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

BULLETIN 248 JUNE 1, 1938.

1. DISCIPLINARY PROCEEDINGS - VICE ON LICENSED PREMISES - REVOCATION INDICATED AND EFFECTED.

May 26, 1938.

Edward Du Pree,
City Clerk,
Paterson, N. J.

Dear Mr. Du Pree:

I have staff reports of the proceedings before the Board of Aldermen of Paterson against:

1. Bertha Bader, t/a Bader's Yellow Tavern, charged with (a) selling alcoholic beverages during prohibited hours, (b) permitting hostesses to stand at the bar and to be served drinks with patrons, (c) permitting gambling, (d) serving alcoholic beverages to an intoxicated person, (e) harboring immoral persons and permitting the licensed premises to be used in procuring or furnishing women for immoral purposes and (f) allowing and permitting prostitutes and persons of ill-repute on the licensed premises; all in violation of State Rules and local regulations.

I note this licensee was adjudicated guilty on all the charges and that by the unanimous vote of the Board of Aldermen her license was revoked outright, effective May 22, 1938.

2. Nellie Rosenberg, t/a River Bank Grill, charged with (a) permitting a slot machine on the licensed premises, (b) permitting lottery tickets to be sold on the licensed premises, (c) serving alcoholic beverages to an intoxicated person, (d) permitting lewd and immoral activities on the licensed premises and (e) allowing prostitutes on the licensed premises; all in violation of State Rules.

I note this licensee attempted to avoid an adjudication on the charges by surrendering her license; that this surrender was not supinely accepted by the Board but on the contrary, the case proceeded to a hearing and an adjudication of guilt on all charges entered; that by the unanimous vote of the Board this license was also revoked outright, effective May 29, 1938.

Neither expressing nor entertaining any opinion on the merits of these cases which were handled by the staff in routine course, I wish to extend to the Board of Aldermen and to attorney Salvatore D. Viviano, Esq., my sincere thanks for the prompt and efficient way in which these disagreeable cases were handled. They have acted in an admirable and conscientious manner and these two successive revocations dispel the misgivings which arose as a result of the recent dismissal in the Dugan case.(Bulletin 240, Item 4).

As I have said before, it is a most disagreeable job for my men to be forced to track down conditions such as evidently existed in these licensed premises. Predatory

females give a bad name, not only to the places they infest but to the liquor business in general; also, to the city where their nefarious practices are carried on.

Hence it is our duty -- your Board's as well as mine -- to stamp out all practices which insult decency and challenge the very maintenance of the privilege to dispense liquor.

Again, my heartiest thanks for the fine backstopping.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. MUNICIPAL REGULATIONS - HOURS OF SALE - REGULATIONS APPLICABLE TO PLENARY RETAIL CONSUMPTION LICENSEES SHOULD PROHIBIT BOTH ON-PREMISES AND OFF-PREMISES SALES.

MUNICIPAL REGULATIONS - HOURS OF SALE - REGULATIONS APPLICABLE TO CONSUMPTION LICENSEES APPLY TO CLUB LICENSEES UNLESS EXPRESSLY EXCEPTED.

MUNICIPAL REGULATIONS - HOURS OF SALE - WHILE DIFFERENT HOURS MAY LEGALLY BE FIXED FOR DIFFERENT CLASSES OF LICENSES, THE POWER SHOULD BE MOST CAREFULLY EXERCISED.

MUNICIPAL REGULATIONS - HOURS OF SALE - HEREIN OF THE REQUIREMENT THAT REGULATIONS SHALL ALSO BE APPLICABLE TO PREMISES "CONNECTED WITH" LICENSED PREMISES.

MUNICIPAL REGULATIONS - HOSTESSES - NECESSITY FOR DESCRIBING THE PARTICULAR CONDUCT SOUGHT TO BE PROHIBITED.

MUNICIPAL REGULATIONS - SERVICE OF WOMEN AT BARS - FUTILITY OF PROHIBITING THE SERVICE OF WOMEN AT BARS EXCEPT WHEN ACCOMPANIED BY A MALE ESCORT.

MUNICIPAL REGULATIONS - MINORS ON LICENSED PREMISES - FUTILITY OF PROHIBITING MINORS IN BARROOMS UNLESS ACCOMPANIED BY A RELATIVE.

MUNICIPAL REGULATIONS - CONDUCT OF PREMISES - REGULATIONS WHICH IMPOSE NO DUTY UPON LICENSEES DO NOT PRESCRIBE ANY COURSE OF CONDUCT FOR VIOLATION OF WHICH ANYONE CAN BE PUNISHED.

