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

BULLETIN 322. JUNE 12, 1939.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR CONTAINING DANGEROUS DENATURANTS - 90 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against	:	
WILLIAM J. GLANCEY, t/a GLANCEY'S CAFE, 508 North Vermont Avenue, Atlantic City, New Jersey,	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-205, issued by the Board of Commissioners of the City of Atlantic City.	:	

William J. Glancey, Pro se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.
Samuel F. Backer, Esq., Attorney for the City of Atlantic City.

BY THE COMMISSIONER:

An Inspector of the Alcohol Tax Unit, Internal Revenue Service, in the course of an investigation on August 10, 1938 seized two bottles of alcoholic beverages, each labeled "Teacher's Highland Cream", on the licensed premises, which he found to be off proof.

The testimony of A. G. Blakeley, a Government chemist for over ten years last past and now with the Philadelphia laboratory of the Alcohol Tax Unit, who analyzed the contents of the two bottles, shows that the liquor contained therein had a much smaller acid and solid content than the genuine sample, and contained artificial coloring due to a dye, whereas the genuine sample contained caromel coloring; that said liquor was off proof to the respective amounts following: 8.2 proof, 8.7 proof; that each bottle contained tertiary butyl alcohol, which substance was not found in any genuine samples of this brand; that this tertiary butyl alcohol is a denaturant used in several formulas of special denatured alcohol authorized by the Government.

This evidence shows that the contents of the two bottles is illicit, and that both bottles contained an adulterant which is harmful to the human system even if not technically poisonous. Re Felsenfeld, Bulletin #175, Item 8; Re Grembowiec, Bulletin #178, Item 6.

The licensee testified that he did not put anything in either of the bottles, and that he knows nothing about the illicit alcoholic beverages; that his bartender has worked for him for about a year; that he has known his bartender for four or five years and has never had any trouble with him about refilling bottles. The licensee, however, as the master, is responsible for the acts of his employees. Re Jacobs, Bulletin #315, Item 8; Re Tumen, Bulletin #316, Item 8.

In Re Felsenfeld, supra, I said:

"It is clear that the only way in which acetone gets into liquor is because the liquor has been 'cut' or the bottle refilled with recovered denatured alcohol. The tell-tale trace of acetone remains, however skillful the cutting or the blending, to point its paternity. Such an ingredient makes liquor illicit, not only in the sense that it is not tax paid or has been diluted with water or colored with prune juice or caromel, but also in the graver significance that the adulterant is harmful to the human system, even if not technically poisonous, and even if the doctors and the chemists and the experts have not yet determined the minimum quantity necessary to produce pernicious results. The public has no way of knowing what is contained in the liquor they drink. Few would buy if they knew what they swallowed was adulterated with a celluloid or smokeless powder solvent or denatured roach exterminator or rubbing alcohol, having a harmful, and possibly poisonous, effect. The mere fact that in this particular case the samples tested did not contain sufficient acetone by volume to cause any noticeably harmful effect is not the point. It is a pure accident that less rather than more acetone was contained in the bootleg liquor used to adulterate the genuine. Licensed places are not laboratories in which to experiment with human lives. Licensees may not escape punishment because the illicit liquor they purchase or possess happens to be concocted under a formula which renders the deleterious effect negligible. The public will suffer if other formulae or processes are not so fortunate."

What was there said in reference to acetone applies to isopropyl and to tertiary butyl alcohol and to any other dangerous denaturant albeit not lethal.

I find the licensee guilty of possession of illicit alcoholic beverages, in violation of R.S. 33:1-50 (Control Act, Section 48).

In Re Antico, Bulletin #195, Item 9, I held that the penalty for illegal possession of liquor containing acetone or isopropyl alcohol will be ninety days.

The same rule will apply to the illegal possession of liquor containing tertiary butyl alcohol. If this punishment doesn't prove sufficient to drive out liquor recovered from denatured alcohol and doctored with dangerous substances, the penalty will be appropriately stepped up.

Since the present licensing period will expire prior to the expiration of ninety days, the present license will be suspended for the balance of its term, and the Board of Commissioners of the City of Atlantic City will be directed not to issue any renewal of said license prior to the expiration of ninety days from the effective date of the suspension ordered herein.

