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

BULLETIN 263 JULY 28, 1938

1. BARTENDER - A PROFESSIONAL POLICEMAN WITH A FLAIR FOR MIXING MAY BE A BARTENDER AT A SOCIAL FUNCTION IF HE STRICTLY MAINTAINS HIS AMATEUR STANDING.

My dear Commissioner:

As counsel for the Township of Franklin in the County of Somerset, I have been asked whether a special police officer may serve as bartender at a special function. Having in mind your previous ruling, I have advised that this particular individual should not take upon himself the decision of distinguishing his position from that covered by your bulletin.

The person about whom I am inquiring is a special police officer who is not on regular duty, being assigned at certain times for certain purposes and paid only while performing such special duty. He happens to be a member of an organization which at infrequent intervals obtains a special permit for the sale of alcoholic beverages. On such occasions he desires to act as the dispenser and seller, on behalf of the organization, of these beverages. These occasions do not coincide with those on which he serves as special officer.

Would you kindly advise me whether this individual may, without going contrary to your regulations, serve alcoholic beverages on the occasions above referred to, it being understood that on the occasions in which he serves these beverages he does not act in his capacity as special officer.

Respectfully yours,
Clarkson A. Cranmer.

Clarkson A. Cranmer, Esq., July 22, 1938
Somerville, N. J.

My dear Mr. Cranmer:

I understand that the police officer wishes to act as bartender for an organization to which he belongs, on the occasions that it sells alcoholic beverages pursuant to special permit.

I have ruled that officers entrusted with the enforcement of the law may not hold liquor licenses or be employed by licensees. Re Scott, Bulletin 109, Item 5; Re Franco, Bulletin 109, Item 6 (policeman); Re Schepis, Bulletin 115, Item 3 (constable); Re DuPree, Bulletin 156, Item 11 (marshal); Re Everson, Bulletin 162, Item 10 (member of Police Committee); Re Osborn, Bulletin 174, Item 16 (constable).

Sound public policy demands that those entrusted with the enforcement of the liquor law shall have no personal or financial interest in the liquor trade. Where there is potential conflict between private interest and public duty, the latter must prevail.

The rulings heretofore made have been concerned, however, only with licensees whose liquor businesses are conducted for private gain. It is this private gain - the pecuniary interest - that creates the conflict. Where it does not exist, the reason for the rule falls. Thus, in Re Franco, Bulletin 262, Item 11, I held that

a bartender may be drafted as a special officer to disperse trespassers upon a golf course instead of dispensing refreshers to members. See also Re Higgins, Bulletin 203, Item 14, where a constable, whose only duties were to guard a watershed for the Jersey City water supply, was permitted to be a bartender when off duty.

That is what we have in the present situation. The organization does not hold a liquor license but only temporary special permits. It is not in the liquor business for commercial gain. The sale of liquor is not the principal purpose for which the club exists, merely an incidental aspect of its general social activities. It is, therefore, highly improbable that any such conflict will arise. I take it that all it amounts to is that, like men who want to be the chef on a picnic, he thinks he has a flair for mixing.

Of course, the fact that a police officer is a member does not in any wise relieve the club of its responsibility to obey the law. If it appears that the club has abused its position or the officer made use of his official connections to circumvent the law, any permit it may hold will be subject to revocation, and it may be disqualified from obtaining further permits in the future.

The policeman may, therefore, act as bartender for his club, but he may not receive any compensation therefor, as that would give him a direct financial interest which the rulings heretofore made expressly prohibit.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. LICENSES - REFUND - PRORATION - FEE TO BE PRORATED IN ACCORDANCE WITH THE LAW AS IT STANDS AT THE TIME OF APPLICATION - AMENDMENT OF JUNE 8, 1935 PROVIDING NEW METHOD FOR PRORATION OF LICENSE FEES WAS NOT RETROACTIVE.

Dear Sir:

On August 27, 1934, plenary retail consumption license C-43 was issued to Frank McDonnell, 138 No. King Street, Gloucester City, N. J., and full fee (at that time $250.00) was paid by him and was not prorated from date of issue.

I had just taken over this position in 1934 and was not thoroughly familiar with the law relative to prorating of fees, and, as no one had raised this question, the full fee of $250.00 was paid by McDonnell to Treasurer of Gloucester City. Now at this late date, Mr. McDonnell is asking whether he cannot collect this refund or the difference in fee from July 1st to August 27th, and the governing body has requested me to inquire from you whether he has a just claim at this late date.

