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

BULLETIN NUMBER 201 AUGUST 13, 1937.

1. APPELLATE DECISIONS - LOJEWSKI vs. BAYONNE

STANLEY LOJEWSKI, Appellant,	)	
-vs-	)	ON APPEAL
BOARD OF COMMISSIONERS OF THE CITY OF BAYONNE, Respondent	)	CONCLUSIONS

. . . . . .

Irving Meyers, Esq., Attorney for Appellant
William Rubin, Esq., Attorney for Respondent

By the Commissioner:

This appeal is from the denial of a transfer of a plenary retail consumption license from 245 Avenue E to 291 Avenue A, Bayonne.

The appeal, although pertaining to the transfer of last year's license, was stipulated to be dispositive of the merits, one way or the other, of a similar transfer in respect to this year's license.

Respondent contends that it validly denied the transfer because of a developed policy against the establishment of any new licensed premises in a residential neighborhood where a number of residents therein have indicated protest.

The proposed site is located on Avenue A at 10th Street. At the intersection on 10th Street, three of the four corners are occupied by store premises. On one corner there is a butcher-shop; on another, a grocery-delicatessen; on the third, two unoccupied stores (one being the proposed site), and immediately next door are a stationery store and a barber-shop. All these stores are in residential buildings. On the remaining corner, there is a large and attractive two-family house which faces on 10th Street.

On Avenue A, between 10th and 11th Streets, there is a small grocery near the middle of the block; at 13th and again at 14th Street, there is a grocery-delicatessen; between 13th and 14th Streets (three and a half blocks from the proposed site), there is a gasoline station. In the opposite direction along Avenue A, below 10th Street, apparently the nearest business property is a series of industrial sites located a few blocks below 8th Street and some five or six blocks from 10th Street.

All the side-streets issuing into Avenue A between 8th and 16th Streets are (except for a school on 10th Street) completely devoted to homes. Avenue A itself is all residential between those Streets, with the exceptions above noted.

Ordinarily I would have no difficulty in sustaining

respondent's action.

The vicinity is residential in character. The stores are few, scattered and of the neighborhood "corner grocery" type. The little cluster at 10th Street and Avenue A are in residential buildings. The gasoline station, apparently the only one in the general area, is some three to four blocks away.

The trouble is not caused by what the City Commissioners did in this case but what they did in other cases. Appellant charges, and not without cause, lack of uniformity in the application of the policy which the Commissioners allege as defense. In fact, he goes further and charges that no set policy has been adopted as to any neighborhood and hence claims he has been the victim of arbitrary discrimination.

Respondent admits that in two other areas more or less comparable in general character to the present vicinity, it has allowed new taverns to be established despite the known objection of residents therein. In December 1936, it granted a transfer to Veronica B. Paciullo of a plenary retail consumption license to premises located at Avenue A and 31st Street, just opposite premises for which it had previously denied a license to John Serafin for no other cause than the neighborhood. It states that this transfer was granted "inadvertently" and as part of routine business, since no one in the neighborhood, whether resident or representative of any nearby school or church, lodged any protest to the application or drew respondent's attention to the actual considerations involved, an excuse wholly unnecessary if the righteous policy alleged were actively in mind. In February 1937, respondent granted a transfer of a similar license to premises located at the Boulevard and 31st Street despite protests made by neighbors and a nearby church.

I find nothing worthy the name of "uniform policy" in Bayonne. Commissioner Roberson candidly disclosed the true situation, viz.:

> "Q. You adopted no policy in regard to any section or neighborhood or corners in the City of Bayonne?
>
> A. If you mean some zoning ordinance, we haven't.
> Q. You have adopted no uniform policy in respect to granting licenses in any particular section?
> A. I would say, as each one comes up, we have formulated our policy as we have gone along.
> Q. But you have no uniform policy as to the denial or granting of a license because of residential sections -- have you established any uniform policy?
> A. As each one is presented to us, we establish as we go along ***."

