellant seeks to locate has applied for a plenary retail distribution license in lieu of his consumption license, and that another plenary retail consumption licensee in the vicinity plans to seek a transfer of his license to another part of the Borough.

In view of such stipulated facts, together with the fact that no objectors appeared at the hearing on appeal, I have, in fairness, no other alternative but to reverse.

The action of respondent in denying appellant's application for a transfer is hereby reversed. Respondent shall issue a transfer to appellant forthwith as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 14, 1939.

4. APPELLATE DECISIONS - FRINO vs. HARRISON.

JOHN FRINO, :

Appellant, :

-vs- :

THE MAYOR AND COMMON COUNCIL of the TOWN OF HARRISON, :

Respondent. :

ON APPEAL

CONCLUSIONS

Wallace M. Norton, Esq., Attorney for Appellant.
Michael J. Bruder, Esq., Attorney for Respondent.
William C. Egan, Esq., Attorney for Harrison Liquor Dealers Association, an Objector.

BY THE COMMISSIONER:

This appeal is from the denial of transfer of a plenary retail consumption license from John C. Krzyzewski, Jr., to appellant, for premises located at 756 Harrison Avenue, Harrison.

In its answer respondent sets forth that the transfer was denied because (1) the granting of said transfer would frustrate the attempt on the part of respondent to limit the number of consumption licenses to forty, (2) appellant is not a bona fide applicant but is making the application on behalf of Michael Vergaleno, whose name does not appear and who may not qualify as a licensee.

On June 7, 1938 respondent adopted a resolution instructing the corporation counsel to prepare an ordinance restricting the number of alcoholic beverage licenses to the present number and resolving that, pending the preparation and adoption of such ordinance, no new license to sell or vend alcoholic beverages should be issued. In so far as said resolution attempted to limit the number of licenses, it was ineffective because, since July 1, 1937, such limitation must be effected by ordinance and not by resolution, although a limitation adopted before said date by ordinance or resolution continues in full force and effect until repealed, amended or otherwise altered by ordinance. R.S. 33:1-40. In pursuance of said resolution, a proposed ordinance was prepared and thereafter submitted to me for approval. On February 2, 1939 said proposed ordinance was returned to the Town Clerk with certain suggestions but, so far as appears, the ordinance has not been adopted.

As to (2): The evidence shows that appellant has been a barber for the past five years and maintains a barber shop at 607 Harrison Avenue, Harrison. He admits that, after he filed his present application, Michael Vergaleno loaned him the sum of $500. cash without security and without signing any note; that a part of this money was used in repairing the premises, installing Venetian blinds and lights, and odds and ends, despite the fact that the license had not yet been transferred to appellant. Appellant further testified that he owes no money to Vergaleno because he subsequently made an arrangement with Mr. Altman, the landlord, whereby appellant's debt to Vergaleno was wiped out; that he believes that there was some understanding between Altman and Vergaleno whereby Altman took over Vergaleno's claim against appellant; that appellant owes no money to Altman, his only obligation being to pay $50. a month rent and $17. a month for the use of the fixtures which are owned by the landlord. Captain Higgins, of the Harrison Police, testified that, on December 6, 1938, he had a conversation with Michael Vergaleno, who was then at the licensed premises located at 756 Harrison Avenue. He testified:

> "So he (Vergaleno) brought me inside and showed me the place, how it was fixed up, and asked me how I liked it. He told me how he changed things around. I said, 'When do you expect to get going?' He said, 'Well, maybe the end of the week, if we get our license.' He said, 'I have a lot of dough stuck in here, and it is what I want, because I have two brothers hanging on my neck, and I want to stick them in here as bartenders.' I went to the barber shop and talked to Frino, and he told me he was the one going to run the place, that it cost a lot of dough, and Vergaleno had loaned him the dough."

Mayor Gassert testified that, prior to the meeting of the Council at which the transfer was denied, he had received information that the place was not to be operated by the applicant but that it was to be operated by another person in the name of the applicant; that he had caused a police investigation to be made of the criminal record of Michael Vergaleno, which record shows that he was convicted of a crime in 1922; that these matters were discussed by the members of the Council, who thereupon voted to deny the transfer.