Yours truly,
Daniel J. Lane,
City Clerk.

July 22, 1938

Daniel J. Lane,
City Clerk,
Gloucester City, N.J.

My dear Mr. Lane:

I understand that with Mr. McDonnell's application for 1934-35 plenary retail consumption license, he deposited $250.00, the annual license fee; that the license was issued on August 27, 1934; that Mr. McDonnell now requests rebate of the difference between the deposited fee and the fee prorated from the date of issuance of the license to the end of the fiscal year.

As the law then stood, license fees were properly prorated from the date on which the application was filed to the end of the fiscal year. See Re Federal Products Company, Bulletin 35, Item 16; see also Bulletin 46, Item 7. There is, therefore, no objection to the Common Council's refunding to Mr. McDonnell the difference between the $250.00 he deposited with his application and the correct amount of the fee prorated from the date of application, if the Council so desires.

That, you realize, is not the procedure we follow now, because since 1934 the law has been changed.

By amendment of June 8, 1935 (C. 257, P. L. 1935), it was provided that the respective fees for licenses shall be prorated according to the effective date of the license and based on the respective annual fees, and that where the fee deposited with the application exceeds such prorated fee, a refund of the excess shall be made. See Bulletin 83, Item 1, paragraph 9; R. S. 33:1-26 (Control Act, Sec. 23).

Thus, since the amendment, license fees are properly prorated from the date of issuance of the license, not from the date on which the application was filed.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. MUNICIPAL REGULATIONS - DAYLIGHT SAVING TIME - SUNDAY SALES - REFERENDUM - WHERE SALES ON SUNDAY HAVE BEEN FORBIDDEN BY REFERENDUM, "SUNDAY" IS TO BE MEASURED BY EASTERN STANDARD TIME AND NOT DAYLIGHT SAVING TIME, WHETHER THE LATTER HAS BEEN OFFICIALLY ADOPTED BY MUNICIPAL ORDINANCE OR NOT, UNLESS THE REFERENDUM ITSELF CONTAINED AN APPROPRIATE REFERENCE TO DAYLIGHT SAVING TIME - HEREIN OF THE EFFECT OF REFERENDA PROVIDED FOR BY STATE STATUTE ON CONFLICTING MUNICIPAL ORDINANCES.

My dear Commissioner:

I am writing you on behalf of the Hamilton Township Licensed Beverage Association of Hamilton Township, Mercer County, which I represent, in order to ascertain whether or not Eastern Standard or Daylight Saving Time is applicable to the following stated facts:

On November 6, 1934 a referendum was held in Hamilton Township providing as follows: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" A majority vote in the negative was returned.

On June 15, 1937, an Ordinance was passed by the Hamilton Township Committee fixing license fees, closing hours, etc. concerning the sale of alcoholic beverages in the Township and which provided, among other things, that: "No intoxicating beverages may be sold ****** between the hours of 2:00 o'clock A. M. and 7:00 o'clock A. M. on week-days except on the morning of January 1 or between the hours of 12:00 o'clock A. M. on Saturday and 7:00 o'clock A. M. on Monday. These hours shall be construed to indicate Standard Time or Daylight Saving Time during such period as each is in effect in the Township of Hamilton."

After careful examination of the minutes of the Township Committee, Resolutions and Ordinances beginning with the period prior to the creation of Daylight Saving Time, I could find no official record of the adoption of the convention of Daylight Saving Time or any indication that Daylight Saving Time was the official time of the community.

Under the circumstances, my interpretation is that Eastern Standard Time is in full force and effect in Hamilton Township and that the closing hours inferred under the referendum or applicable under the Ordinance, supra, is that of Eastern Standard Time. Therefore, would the taverns be permitted to remain open an additional hour and particularly on Sunday until 1:00 o'clock A. M. Daylight Saving Time?

Of course, it is understood that the tavern keepers must open an hour later if they intend to remain open an hour longer, thereby not gaining an extra hour in each day.

Since your ruling under the circumstances is of the greatest importance, we would appreciate your giving this your customary prompt attention.

Very truly yours,
Ernest S. Glickman.

July 25, 1938

Ernest S. Glickman, Esq.,
Trenton, N. J.