On the other hand, respondent has consistently refused the establishment of a licensed premises in the vicinity now under consideration on the ground that it is a residential neighborhood where substantial sentiment exists against liquor establishments. In November 1935 and again in February 1937, applications for this vicinity were denied. On the first occasion, a petition of 43 nearby residents was filed in protest of the application. On the second occasion no petition

was filed and no persons appeared in protest; but one of the City Commissioners was approached by residents who opposed the application. At the hearing below on the present application, no petition was filed and no persons voiced protest. It is quite possible that the protesting residents believed it unnecessary once again to air their known objections, and believed that respondent would follow the course of its two previous denials and deny the present application. In any event, it was reasonable for respondent, in view of past protests, to consider this a residential vicinity where a substantial sentiment exists in opposition to the establishment of liquor stores or taverns.

In the absence of any openly declared and uniformly applied policy concerning the location of liquor licenses in Bayonne, the refusal to grant a transfer in the present case must stand or fall on general principles.

The neighborhood, as hereinbefore stated, is substantially residential. A local issuing authority may, within its discretion, refuse a license in a residential area where it reasonably concludes a substantial sentiment to be against any such license. The presence of business properties which do not alter the essential character of the area is immaterial. Welstead v. Matawan, Bulletin #133, Item #2; Borkowski v. Clifton, Bulletin #139, Item #5; Mulligan v. Lyndhurst, Bulletin #146, Item #6; see also Hickey v. Lopatcong, Bulletin #68, Item #1; Thomas v. Evesham, Bulletin #80, Item #2; Farley v. High Bridge, Bulletin #151, Item #13; and cf. Bisante v. Camden, Bulletin #58, Item #10.

Irrespective, then, of what the Commissioners did in other cases, they did the right thing in the instant case. As their own counsel well said:

> "If you think the Commissioners have done wrong in one place, it is no reason why they should not be permitted to do right in another."

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: August 8, 1937

2. MUNICIPAL ORDINANCES - HOURS OF SALE - DAYLIGHT SAVING TIME - MUST BE OFFICIALLY ADOPTED TO AFFECT TIME SPECIFIED IN REGULATION.

My dear Commissioner:

The resolution of the Borough of Neptune City fixing license fees, closing hours, etc., concerning sale of alcoholic beverages in the Borough, provides that no intoxcating beverages may be sold between the hours of 1 A. M. and 6 A. M. weekdays, and between the hours 1 A.M. and 1 P.M. on Sundays. It is not stated in the resolution whether this time should be Eastern Standard Time or Eastern Daylight Saving Time if and when Eastern Daylight Saving Time is in effect.

It was my recollection that you had a rule that in cases where Standard Time or Daylight Saving Time went into effect was not stated, that Standard Time prevailed. I am informed now however, that I am in error and that the time in use in that particular municipality is the time which

actually governs.

Neptune City has taken no official action to adopt Daylight Saving Time, although all business in the Borough, both private and municipal, is conducted on Daylight Saving Time. The tavern keepers in Neptune City would like to remain open until 1 A. M. Standard Time, or 2 A.M. Daylight Saving Time. Is it necessary for the governing body to amend their resolution by providing that the time mentioned in the resolution shall be considered Eastern Standard Time in order to permit these tavern keepers to remain open until 2 A. M. Daylight Saving Time?

Very truly yours,

JOSEPH R. MEGILL
Solicitor Borough of Neptune City

August 9, 1937

Joseph R. Megill, Esq.,
Asbury Park, N. J.

My dear Mr. Megill:

My records disclose that by resolution of June 19th, 1935, the Borough of Neptune City has provided:

> "Section 2. No alcoholic beverages shall be sold or dispensed between the hours of 1 A.M. and 6 A. M. on weekdays, and between the hours of 1 A. M. and 1 P. M. on Sundays."

Ruling heretofore made in re Wagner, Bulletin 58, item 4, dealt with a regulation similar to yours in that no time was specified. I there held that such a regulation meant Standard or Daylight Time, whichever was the official time of the community. But for such a conversion to take place, Daylight time must be the official time of the community, and not merely the generally accepted time. Practical enforcement requires the certainty of some official record of the adoption of the convention of Daylight Saving Time.

Unless Daylight Time has been officially adopted in Neptune City by resolution or ordinance (Cf. re Kane, Bulletin 186, item 4) the hours of sale are Eastern Standard Time. You tell me that Neptune City has never taken any official action to adopt Daylight Saving Time. It therefore follows that if the Borough Council wishes to permit the taverns to remain open until 2 A. M. Daylight Saving Time, no amendment of the present resolution is necessary.