MUNICIPAL REGULATIONS - FRONTS - REGULATION REQUIRING THAT THE LICENSEE BE IN CHARGE OF THE MANAGEMENT OF THE ESTABLISHMENT DISAPPROVED.

MUNICIPAL REGULATIONS - DEFINITION OF RESTAURANTS BASED UPON THE NUMBER OF MEALS THAT CAN BE SERVED DISAPPROVED - REGULATION CONFINING THE ISSUANCE OF CONSUMPTION LICENSES TO ALL BONA FIDE RESTAURANTS APPROVED.

May 25, 1938

Frank T. Reed,
Borough Clerk,
Park Ridge, N. J.

My dear Mr. Reed:

I have before me proposed liquor ordinance for the Borough of Park Ridge.

* * * * *

Section 3 prohibits the sale of alcoholic beverages by plenary retail consumption licensees for on-premises consumption except between the specified hours, further providing that the hours shall likewise be the hours for opening and closing of the place of business and for all business establishments operated in connection therewith, it being the intention that the closing provisions shall apply to restaurants and dance halls conducted in connection with such licenses.

I note that it is only sales for on-premises consumption that are prohibited. Consumption licensees also have the privilege of selling for off-premises consumption. R. S. 33:1-12 (Control Act, Sec. 13). Thus, if the section did not further require that during the hours sales are prohibited the places of business should also be closed, it would have the effect of prohibiting on-premises, while permitting off-premises, sales. The defect, however, is remedied by the fact that there is also a closing regulation.

The section, by its terms, applies only to plenary retail consumption licenses. Rule 6 of State Regulations No. 7 (Pamphlet Rules, pages 48, 49) provides, however, that club licenses shall be subject to the same municipal regulations respecting hours of sale as are prescribed in respect to consumption licenses unless the municipality enacts that club licenses shall not be so subject. Your section does not provide that club licenses shall not be so subject. It therefore applies to club licenses as well. If club licenses are not to be subject to Section 3, an express exemption excepting them from the operation of the section must be included. Such exemptions, however, should be most carefully considered. You must bear in mind that the regular consumption licensees pay a much higher fee. If you grant longer hours to club licensees, the charge will inevitably be made that the less one pays for a license, the greater privileges he gets. It is true that there is a distinction. Club licensees may sell only to actual members and bona fide guests and not to the general public. It is for this reason that I have ruled (Re Carew, Bulletin 87, Item 11) that it can be done. Perhaps any adverse criticism which may be made would be measurably lessened if the Borough Council, at the same time that it makes the exception, gives fair warning that the regulations and restrictions controlling club licenses will be rigidly enforced and then sees to it that its orders are obeyed. Consumption licensees continually complain that whereas they are made to toe the mark, clubs get away with murder.

Furthermore, you also provide in the ordinance for plenary retail distribution licenses and my records indicate that such licenses have been issued. They, however, as the ordinance is presently worded, are not restricted as to hours.

There is nothing in the Act which requires that all classes of licenses shall be treated alike. Re Wenzel, Bulletin 19, Item 7; Bulletin 7, Item 1. And as between consumption and distribution licenses, I can appreciate that in certain circumstances different considerations are applicable. They do a different type of business and different conditions prevail. But while the power exists to make different rules, the policy should be most carefully exercised.

I give you these thoughts so that you may take all these things into consideration and not cause adverse public reaction in passing the regulations.

Section 3 further provides that the hours shall constitute the opening and closing hours for all business establishments operated in connection with those holding plenary retail consumption licenses, it being the intention of the ordinance that restaurants and dance halls conducted in connection therewith shall also be subject thereto.

When you say merely that the regulation shall also apply to establishments operated in connection with licensed places, you do not impose any workable test by which the regulation could be enforced. Just what sort of a connection is required? What manner or method of association constitutes such a connection as would make the closing regulation applicable? Must the restaurants and dance halls be included in the premises for which the license has been issued? Or is it sufficient that they be in physically connected buildings, or in separate buildings on the same lot, or in separate buildings on adjacent properties? Or is it enough that they are merely owned and operated by the same persons? Just what "connection" means is not clear. The regulation must be revised clearly to express its purpose.

For form of regulation dealing with hours of sale and the closing of the premises, see Re Franco, Bulletin 231, Item 5, and Re Stevens, Bulletin 197, Item 5.

* * * * *

Section 5 provides that it shall be unlawful for licensees to permit on the licensed premises any person acting in the capacity of a hostess.