My dear Mr. Glickman:

My records indicate that referendum was held in Hamilton Township on November 6, 1934 on the question "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?", and resulted in a vote of 4,204 negative and 2,423 affirmative.

Therefore, under the provisions of R. S. 33:1-47 (Control Act, Sec. 44), it is a violation of the Alcoholic Beverage Law to sell alcoholic beverages in Hamilton Township on Sundays, and the seller is subject to arrest and fine of $1,000.00, imprisonment for three years, or both.

The only question is of the effect of Daylight Saving Time upon the meaning of the word "Sunday."

The ordinance of Hamilton Township of June 15, 1937 has no bearing on the question for two reasons:

1. Daylight Saving Time has never been officially adopted in that Township by ordinance or resolution, hence no matter how widely observed in fact, Daylight Saving Time is not "in effect." Re Kane, Bulletin 186, Item 4; Re Lane, Bulletin 261, Item 2.

2. Even if Daylight Saving Time were officially adopted in Hamilton Township by an ordinance, such ordinance would have no effect upon the referendum nor could the referendum be interpreted in the light of the ordinance. For, not only is any ordinance inferior to the declared will of the people themselves, as manifested by a referendum, but, deeper, the referendum having been conducted pursuant to a State Statute, the word "Sunday" therein must be determined by Standard and not by Daylight Saving Time, because "the time named in any of the statutes of this state" means Standard Time unless otherwise expressed. P. L. 1884, p. 175, R. S. 1:1-2.3. The question submitted to the electorate, supra, made no other expression of time.

The ruling in Re Tanier, Bulletin 261, Item 1, which allows a flexibility depending on which time is officially in effect, was grounded expressly on the determination that neither the 1884 statute nor the revision applied to municipal ordinances, resolutions or regulations.

But that statute and the revision do apply to referenda provided for by State statutes.

The result is that because of the referendum forbidding sale of alcoholic beverages in Hamilton Township on Sundays, the term "Sunday" means Eastern Standard Time.

For the reasons stated, tavern owners in Hamilton Township must observe Standard Time every day in the week both as to opening and as to closing hours.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. MUNICIPAL REGULATIONS - DAYLIGHT SAVING TIME - HEREIN OF THE OFFICIAL ADOPTION OF DAYLIGHT SAVING TIME AND ITS EFFECT ON WEEKDAY OPENING AND CLOSING HOURS AS DISTINGUISHED FROM SUNDAY SALES WHERE PROHIBITED PURSUANT TO REFERENDUM.

Dear Commissioner Burnett: In Re: Borough of Runnemede - Closing Hour, Daylight Saving Time.

On June 7, 1935, the Mayor and Council of the Borough of Runnemede adopted a resolution which provided, in part, as follows:

> "Section XII. HOURS OF SALE. Any place for the sale for consumption or distribution of the alcoholic beverages defined herein shall not open before the hour of 7:00 A. M. and shall close at 2:00 A. M. and shall remain closed without engaging in the sale of alcoholic beverages between the hours of 2:00 A.M. and 7:00 A.M. of any week day. Said places shall be closed at Midnight on Saturday night and remain closed until 7:00 A. M. Monday."

Recently the Mayor of the Borough has proclaimed Daylight Saving Time in said Borough.

The licensees of the Borough have inquired as to whether or not they should open and close their places of business according to Standard Time or Daylight Saving Time.

I would appreciate it very much if you would give us an expression of your opinion in this matter.

Very truly yours,
S. Lewis Davis,
Solicitor of the Borough
of Runnemede.

July 25, 1938

S. Lewis Davis, Esq.,
Solicitor, Borough of Runnemede,
Camden, N. J.

My dear Mr. Davis:

I have before me your letter inquiring whether licensees in Runnemede Borough shall observe the opening and closing hours fixed by local resolution, in accordance with Eastern Standard Time or Daylight Saving Time.

The proclamation by the Mayor does not make Daylight Saving Time legally effective unless he was authorized by ordinance or resolution of the governing body to make such proclamation. Re Lane, Bulletin 261, Item 2.

The referendum held in the Borough of Runnemede on November 6, 1934 on the question, "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?", resulted in a majority vote in the negative. Accordingly, sale of alcoholic beverages is unlawful on Sunday in Runnemede. The subsequent referendum on November 2, 1937 on the same question did not affect the earlier result. Re Gaunt, Bulletin 223, Item 7.