It goes without saying that the tavern-keepers must observe the same kind of time for opening as well as closing. They cannot open on the one and close on the other, thereby gaining an extra hour each day.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. DISCIPLINARY PROCEEDINGS - ILLEGAL TRANSPORTATION - P. & P. TRANSPORTATION CO., INC.

In the Matter of Disciplinary Proceedings against	
P. & P. TRANSPORTATION CO., INC. 429 Bellevue Avenue Hammonton, New Jersey Holder of Transportation License No. T-40	CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., Attorney for the Department of Alcoholic Beverage Control.

Samuel Freedman, Esq., Attorney for P. & P. Transportation Co., Inc.

BY THE COMMISSIONER:

Charges were duly served on the above named licensee, which may be summarized as follows:

(1) That on or about September 3, 1936, licensee did knowingly aid and abet another in violating a provision of the Control Act in that it did allow, permit and suffer one John E. Robinson to transport alcoholic beverages within this State for said licensee in violation of Section 48 of the Control Act, well knowing that said Robinson did not hold a license so to do, contrary to and in violation of Section 50 of the Control Act;

(2) That said licensee failed to submit questionnaires for various employees specifically named, and submitted a questionnaire with wrong and misleading information relative to one Pete Pitale in violation of Rules Governing Identification of State Licensees and Their Employees;

(3) That on or about January 21, 1936 and on divers days prior thereto, licensee transported denatured alcohol knowing that it was to be used for beverage purposes and/or under circumstances from which licensee might reasonably deduce that the intention of the purchaser or consignee was to use same for beverage purposes, some of which was transported to property known as Longo Farm, Oak Road, Hammonton, New Jersey, where an illegal distilling plant was discovered; contrary to Section 27 of the Control Act.

As to the first charge: The evidence shows that, in addition to its principal place of business in Hammonton, the licensee maintains a branch office in the City of Philadelphia. On or about September 3, 1936, licensee picked up a shipment of ten cases of wine from the licensed premises of a New Jersey wholesaler located in the City of New York, consigned to the holder of a plenary retail distribution license in Wildwood, New Jersey. The wine was transported by the licensee from New York to its Philadelphia branch office. At the latter point, Sears, a part-time

employee of the licensee, turned the shipment over to Robinson for delivery to Wildwood. Robinson admittedly had no New Jersey Transportation license and was arrested while on the road to Wildwood with some of the wine. Robinson later pleaded guilty to illegal transportation. The President of P. & P. Transportation Co., Inc. testified that he had instructed Sears to obtain a licensed transporter in making delivery from Philadelphia to Wildwood. Sears testified that he had been told by Robinson that the latter had a New Jersey Transportation license, but admitted that he did not examine Robinson's truck to see if it had a proper decalcomania, explaining his omission by stating that he did not know that a decalcomania was required.

Without question Robinson violated the Control Act. The licensee and its employee, Sears, were guilty of gross negligence in failing to see that the shipment was transferred to a duly licensed transporter. The evidence is not sufficient, however, to show that the licensee knowingly aided or abetted Robinson in violating the Control Act. I find, therefore, that the licensee is not guilty on the first charge.

As to the second charge: At the hearing it developed that the employees for whom questionnaires were not filed were employed only one or two days by the licensee and that, while apparently the questionnaire filed for Pete Pitale in July 1935 was inaccurate, a proper questionnaire had been filed by him in July 1936. The evidence is not sufficient to show that the licensee knowingly violated the Rules Governing Identification of State Licensees and Their Employees, and I, therefore, find the licensee not guilty on the second charge.

As to the third charge: In December 1935 a New Jersey Transportation license was outstanding in the name of Frank Pitale, doing business as P. & P. Transportation Co. In July 1936 a Transportation license was issued to P. & P. Transportation Co., Inc., a corporation of New Jersey which had been organized about 1932 but which apparently was dormant from that time until 1936. It appears, however, that the stockholders of P. & P. Transportation Co., Inc., are Frank Pitale and members of his family and, in effect, that the Corporation is merely a convenient method of doing business by Frank Pitale.

