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

BULLETIN 310 APRIL 13, 1939.

1. ELECTIONS - GIFTS OF LIQUOR TO INFLUENCE VOTERS IS A MISDEMEANOR IRRESPECTIVE OF WHETHER GIVEN ON ELECTION DAY OR NOT - POLITICAL ORGANIZATIONS ADVISED NOT TO MAKE GIFTS OF ALCOHOLIC BEVERAGES IN ANY MANNER AT ANY TIME.

Dear Commissioner:

What is the ruling where a political organization wishes to serve refreshments including beer (give away no charge). We have local election May 9th and this office has been asked if beer can be given away at rallies of which many will be held during the next few weeks.

Very truly yours,
A. D. Bolton,
City Clerk.

April 6, 1939

A. D. Bolton,
City Clerk,
Passaic, N. J.

My dear Mr. Bolton:

So far as the Alcoholic Beverage Law is concerned, political organizations which do not hold liquor licenses may serve beer at political rallies, without permit, provided the service is really gratuitous in every respect. But if there is an admission charged or some fee required to be paid, then, the same as any other group, the organization must first get a special permit. We don't distinguish between political organizations and other kinds of associations in the issuance of permits for the sale and service of liquor.

But the Election Law prohibits, among other things, gifts of drink for the purpose of inducing votes. Violation is a misdemeanor and subjects the offender to fine or imprisonment or both. The pertinent provisions, as enacted in Chapter 187, P. L. 1930, are reprinted in Re Tice, Bulletin 145, Item 1. The citation in the Revised Statutes is R. S. 19:34-25.

In view of these provisions of the Election Law, I cordially advise that political organizations do not make gifts of alcoholic beverages in any manner at any time.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - DRUG STORE WITH LIQUOR DEPARTMENT ADVERTISING "CUT RATE" - ALSO VIOLATION OF FAIR TRADE RULES.

In the Matter of Disciplinary Proceedings against

LOUIS H. GLASSMAN,
893 Main Street,
Paterson, New Jersey,

Holder of Plenary Retail Distribution License No. D-43, issued by the Board of Aldermen of the City of Paterson.

CONCLUSIONS AND ORDER

Louis Nussman, Esq., Attorney for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that (1) on December 29, 1938, he sold a pint bottle of The Wilken Family (blended whiskey) below the minimum retail price, in violation of State Regulations No. 30; (2) on December 29, 1938, he advertised, and permitted and suffered the advertising of, the price of alcoholic beverages on the exterior of his licensed premises and in the show window thereof, contrary to Rule 3 of State Regulations No. 21.

Licensee pleads guilty to the first charge with the request that he be allowed to show extenuating circumstances, and pleads not guilty to the second charge.

As to (1): On December 29, 1938 the licensee sold to Investigator Togno, of this Department, at the licensed premises, one pint of Wilken Family blended whiskey for ninety-five cents. The Fair Trade price of said item is ninety-nine cents.

In extenuation, licensee testified that he believed that the item he sold was a discontinued item not covered by Fair Trade prices because, two or three months prior to the alleged violation, pint containers of Wilken Family blended whiskey were placed on the market which differed as to the shape of the container and the blend and proof of the contents thereof from that sold by the licensee to the investigator on December 29, 1938. It appears, however, that both the old style bottle and the new style bottle are labeled "Wilken Family Blended Whiskey", and in the bulletins issued by this Department the Wilken Family blended whiskey is listed without any distinction being made between the old style container and the new style container. Although the licensee was in doubt as to whether the item which he sold was covered by the Fair Trade prices, he did not inquire of the manufacturer or distributor or this Department to ascertain if it was subject to Fair Trade prices until after the sale was made. It's a fine time to lock the garage after the car has been backed out. Licensees who take chances have but themselves to blame.

The license will be suspended for ten days on the first charge.