Regardless of the alleged criminal record, and despite appellant's testimony that he is the only person interested in the license, there is sufficient evidence to show that Vergaleno or Altman, or both, are the real parties in interest. A transfer may be denied where the transferee is acting as a "front" for another. Schwartz vs. Bellmawr, Bulletin #145, Item 9, and cases therein cited; Shupack vs. Paterson, Bulletin #248, Item 5; Cf. Sobocienski vs. Newark, Bulletin #239, Item 8. The evidence is sufficient to sustain respondent's finding that appellant is not the real party in interest, but is really a "front" for another person or persons.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 14, 1939.

5. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES ON SUNDAY.

In the Matter of Disciplinary Proceedings against	:	
SAMUEL GERSHENBAUM, 209 Belmont Avenue, Newark, N. J.	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License D-165, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	:	

Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Nathaniel J. Klein, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with selling liquor before noon on Sunday, November 20, 1938, in violation of Newark Ordinance No.657[illegible]

The defendant operates a combination liquor and grocery stor which caters to colored trade. At about 10:45 a.m. on the Sunday in question, Officers Kiernan and Albrecht, of the Newark Police Department, witnessed Lawrence Deveaux, a colored man, leave the premises with a brown paper bag in which they discovered a chilled and damp quart bottle of Krueger's Cream Ale. Officer Kiernan, being in civilian clothes, thereupon entered the store and endeavored to make a purchase of liquor himself, but was refused.

Deveaux testified that he lives about half a block from the defendant's store; that at about 10:30 a.m. on this Sunday, he went to a nearby paint shop to buy some benzine, but found the shop closed; that he thereafter met an acquaintance who asked him to buy a bottle of ale for him on Belmont Avenue, giving him a dollar bill with which to make the purchase; that he (Deveaux) stated, "I don't think I can get it this time of day", but was assured by the acquaintance that he could; that he entered the defendant's store and there found the defendant and an elderly woman (whom he identified as the defendant's mother), and seven or eight customers; that he bought a bottle of ale from the defendant for twenty-five cents, left, and was seized by the police officers on the outside.

In defense, the licensee testified that his store is small, with a counter on one side and shelves on the other containing (inter alia) packages of crackers; that a Coca Cola stand, in which he keeps "beer", is located near the crackers; that several loose bottles of "beer" are also located on the floor nearby; that he had seen Deveaux in the store on a previous occasion; that, when Deveaux entered on this Sunday, he (the defendant) was without help and was busy waiting on customers; that Deveaux, when asked for his order, told him, "Wait on somebody else"; that, when he again returned to Deveaux, the latter ordered a box of crackers and gave the defendant five cents; that the defendant, in keeping with his custom when behind the counter, told Deveaux to get the crackers himself; that he did not watch Deveaux while he was thus waiting on himself; that he did not sell a bottle of Krueger's Cream Ale to him, and did not see him leave with any in his possession.

What the defendant apparently seeks to project from his testimony is that Deveaux stole the ale. However, since the bottl[illegible]

found in Deveaux's possession by the police officers was chilled and damp, it could have been taken, not from the loose bottles standing on the floor, but only from the Coca Cola stand. It is extremely unlikely that Deveaux could have stolen the ale from that stand, placed it in a paper bag found nearby, and walked out without being detected.

I find the defendant guilty as charged.

Accordingly, it is, on this 14th day of March, 1939,

ORDERED that Plenary Retail Distribution License D-165, heretofore issued to Samuel Gershenbaum by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing March 17, 1939, at 3:00 a.m.

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - SECOND OFFENSE - FORTY DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against	:	
JOHN GAINE, 441 Mt. Prospect Avenue, Newark, New Jersey,	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License No. D-135, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	:	

Louis J. Beers, Esq., by James Hart, Esq., Attorney for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on January 26, 1939, he sold a fifth bottle of Old Grand-Dad (Straight Bourbon Whiskey) below the minimum retail price, in violation of State Regulations No. 30.