On December 3, 1935, Investigators attached to the Alcohol Tax Unit, Internal Revenue Division, visited a garage which existed at that time at 79 White Horse Pike, Hammonton, and which has been subsequently torn down. At that time Joseph Pitale, a brother of Frank Pitale, resided at 81 White Horse Pike. There is a conflict in testimony as to whether the garage was owned at that time by Frank Pitale or his brother Joseph, but it is unnecessary to consider that question because it sufficiently appears from Frank Pitale's testimony that on December 3, 1935, the garage was being used at least temporarily for a shipment of some merchandise over which Frank Pitale was exercising control. Frank Pitale testified that about November 30th he received a telephone call from one Bradley, who asked him if he would haul "the bottles" to Philadelphia. Pitale told Bradley that he was quite rushed at the time, but instructed Bradley to deliver the shipment to the garage at 79 White Horse Pike, and that the shipment would be made to Philadelphia at the first opportunity. On December 3, 1935, when

the Federal Investigators called at the garage, they found approximately 1200 paper cartons containing bottles which were practically empty and which were labeled "King Laboratory" and "Brown's Rubbing Alcohol." They also found 50,000 bottle caps, a steel drum, a large funnel and three racks. They testified that these racks were designed to empty expeditiously the contents of a dozen bottles at one time into the drums by means of the funnel. One of the Investigators marked a rack with an "X" and his initials. Immediately after inspecting the garage, these Federal Investigators proceeded to 429 Bellevue Avenue. In going through the yard at the latter premises, they found approximately 500 more paper cartons labeled "King Laboratory" and "Brown's Rubbing Alcohol" in a small one-story frame building. Some of the cartons contained the number "1537-C" in stencil. The cartons contained bottles that were practically empty, but sufficient samples were obtained in both places from which it was determined that the bottles in the garage and the building at 429 Bellevue Avenue had contained rubbing alcohol. On January 20, 1936 Federal Investigators located a still which was not in operation at the time on the Longo Farm, Oak Road, Hammonton. On the farm they found seven drums containing rubbing alcohol, parts of cartons similar to those which they had seen at the garage, and also the rack which one of the Investigators had marked while in the garage.

The Investigators also testified that on December 9, 1935 they observed a truck in Philadelphia transferring twenty-five or thirty gross of paper cartons to a truck of the P. & P. Transportation Co., Inc. These cartons were labeled, "Rubbing Alcohol" and had numbers on them "1537, 1537-C" in black stencil, and some of them were marked "C. M. Brown Rubbing Alcohol Compound, 12 pints." They followed the P. & P. truck from Philadelphia to Berlin, New Jersey, but lost the truck when their own car developed engine trouble.

Frank Pitale testified that neither he nor the Corporation of which he is President, ever hauled denatured alcohol; that he never saw the racks which were identified as having been in the garage; that no deliveries had been made by him or by his Corporation to the Longo Farm. In addition to his testimony previously outlined as to the cartons found in the garage, he testified also that these cartons of empty bottles had been delivered to Bradley at a Philadelphia address on December 3, 1935. The Federal Investigators, however, testified that these cartons were still in the garage on December 6, 1935 when they returned there for a further inspection. Referring to the cartons which were found at 429 Bellevue Avenue, Frank Pitale testified that these cartons containing empty bottles were left on the platform of his building at that address on Labor Day by some unknown person, at which time a watchman was in charge of the premises. When no one claimed the cartons they were moved to the one-story building, where they were found, but were later sold as "empty bottles and cartons."

The evidence is admittedly circumstantial. It is sufficient, however, to show that Frank Pitale transported denatured alcohol. The fact that the rack which was marked in the garage was later found at the Longo Farm connects up the transportation with the operation of the still. This evidence suffices to show that Pitale transported the denatured alcohol under circumstances from which he should reasonably deduce the intention of the purchaser or consignee to use the denatured alcohol for beverage purposes.

I therefore find that Frank Pitale, during the term of a prior license held by him, was guilty of a violation of Section 27 of the Control Act as charged in the third charge filed against the present licensee.

Any license may be suspended or revoked for proper cause, notwithstanding that such cause arose during the term of a prior license held by the licensee. Rule I of Rules Relating to Revocation Proceedings Pending or Contemplated at Expiration of License or Instituted Thereafter.