I appreciate what you are trying to do in Section 5. I agree with you that hostesses should be driven out of taverns. The hostess racket is a vicious practice. But merely to prohibit hostesses is not enough, because, while you and I know what we mean, the term is not yet sufficiently recognized in the sense employed in your regulation to support its use in a formal legislative enactment. Hence, instead of merely making it unlawful to employ or permit hostesses on licensed premises, I suggest that you set out at length the particular conduct sought to be prohibited.

Section 6 first provides:

> "No woman shall be served with alcoholic beverages directly over any bar unless accompanied with a male escort."

Whether or not licensees shall be allowed to serve women at the bar in Park Ridge is a matter which rests in the discretion of the Council. Such regulations, when properly drawn, have heretofore been approved. See Re Bocca, Bulletin 105, Item 7, and the items cited therein. The Council has the legal authority to prohibit such conduct if it chooses. But I have grave doubts as to the efficacy of your exception allowing such service if the woman is accompanied by a male escort. I think that as a practical matter the exception will make the regulation a nullity. You will never be able to prove a violation, for no matter how many women you find at the bar, so long as one man is present, they all will claim him as their escort. If it is the thought of the Council that women should

not be served with alcoholic beverages directly over the bar, I suggest that the regulation be adopted without the proviso "unless accompanied with a male escort."

The section also provides that minors shall not be allowed in rooms in which bars are located unless accompanied by a parent, relative or guardian. It does not require that the parent, relative or guardian be the minor's parent, relative or guardian. Hence any parent, relative or guardian will do. Furthermore, "relative" is a loose term. A brother or a sister is a relative; so also is a second cousin thrice removed. Again the exception destroys the effectiveness of the regulation. It should be amended to cover these points exactly. See Re Field, Bulletin 197, Item 8.

Section 8 purports to prohibit on the licensed premises any persons under the influence of liquor, but is not directed to the licensee. Unless you prohibit the licensee from allowing such conduct, you do not impose any duty upon anyone who for violation could be punished. Re Raber, Bulletin 196, Item 7. Section 8 should read:

> "No licensee shall allow, permit or suffer any person under the influence of alcoholic liquor"

and so forth, as presently worded, omitting from the third line "is hereby forbidden."

Section 9 suffers from the same defect. It forbids boisterous noise, minors, mental defectives and habitual drunkards on the licensed premises and conduct which disturbs the peace and quiet of the neighborhood, but imposes on no one the duty to obey or see that the mandate is carried out. Section 9 should read:

> "No licensee shall allow, permit or suffer any loud or boisterous noise upon the premises; or minors, mental defectives or habitual drunkards to congregate upon the licensed premises; or any conduct upon the premises which disturbs the peace and quiet of the neighborhood."

Section 10, so far as it requires that the licensee be in charge of the management of the establishment is disapproved.

I take it that what you are endeavoring to do is prevent the licensing of fronts. The regulation will not accomplish it. How much supervision must be given to constitute a person in charge of the management of an establishment is conjectural. Is a yearly or monthly or weekly or daily visit sufficient, or must he be in attendance so many hours a day? If the latter, mere attendance will not indicate that any supervision is being exercised. The front could sit in a place all day long doing nothing but nodding his head in acquiescence of what the true owner was doing, yet he would still appear to be in charge. You are endeavoring to deal with the problem by attacking symptoms instead of causes. The way to do it is through thorough investigation of the application and of the manner in which the business is conducted after the license is issued, to ascertain that the licensee is in fact the true owner and not merely holding the license or operating the business for another.

* * * * *

Section 12 provides, in part, that consumption licenses shall be granted only to applicants who have fully

equipped kitchens and facilities to serve at least twenty meals at the same time. I take it that what you want to do is confine consumption licenses to restaurants. If that is what the regulation did, it would be approved. Re Knox, Bulletin 109, Item 3; Re Hubbard, Bulletin 94, Item 9, and the items cited therein. But the number of meals a place can serve is not what makes it a restaurant. It is a restaurant if it is a bona fide restaurant within the contemplation of the statutory definition (R. S. 33:1-1; Control Act, Sec. 1-ss), regardless of the number of persons it can accommodate. It is the same as if you tried to define hotels according to the number of rooms the building contained. A place is a bona fide hotel if it is operated as such. Otherwise it is not. See Re Sussman, Bulletin 235, Item 4, and the items cited therein. Hence, if it is the thought of the Council that consumption licenses should be confined to restaurants, it is sufficient to say:

"No plenary retail consumption license shall be issued except for premises operated as a bona fide restaurant. Failure to continue the operation of the premises as a bona fide restaurant after the issuance of the license shall be cause for revocation."