Accordingly, it is on this 6th day of June, 1939

ORDERED that Plenary Retail Consumption License No. C-205, heretofore issued to William J. Glancey by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended until the end of its term, effective June 9, 1939 at midnight (Daylight Saving Time); and it is

FURTHER ORDERED that no further license be issued to said licensee or for the same premises prior to September 8, 1939.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against	:	
REBA GOODELMAN, t/a Blue Tavern, 1920 Baltic Ave., Atlantic City, N. J.,	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-99, issued by the Board of Commissioners of the City of Atlantic City.	:	

. . . . . .

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Max Mehler, Esq., Attorney for Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with possessing illicit liquor in violation of R.S. 33:1-50.

She operates a tavern which caters to the colored folk. On August 26, 1938, Junior Inspector Chick of the Alcohol Tax Unit, U. S. Department of Internal Revenue, tested twenty-four liquor bottles at the tavern and seized two as containing liquor not genuine as labeled - namely, a quart bottle labeled Calvert's Reserve Blended Whiskey and a fifth bottle labeled Black & White Fine Old Blended Scotch Whiskey, each then one-third full.

The inspector used the Williams test on these bottles - that is, pouring a chemical re-agent into an equal amount of liquor in a test tube, the re-agent causing the alcohol to rise to the top over the water and foreign substances in the liquor. On so testing samples of the contents of the Calvert's and the Black & White bottles, he found in each case that the color which went to the bottom was lighter than in genuine samples of those respective liquors as tested by him on hundreds of occasions, and further that, in the test on the sample from the Calvert's bottle, the scum dividing the alcohol from the water and foreign substances was thicker and darker than in genuine Calvert's.

Federal Chemist Blakeley, on analyzing samples from the two bottles, found, among other things, that the solid content of the liquor in the Calvert's bottle was 281 grams per 100 litres, and that the solid content of the liquor in the Black & White bottle was 456 grams for the same amount. He testified (and was substantially corroborated by Chemist Battista of this Department) that genuine Calvert's contains between 147 and 162 grams per 100 litres, and that genuine Black & White contains 162 grams for that amount. He further testified that the solid content of genuine Calvert's or Black & White could not appreciably change by simple storage in the bottle, and that, in his opinion (based upon the variation in solid content) the liquor in the two bottles was not genuine as labeled.

The defendant testified that on August 26, 1938, she had three employees at the tavern, viz., a general manager, a colored bartender and a colored waitress; that she is not in the tavern regularly but merely checks "in and out every day"; that the two bottles which were seized by the Federal inspector were the only bottles of Calvert's and Black & White which she had had in the tavern for months; that she herself never tampered with these bottles; that she neither authorized nor was aware of any such tampering; that she never had any trouble with her help in this respect; that at the time the bottles were seized such tidbits as "pretzels, eggs, salted peanuts" stood on the bar; that liquor is served to patrons at the bar, sometimes by pouring out the drink and sometimes by leaving the bottle on the bar for the patron to pour out his drink.

Her general manager also testified that he never made or authorized or was aware of any refill of the bottles; that he never had any such trouble with the help; that during the summer various tidbits stand on the bar; and that sometimes drinks are served at the bar by leaving the bottle there for the patron to take his drink. He further testified that both the Calvert's and the Black & White are very slow sellers, no more than a drink of each being sold in six months; that between August 11 and August 26, 1938, he had been sick and came into the tavern but for a few hours several times a week; that the colored bartender and colored waitress were in charge during that time; and that he is unable to account for any liquor not as labeled being in the two bottles.

The defendant's suggestion that, when these bottles were standing open on the bar, grains of salt or other foreign matter may have fallen into them from various of the food tidbits being used by the patrons has no foundation in the evidence.

I find as fact that the liquor in the Calvert's and Black & White bottles were refills, constituting the contents of those bottles as illicit liquor. The mere possession of such liquor by the defendant was itself a violation of the Alcoholic Beverage Control law (R.S. 33:1-50) for which she is strictly responsible, even though she be personally innocent of the refilling.

I therefore find the defendant guilty as charged.

In Re Jacobs, Bulletin 315, item 8, I thoroughly reconsidered and appraised the problem of refills which, as there pointed out, strikes at the very root of liquor control since there is no definitive way of eliminating the suspicion that the refill is bootleg liquor. See also Re Tumen, Bulletin 316, item 8.