As to (2): Licensee conducts a drug store which contains a liquor department. The entrance to the licensed premises is located in the center of the store about four feet back of the building line. Show windows are located to the left and the right of the

entrance. On the show window which is located to the left, between the building line and the door, appear the words "Cut Rate" in letters about one foot high, at the top of said window. The word "Wines", in purple letters six or seven inches high, appears on the same window about a foot below the words "Cut Rate." Rule 3 of State Regulations No. 21 provides, with certain exceptions not here material, that "No retail licensee shall directly or indirectly advertise or permit or suffer the advertising of the price of any alcoholic beverage or relative size of the container thereof on the exterior of the licensed premises or in the show window or door thereof or in the interior thereof when visible from the street ***." Under this Rule, signs advertising that the licensee sells alcoholic beverages at cut rates are prohibited. Re Trent, Bulletin 82, Item 7; Re Sinders, Bulletin 120, Item 10; Parker Liquor Stores, Inc. v. Jersey City, Bulletin 130, Item 9; Re Felko, Bulletin 162, Item 3; Re Sosnow, Bulletin 227, Item 12. The words "Cut Rate" must be removed from the window at once because patrons naturally believe that the words apply to liquor as well as to all other articles of merchandise. The evidence shows that the licensee is guilty as to the second charge. I shall suspend his license for a period of five days on the second charge.

Accordingly, it is, on this 6th day of April, 1939, ORDERED, that Plenary Retail Distribution License No. D-43, heretofore issued to Louis H. Glassman by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of five (5) days, effective April 13, 1939 at 3:00 A.M., for the violation of Rule 3 of State Regulations No. 21 as set forth in the second charge herein; and it is

FURTHER ORDERED that said license be and the same is hereby suspended for a further period of ten (10) days, for the violation of State Regulations No. 30 as set forth in the first charge herein. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of the ten day suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - WENZEL v. MAYWOOD.

HARRY N. WENZEL,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE
BOROUGH OF MAYWOOD,)
Respondent)

Malcolm C. Mercer, Esq., Attorney for Appellant.
George S. Sauerbrey, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at 16 East Pleasant Avenue, Borough of Maywood.

Appellant contends that the action of respondent was erroneous because the premises in question are in a legally zoned business section and because a resolution adopted by respondent provides that four consumption licenses may be outstanding and only three such licenses have been issued. Respondent admits that the premises in question are in a properly zoned business district and that only three of the four consumption licenses authorized by its resolution have been issued, but it contends that its action should be sustained because, among other reasons, this part of East Pleasant Avenue is more residential than business in character, because there are a sufficient number of taverns upon the street in question, and because the premises are situated near a church.

It appears from the evidence that appellant is qualified to hold a license, and no question is raised as to his good character. Since a vacancy exists under the municipal regulation, appellant is entitled to a license unless some valid reason exists for denying a license for the premises in question. Eisen v. Plainfield, Bulletin 68, Item 12; Sosnow v. Freehold, Bulletin 68, Item 13; DeLucca v. Fairview, Bulletin 279, Item 12; Sobolewski v. Fairview, Bulletin 280, Item 11. Despite the vacancy, however, an issuing authority may lawfully refuse to issue a license where it is satisfied that there are sufficient licenses in the immediate vicinity of the place for which the license is sought. Young v. Pennsauken, Bulletin 114, Item 2.

The evidence herein shows that appellant's premises consist of two stores located in a building containing three stores, on the southeast corner of Maywood Avenue and East Pleasant Avenue; that said corner is zoned for business; that there are six or seven stores on the northeast corner of said streets. It appears, however, that, aside from these corner lots, East Pleasant Avenue is residential in character and that many of the objectors reside on said avenue. It likewise appears that two of the three existing consumption licenses are located on West Pleasant Avenue, which extends westerly from Maywood Avenue, and that these licensed places are located about four hundred thirty and eight hundred feet respectively from the premises in question; that two of the objectors who appeared at the hearing testified that, in their opinion, the existing consumption places were sufficient for that particular neighborhood. It also appears that the Zion Lutheran Church, the Pastor of which objected to the granting of the license, is located on the opposite side of East Pleasant Avenue, about two hundred seventeen feet diagonally across the street. Although the church is clearly not within two hundred feet of the premises in question, measured as an ordinary person would, or at least, ought to, walk, its proximity to the premises in question may be considered.