Therefore, so far as sales on Sunday are concerned, Sunday means, because of the referendum, Eastern Standard Time. Re Glickman, Bulletin 263, Item 3.

So far as sales on days other than Sunday are concerned, Standard Time applies, because Daylight Saving Time has not been officially adopted. Re Lane, supra.

It follows that tavern owners in Runnemede Borough must observe Standard Time every day in the week both as to opening and as to closing hours.

It is competent for the Mayor and Council, however, if they so choose, to make Daylight Time effective on week days, so far as taverns are concerned, either by ordinance or by resolution or by ratification of the Mayor's proclamation. Re Tanier, Bulletin 261, Item 1. But this would not apply to Sundays, for the reasons set forth in Re Glickman, supra.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

5. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1937 TO JULY 1ST, 1938 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption No. Issued	Plenary Retail Consumption Fees Paid	Plenary Retail Distribution No. Issued	Plenary Retail Distribution Fees Paid	Club No. Issued	Club Fees Paid	Limited Retail Distribution No. Issued	Limited Retail Distribution Fees Paid	Seasonal Retail Consumption No. Issued	Seasonal Retail Consumption Fees Paid	Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
Atlantic	481	176,971.17	42	16,680.00	15	1,030.60	2	50.00	5	608.50	11	534	195,340.27
Bergen	827	267,496.47	229	53,769.95	52	4,391.93	49	2,192.00	7	1,091.60	12	1152	328,941.95
Burlington	185	54,552.26	15	3,335.78	28	3,346.63	1	25.00			1	228	61,259.67
Camden	464	186,247.57	46	16,570.00	61	5,261.34	2	100.00	6	1,278.15	4	575	209,457.06
Cape May	124	42,596.42	10	3,200.87	6	469.97						140	46,267.26
Cumberland	75	22,770.00	13	2,300.00	25	2,339.03					5	108	27,409.03
Essex	1467	733,716.78	349	153,106.76	72	9,703.50	25	1,186.49	4	1,501.44	8	1909	899,214.97
Gloucester	116	32,125.45	9	1,325.00	4	250.00						129	33,700.45
Hudson	1679	689,942.12	272	107,213.34	54	7,043.00	79	3,187.57			14	2070	807,386.03
Hunterdon	80	21,040.00	1	200.00	1	150.00						82	21,390.00
Mercer	446	183,650.82	43	10,740.49	38	4,765.11			2	600.00	2	527	199,756.42
Middlesex	622	242,869.25	38	9,874.02	34	2,880.45	1	25.00	6	1,207.08	13	688	256,855.80
Monmouth	518	193,502.22	71	17,631.13	31	3,380.72	9	385.00	33	9,351.90	23	639	224,250.97
Morris	329	93,344.62	66	16,346.46	26	1,967.62	1	25.00	18	2,602.62	15	425	114,286.32
Ocean	177	82,590.86	28	9,049.00	8	800.00					2	211	92,439.86
Passaic	929	356,254.99	120	33,009.74	35	3,989.15	22	1,050.00	9	1,771.67	12	1103	396,075.55
Salem	51	15,675.00	4	524.00	7	600.00						62	16,799.00
Somerset	179	62,173.63	21	5,000.00	11	875.00			2	702.26	4	209	68,750.89
Sussex	163	33,025.04	9	1,590.00	4	210.00			5	750.00	4	177	35,575.04
Union	558	271,721.59	116	38,698.03	59	7,022.25	19	779.69				752	318,221.56
Warren	137	37,681.48	14	1,800.38	18	620.00	3	105.00	3	400.00	1	174	40,606.86
TOTALS	9607	3,799,947.74	1516	501,964.95	589	61,096.30	213	9,110.75	100	21,865.22	131	11,894	4,393,984.96

D. FREDERICK BURNETT, Commissioner
Report for the fiscal year ending June 30, 1938

Respectfully submitted,
ERWIN B. HOCK,
Deputy Commissioner.

6. FEDERAL TAX - DISTILLED SPIRITS - THE RECENT INCREASE AND THE NEW FLOOR TAX.

June 25, 1938

Memo to: Commissioner Burnett
From: N. L. Jacobs

I have spoken with Mr. Cohen of the Alcohol Tax Unit with respect to the effect of the recent amendment of the Federal tax on distilled spirits contained in the Revenue Act of 1938. He advises me that:

(1) On and after July 1, 1938, the tax on each proof gallon (100 proof) or wine gallon below such proof, will be $2.25 instead of $2.00. (Consequently, the tax on alcohol of 190 proof will be $4.27½ instead of $3.80).