* * * * *

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - HARBORING PROSTITUTES AND WORSE - TAVERNS ARE NOT MEANT TO BE HOUSES OF ASSIGNATION NOR WILL THEY BE ALLOWED TO BE.

In the Matter of Disciplinary Proceedings against ALEXANDER BELLUCCI 303 Sherman Avenue, Newark, New Jersey, Holder of Plenary Retail Consumption License No. C-554	CONCLUSIONS AND ORDER

. . . . . .

Maurice Schapira, Esq., by Harold Farkas, Esq., Attorney for Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges filed herein allege that on February 17, 1938 the licensee did (1) allow, permit or suffer in or upon the licensed premises a known prostitute, contrary to Rule 4 of State Regulations No. 20; (2) allow, permit or suffer in or upon the licensed premises a known person of ill repute, contrary to Rule 4 of State Regulations No. 20; (3) harbor an immoral individual and permit his business to be used in the procuring or furnishing of a woman for immoral purposes, contrary to municipal regulations.

Investigators Kane and Palmieri visited the licensed premises on February 17, 1938, shortly after midnight. They testified that shortly thereafter the licensee introduced himself to them and engaged in conversation with them; that about 12:45 A.M. a girl came in whom Bellucci called "Mae;" that Bellucci carried on a conversation with "Mae", so filthy as to make even a synopsis of it or more than a bare reference to it unprintable, and which clearly shows that she was known to Bellucci for what she is -- a prostitute and worse!; that "Mae", in the presence of Bellucci, offered to take the Investigators to the back room for diverse immoral purposes, which Bellucci refused to permit; that "Mae" still remained on the licensed premises after the Investigators left at about 1:45 A. M.

Licensee denies the conversation. He testified that "Mae" visited his premises once prior to February 17, 1938, accompanied by her husband; that, on the evening in question, Investigator Kane, who, Bellucci thought, was intoxicated, (which Kane denied on rebuttal), wanted to take "Mae" to the back room for immoral purposes and that he thereupon told Kane: "This is a respectable place. ***Get her out of here;" that "Mae" has not visited the licensed premises since that time.

The licensee's story is uncorroborated. Neither "Mae", nor her "husband", nor the bartender, who was present, could be produced.

I find the licensee guilty as charged.

After reading the transcript of the testimony taken in this case, I have grave doubts as to whether Bellucci is worthy of a license. The conversations, sworn to have occurred, reach the dregs of depravity. What is talked about is usually a short preliminary to what is done! The practice of prostitutes and worse infesting licensed places is on its way to be broken. Our taverns are not meant to be houses of assignation nor will they be allowed to be. I find, however, that his record is heretofore clear of adjudicated offenses and that six witnesses testified that his premises have been conducted in a decent manner. If it were not for this, I should revoke the license. As it is, I shall suspend it for sixty days and transmit to the Newark Municipal Board of Alcoholic Beverage Control a certified copy of the transcript of the testimony as well as a copy of these conclusions.

Accordingly, it is on this 26th day of May, 1938 ORDERED that, effective 3:00 A. M. (Daylight Saving Time) on May 29, 1938, plenary retail consumption license No. C-554, issued to Alexander Bellucci by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for the balance of its term.

And it is further

ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R.S. 33, Ch. 1) be issued to said Alexander Bellucci before the 27th day of July, 1938.

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - VICE - MERE SUSPICIONS WILL NOT SUFFICE TO CONVICT.

In the Matter of Disciplinary Proceedings Against	)	
HARRY FOSTER and MARGIE CLAUSS, 477 Washington Street, Newark, New Jersey.	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License #C-392 Issued by the Municipal Board of Alcoholic Beverage Control of Newark.	)	

. . . . . .

Richard E. Silberman, Esq.,
Attorney for Department of Alcoholic Beverage Control.
Aaron Levinstone, Esq., Attorney for Harry Foster and Margie Clauss, Licensees.

BY THE COMMISSIONER:

The licensees, Harry Foster and Margie Clauss, were charged with having permitted known prostitutes in their licensed premises in violation of Rule 4 of Regulations No. 20 promulgated by the Department of Alcoholic Beverage Control and the municipal regulations governing the sale of alcoholic beverages in Newark, and were served with notice to show cause why their license should not be suspended or revoked on that ground. Upon the return day of the notice, a hearing was held and testimony was duly taken.