The proper remedy in a case such as this is revocation.

P. & P. Transportation Co., Inc., is the holder of Transportation license No. T-40 for the present fiscal year.

Accordingly, it is on this 9th day of August, 1937, ORDERED that Transportation License No. T-40, issued to P. & P. Transportation Co., Inc. by the Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective August 12, 1937 at midnight (Daylight Saving Time).

D. FREDERICK BURNETT
Commissioner

4. COURT DECISIONS - CONOVER vs. BURNETT, COMMISSIONER - NEW JERSEY SUPREME COURT - ON CERTIORARI

NEW JERSEY SUPREME COURT
No. 247 May Term, 1937

Honorable Russell G. Conover, Judge of the Court of Common Pleas in and for the county of Ocean, in the State of New Jersey,

Prosecutor

v.

D. Frederick Burnett, State Commissioner of Alcoholic Beverage Control, and the Great Atlantic and Pacific Tea Company, a corporation,

Defendants.

. . . . . .

Argued May 1937 Decided 1937

On Certiorari

For Prosecutor, Ira F. Smith, Frederic M. P. Pearse
For D. Frederick Burnett, Nathan L. Jacobs
For Great Atlantic and Pacific Tea Co., J. Raymond Tiffany
Before Justices Bodine, Heher and Perskie

BODINE, J. The Great Atlantic and Pacific Tea Company operates a chain of stores for the sale of food product at retail. For some time past, it has held six plenary retail liquor distribution licenses for certain of its stores located

in Ocean County. In June of 1936, it applied to Judge Russell G. Conover, of the Ocean County Court of Common Pleas for the renewal of these licenses. The application was denied, for the reason that the company habitually sold alcoholic beverages near and in some instances below the wholesale cost to local dealers, which circumstance might result in such dealers more easily engaging in illegal practices. The applicant then appealed to the Commissioner of Alcoholic Beverage Control whose action in ordering, after a hearing de novo, the issuance of the licenses is here challenged on certiorari. The powers of the Commissioner are set forth in sec.35, P.L. 1935, Chapt. 257, p. 811, which is as follows: "The Commissioner is hereby empowered and it is his duty to hear and conduct all appeals provided for by this act and thereupon to render written decisions stating conclusions and reason therefor upon each matter so appealed, and enter orders pursuant thereto. Said decisions and orders shall be binding upon all persons and shall be honored and forthwith executed by the other issuing authority. The commissioner is hereby authorized to order the other issuing authority to issue a license when and if after a hearing on the appeal of an applicant therefor, the commissioner shall decide that a license was improperly revoked by the other issuing authority: to order the other issuing authority to suspend or revoke a license, or to forthwith terminate the suspension or cancel the revocation of a license, when and if, after a hearing on appeal, the commissioner shall reverse the decision of the other issuing authority; to establish procedure and rules; and to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this act. Where any order entered by the commissioner pursuant to any appeal taken under this act, except from the denial of a refund, is not honored and executed within ten (10) days after the date thereof, it shall be deemed self-executed and shall have the same force and effect as though actually complied with by the other issuing authority."

The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. The legislature, when it created the office of Commissioner of Alcoholic Beverage Control, used appropriate language to vest in that office comprehensive power to compel the issuance of licenses. Because the Great Atlantic and Pacific Tea Company may be able to undersell its competitors is no reason why it should be refused a license.

The ruling under review will be affirmed.

5. SPECIAL PERMITS - NO BEER PERMITS ISSUED EVEN FOR CIRCUS DAY

August 11, 1937

Mr. Joseph Frankenstein,
Camden, N. J.

Dear Mr. Frankenstein:

Special Permits for the sale of alcoholic beverages for private commercial purposes or private profit for particular occasions are not issuable as substitutes for regular licenses or to non-licensees. Regular licensees are entitled to protection from competitors who would pay only a fraction of the regular fee and pick their own days. Special Permits for private gain, which are in substance a plenary consumption license, are never issued, otherwise every similar public occasion would be commercially capitalized.