(2) In addition, Congress has imposed a floor tax at the rate of 25¢ for a proof gallon (100 proof) on tax paid alcoholic beverages possessed by licensees on July 1, 1938. (Consequently, the tax actually payable on each gallon of such tax paid distilled spirits possessed by licensees will vary, depending upon the actual proof of the contents).

A retailer is entitled to an exemption of 250 wine gallons and therefore need pay only on such distilled spirits as he possesses in excess of that amount. With respect to such excess, he must pay at the rate of 25¢ for a proof gallon, as hereinbefore stated.

7. APPELLATE DECISIONS - NUGENT and HIGNETT v. LINDEN.

WILLIAM NUGENT and EMILY HIGNETT,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF LINDEN,
Respondent

ON APPEAL
CONCLUSIONS

- - - - - - - - - - - - - - - - - - -

Eugene J. Kirk, Esq., Attorney for Appellants.
Lewis Winetsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants appeal from the denial of a plenary retail consumption license for premises located on North Stiles Street, Linden.

Respondent denied the license because the premises sought to be licensed are in a residential and not in a business zone; because the granting of the license would be in violation of the zoning ordinance of the City of Linden.

The premises for which the license is sought consist of a plot of ground covering approximately fourteen acres, two of which have been cleared, the remaining twelve acres consisting of woodland. These premises have been used as a picnic grove since approximately 1934. At or about that time a one-story building was erected

on the cleared ground, and the grove was licensed for the sale of alcoholic beverages in 1935 and 1936. Said licenses were issued to Thomas Hanlon.

The evidence shows that the City of Linden adopted a zoning ordinance in 1927. According to the terms of said ordinance, the premises in question are located in "A" district. According to the terms of said ordinance, no building or premises in an "A" district shall be used, and no building shall be erected which is arranged, intended or designed to be used except for one-family dwellings, with certain exceptions which are not material. Appellants do not dispute the fact that their property is located in a district which is zoned for one-family dwellings. If that were all, the license should clearly be denied. East Brunswick Township Board of Adjustment v. East Brunswick and Mills, Bulletin 223, Item 5, and cases therein cited.

Appellants, however, allege discrimination in that a license has been issued and is now outstanding in the name of one Fedirko for a place known as Willick's Grove, which is located only a short distance away from appellants' premises and, admittedly, is also located in "A" district as defined in the zoning ordinance. That does look like unfair discrimination. The Chairman of respondent Board testified that Fedirko's license was issued within a residential zone because the property which he occupies has been used as a grove for approximately twenty years. Apparently, respondent contends that it was justified in issuing the Fedirko license because of the existence of a picnic grove at those premises prior to the adoption of the zoning ordinance in 1927. The contention of respondent appears to be without merit, because the sale of alcoholic beverages pursuant to a license constitutes a new use contrary to the terms of the ordinance. Talbot v. Keppler, Bulletin 117, Item 1, and cases therein cited. It is not necessary to determine in this case whether there was unfair discrimination or not, because, even if there were, the validity of the Fedirko license is not at issue in these proceedings, and the improper issuance of a license to Fedirko would not require respondent to further violate the terms of the zoning ordinance by issuing a license to appellants herein. If the Fedirko license was improperly issued, I will entertain an appeal to determine that question in direct proceedings, but it would not be fair to Fedirko in a collateral proceeding to which he is not a party to make any determination concerning his rights.

Appellants further contend that the zoning ordinance has not been enforced. It appears that classification of certain properties has been changed since the ordinance was originally adopted, but the ordinance itself provides that such changes may be made. There is no substantial evidence that the zoning ordinance is not being enforced. The issuance of a license to appellants herein would be in violation of the zoning ordinance, and their application was, therefore, properly denied.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 23, 1938.

8. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

In Re Case No. 220 -)

Application for Solicitor's Permit.) CONCLUSIONS

)

J. Charles Popkin, Esq., Attorney for Applicant.

BY THE COMMISSIONER:

Applicant herein is the same individual referred to in Case No. 220, Bulletin 243, Item 6. The matter is again before me on an application for rehearing, which was granted. At said rehearing, further evidence was presented, and counsel has filed a memorandum in support of his contention that his client has never been convicted of a crime involving moral turpitude.