On January 26, 1939, at about 7:00 P.M., Investigators Wolf and Higginbotham, of this Department, entered the licensed premises shortly after John Fitzgerald, the manager in charge of said premises, had sold to a customer a fifth bottle of Old Grand-Dad (Straight Bourbon Whiskey) for $2.60. The minimum retail price of said item is $2.89. The sale at $2.60 is corroborated by the customer and admitted by John Fitzgerald, the manager, who also admits that he knew the Fair Trade price was $2.89.

The only explanation given by the Manager of the store is that this customer had been bothering him for more than a month by endeavoring to get the manager to sell liquor below Fair Trade prices and that the sale in question was made in order to get rid of the customer.

It is not contended that the licensee himself was on the licensed premises, but he is nevertheless responsible for the acts of his agents performed within the scope of their duties. The licensee is guilty as charged.

This is the licensee's second offense. On December 14, 1938 he was found guilty of violating State Regulations No. 30 by selling alcoholic beverages below Fair Trade prices at his licensed premises located at 104 Hillside Avenue, Neptune City. Bulletin #288, Item 9. For that his license was suspended for twenty days. As this is the second offense, the penalty will be doubled.

Accordingly, it is on this 14th day of March, 1939

ORDERED that Plenary Retail Distribution License No. D-135, heretofore issued to John Gaine by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and same is hereby suspended for a period of forty (40) 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.

7. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 13th, 1939.

RE: Case No. 256.

In April 1935, applicant was found guilty on a disorderly person charge and sentenced to thirty days in a workhouse. This conviction was founded upon an accusation that, on the date of her arrest, at about 11:00 P.M., she had been acting in a suspicious manner in company with a large number of soldiers.

In November 1936 she was again found guilty of being a dis orderly person (common prostitute) and sentenced to six months in a workhouse. She was discharged two months later because of pregnanc acquired before arrest.

In November 1938 she was arrested on a charge of fornication, but the Grand Jury did not indict.

The probation officer reports: "This woman is known to the police as a prostitute."

Considering applicant's entire record, I recommend that she be advised that she is not eligible to be employed on licensed premises.

EDWARD J. DORTON,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

8. ALIENS - TERMINATION OF ITALIAN TREATY DESTROYS RECIPROCAL PRIVILEGES - HEREIN OF THE RULES CONCERNING ALIEN NATIONALS OF ITALY.

March 15, 1939.

H. P. Woertendyke, Divisional Director,
Immigration and Naturalization Service,
U. S. Department of Labor,
Post Office Building,
Newark, N. J.

My dear Mr. Woertendyke: Re: Your File 2205-P-18266 P.

Re your inquiry as to the provisions of the treaty with Italy regarding the sale of alcoholic beverages in New Jersey by Italian subjects: Heretofore, I have ruled that aliens from countries having treaties with the United States which afford reciprocal privileges to their respective nationals, are not disqualified from holding licenses or from being employed by licensees solely because they are aliens. It is true that Sec. 22 of the New Jersey Alcoholic Beverage Control Act (R.S. 33:1-25) requires all liquor licensees to be citizens of the United States, and that Sec. 23 (R.S. 33:1-26) prohibits a person who fails to qualify as a licensee from being employed by a licensee to sell and dispense alcoholic beverages, except by special permit. But since treaties made by the President and ratified by the Senate are, under our Constitution, the supreme law of the land, they therefore supersede to that extent the provisions of the New Jersey statute. Re McGuigan, Bulletin 228, Item 2. Italy was one of the foreign nations which had made treaties with the Federal Government providing that their citizens cannot be excluded as aliens from privileges granted to American citizens. Re Guskind, Bulletin 130, Item 5.

Thus, pursuant to such previous ruling and down to the present moment, an alien national of Italy, if otherwise qualified, might either hold an alcoholic beverage license or be employed by a licensee in this State without any permit.

I have now been informed, however, by the Secretary of State that the treaty with Italy, proclaimed in 1871, and the amendatory treaty with Italy signed in 1913, have been terminated in their entirety as a result "of a joint notice of denunciation given by the Governments of the United States and Italy to each other."

Such termination removed the basis for the previous rulings.