The evidence introduced at the hearing in support of the charge was furnished by two Newark Police officers, who testified that on March 19, 1938, while investigating nearby premises, they observed a woman, later identified as Margaret P_____, who entered a car parked opposite the licensees' tavern, drove off and was followed by another car containing two men, later identified as Walter H_____ and William H_____. Their suspicions being aroused, the officers also followed and saw the woman and the two men enter an apartment house at Custer Place at separate intervals. Later all three were questioned by the officers and gave them signed statements. In her statement, Margaret asserted that while sitting in the licensees' tavern she met Walter and his friend, William, and after having a few drinks told Walter that she would meet him at her house at Custer Place; that she then drove her car and the two men followed; and that Walter paid her the sum of $7.00 and that she had sexual intercourse with Walter and William. In his statement, Walter said that when he and William entered the tavern he saw Margaret and had several drinks with her; that thereafter he and William left and were sitting in their car when Margaret came out of the tavern to her car which was nearby; that after brief discussion she said she was going home and they followed; and that he paid her the sum of $4.00 but that he did not actually have any sexual intercourse with her. William's statement was along the same lines as Walter's, except that he stated that he paid Margaret the sum of $3.00 and had sexual intercourse with her. All three were arrested and appeared before the Newark Police Court, where Margaret was convicted for solicitation and Walter and William were convicted for loitering.

The licensees testified in support of their denial of the charge and also introduced evidence by Margaret, Walter and William. The licensee, Harry Foster, testified that Margaret had been a regular customer at the tavern for a considerable period of time; that she purchased food and drink and at all times conducted herself properly; and that he never knew anything about her personal affairs. He admitted that Margaret telephoned to him after her arrest and that he aided in obtaining an attorney to act on her behalf. He testified that he gave such aid because she was a good customer and denied that there was anything more to be justifiably inferred. Margie Clauss, the co-holder of the license, likewise testified that Margaret was a good customer, always acted properly while at the tavern, and that she knew nothing of her personal affairs.

Margaret testified that she had been a customer at the tavern for a year and one-half; that she had never solicited any person at the tavern; that she had never discussed her personal affairs with the licensees; that she did not solicit Walter or William at the tavern on March 19, 1938, but that her conversation with them while standing at her car led to her having intercourse with Walter and William; and that she has never previously been convicted for any offense, has never previously solicited and would not have done so on this occasion had she not been drinking. Walter and William likewise testified that there had been no solicitation or improper discussion at the tavern; that they left the tavern and were listening to the radio in their car and considering whether they should bowl, when Margaret came out to her car nearby; and that the conversation which there ensued led them to Margaret's apartment.

Mere proof that a prostitute was present on the licensees' premises is insufficient to establish the offense charged. There must, in addition, be adequate proof that the licensees knew that she was a prostitute and nevertheless acquiesced in her presence at the premises. See Re Kaas, Bulletin 239, Item 1:

> "Unless the offense can be tied in and brought home to the licensees by their knowledge or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club. The mere presence of a prostitute or other person of ill repute on licensed premises does not make out a case.

The charge that a licensee has knowingly permitted prostitutes at the licensed premises is a serious one and might well, if established, lead to outright revocation of the license. It is a practice which is going to be broken up. Taverns are not to be made into houses of assignation. See In Re Lammerding, Bulletin 38, Item 9; Re Snyder, Bulletin 247, Item 9; Re Bellucci, Bulletin 248, Item 3. However, fairness to the licensee and the interests of justice demand that a finding of guilt be based on credible affirmative testimony -- mere suspicions, no matter how reasonable, will not suffice. Cf. Weiss vs. Newark, Bulletin 164, Item 8. The testimony of the licensees and each of the participants is directly to the effect that the licensees did not know that Margaret was a prostitute or was engaging in immoral activities. Although there are inconsistencies and circumstances which give rise to substantial doubts, I search the record in vain for any affirmative evidence establishing that the licensees knew of Margaret's character or repute.

Careful examination and analysis of the record of the hearing has failed to convince that the burden of proving the essential elements of the offense charged has been sustained. Accordingly, the charge and the notice to show cause thereon are dismissed.

D. FREDERICK BURNETT
Commissioner

Dated: May 26, 1938.

5. APPELLATE DECISIONS - SHUPACK vs. PATERSON.

MARGARET SHUPACK, Appellant,	)	
-vs-	)	ON APPEAL
BOARD OF ALDERMEN OF THE CITY OF PATERSON, Respondent	)	CONCLUSIONS

. . . . . .