In view of the evidence as to the existence of the other licensed premises, the residential character of East Pleasant Avenue, aside from the corners which are zoned for business, and the proximity of the church, it cannot be said that the action of respondent in denying a license for the premises in question was unreasonable.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 7, 1939.

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

In the Matter of Disciplinary Proceedings against

COLONIAL WINE & LIQUOR STORES, INC., 547 Hamilton Avenue, Trenton, New Jersey,

Holder of Plenary Retail Distribution License No. D-6, issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

Joseph A. Citta, Esq., Attorney for the Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge served upon the licensee alleges that, on December 3, 1938, it sold a quart bottle of Wilson "That's All" whiskey below the minimum retail price, in violation of State Regulations No. 30.

The evidence shows that, on December 3, 1938, Investigator Finzel, of this Department, purchased the item in question at the licensed premises for $2.15. The Fair Trade price on said item is $2.25. The item was purchased from Alfred Russo, a young man, who came out of a back room directly in back of the store, went behind the counter and made the sale to the investigator.

The licensee contends that Russo was employed as a driver, that Russo had never made any previous sales and was not acquainted with the Fair Trade prices. The only evidence produced by the licensee consists of the testimony of Russo, who admits making the sale at $2.15 but who testified that he is employed as a driver to deliver orders, and that he went behind the counter on this occasion because the clerk "went out to have a cup of coffee." Aside from the fact that, in a statement given to the investigator at the time of the violation, Russo admitted that he was employed as clerk and driver, the evidence shows that, whatever the private arrangement between him and the licensee may have been, he was actually acting as a clerk for the purpose of making the sale at the time of the violation. A licensee is responsible for the acts of his employees performed within the scope of their duties, and it is apparent that Russo was performing the usual duties of a clerk on this occasion. The licensee is guilty as charged. I shall suspend its license for ten days.

Accordingly, it is, on this 8th day of April, 1939, ORDERED that Plenary Retail Distribution License No. D-6, heretofore issued to Colonial Wine & Liquor Stores, Inc. by the City Council of the City of Trenton, 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.

5. APPELLATE DECISIONS - LUCARI v. MILLVILLE

LOUIS LUCARI,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS

BOARD OF COMMISSIONERS OF THE CITY OF MILLVILLE,)

Respondent)

Philip P. Wodlinger, Esq., Attorney for the Appellant.
Harry R. Waltman, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at 122 West Broad Street, Millville.

Respondent denied the license on the ground that the municipal quota on consumption licenses, fixed by City Ordinance #403 (adopted August 27, 1937), was filled by the sixteen consumption licenses already outstanding. That ordinance, so far as pertinent, provides:

"Sec. 13 a. The maximum number of licenses for the City of Millville shall be:

Plenary Retail Consumption,	10,
Plenary Retail Distribution,	4,
Club,	6;

provided, however, that existing licenses may be renewed as long as the holders qualify."

Appellant contends that his application is, in effect, for renewal of a consumption license which, as he claims, was in existence when the ordinance was adopted, and hence falls within the express exception in the ordinance.

The facts upon which appellant relies are undisputed. Appellant's father, Peter Lucari, held a consumption license for the premises in question (of which he was owner) during the 1935-6 and 1936-7 licensing terms. He died on June 12, 1937, leaving the premises to appellant and three other children to share equally, and appointing appellant and another person co-executors of his estate.