In accordance with the principles set forth in Re Jacobs, supra, the defendant's license will be suspended for the minimum period of thirty days.

In 1936, the defendant was found guilty by the Atlantic City Board of Commissioners not only of violating State rules in permitting immoral activities and the selling of lottery tickets at her tavern but also of violating the Alcoholic Beverage Control law by selling liquor off the licensed premises.

In view of that prior statutory violation, the defendant's present conviction constitutes her second violation of the Alcoholic Beverage Control law. Under R.S. 33:1-25, no further license may, therefore, be issued to her. Re Wismer, Bulletin 298, item 5.

Accordingly, it is, on this 6th day of June, 1939, ORDERED that Plenary Retail Consumption License No. C-99, heretofore issued to Reba Goodelman, t/a Blue Tavern, by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended until the end of its term, effective June 9, 1939 at midnight (Daylight Saving Time);

And it is further ORDERED that no license of any class or kind under the Alcoholic Beverage Control law (R. S. Title 33, chapter 1) shall hereafter be issued to the said Reba Goodelman.

D. FREDERICK BURNETT,
Commissioner.

3. EXCISE BOARDS - THE SALUTARY STAND FOR LAW ENFORCEMENT TAKEN BY THE NEWLY CREATED EXCISE BOARD OF RAHWAY UPON ITS INDUCTION INTO OFFICE.

June 5, 1939

Samuel R. Morton,
City Clerk,
Rahway, N. J.

Dear Mr. Morton:

I have before me:

(1) Resolution adopted by the Council on May 10, 1939, establishing a Municipal Board of Alcoholic Beverage Control and appointing Messrs. G. Stanley Hoyt, Charles E. Reed and George Rothaar as members for terms of three, two and one year respectively.

(2) Acceptances of the appointments, dated May 16, 1939, by the members.

(3) Resolution adopted by the Board on May 16, 1939, assuming the responsibilities and duties imposed upon such Boards.

(4) Notice of Mr. Hoyt, President of the Board, to all licensees soliciting cooperation in the administration of the law and in the performance of the duties of the Board.

The filing of the acceptances with me makes the appointments effective immediately. R. S. 33:1-48.

Please express to the Board and to Mr. Hoyt, the President, my respects and high esteem for the dignified and salutary notice to licensees. I deem particularly well expressed the paragraph reading:

> "Coupled with the benefits that we feel will result from an impartial administration of the law must go.....a just and proper penalty for a violation committed by any licensee and accordingly the Board desires to record itself as being determined to enforce the provisions of the law under which licensees operate. Pursuant to the law any licensee will be given a full and complete hearing of any charges for violations and shall expect to receive a penalty commensurate with the offense."

The statute provides that not more than two of the three members of such Boards shall be of the same political party. R. S. 33:1-5. Will you, therefore, kindly send me at earliest convenience a statement of each member of his political affiliation.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

4. LICENSES - A LIMITED WHOLESALE LICENSE CONFERS NO POWER UPON THE HOLDER TO SOLICIT OR ACCEPT ORDERS FROM OR DELIVER TO CONSUMERS.

Dear Mr. Burnett:

Will you please advise me whether a duly licensed wholesaler in the State of New Jersey is permitted to solicit orders for large quantities of beer to be shipped direct from the brewery in Pennsylvania to the consumer if the Pennsylvania brewery is the holder of a limited wholesale license in the State of New Jersey?

Very truly yours,
Norman J. Shea

June 6, 1939

Mr. Norman J. Shea,
St. Davids,
Pennsylvania.

Dear Sir:

R. S. 33:1-11 provides that the holder of a limited wholesale license shall be entitled, subject to rules and regulations, to distribute and sell to retailers, and wholesalers, licensed in accordance with this Act, brewed malt alcoholic beverages and naturally fermented wines. That means that the holder may not solicit or accept orders from or deliver to consumers.

Subterfuges to avoid the effect of the above ruling will not be tolerated. Re Notice to Wholesalers, Bulletin 169, Item 5.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

June 7, 1939

Re: Case No. 276

At a hearing held herein, applicant admitted the following convictions: In 1914, for receiving stolen goods; in 1917, for larceny; and in 1934, for conspiracy involving the fixing of juries; he further admitted that he served time in State's Prison on each conviction and was last paroled in February 1937.