T. David Newman, Esq., Attorney for Appellant.
Salvatore D. Viviano, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a transfer of a plenary retail consumption license from Lorrie Damato to herself, and from premises situated at 405 Totowa Avenue to 187 Ellison Street, Paterson.

Respondent denied the transfer because, as it alleges, the application was made in behalf of another person or persons, and not in good faith.

Appellant herself is qualified to receive a license. At the hearing testimony was introduced as to her good character which, apparently, is unquestioned. Respondent contends, however, that the real party in interest is not appellant but her husband, Jack Shupack. The application was denied by a vote of two in favor and nine against. The minutes of the meeting at which the application was denied show that one of the aldermen who voted against the application expressed the opinion that Mrs. Shupack is merely a "blind", and he and two other aldermen who likewise voted to deny expressed the opinion that the City of Paterson should not be made a dumping ground for licensees not wanted in other places.

The records of this Department show that, after a hearing held on November 11, 1937, the Township Committee of Saddle River revoked plenary retail consumption license then outstanding in the name of Jack Shupack after having found him guilty of having allowed, permitted and suffered immoral activities on or about the licensed premises and allowing the same to become a nuisance and having employed out-of-State entertainers without a permit. On December 30, 1937 said Township Committee, on an application made by Jack Shupack, modified the order of revocation theretofore made by imposing a sixty-day penalty in lieu of said

revocation upon the express conditions that the license should be surrendered and that the said Jack Shupack should not further engage in the liquor business in the Township of Saddle River.

About February 21, 1938 Jack Shupack filed a written application with respondent in due form, wherein he applied for the transfer of a consumption license from one Koppel to himself, from premises 54 Lafayette Street to 187 Ellison Street, Paterson. On March 24, 1938 Jack Shupack withdrew said application and, on the very next day, appellant herein filed the application which is the subject of this appeal. At the hearing Jack Shupack testified that he withdrew his application because of some differences which arose between him and Koppel, the transferor.

Appellant testified that she has been married to Jack Shupack for more than nine years; that the money which she has invested in the business was not advanced to her by her husband but is her own money which she saved from a weekly allowance advanced to her by her husband for household expenses and from money which she earned herself. She testified, however, that she has never worked on premises where alcoholic beverages are served, and one of the aldermen who investigated appellant described her occupation as "housewife." Mrs. Shupack testified that she is making the present application because her husband "is thinking of going to Georgia" on some business deal which "may" require his absence for four or five months and perhaps longer. When asked if she intended to employ her husband in the licensed premises, she answered: "Well, that I don't know offhand. Probably later on, but right now, no."

Questioned as to her husband's interest in the licensed premises, she testified as follows:

"Q. And what connections, if any, will your husband have if you're granted a license? A. Well, as far as the responsibility is concerned, he will have none whatsoever. It would be mine.
Q. You mean as to the payment of bills? A. That's right. Running it and the payment, and everything else.
Q. I see. A. Whole responsibility.
Q. What responsibilities will your husband have? A. To this license?
Q. Yes. A. To my knowledge, none whatsoever.
Q. He will have no responsibilities at all? A. No.
Q. Will he have any benefit? A. That's hard to say. We're husband and wife.
Q. In other words, what is yours is his, and what is his, is yours? A. Well, according to law, probably.
Q. No, I'm asking you, in your household. A. Well, in my household, I'd give him anything I have.
Q. Yes. And he'll give you anything he has? A. Naturally."

The evidence is sufficient to sustain the respondent's finding that appellant is not the real party in interest but is merely a "front" for her husband. While Jack Shupack is not presently ineligible to hold a license, respondent would be justified in denying a license to him because of his past record. Hence, respondent was justified in denying the application of his wife who, under the facts in this case, appears to be his alter ego. Cf. Schwartz vs. Bellmawr, Bulletin 145, Item 9 and cases therein cited.

Appellant alleges that the action of respondent was an infringement of the appellant's legal right to secure a transfer. The right to transfer a license is not inherent in the license itself. A transfer may be denied for valid reasons. Van Schoick vs. Howell, Bulletin 120, Item 6.

The action of respondent is affirmed.

Dated: May 27, 1938

D. FREDERICK BURNETT
Commissioner

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

May 26, 1938.

RE: Case No. 224.