Hence, you cannot obtain a Special Permit to sell beer for one day while the circus is visiting the city.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

6. PRACTICES UNDULY DESIGNED TO INCREASE THE CONSUMPTION OF ALCOHOLIC BEVERAGES - BEER DRINKING CONTESTS - FORBIDDEN

Dear Sir:

One of our advertisers has submitted the following plan as copy for an ad to appear in our paper the "PLAY BOY." After reading the plan I advised them to get a ruling from you as this plan is a contest.

RULES

1-Contest open to everyone over 21 years of age.

2-Contestant pays $2.00--one dollar covering cost of one gallon of beer and one dollar as entrance fee into contest.

3-The one gallon of beer to be consumed in one hour or less.

4-In the event of more than one person drinking the gallon of beer in the allotted time the monies accumulated from the entrance fees will be divided equally.

5-If no one on any specific night emerges victorious the accrued monies will be added to the next contesting night.

Please advise us at your convenience a ruling on this matter.

Very truly yours,

Charles B. Karcher
PLAY BOY

August 13, 1937.

Play Boy,
Atlantic City, N. J.

Gentlemen: Att: Mr. Charles B. Karcher

I appreciate very much that you did not accept copy for such an ad. The proposed contest would no doubt fill the till. The greater the gate for the winner, the greater the cover charge for the licensee. No question but that he'd be willing to pour until the customers are plump. No wonder he speaks of the victor as one who "emerges"!

Such contests are not permissible.

I had not thought it necessary to make any formal rule. Practices unduly designed to increase the consumption of alcoholic beverages are invariably disapproved. Licensees with any appreciable conception of their own best interests need no such regulation. For the benefit of the nearsighted, I now make a special ruling, pursuant to the Control Act, that the holding of such a contest will be cause for revocation.

The cooperation of your paper and the press generally in refusing such advertisements is welcome.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

July 25, 1937.

Dear Sir:

At the Club's annual outing August 28, 1937 at Lis' Farm, Kuser Road, Trenton, New Jersey, we plan to stage a beer drinking contest.

The Club desires your opinion as to the legality or worthiness of the contest.

Would you suggest a limitation, a fight-to-the-finish affair, or some other less violent contest.

We would appreciate a reply in the very near future.

Sincerely yours,

Francis Troilo
Secretary

August 13, 1937.

First Ward Democratic Club,
Trenton, N. J.

Gentlemen: Att: Francis Troilo, Secretary

I have your inquiry of the 25th ult.

I suggest you consult an alienist.

Enclosed is copy of the special ruling against beer drinking contests. Re Play Boy, Bulletin 201, Item 6.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

7. STATE BEVERAGE DISTRIBUTORS - RETAIL SALES - EFFECT OF LOCAL REGULATIONS FORBIDDING SUNDAY SALES AND DELIVERIES TO CONSUMERS

August 11, 1937

K. & O. Liquor Store
S.E.Corner 6th & Landis Avenue
Vineland, New Jersey

Gentlemen:

I have before me your communication of July 22nd asking whether it is lawful for a "wholesale distributor" to make sales and deliveries of beer to consumers in Vineland on Sunday.

The holder of a manufacturer's or wholesaler's license is not permitted to sell or deliver alcoholic beverages to any consumer, whether on Sunday or any other day.

By "wholesale distributor," however, I presume that you mean a State beverage distributor -- the holder of a hybrid license who is entitled to sell both to licensed retailers and also direct to consumers. He is therefore, in effect, both a wholesaler and a retailer.

There is nothing in the State law or regulations prohibiting a State beverage distributor from making sales or deliveries on Sunday. However, according to the records of this Department, the Borough of Vineland adopted a resolution on December 19, 1933, section 15(1) of which reads as follows:

> "The holder of plenary retail consumption license shall be entitled to sell alcoholic beverages...and the holder of plenary retail distribution license shall be entitled to distribute...from the hours of seven o'clock in the forenoon, until twelve o'clock midnight, excepting on the day of the Sabbath, commonly known as Sunday, on which day no sale or distribution shall be made at any time."

Section 3 (as amended on June 12, 1934) provides that the holder of a club license shall be subject to the same regulation. There is no provision for the issuance of any other type of license in Vineland. Section I(i) provides that the word "sale" shall include delivery of alcoholic beverages.