Although a temporary commercial arrangement was effected by an exchange of notes signed at Rome, December 16, 1937, (printed in the U. S. Statutes at Large, Vol. 51, page 361) and is still in force, it does not include any provision, as did the treaty of 1871, affording reciprocal privileges to the nationals of the United States and Italy.

It therefore follows that at the present time an alien national of Italy, although otherwise qualified, may not acquire an alcoholic beverage license. He may, however, be employed by a licensee if he obtains a permit from the State Commissioner by virtue of Sec. 23 of the Control Act (R.S. 33:1-26), as amended by P.L. 1937, c. 124, restricted, however, that he shall not, in any manner whatsoever, sell or solicit the sale, or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage.

In view of this new information, I have no option except to rule that hereafter no further alcoholic beverage licenses of any kind may be issued to alien nationals of Italy, and that all employment permits be restricted in the manner above set forth.

I therefore make such ruling herewith, effective immediately.

Question remains as to the present status of alien nationals of Italy who now hold alcoholic beverage licenses and as to those employed at the present time without permit.

As regards such licenses now in effect, I see no reason why they should be declared void or proceedings taken to cancel them. Section 22 of the Control Act, supra, provides:

> "No retail license shall be issued to a natural person unless he is a citizen of the United States",

and again:

> "No license of any class shall be issued to any individual who is an alien."

The language, which I have italicized, is in the future tense. I take it, therefore, that the license, once having been properly issued, ought to remain in force, so long as the licensee is in good standing, for the balance of its term, which expires, in any event, on June 30th next. It is true that a license may be revoked for something occurring after the time of making an application for a license which, if it had occurred before said time, would have prevented the issuance of the license. Control Act, Section 28 (R.S. 33:1-31). But this provision obviously contemplates some personal fault of the licensee. It is sandwiched in the statute along with failures, defaults and violations. It would be harsh and unwarranted to revoke outstanding licenses held by alien nationals of Italy for something which has occurred or at least been brought to official attention for the first time after their licenses were issued and financial commitments made and expenses incurred on the faith thereof. I therefore rule that these licenses may continue in full force and effect until the end of the current fiscal year. At that time, however, they cannot be renewed.

As regards alien nationals of Italy now employed by licensees without permit: Permits will have to be secured or else such employment cease. In order not to interrupt continuity of employment, one month's time is hereby given within which such permits must be obtained. All permits so issued must be restricted as hereinbefore set forth.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 15th, 1939.

RE: Case No. 257.

Applicant admits that, in 1932, he pleaded non vult to assault and battery, at which time he was placed on probation for three years to pay fifty cents a week.

At the hearing applicant testified that, on the day of his arrest, he struck a police officer with his fists after the officer had hit him with a club. There appears to be no question of moral turpitude involved in his conviction for assault and battery.

In September 1938 he was arrested on a charge of atrocious assault and battery, but the Grand Jury dismissed the case.

There is no record of any other conviction against applicant. It is recommended that he be advised that he is eligible to be employed on licensed premises.

EDWARD J. DORTON,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

10. PLENARY RETAIL CONSUMPTION LICENSES - OTHER MERCANTILE BUSINESS - A PLENARY RETAIL CONSUMPTION LICENSE MAY NOT BE ISSUED FOR, OR TRANSFERRED TO, PREMISES CONDUCTED AS A DELICATESSEN.

March 15, 1939.

Bertram M. Berla, Esq.,
Dover, New Jersey.

My dear Mr. Berla:

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

Plenary retail consumption licenses may not be issued for premises conducted as delicatessens. See Sidney's, Inc. et al v. Newark, Bulletin 296, item 10.

It does not change the situation that the licensee will waive the privilege of sales for consumption on the premises. While it is true that a consumption licensee may voluntarily confine his business to off-premises sales, no condition or agreement purporting to so restrict the license is permissible. See Re Lee, Bulletin 232, item 8; Re Mead, Bulletin 38, Item 10. Consumption licensees have the authority under the law to sell both for on-premises consumption and off-premises consumption and may avail themselves of either or both privileges at any time.