In his application and questionnaire applicant denied he had ever been convicted of a crime. Fingerprint records disclosed that, in February 1937, he had been convicted on an indictment charging violation of Sec. 318, Title 18, United States Code Annotated; that he was sentenced to one year, one day, sentence suspended, placed on two years probation, same day. Said Sec. 318 provides:

> "Whoever, being a postmaster or other person employed in any department of the Postal Service, shall unlawfully detain, delay, or open any letter, postal card, package, bag or mail intrusted to him or which shall come into his possession, and which was intended to be conveyed by mail, or carried or delivered by any carrier, messenger, agent, or other person employed in any department of the Postal Service, or forwarded through or delivered from any post office or station thereof established by authority of the Postmaster General; or shall secrete, embezzle, or destroy any such letter, postal card, package, bag, or mail; or shall steal, abstract, or remove from any such letter, package, bag, or mail, any article or thing contained therein, shall be fined not more than $500, or imprisoned not more than five years, or both."

At the hearing, applicant admitted the conviction and sentence. He testified that at the time of his arrest, he had been employed for some years as a substitute clerk in a post office; that, unknown to him, fifteen decoy letters had been placed in the mail, one of which was open and contained four dollar bills and a silver half-dollar; that, while handling this open letter, the money slid out of the envelope into his hands; that his superior removed the empty envelope before he had a chance to replace the money and that the inspectors came down and found the money in his possession; that he pleaded guilty because the Judge promised leniency.

Applicant denied opening a sealed letter, but his explanation does not seem true because he admits that the other fourteen decoy letters were sealed. Applicant has pleaded guilty, not to a petty theft, but to a violation of a Federal statute intended to prevent the rifling of mail by postal employees. Conviction for violation of such a statute involves moral turpitude.

It is recommended, therefore, that the application for a solicitor's permit be denied.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:
D. FREDERICK BURNETT
Commissioner

May 30, 1938.

7. NEW LEGISLATION - PROHIBITION OR REGULATION OF THE SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF FAIR TRADE CONTRACTS.

Assembly Bill, No. 456, was approved by Governor Moore on May 19th, 1938 and thereupon became Chapter 208 of the Laws of 1938.

It reads:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes.

"WHEREAS, Alcoholic beverage licensees have been unduly stimulating the sale of alcoholic beverages by indiscriminate price cutting, resulting in price wars, and by excessive advertising of bargain values and cut prices; these practices are deemed detrimental to the proper operation of the liquor industry and contrary to the interests of temperance; the sale of alcoholic beverages is unusually susceptible to abuse, with resulting danger to the general public and should be strictly supervised and regulated to prevent undue stimulation of public demand for alcoholic beverages; therefore,

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. The State Commissioner of Alcoholic Beverage Control is hereby vested with the following powers to be exercised in such manner as will assist in properly supervising the liquor industry and promoting temperance: The commissioner may, in his discretion, by rule or regulation, prohibit or regulate the sale of alcoholic beverages within this State in violation of any fair trade contract entered into pursuant to the legislative sanction afforded by Revised Statutes, Title 56, chapter four.

"2. This act shall take effect immediately."

The Commissioner is now studying the situation with a view to formulating appropriate rules or regulations, which eventually will be publicly promulgated and due notice given.

Until the regulations become effective, there is no necessity for filing any price lists or notices or any other document, and no legal effect ensues thereby. Nothing is gained by encumbering the files with meaningless data which will only have to be duplicated later on, and which will have to be entirely disregarded as prematurely filed.

In the meantime, I invite from the public and from each branch of the industry specific suggestions as to just what the rules or regulations should be; what they should avoid; and how far they should go.

After the rules have been worked out in tentative form, a public hearing will be held thereon. Constructive thoughts on the practical problems arising by this new legislation will be welcomed from all sources.

D. FREDERICK BURNETT,
Commissioner

8. MUNICIPAL REGULATIONS - SCREENS - REQUIREMENT THAT INTERIOR OF PREMISES BE SCREENED FROM PUBLIC VIEW TENTATIVELY APPROVED.

MUNICIPAL REGULATIONS - SCREENS - REQUIREMENT THAT ALCOHOLIC BEVERAGES OFFERED FOR SALE BY PLENARY RETAIL CONSUMPTION LICENSEES BE SCREENED FROM PUBLIC VIEW DISAPPROVED BECAUSE DISCRIMINATORY - HEREIN OF OFF-PREMISES SALES BY TAVERN-KEEPERS.

May 17, 1938.

Joseph Altman, Esq.,
Atlantic City, N. J.

My dear Mr. Altman:

I have before me proposed amendment to Section 12 of Ordinance No. 3 adopted by the Atlantic City Board of Commissioners on July 16, 1936.

The proposed amendment will add to Section 12 the following:

> "All parts of any licensed premises operated under a plenary retail consumption license, as windows, doors or other openings, opening on any street or avenue, shall be screened so as to effectively prevent the interior of such premises, or the contents thereof offered for sale, from being visible from the street or avenue."