Counsel herein, who was one of two attorneys representing applicant when, in April 1938, he pleaded non vult to an indictment for maintaining a disorderly house, argues that it was the intention of the attorneys to plead non vult to only a second count in said indictment, namely, a count for aiding and abetting. The undisclosed intention of the attorneys, however, cannot be considered herein, in view of the recorded plea. The real question is whether the crime of maintaining a disorderly house, under the circumstances of this case, is a crime involving moral turpitude.

At the rehearing, applicant introduced testimony showing that the "social club" was operated by a corporation organized in June 1937, of which corporation he was one of the trustees; that, in October 1937, a new board of trustees was elected to replace applicant and others who had resigned. Since the raid on the "social club" took place in January 1938, these facts raise a grave doubt as to whether applicant was in control of the premises at the time he was accused of maintaining a disorderly house therein.

Despite the fact that the records of the prosecutor's office, which were produced at the rehearing, do not substantiate in minute detail the contents of the prosecutor's letter referred to in the conclusions filed in Re Case No. 220, supra, there is sufficient in the record to show that the "social club" was being used for gambling purposes at the time of the raid. The files of the prosecutor's office contain a statement taken from one of the witnesses, in which the following appears:

> "Q Can you give a description of the place?
> A You open the first door and there is a partition there with a door. When you open the outside door, a buzzer rings. They come to the door and look through a slot in the door to see who it is. There is another door, after that door, and two steps to go up. There are three rooms. In the middle room is a blackboard and race charts. On the blackboard is the names of the horses and the odds."

Applicant, himself, admits that the witness who made this statement had placed bets with him on the licensed premises two or three times.

While I have indicated in previous decisions that a conviction for commercialized gambling constitutes conviction of a

crime involving moral turpitude, Bulletin 2, Item 8; Re Ulhich, Bulletin 70, Item 2, decision in each case of this nature should depend upon the facts. Since there is a grave doubt as to whether applicant herein was in control of the raided premises, and there is nothing to show that he carried on commercialized gambling except his own admission that he accepted two or three bets, his conviction for maintaining a disorderly house will be held, under the circumstances of this case, not to involve moral turpitude. Hence, the applicant is not permanently disqualified from being employed by a liquor licensee within the State of New Jersey.

It does not follow, however, that a solicitor's permit should be issued. He admits a conviction in 1931 for possession of liquor as a result of which he was sentenced to serve forty-five days, and a conviction in November 1937 for possession of lottery slips, at which time he was fined $75.00. On the disorderly house charge he was fined $750.00 and sentenced to serve one year in the workhouse, the sentence being suspended during good behavior. The last sentence was imposed on April 22, 1938. No solicitor's permit will be issued to applicant during the period of his suspended sentence. He may apply for a solicitor's permit after April 22, 1939, provided he produces proof at that time that he has conducted himself in a law abiding manner since his last conviction.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 24, 1938.

9. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - EMPLOYMENT OF PERSON CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE AND THE MAKING OF FALSE ANSWERS IN LICENSE APPLICATION.

In the Matter of Disciplinary Proceedings against

ANNA GULKA,
225 Springfield Avenue,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-776, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

David Bernheim, Esq., Attorney for Licensee.
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The following charges were served on the licensee:

1. On June 6, 1938, and on divers days prior thereto, you did knowingly employ and have connected with you in a business capacity, one William H. Gulka, a person who has been convicted of divers crimes involving moral turpitude, contrary to R. S. 33:1-25 and R. S. 33:1-26 (Control Act, Sections 22 and 23).

2. In your application for Plenary Retail Consumption License filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, dated June 22, 1936, upon which license #C-978 was issued to you, you

did knowingly misstate a material fact, in that you did answer, in the negative, question #13(a) thereof, said question reading as follows:

"13(a). Have written charges of violations ever been served upon you?",

whereas, in truth and in fact, written charges of violations were served upon you by the Municipal Board of Alcoholic Beverage Control of the City of Newark on or about September 6, 1935, contrary to R. S. 33:1-25 (Control Act, Section 22).