The executors made no attempt to extend the 1936-7 license which Peter Lucari held at the time of his death. See R.S.33:1-26. However, during the next, i.e., the 1937-8 licensing term (to wit, on August 3, 1937), appellant applied in his individual capacity for a consumption license for the premises in question, but was denied. No appeal was ever taken from that denial.

Now, during the current 1938-9 term (to wit, on December 15, 1938), he made his present application for license.

Appellant testified that the executors did not apply for an extension of Peter Lucari's 1936-7 license because they believed that the time between Peter Lucari's death (June 12, 1937) and the

end of that licensing term (June 30, 1937) was insufficient to obtain the extension. They were, apparently, under the erroneous belief that, to obtain the extension, it was necessary to make a regular application for the usual type of transfer. See R.S.33:1-2(

Appellant further testified that he waited until August 1937 before filing the first application for license, and then applied in his own name, under advice of counsel. There is no attempt to explain why nothing further was done until December 15, 1938, when the present application was filed.

Irrespective of the question whether the application in August 1937 could be treated as an application for renewal, it is clear that the present application may not be so viewed because it was made more than 18 months after Peter Lucari's death, more than 17 months after the expiration of the previous license, and more tha 16 months after an earlier application had been denied and no appeal taken. After a whole licensing period has gone by, the chain is broken. The instant application is for a new license, not for a renewal. The point is set at rest in Berger v. Carteret, Bulletin 213, Item 9, viz.:

> "It is true that a mere gap between the expiration of an old license and the issuance of a new one will not necessarily in and of itself bar the latter from being considered as a renewal. Re Deighan, Bulletin 141, Item 2. For instance, a licensee may unduly delay publication with result that the new license is not actually issued until after the old license has expired. As said in the case last cited:
>
> > "'Here it is evident that there is no intent to abandon the business and the license ultimately issued can properly be treated as a renewal. Cf. Presbyterian Church v. Miller, 85 N. J. L. 463 (Sup. Ct. 1914). On the other hand, where a license expired and there is an actual abandonment of the business by the licensee, the license can no longer be 'renewed'; an application thereafter made will be for a new license even though made by the same person for the same premises.'
>
> "While the Deighan case fixed no arbitrary time limit but declared the intent of the licensee to preserve and continue the same business operated under the expired license as the governing factor, it is obvious that the intent so called for may not be the secret undisclosed intention of the licensee, to be invoked or not at his will accordingly as it serves his purpose, but, rather the reasonably presumable intent gathered from the facts of the particular case, actions speaking at times so much louder than words! Without attempting in this case to fix any precise time within which the application must be filed after an old license has expired in order to constitute it a renewal license, which time if arbitrarily fixed would in effect constitute so many days 'of grace', it is clear that after a whole licensing period has gone by the chain has been broken and therefore the present application is not for renewal. Whatever the actual intent or the explanation may be, the liberal doctrine laid down in Re Deighan cannot be invoked, as was said therein, except during the license period immediately following the expiration of the old license."

Appellant invokes Kirschhoff v. Millville and Beckett, Bulletin 254, Item 8. In that case, one Russell Beckett, holder of a plenary retail consumption license for the 1936-7 licensing term, (like Peter Lucari) died during that term. Beckett's administratrix not only obtained an extension of that license for the remainder of its term, but also a license for the succeeding term. Appellant did neither. The Beckett license was kept alive. The license of appellant's father was allowed to lapse. The cases are quite dissimilar.

The trouble with appellant is that his whole argument is based on the erroneous assumption that the license of his father was in existence on August 27, 1937 when the local ordinance was adopted. It is clear from the facts that no such license was then in existence. It had expired on June 30, 1937. It was never renewed. There was hence nothing to which the exception in the ordinance in favor of existing licenses could apply.

Appellant's final contention, viz., that there is public need for a consumption establishment at the premises in question (which are located in a mixed residential and business "corner" of the city, with several shops or factories nearby) is likewise without merit. There is a consumption establishment two blocks to the southeast and another five blocks to the northwest. There is no evidence that these establishments are incapable of sufficiently meeting the public demands for liquor in this vicinity.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 8, 1939.