Where a municipality has a regulation forbidding its licensees from making retail sales or deliveries on Sunday, I shall compel State beverage distributors to respect such expression of local sentiment and will therefore require them to refrain from making retail sales or deliveries to consumers in that municipality on Sunday.

In Re Hickey, Bulletin #124, item #8, I said to a State beverage distributor:

> "If Judge Way has ordered that no retail sales be made in certain municipalities in Cape May County before noon on Sundays, then you cannot make retail sales or deliveries to consumers in those municipalities

before that time. If Judge Way has prohibited in certain municipalities all retail sales at any time on Sundays, then you cannot make retail sales or deliveries to consumers in those municipalities at any time on Sundays. You cannot make retail sales or deliveries to consumers on Sundays in any municipality or at any time when retail sales have been prohibited. In each case, the rule governing the particular municipality in which the sale and delivery is made, governs."

So, in Re Weston & Co., Bulletin #171, item #1, I ruled that a retail licensee in Newark, which permits part time sales on Sundays, may not deliver alcoholic beverages on Sunday in East Orange where all Sunday sales had been prohibited by referendum.

The same result would have followed whatever manner the closed Sunday in East Orange had been effected, e.g. by ordinance or resolution, as well as by referendum. The point is that, so long as Sunday sales are prohibited by law in any municipality, or to the extent that they are prohibited, licensees from other places will not be allowed to violate the local rule.

As regards sale or delivery by a State beverage distributor to licensed retailers in Vineland on Sundays, I have as yet had no occasion to make any rule, deeming that the retailers in a municipality where Sunday sales are not permitted will have the sound sense and good taste to close their establishments on Sundays and not be accepting consignments of alcoholic beverages on those days from a wholesaler even though they are not resold on Sundays at retail.

If you will inform me of any State beverage distributor who is violating the Vineland regulation, I will take immediate steps to see that he refrains forthwith from making any retail sales or deliveries to consumers in Vineland on Sundays.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - REPICI VS. HAMILTON TOWNSHIP

DOMINIC REPICI,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HAMILTON (ATLANTIC COUNTY),)
Respondent.)

ON APPEAL

CONCLUSIONS

. . . . . .

Morgan E. Thomas, Esq., Attorney for Appellant.
Enoch A. Higbee, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of renewal of his plenary retail consumption license for premises located at 201 North Main Street, Mays Landing; Township of Hamilton.

Respondent contends that its action was proper because the premises are located in a residential section and because numerous complaints were received from nearby residents concerning the noise, disorder and drunkenness in and about the licensed premises.

Appellant's place of business is located in a section of the Township which is mainly residential, but the building has been used for business purposes for more than thirty-five years. He has been a licensee, at his present address, since Repeal.

Appellant's application for renewal was first considered at a meeting of the Township Committee held on June 21. The Clerk announced that he had received one letter and a petition containing five signatures of residents objecting to renewals and respondent deferred action until June 28. At a special meeting held on the latter date, renewal was denied. At this special meeting no objectors appeared but four persons spoke in favor of renewal.

At the hearing on appeal, the Chairman of the Township Committee testified that five residents of the immediate vicinity had personally complained to him of the noise and misconduct of some of the patrons of the place; that he had warned appellant in the summer of 1936 that complaints had been received and that appellant promised to remedy conditions. Committeemen Boerner and Joslin testified that they had voted not to renew because of the complaints received from nearby residents; the latter adding that "I believe Mr. Repici has gone so far that he cannot control it." Mr. Hoover, who resides two doors away, testified that on eight or ten occasions since March 1937 he has seen men urinating alongside the building or in front of it and that since March 1937 he has seen many drunks coming out of the place, some as recently as a week before the hearing. His testimony was corroborated to some extent by his daughter. The Chief of Police testified that he was obliged to go to Repici's place five or six times in the last two years because of "noise and rough talking and singing."

Appellant and his witnesses deny that the conditions complained of exist. Appellant admits, however, that, at the hearing below, he acknowledged the fact that there had been disorders outside of his place and that he told the Committee he was not responsible for what went on outside. One of appellant's witnesses testified "the drunks that I have seen come out of there, nine-tenths of them come from another part of the town and go into his place - they don't stay long, they come out in about five minutes."