3. In your application for Plenary Retail Consumption License filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, dated June 14, 1937, upon which license #C-776 was issued to you, you did knowingly misstate a material fact, in that you did answer, in the negative, question #13(a) thereof, said question reading as follows:

"13(a). Have written charges of violations ever been served upon you?",

whereas, in truth and in fact, written charges of violations were served upon you by the Municipal Board of Alcoholic Beverage Control of the City of Newark on or about September 6, 1935, contrary to R. S. 33:1-25 (Control Act, Section 22).

Licensee pleaded non vult to said charges.

It appears that William H. Gulka, father of licensee, was convicted in 1908 on a charge of grand larceny; in 1911 on a charge of larceny from the person and in 1925 on a charge of burglary. Each of said crimes ordinarily involves moral turpitude and, hence, he is presently disqualified from being employed in any business capacity on licensed premises. R. S. 33:1-26 (Section 23 of Control Act). Licensee admitted at the hearing that she is employing her father as a chef in the kitchen of her licensed premises. In a statement dated June 8, 1938, licensee admitted that William Gulka acts as manager, and this fact is confirmed by a statement signed by William Gulka. Without doubt, William Gulka is presently disqualified and is being employed on the licensed premises.

It is unnecessary to consider the contention of licensee's attorney that there were certain mitigating circumstances surrounding the conviction of William Gulka in 1925 on the burglary charge. This is not a proceeding to remove his disqualification. Aside from said conviction, William Gulka is presently disqualified because of his two prior convictions.

As to the second and third charges: Licensee admits that charges were served upon her on September 6, 1935 by the Municipal Board of Alcoholic Beverage Control of Newark, alleging that she was employing an unqualified person on her licensed premises. It has been stipulated that these charges were later dismissed "with a warning that William Gulka be prohibited from taking any active part in the management of the licensed premises." Licensee testified that she answered Question 13(a) in the negative in applications filed June 22, 1936 and June 14, 1937 because the notary public who filled out the form advised her that the question should be so answered since her license had not been suspended or revoked.

The notary public was not produced as a witness, which omission causes no surprise. Even if he had so advised, the question should have been perfectly clear to the licensee. Certainly, she must have known that, in September 1935, charges had been served upon her. If the licensee does not have sufficient intelligence to answer a simple question like that, she is deficient in qualification to be a licensee.

Since she has heretofore been warned but failed to heed, a suspension of twenty days will be imposed on the first charge. For the false statements on the second and third charges, the suspension will be five days each, making a total suspension of thirty days.

Since these proceedings were instituted, the license then outstanding has expired. The Municipal Board of Alcoholic Beverage Control has deferred action on the licensee's application for renewal pending determination of the charges, and the licensee has been operating pursuant to Special Permit No. 19433, issued by the Commissioner.

Accordingly, it is on this 25th day of July, 1938, ORDERED that Special Permit No. 19433, issued to Anna Gulka, shall be and hereby is cancelled effective midnight (Daylight Saving Time) July 25, 1938; and it is further

ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R. S. Title 33, Chapter 1) shall be issued to Anna Gulka to be operative before midnight (Daylight Saving Time) August 24, 1938.

D. FREDERICK BURNETT,
Commissioner.

10. ADVERTISING - MATCH COVER WITH LIQUOR ADVERTISEMENT ON FRONT AND THAT OF AMUSEMENT PARK ON BACK ENTITLING HOLDER TO FREE ADMISSION AND AMUSEMENT RIDE UPON PRESENTATION AT PARK, DISAPPROVED - LIQUOR ADVERTISEMENTS HAVE NO PLACE IN SCHEMES WHICH TEND TO AROUSE CHILD INTEREST.

Dear Sir:

One of our clients, Browne Vintners Company, distributors of "Wilson Whiskey", will be in a tie-up arrangement with the Palisade Amusement Park, whereby we will print their advertisement on the front cover and the Palisade Amusement Park on the back cover, with a statement that the Palisade Amusement will grant one free admission and one amusement ride upon presentation at their park.

This offer is being made entirely on the part of the Palisade people, and the distribution of these matches will be made in the wholesale general advertising channels.

Respectfully yours,

Jersey Match Company.

July 25, 1938

Jersey Match Company,
New York City.

Gentlemen:

The arrangement is disapproved. It is common knowledge that the Park, with its recreational and amusement facilities, caters largely to children. I have no intention of allowing them to become whiskey conscious by collecting liquor advertisements entitling them to free rides.

Liquor wholesalers may not participate in such a scheme.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. LICENSED PREMISES - WHAT CONSTITUTES - SERVING LIQUOR TO CUSTOMERS IN PARKED CARS DISAPPROVED.