6. ADVERTISING - NIGHT CLUBS OR TAVERNS - FORD MODEL "T" WITH SIGN ATOP - DISAPPROVED.

March 30, 1939

Dear Sir:

I own an attractive looking 1924 Ford Model "T" car, which should earn a living for me, if I could manage to obtain a legal right advertising night clubs or taverns, by driving around in my car, with a sign atop of it, depicting one tavern or another by means of proper words thereon.

Before engaging in such an enterprise, I wish to know if it is permissible.

I could not state definitely just how the sign would read, because different tavern owners would have different ideas on the subject, but I do know I would not tolerate any wording that would would conflict with your ruling.

I would have to submit to any city streets, or highways, the advertisers would select for me.

Cordially,
Charles Weslow

April 10, 1939

Mr. Charles Weslow,
Newark, N. J.

My dear Mr. Weslow:

I have yours of March 30th and sketch of proposed sign: "Drink, dine and dance at Donohue's."

Liquor advertising a la Model "T" does not impress me favorably. It creeps up on one whether dance-minded or not. If this were allowed, then someone would antedate you with a horse and buggy and banner proclaiming the glories of Whiffletree Inn. And if this return to old fashions went well, I would soon expect an armored knight on horseback with pennant on spear advertising Twin Beeches as the place to get spiked. No —I shall have to bar all liquor advertising on wheels or on the hoof.

Tricky schemes have no place in liquor advertising. It should be confined to customary presentations in recognized media. Over-emphasis by way of innovations is out of order.

Hence, please do not refer in your sign to liquor or drinking or taverns.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. LICENSES - PARTNERSHIP - WHERE PARTNERSHIP IS TERMINATED AT END OF LICENSING TERM, LICENSE THERETOFORE ISSUED TO IT MAY BE RENEWED BY PARTNER CONTINUING THE BUSINESS AND HAVING RIGHT TO IMMEDIATE EXCLUSIVE POSSESSION OF THE PREMISES - WHERE A PARTNER RETIRES DURING LICENSING TERM, REMAINING PARTNER MAY CONTINUE THE BUSINESS IN HIS OWN NAME UNDER LICENSE THERETOFORE ISSUED TO THE PARTNERSHIP IF FACT OF RETIREMENT IS ENDORSED THEREON - TO ADD MEMBER TO PARTNERSHIP HOLDING A LICENSE, EVEN THOUGH IN SUBSTITUTION OF A RETIRING PARTNER, REQUIRES TRANSFER OF LICENSE, AND ALL ORIGINAL PARTNERS MUST CONSENT IN WRITING TO THE TRANSFER.

April 10, 1939

Mr. H. A. Nordheim,
Margate, N. J.

Dear Mr. Nordheim:

(1) You ask whether a plenary retail consumption license, held by two partners, may, after expiration, be renewed by one of the partners for himself when the other "refuses to sign for a renewal."

If you mean that the partner who "refuses to sign for a renewal" is retiring from the partnership and abandoning the business, then the answer to your inquiry is that the remaining partner who is continuing that business may, if he has the right to immediate exclusive possession of the premises now licensed, obtain a license for the new term in his own name, and such a license constitutes a "renewal" of the original license for the purpose (and I take it this is the point which you more particularly have in mind) of a municipal ordinance limiting the number of plenary retail consumption licenses except as to "renewals." Ordinarily, for the purpose of such

renewals, there must be exact identity of person between the holder or holders of the original and of the succeeding licenses. However, there is sufficient identity when the original license was held by partners, one of whom, after dissolution of the partnership, is continuing the business and seeks the successive license.