The municipal authorities were wholly right in their

thought that there could be no transfer of a consumption license to premises conducted as a delicatessen.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT SUSPENSION TEMPORARILY - GRANTED.

In the Matter of Disciplinary Proceedings against	:	
BOHEMIAN BENEVOLENT & LITERARY ASSOCIATION, 56 - 19th Avenue, Newark, New Jersey	:	ON PETITION
	:	O R D E R
Holder of Plenary Retail Consumption License C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	:	

Frank E. Krasny, Esq., Attorney for the Licensee.

An order having been entered herein on the 11th day of March, 1939 suspending plenary retail consumption license C-528, issued to the Bohemian Benevolent & Literary Association, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, for a period of five (5) days, commencing March 16, 1939 at 3:00 A.M., as set forth in Bulletin 302, Item 17, and

It appearing from verified petition of the licensee that, prior to the entry of the order of suspension, arrangements were completed for an affair to be held at 56-19th Avenue, Newark, N. J., the licensed premises of the Bohemian Benevolent & Literary Association, by the Society of Bohemian Women, a civic and fraternal organization, on March 19, 1939, and by an Athletic Association for a shuffle-board tournament on March 26, 1939, and that tickets for each of these affairs have been widely sold, and that therefore numerous innocent persons would be inconvenienced by reason of requiring the premises to be closed on March 19, 1939, in accordance with the order heretofore entered, or on March 26, 1939;

It is on this 15th day of March, 1939

ORDERED that the said suspension of five (5) days, instead of being effective commencing March 16, 1939 at 3:00 A.M., shall in lieu thereof commence on March 30, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT SUSPENSION TEMPORARILY - GRANTED.

In the Matter of Disciplinary Proceedings against	:	
CHARLES GALLAGHER, 56 - 11th Avenue, Newark, New Jersey,	:	On Petition
Holder of Plenary Retail Consumption License No. C-775, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	:	ORDER

Arthur J. Connelly, Esq., Attorney for the Licensee.

An order having been entered herein on the 12th day of March, 1939 suspending plenary retail consumption license C-775, issued to Charles Gallagher by the Municipal Board of Alcoholic Beverage Control, for a period of ten (10) days, commencing March 16, 1939, at 3:00 A.M., and

It appearing from verified petition of the licensee that:

> "Your petitioner is a citizen of the United States and was born in Ireland and the patrons of his tavern at 56 - 11th Avenue, Newark, New Jersey, are, in the main, persons who were born in Ireland or whose parents were born there. Your petitioner, before notice of the penalty herein, arranged for a meeting at his tavern on St. Patrick's Day, March 17, 1939, to be attended by about forty-five people, to make arrangements for participation in the St. Patrick's Day Parade, in Newark, on March 19, 1939. In addition to this meeting, the festival feelings of your deponent's patrons of Irish extraction or birth, has always been a source of profit to your petitioner because of frequent gatherings at his tavern during the period influenced by the occurrence of the day set apart to pay homage to Ireland's Patron Saint."

and that therefore innocent persons would be inconvenienced, and the licensee penalized to an undue degree, by requiring the premises to be closed on March 17, 1939, or March 19, 1939, in accordance with the order heretofore entered;

It is, on this 15th day of March, 1939,

ORDERED, that the said suspension of ten (10) days, instead of being effective commencing March 16, 1939 at 3:00 A.M., shall in lieu thereof commence on March 23, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLING BOTTLES IS UNLAWFUL NOTWITHSTANDING THAT LIQUOR IS TAX PAID.

March 13th, 1939.

Mr. John L. Haney,
City Clerk,
Trenton, N. J.

Dear Sir:- Re: Disciplinary Proceedings against Louis Papp, 647 Cass St., Trenton, N. J.

I have reviewed your letter of March 9th, together with the records of the Department pertaining to the above entitled matter.