Dear Sir:

Will you kindly advise just what constitutes a licensed premises.

Where the licensee owns the building and enough ground to park cars around the building, is it all right to serve customers in cars, if customers who are crippled and have to be helped in and out of cars wanted to be served in their cars, and the cars are parked on the premises, is that all right?

May tables and chairs be placed on the lawn of the property and patrons be served as they would be on the inside, or could patrons get their drinks from the bar and take them outside either to tables or cars?

Very sincerely,
Wm. H. Morris

July 24, 1938

Wm. H. Morris,
Salem, N. J.

My dear Mr. Morris:

The licensed premises is defined by the alcoholic beverage law (R. S. 33:1-1, Control Act, Sec. 1-k) as any premises for which a liquor license is in force and effect. More specifically, it is the floors, rooms and grounds where alcoholic beverages are to be sold, served, or stored as described in the application for liquor license on file with the issuing authority, as specified in answer to Question No. 7 of the revised form of application for all municipal retail licenses except club licenses (in the club license form, it is Question No. 4), promulgated April 6, 1938.

A licensee may not serve patrons with alcoholic beverages in open containers anywhere except on the licensed premises as above defined. Thus, if the parking space and the ground surrounding the building were not included in the description of the licensed premises in the application for license, the licensee could not serve drinks to persons seated in parked cars.

The practice of serving liquor to customers in parked cars is not at all desirable. Of course, it cannot lawfully be done at the curb. But even if served in the licensee's own parking place, as part of his licensed premises as aforesaid, I advise against it, for usually the place is dark and the occupants are not cripples.

The requirement that every part of the licensed premises must be expressly mentioned in the application is salutary, for it thereby brings into the open the intention of the licensee to cater to a trade which will eventually bring reproach on the industry. Issuing authorities would do a public service if they denied all applications which included parking spaces as licensed premises.

Tables and chairs may be placed on the lawn and patrons served there only if the lawn is part of the licensed premises, and there is no municipal regulation prohibiting open-air sales. If the lawn or the parking space were not part of the licensed premises, it would be illegal for the licensee to permit patrons to get drinks at the bar and take them outside, either to tables on the lawn or their parked cars, and there consume them.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. RETAIL DISTRIBUTION LICENSEES - PACKAGE SALES WITH KNOWLEDGE THAT THEY ARE TO BE CONSUMED IN ADJACENT UNLICENSED PREMISES DISAPPROVED - HEREIN OF THE POSSIBLE CONSEQUENCES OF SUCH CONDUCT.

Dear Sir:

I rent from my mother a separate room in which I run a packaged liquor store, while she has a general business. The liquor is in a partitioned off room, entirely separate from the general store. The two businesses are run under two different names.

What I would like to know is whether my mother can treat anyone to a bottle of beer in her store without breaking the law for me?

Yours truly,
Alexander Chrusz.

July 25, 1938

Mr. Alexander Chrusz,
Johnsonburg, N. J.

My dear Mr. Chrusz:

I understand that your liquor store, for which you hold a plenary retail distribution license, adjoins your mother's general store, which is not licensed.

Technically, there is nothing in the law that would prevent your mother from treating someone to a bottle of beer on her premises.

I do not, however, think that it is a good idea. I advise against it.

Your distribution license permits you to sell alcoholic beverages in the original, unopened container for consumption off the

premises. Technically, it is not your concern, so long as the unopened container is taken off your premises, where the contents are consumed. But because your and your mother's stores are adjacent, if she permits beer or any other liquor to be consumed in the general store, it will surely look as if she were permitting sales on unlicensed premises, or that you were trying to provide a place for people to consume the beer they purchased from you, because of the fact that under your license it could not be done on your licensed premises. It would be mighty hard to explain away if your mother were arrested for a violation. It would look as if you were trying to evade the law regardless of any protestations that you may make to the contrary. See Re Hullings, Bulletin 196, Item 9; Re Narrow, Bulletin 204, Item 4.

I have consistently warned the proprietors of unlicensed stores and restaurants that if they want to have anything to do with liquor, they should first take out the proper license. Non-licensees who play with fire-water are apt to get their fingers burnt. Re Marton, Bulletin 241, Item 5; Re Trenton Chamber of Commerce, Bulletin 231, Item 10.

Very truly yours,

Commissioner.