It may be that, the partnership being terminated, each partner plans to continue the business for the next year each in his own name and to apply for the successive license. However, the license may be granted only to the one having the right to immediate and exclusive possession of the premises now licensed. Should each have an equal right to possession, then neither may obtain the license. The municipal limitation of the number of licenses is not to be augmented because of partnership friction. The license cannot be halved. If the partners can't agree, then both will have to go without.

(2) You ask whether, "if one partner refuses to operate with other partner", can such other partner continue to conduct the business under their partnership license.

If the partnership remains in existence and continues to own the business, and all that happens is that the partners are on the "outs" or in combative mood, it is immaterial, so far as this Department is concerned, how they arrange between themselves as to who shall manage the business. Either partner may, under the partnership license, manage the business so long as he is doing so pursuant to the partnership. Their internal fights must be settled between themselves or in the courts.

However, if the partner who "refuses to operate" is actually withdrawing from the business, the remaining partner may continue to conduct that business under the original license even though now conducting it for himself, but he must immediately notify the municipal clerk of his partner's withdrawal so that an endorsement to such effect may be made on the license (which thereupon stands in his name alone) and so that adequate notation may be entered in the municipal clerk's records. See Re Baumgartner, Bulletin 165, Item 10. At renewal time, he may renew the license as though it had been in his name throughout.

(3) You ask whether one partner can "sell his share of license to another party without consent of other partner." In order to add any new member to a partnership holding a license, it is a condition that the issuing authority grant a regular person-to-person transfer of that license from all the members of the original partnership to all the members of the newly constituted firm. See Re Sohl, Bulletin 230, Item 1. It is immaterial that the new partner may be coming into the firm in substitution of a retiring partner whom he has bought out. The issuing authority must have an opportunity to determine whether, in its opinion, the new partner is qualified to be a license holder.

To obtain a transfer of the license to the newly constituted firm, all the requirements for a regular person-to-person transfer must be met, i.e., application, advertisement of notice of intention, etc. One of the requirements is that the original license holders consent in writing to the transfer. State Regulations No. 3, Rule 3. Hence, where one of two partners holding a license is to withdraw and be replaced by a new partner, both of the original partners must consent in writing to the transfer of the license to the newly constituted firm, else the application for the transfer must be denied.

The foregoing answers are made solely from the standpoint of the Alcoholic Beverage Control Act. Advice as to your personal rights, and as to the partnership generally, should be obtained from your own counsel.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. ELECTIONS - ADOPTION OF COMMISSION FORM OF GOVERNMENT - NO RETAIL SALES WHILE POLLS ARE OPEN.

April 10, 1939

William A. Dooling,
Chief of Police,
Trenton, N. J.

My dear Chief:

I have just wired you:

"Please see to it that licensees do not sell, offer for sale, or deliver any alcoholic beverages at retail in Trenton on April eleventh Nineteen Hundred Thirty Nine between the hours of seven A M and eight P M and report all violations."

The special election in Trenton on the proposed change from City Manager to Commission form of government submits to the electorate the question:

"Shall chapters 70 to 76 of the title Municipalities and Counties of the Revised Statutes (§40:70-1 et seq.) providing for the commission form of government be adopted?"

The election is being held pursuant to R. S. 40:71-1 et seq. The question is prescribed by R. S. 40:71-3. R. S. 40:71-4, concerning the conduct of such elections, provides, among other things, that the election shall be held at the usual places for holding the annual election in the municipality, that the polls shall remain open during the usual hours, and that the election shall be conducted by the election officers and in the manner provided by the law regulating elections. The reference is to the Election Law (R. S. Title 19). As R. S. 40:71-4 incorporates the Election Law procedures, the election is, for the reasons in Re Duff, Bulletin 295, Item 13, a special election within the purview of Rule 2 of Regulations No. 20.

Licensees will, therefore, not sell, offer for sale, or deliver any alcoholic beverages at retail in Trenton, on April 11, 1939, between the hours of 7:00 A.M. and 8:00 P.M. Eastern Standard Time, the polling hours provided for by statute.