There is no doubt that applicant has been convicted of crimes involving moral turpitude.

A plea has been made that applicant has reformed and is trying to rehabilitate himself; that he is elderly and knows no business other than bartending. Whatever the merits of the plea, the provisions of R. S. 33:1-26 bar the applicant from employment by a liquor licensee and he cannot be granted any relief on a petition to remove disqualification until February 1942.

It is recommended, therefore, that applicant be advised that he is not eligible for employment by any liquor licensee in New Jersey.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

6. WAREHOUSE RECEIPTS - AS COLLATERAL FOR LOAN FROM FINANCE COMPANY - NEITHER THE WAREHOUSE RECEIPTS NOR THE ALCOHOLIC BEVERAGES REPRESENTED THEREBY MAY BE SOLD EXCEPT PURSUANT TO PERMIT OR LICENSE.

Dear Commissioner:

I represent a finance company which is desirous of loaning money to an individual to purchase certain bonded liquor now located in the State of New Jersey. In order to be assured of the return of the loan, the warehouse receipts would be retained by the finance company until payment in full of its loan.

In the event that the borrower should fail to make the stipulated payments, when due, would the finance company be permitted to dispose of the stock on hand, not to individual storekeepers, but to wholesalers or distributors in the State of New Jersey. I am assuming the above to be an isolated individual transaction. Assuming that the above situation were to reoccur a number of times, would a permit be issued to the finance company or its assigns to dispose of the liquor on hand. If a license is required, could you tell me the procedure and the cost necessary to obtain the same.

Very truly yours,
Sol L. Kesselman

May 31, 1939

Sol L. Kesselman, Esq.,
Newark, N. J.

Dear Sir:

R. S. 33:1-72 (Control Act, Section 73) prohibits the sale of warehouse receipts except pursuant to a warehouse receipts license, the fee for which is One Hundred Dollars ($100.00).

Rule 3 of State Regulations No. 8 provides, with certain exceptions not here material, that the holders of warehouse receipts licenses may sell receipts thereunder only to New Jersey licensed manufacturers and wholesalers authorized to sell beverages covered by the receipts.

Hence, if your finance company purposes to make a practice of loaning on warehouse receipts as collateral, it would be well for

it to take out a warehouse receipts license, for otherwise it would not be able to realize on the collateral which it might have to take over in the event of default in the payment of the loans.

If, however, a single transaction is involved, it would be possible to get a special permit to enable you to dispose of such foreclosed collateral, the fee for which would be determined after application for the special permit is filed. But that is an expensive way to do business if there is much of it.

Neither the bonded liquor itself nor the warehouse receipts which represent it may be sold by the finance company or anybody else to anyone under any circumstances except pursuant to a license or a special permit. Otherwise it would constitute a misdemeanor.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. TRANSPORTATION LICENSES - RAILROAD CARRIERS - ALCOHOLIC BEVERAGES REFUSED BY CONSIGNEE ON ACCOUNT OF DAMAGE - MAY BE RETURNED TO CONSIGNOR UNDER THE TRANSPORTATION LICENSE - MAY NOT BE SOLD FOR STORAGE CHARGES EXCEPT PURSUANT TO SPECIAL PERMIT.

Dear Sir:

Will you kindly furnish me with a copy of laws covering the dispensing of alcoholic beverages in the State of New Jersey or quote in particular that section of the law pertaining to carrier's procedure in disposition of alcoholic beverages rejected account of damage.

Yours truly,
Edward Dixon,
Freight Claim Agent.

May 22, 1939

Edward Dixon, Freight Claim Agent,
Reading Company,
Philadelphia, Pa.

Dear Sir:

As to alcoholic beverages rejected by consignee on account of damage: The alcoholic beverages may be returned to consignor by licensed transporters without special permit. If, however, the railroad finds it necessary to sell the damaged goods for storage charges, such sale may take place in New Jersey only pursuant to a special permit obtained from this Department.