It is my understanding that the licensee was formally charged with possession of illicit beverages and rebottling; counsel for the licensee moved to dismiss but motion was denied; investigators of the Department testified in support of the charges; the licensee testified that he had withdrawn liquor from a tax paid container labeled "Schenley's Red Label Blended Whiskey" and had poured it into bottles labeled "Three Feathers 50th Anniversary Blended Whiskey", "Wilson 'That's All' Blended Whiskey", and "Calvert's Special Blended Whiskey"; and the inquiry is as to the effect of the licensee's story, assuming that the City Council finds it to be true.

Section 2 of the Control Act (now R.S. 33:1-2) contains comprehensive language designed to render unlawful all commercial alcoholic beverage activity of whatsoever nature, except where it is appropriately licensed. Thus, it provides, among other things, that it shall be unlawful to "rectify, blend, treat, fortify, mix, process, bottle or distribute alcoholic beverages within this State except pursuant to and within the terms of a license"; the exemption which it contains allowing any person to mix an individual drink for immediate personal consumption is not here material. Plenary retail consumption licensees are authorized by the terms of their licenses (see Section 13 - now R.S. 33:1-12) to sell alcoholic beverages for on premises consumption by the glass or other open receptacle and to sell alcoholic beverages for off premises consumption in original containers only. They are not, in anywise, authorized to engage in the rectification, blending or bottling of alcoholic beverages. And in so far as bottling is concerned, Section 78 (now R.S. 33:1-78) contains a further express prohibition against such activity by retail licensees. Where liquor has been rectified, blended or bottled by a retail licensee, it is illicit within the statutory definition contained in Section 1 of the Control Act (now R.S. 33:1-1) and the licensee's mere possession of such illicit beverage constitutes a misdemeanor (see Section 48 - now R.S. 33:1-50) and subjects his license to disciplinary proceedings (see Section 28 - now R.S. 33:1-31).

The comprehensive legislative restrictions against rectification, blending and bottling by retail licensees are salutary in purpose and effect. They are aimed not only against the use of "bootleg" liquor on which tax has not been paid, but also against "refills" of all kinds. Customers are entitled to receive the liquor which they order (see Re Lane, Bulletin #231, Item #13; Re Turner, Bulletin #230, Item #3), and licensees cannot be heard to say that the liquor which they substituted was "just as good". If a decent measure of control is ever to be attained, retail licensees must be brought to the realization that their tampering with liquor will not go unpunished.

Assuming that the licensee's story is accepted as true, he was none the less guilty of a bottling operation of the nature prohibited by law. Cf. Cassie vs. East Orange, Bulletin #128, Item #3. Furthermore, the analysis by the Department's chemist discloses that the contents of the bottles which were labeled Three Feathers, Wilson and Calvert respectively, varied in proof, specific gravity and solids from the contents of the bottle bearing a Schenley label. This would indicate that the licensee's story was untrue or that the containers into which the Schenley whiskey was poured were partly filled with other whiskies. In the latter event the operation would be not only an unlawful bottling but also an unlawful rectification or blending.

In the light of the foregoing, it is evident that even if the licensee's story is believed there should be an adjudication of guilt and appropriate suspension of license. However, with respect to the extent of the suspension, the City Council may properly consider, in mitigation, the alleged fact that the liquor which was improperly poured into the bottles bearing Three Feathers, Wilson and Calvert labels was lawful in origin and of similar cost. Although such conduct is not to be tolerated, it would not appear to warrant the identical punishment meted out to a licensee who has been found guilty of possessing "bootleg" liquor on which taxes due to the State and the Federal government have not been paid.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner and Counsel.

14. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLING BOTTLES - 30 DAYS' SUSPENSION.

March 14, 1939.

Joseph E. Colford,
City Clerk,
Jersey City, New Jersey.

My dear Mr. Colford:

I have before me staff report and your certification of March 1st re disciplinary proceedings conducted by Commissioner Casey against Louis Kociencki, 215 Tonnele Avenue, charged with refilling liquor bottles, and note that his license was suspended for thirty days.

Please express to Commissioner Casey and the members of the Board of Commissioners my deep appreciation for their conduct of these proceedings and the appropriate penalty imposed. Refilling of liquor bottles is a problem of first magnitude. The salutary action of your Board will go far to stamp it out.

Very truly yours,

D. Frederick Burnett

Commissioner.