Very truly yours,
D.FREDERICK BURNETT,
Commissioner.

9. ELECTIONS - REGULAR ELECTION OF MEMBERS OF BOARD OF COMMISSIONERS NO RETAIL SALES WHILE POLLS ARE OPEN.

April 10, 1939

Arthur Colsey,
Chief of Police,
Camden, N. J.

My dear Chief:

The election in Camden for members of the Board of Commissioners, on May 9, 1939, is, I understand, the regular election held every four years, pursuant to R. S. 40:75-1 et seq., for that purpose.

The Election Law (R. S. Title 19) defines municipal election as an election held in and for a single municipality at regular intervals. The regular commission election is a municipal election in the contemplation of the Election Law. It is, therefore, a municipal election within the purview of Rule 2 of Regulations No. 20. It is governed by the Election Law procedure. R. S. 40:75-15.

Please see to it that licensees do not sell, offer for sale, or deliver any alcoholic beverages at retail in Camden, on May 9, 1939, between the hours of 7:00 A.M. and 8:00 P.M., Eastern Standard Time, the polling hours provided for by statute, and report to me all violations.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ELECTIONS - HORSE RACING AMENDMENT - NO RETAIL SALES WHILE POLLS ARE OPEN.

April 10, 1939

R. A. Kindle, Secretary,
Horse Racing Amendment Ass'n, Inc. of N. J.,
Camden, N. J.

My dear Mr. Kindle:

State Regulations No. 20, Rule 2, provides:

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

The special election of June 20, 1939, for the submission of the horse racing amendment, is held under authority of Article IX of the State Constitution and pursuant to P. L. 1938, Chapter 422. The procedure is governed, in part, by P. L. 1938, Chapter 422 and, as to the rest, by the Election Law (R.S. Title 19). In fact, the procedure differs from that set forth in the Election Law only to the extent necessary to provide for the special exigencies of an election of this character. For all procedure not provided for by P. L. 1938, Chapter 422, the express direction is that the Election Law shall control.

The election is, therefore, for the reasons in Re Duff, Bulletin 295, Item 13, a special election within the purview of Rule 2.

Licensees throughout the State will therefore not sell, offer for sale, or deliver any alcoholic beverages at retail, on June 20, 1939, between the hours of 12:00 noon and 8:00 P.M., Eastern Standard Time, which are the polling hours provided for by the statute.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against ANTHONY GIORDANO, 34 Montgomery Street, Jersey City, N. J., Holder of Plenary Retail Consumption License C-22, issued by the Board of Commissioners of the City of Jersey City.	CONCLUSIONS AND ORDER

Anthony Giordano, Pro Se.

BY THE COMMISSIONER:

This licensee has pleaded guilty to a charge of selling liquor at his licensed premises on March 10, 1939 in violation of Rule 6 of State Regulations No. 30.

By entering this plea in ample time before the day fixed for the hearing, the Department has been saved the time and expense of proving its case. In conformity with the practice established in Re Polonsjy and Kiewe, Bulletin 308, Item 9, the license will be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 10th day of April, 1939, ORDERED, that Plenary Retail Consumption License C-22, heretofore issued to Anthony Giordano by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) 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.

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

In the Matter of Disciplinary Proceedings against

ANGELO ELIAS,
T/a Blue-Bird Restaurant,
140 S. So. Carolina Ave.,
Atlantic City, N. J.,

Holder of Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the City of Atlantic City

CONCLUSIONS AND ORDER

Angelo Elias, Pro Se.

BY THE COMMISSIONER:

This licensee has pleaded guilty to a charge of selling liquor at his licensed premises on March 21, 1939 in violation of Rule 6 of State Regulations No. 30.