If at any time you require such a special permit, give me the facts and I shall be glad to advise you further.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. TRANSFER FEES -- ARE PROPERLY CHARGEABLE ON A TRANSFER OF AN EXISTING LICENSE TO A PARTNERSHIP COMPOSED OF THE ORIGINAL LICENSEE AND HIS WIFE.

Dear Sir:

Newark Alcoholic Beverage Licensees who are applying for new licenses and have obtained additional capital from their wives are being held up for a transfer fee to include the wife's name on the new license.

The Municipal Board of Alcoholic Beverage Control of Newark have taken your letter dated April 17, 1939 to Harry S. Reichenstein, Secy. as their authority for making this charge.

Corporations to whom licenses are issued are not required to pay a transfer fee when changes are made in officers when applying for a new license.

Do you consider present licensees applying for renewal with an additional financial interest in the business under the heading of "new licensees" and subject to the transfer charge? Is the wife of a present licensee applying for a license in her name a "new licensee?"

Very respectfully yours,

NATIONAL ASSOCIATION OF RETAIL BEVERAGE DEALERS OF N.J., INC.

By Walter T. Heuring, President.

June 8, 1939.

Walter T. Heuring, President,
Nat'l. Assn. of Retail Bev. Dealers of N. J., Inc.,
Newark, N. J.

My dear Mr. Heuring:

I have yours of May 31st with reference to ruling in Re Reichenstein, Bulletin 311, Item 11.

When the person to whom an individual license has been issued takes a partner into the licensed enterprise, it is necessary that the license be transferred to the new partnership. This is true whether the new partner is the wife of the original licensee or a total stranger. So the wife of a present licensee applying for a new license in her own name is a "new" licensee.

Hence, so long as the number of licenses outstanding in Newark exceeds the quota fixed by the local ordinance, the continuation of the licensed business by an owner other than the original licensee, can be accomplished only through transfer of an existing license.

It follows that the Newark Board is wholly correct in charging the regular transfer fee in respect to every transfer even though it be to a new partnership comprised of the original licensee and his wife.

Your reference to corporations is not in point. A corporate licensee remains the same legal entity irrespective of changes in the personnel of its officers, directors or stockholders. No transfer fee is payable in the event of such changes because no transfer is made of the license itself.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. PLENARY AND LIMITED WHOLESALERS - NO AUTHORITY TO MAKE OUT-OF-STATE SALES.

OUT-OF-STATE SALES - SALES TO FEDERAL INSTRUMENTALITIES OR RESERVATIONS LOCATED WITHIN THE TERRITORIAL LIMITS, ARE NOT OUT-OF-STATE SALES.

PLENARY AND LIMITED WHOLESALERS - MAY SELL TO FEDERAL INSTRUMENTALITIES OR RESERVATIONS LOCATED WITHIN THE TERRITORIAL LIMITS OF THE STATE.

June 7, 1939

Hon. Charles Browne,
Princeton, N. J.

My dear Assemblyman:

I have yours re the sale of beer by F. A. Bamman, Inc., of Princeton, to the Camp Dix commissary.

Camp Dix, I understand, is a Federal reservation, the property of the Federal government, and therefore technically not within the jurisdiction of the State. F. A. Bamman, Inc. holds a limited wholesale license.

I have ruled in Re Congress Beverage Co., Inc., Bulletin 290, Item 15, that the state beverage distributor's license does not authorize out-of-state sales. For the reasons given in the Congress ruling, plenary and limited wholesale licenses likewise do not authorize out-of-state sales. The only wholesale licenses which authorize out-of-state sales are the plenary and limited export wholesale licenses. See R. S. 33:1-11.

Out-of-state sales, however, are those made to persons without this state, for the delivery of which it is required that the merchandise cross the borders of this state into another state or country. Sales to Federal instrumentalities or Federal reservations located within the territorial limits of the state, although outside of the jurisdiction thereof, are not out-of-state sales within the contemplation of the Congress ruling. See Re Galsworthy, Inc., Bulletin 67, Item 14.

It is, therefore, permissible under the State Alcoholic Beverage Law for F. A. Bamman, Inc. to sell to the Camp Dix commissary pursuant to its limited wholesale license.

We now come to the question of taxes.

Matters pertaining to alcoholic beverage taxes are in the exclusive jurisdiction of the Beverage Tax Division of the State Tax Department. They do not come under my department. They are not covered by the Alcoholic Beverage Control Act, but by the Alcoholic Beverage Tax Act.