I note that the purpose if twofold; (1) to screen from view of passersby the interior of bars and (2) to protect plenary retail distribution licensees from the competition of plenary retail consumption licensees by preventing the latter from displaying package goods.

Whether bars shall be screened from view or exposed to view is, in the first instance, a matter for the municipality to decide, subject only, if a regulation is adopted, to the Commissioner's approval and to appeal. Of course, in some situations there are advantages to be gained from screening; in others, it is more desirable that the interior of the premises be open to public view. See, for example, the Atlantic City requirement that no bar shall be visible from the Boardwalk (Section 15, Ordinance No. 3). For other municipalities, I have approved regulations requiring, on the contrary, that the interior of the premises shall be visible to all. See Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1.

Thus, if the proposed amendment required only the screening of bars I would approve it. If, for the sake of civic appearance, a municipality wishes to conceal its bars, I shall go along, although frankly, because of the difficulty of policing, I question the wisdom of it. But the inclusion of the phrase "or the contents thereof offered for sale", which is designed to accomplish your second objective, puts an entirely different complexion on the matter.

I have approved, ex parte, for the Borough of Bradley Beach a municipal regulation prohibiting on licensed premises all displays of alcoholic beverages visible from the outside. Yours, however, would prohibit displays only by plenary retail consumption licensees. It seems to me that the reason for prohibiting displays of alcoholic beverages is that the municipality is opposed to them and in such case I don't see how they can be denied to one class

of licensees and allowed the others. What distinguishes the display of package goods by consumption licensees from such display by the package goods stores? Regulations must apply equally to all who come within the reason for the rule.

Municipal regulations may not diminish the statutory privileges conferred upon licensees nor aggrandize one class at the expense of another. The statute (R.S. 33:1-12; Control Act, Sec. 13) is clear that plenary retail consumption licensees can sell for on-premises consumption, off-premises consumption, either or both. Accordingly, I have disapproved a flat prohibition against consumption licensees' conducting an exclusively package goods business. See Re Lee, Bulletin 232, Item 8. The minimum and maximum limits for the consumption fee, provided by the Act, are twice those for plenary retail distribution. Of course, different fees cannot be charged consumption licensees depending on whether or not they sell for off-premises consumption. But under the Act, the municipality has the power to adjust the fees for each class of license according to the statutory privileges.

If the real purpose of your regulation was to screen alcoholic beverages from public view, then it would have to apply to all, and if it did I would approve it. But as now drawn, it is unreasonable and discriminatory and is disapproved.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. MINORS - EMPLOYMENT - MUNICIPAL REGULATION PROHIBITING ALL EMPLOYMENT OF MINORS, DISAPPROVED.

May 25, 1938.

John H. Monroe
Township Clerk
Cedar Grove, N. J.

My dear Mr. Monroe:

In connection with application for special permit to employ entertainers on behalf of the Meadowbrook Amusement Corporation, the holder of a plenary retail consumption license in your Township, my attention is called to Section 4-F of ordinance concerning alcoholic beverages adopted by the Township Committee on May 18, 1936, which provides in part:

> "F. No licensee shall have in his or her employ anyone under the age of twenty-one years....."

There is nothing in the Alcoholic Beverage Law which expressly authorizes such a regulation. On the contrary, Section 23 (R.S. 33:1-26) seems to indicate that it was the intention of the Legislature to permit the employment of minors subject only to the restrictions therein laid down, viz., that the approval of the Commissioner be first obtained and that the minor not be permitted in any manner whatsoever to sell or solicit the sale of any alcoholic beverage. Otherwise, minors could not even be employed in such innocent capacities as errand boys, and dish washers and kitchen helpers in restaurants.

Restrictions which are reasonable and serve a public purpose are permissible. See, for example, Re Hightstown, Bulletin 117, Item 5, where a municipal regulation prohibiting minors from singing, dancing, performing, acting, playing in an orchestra, or engaging in any performance or entertainment conducted on a licensed premises, was approved.

Rather than prohibit, without exception, the employment of all minors, it is my suggestion that the Township Committee set forth the specific capacities in which it deems the employment of minors to be objectionable and make the regulation apply only to them.

As now worded, it is disapproved. Unless the Township Committee has specific employments in mind that it seeks to prohibit, it would be preferable to omit the regulation entirely and let the statute control the situation. Its restrictions are ample protection for all normal conditions.

Very truly yours,

D Frederick Burnett

Commissioner