In conformity with the practice established in Re Polonsjy and Kiewe, Bulletin 308, Item 9, the license will be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 10th day of April, 1939, ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Angelo Elias, T/a Blue-Bird Restaurant, by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for a period of five (5) 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. SPECIAL PERMITS - SOCIAL AFFAIRS - THE FEE IS UNIFORMLY $10.00 EXCEPT FOR ORGANIZATIONS NOW IN ACTIVE PUBLIC SERVICE, IN WHICH CASE IT IS $5.00.

April 10, 1939

Fred H. Hauser, Judge Advocate,
Hudson County Committee, American Legion,
Hoboken, N. J.

My dear Mr. Hauser:

The special permit fee is uniformly $10.00 for each day the social affair is held, and is charged all groups and associations with the sole exception of policemen's, firemen's and letter carriers' organizations. In their case, for the reason that they are NOW in active public service, I have reduced the rate to $5.00. See Re Iselin Fire Co., Bulletin 35, Item 4; Re Yocum, Bulletin 38, Item 5. But the $5.00 rate is available only to the policemen's, firemen's or letter carriers' organization itself. It is not available to affiliated or subsidiary groups, such as ladies' auxiliaries, or to groups designated as police associations or fire companies by name but organized for other purposes.

That is as far as I can go. It is not possible to reduce fees for any groups not falling within the rule. If I did it for one, I would have to do it for all, because all must, of course, be treated alike. But in that case, the fees would not cover the cost of administration. It is not a question of worthiness or of past public service. If it were, the American Legion would get it for nothing. I have had to refuse reductions for such deserving affairs as the President's Annual Birthday Ball. Re McCarthy, Bulletin 158, Item 1. There is no other workable criterion I could impose for determining the merits of the countless claims for special favor the applying organizations would put forth. The test is not what they have done in the past but whether they are at the present moment actually employed in and devoting their time exclusively to public service.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

14. RETAIL LICENSES - LICENSED PREMISES - RESTAURANT CONCESSIONS - PRINCIPLES APPLICABLE.

April 10, 1939

Edward F. Farrell, Inc.,
Dover, N. J.

Gentlemen:

As I understand it, you wish to know whether it will be permissible for Edward F. Farrell, Inc., holder of plenary retail consumption license for premises 16 N. Sussex Street, Dover, to grant a food or restaurant concession on the licensed premises. I note that the restaurant furniture and fixtures will be owned by the corporation and that it will be in complete charge at all times.

I sense no objection to such an arrangement, provided the concessionaire deals only with food, and does not participate in any manner whatsoever in the sale, service or handling of alcoholic beverages and, furthermore, has no interest therein. See Re Kashner, Bulletin 199, Item 12.

In order for the licensed corporation to sell and serve alcoholic beverages throughout those parts of the premises covered by the food concession, the corporation must retain possession and control of those premises. It should also be borne in mind that alcoholic beverages may be sold or served only by the duly qualified employees of the licensee.

I further understand that the concessionaire's compensation of ninety per cent of the gross sales refers to gross sales of food, and not food and alcoholic beverages. The former is permissible; the latter would not be, because it would amount to giving the concessionaire an interest in the corporation's alcoholic beverage business, which is prohibited.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. PLENARY RETAIL CONSUMPTION LICENSES - OTHER MERCANTILE BUSINESS - WHAT CONSTITUTES - SALE OF EGGS BY THE BOX PROHIBITED.

April 10, 1939.

Mr. George W. Ford,
Hightstown, New Jersey.

My dear Mr.Ford:

I have yours of March 29th, and understand that your industrious hens ofttimes supply more eggs than needed in your home and tavern.

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 non-alcoholic accessory beverages. The license is issuable only to taverns, hotels and restaurants, and not for any premises on which any other mercantile business is carried on. See R. S. 33:1-12.

The sale of eggs by the box constitutes the conduct of another mercantile business, and is therefore not permissible on premises for which consumption licenses have been issued. A taproom is not an egg market.

There is nothing, however, which would prohibit the sale of eggs from your home or any place other than your licensed premises.

Very truly yours,

Frederick Burnett

Commissioner.