It appears that appellant's place is a "port of call" for the town drunks and that the objectionable conditions outside his premises are caused by these patrons. The evidence is sufficient to sustain respondent's finding that appellant has not properly conducted his business and, hence, is not entitled to a renewal. Conte vs. Princeton, Bulletin #139, Item 8; Lalliker vs. New Milford, Bulletin #141, Item 8; Holland vs. Bloomfield, Bulletin #142, Item 7; Borden vs. Newark, Bulletin #148, Item 8.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: August 11, 1937.

9. STATE BEVERAGE DISTRIBUTORS - CONTRIBUTIONS TO A CAMPAIGN FUND AGAINST A DRY REFERENDUM PROPOSED TO PROHIBIT RETAIL SALES - CONSIDERATIONS INVOLVED.

August 11, 1937

Mr. Frank Powell,
Bridgeton, N. J.

Dear Mr. Powell:

There is nothing necessarily illegal about your contributing to a common defense fund to campaign against a "dry" referendum.

Section 40 of the Control Act prohibits wholesalers or manufacturers of alcoholic beverages from being interested in retail licensees, and vice versa. It further prohibits a wholesaler or manufacturer from making a gift to any retail licensee accompanied by an agreement to sell the product of that wholesaler or manufacturer.

The purpose of Section 40 is to prevent retailers from tying themselves to the control of the wholesaler or manufacturer. A State beverage distributor is a hybrid type of licensee; he is both a wholesaler and a retailer. A contribution by him to a fund being raised by the ordinary retailers in the municipality to fight a "dry" referendum, does not result in any control over those retailers. For that purpose, he is one of them.

Of course, if your contribution is accompanied by any agreement or understanding that one or more of the retailers shall patronize your products exclusively, such an agreement or understanding is contrary to Section 40 and consequently illegal.

I am making no expression either in favor of or against the plan to fight the "dry" referendum.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. NEW RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES.

TO ALL RETAIL LICENSEES:

Section 64(d) of the Control Act reads:

> "Any contrivance, preparation, compound, tablet, substance or recipe advertised, designed or intended for use in the manufacture of alcoholic beverages for personal consumption or otherwise in violation of this act is hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section. Any person who shall advertise, manufacture, sell or possess for sale, or cause to be advertised, manufactured, sold or possessed for sale property declared unlawful under this paragraph, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars ($100.00) and not more than five

hundred dollars ($500.00), or imprisonment for not less than thirty (30) days and not more than six (6) months or by both such fine and imprisonment in the discretion of the court."

Staff inspection of the premises of several retail distribution licensees discloses the possession for sale of malt, hops, oak shavings or chips, flavoring and coloring agents, cordial or liquor extracts, essences and syrups and other ingredients and preparations for home-made alcoholic beverages. They are out of place in a present-day licensed liquor establishment. What went during Prohibition, doesn't go Now.

Accordingly, the following rule is hereby promulgated, effective September 1, 1937:

18. No licensee shall sell or possess, or allow, permit or suffer on or about the licensed premises, any malt, hops, oak shavings or chips, flavoring or coloring agents, cordial or liquor extracts, essences or syrups, or any ingredient, compound or preparation of similar nature.

There is another thing which has given me grave and recurrent concern. I refer to the practices by certain members of the liquor trade of issuing coupons, the giving of premiums or gratuities and the insidious allurement of "combination sales." These inducements not only create strenuous and unfair competition in the trade, but are practices unduly designed to increase the consumption of alcoholic beverages. It is unnecessary to point out the vicious examples that have occurred.

Reluctant, as a matter of principle, to impose rules on the economics of merchandising, I have preached moderation but now, in fairness to those licensees who keep within bounds, the time has arrived to practice regulation.

Accordingly, the following rules are hereby promulgated, effective September 1, 1937, viz.:

19. No retail licensee shall, directly or indirectly, sell or offer for sale any alcoholic beverage for consumption off the licensed premises except at a specified price per bottle or specified price per case thereof, or both; "combination sales" of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited.

20. No retail licensee shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, discounts or similar inducements with the sale of any alcoholic beverage for consumption off the licensed premises; provided, however, that nothing herein contained shall prohibit retail licensees from furnishing advertising novelties of nominal value.

Dated: August 11, 1937

E. E. B. ANDERSON

Commissioner