The Tax Department has ruled (see Re Galsworthy, Inc., supra) that for tax purposes, sales to Federal reservations located within New Jersey will be treated as though they were out-of-state sales and that, therefore, such sales, if made by a wholesaler, may be tax exempt only if made by the holder of a plenary or limited export wholesale license. Thus, while under the Alcoholic Beverage Control Act, Bamman could sell to the Camp Dix commissary, it would appear that by virtue of the Tax Department ruling, because Bamman holds a limited wholesale license, no tax exemption could be afforded.

But the question of tax exemption, as aforesaid, is wholly up to the Tax Department. I suggest that you communicate with Hon. Wm. H. Osborne, Jr., Acting Director, State Tax Department, Beverage Tax Division, 109 West State Street, Trenton, for his present ruling on the tax exemption.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. STATE BEVERAGE DISTRIBUTORS - SALE OF OTHER MERCANTILE ITEMS - PERMISSIBLE TO MAKE SUCH SALES TO RETAILERS BUT NOT TO CONSUMERS.

Dear Sir:

We are now handling Fox Head Beer, and would like to know if it is within the law to sell to our customers the glasses which we get with this type of premium beer.

We should appreciate your informing us whether or not we are allowed to sell these glasses to our accounts.

Very truly yours,
Seacoast Liquor Distributors, Inc.

June 7, 1939

Seacoast Liquor Distributors, Inc.,
Fair Haven, N. J.

Gentlemen:

It is permissible for you to sell the Fox Head Beer glasses to retail licensees, provided it does not cause the aggregate cost or reasonable value of all equipment and advertising matter furnished by you to each retailer to exceed the allowable $50.00 per year. See Re Krueger, Bulletin 128, Item 1. The quota in the Krueger ruling, you will note, is $100.00 per year. The regulations were subsequently amended to reduce the amount to $50.00. See Regulations No. 21, Rule 1, Pamphlet Rules, page 64.

It is not permissible for you to sell the Fox Head Beer glasses to consumers. The statute provides (R. S. 33:1-11; Control Act, Section 12(2)c) that the state beverage distributor's license shall not be issued for premises in which any retail business, except the sale of malt alcoholic beverages and non-alcoholic beverages, is carried on.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. NOTICE TO CHIEFS OF POLICE CONCERNING RETAIL LIQUOR LICENSEES AND SPECIAL ELECTION DAY, JUNE 20, 1939.

The Special Election to determine whether the State Constitution should be amended in order to allow Pari-Mutuel betting, will be held on Tuesday, June 20, 1939. Polls will be open from 1 P.M. to 9 P.M. (Daylight Saving Time).

Rule 2 of State Regulations 20 provides:

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

Sales, service or delivery by all retail licensees come within the rule.

It is your privilege and duty to enforce the rule. Therefore, you may issue such notices, arrange such check-ups and adopt such measures as you may deem appropriate to insure strict compliance. Honest licensees will cooperate as they have in the past, not only by closing their places of business but also by reporting "chiseling" competitors.

Do NOT arrest. Order the licensee to stop selling immediately. Report the violation to me for disciplinary proceedings, giving name, address, license number, time and detailed facts. This office will be open all day until 9 P.M. to advise and cooperate with you. Telephone Market 3-3970.

D. FREDERICK BURNETT,
Commissioner.

June 12, 1939.

12. APPELLATE DECISIONS - DELBONO v. NEW BRUNSWICK.

MICHAEL DELBONO,)

Appellant,) ON APPEAL
CONCLUSIONS

-vs-)

BOARD OF COMMISSIONERS OF THE CITY OF NEW BRUNSWICK,)

Respondent)

Alex Eber, Esq., Attorney for Appellant.
Paul W. Ewing, Esq., Attorney for Respondent.
Henry Morris Spitzer, Esq., Attorney for Objector.

BY THE COMMISSIONER:

Appellant appeals from denial of transfer of his plenary retail consumption license from 314 Suydam Street to 179 Remsen Avenue, New Brunswick.

The answer sets forth that the transfer was denied, among other reasons, because there are already a sufficient number of consumption licenses in the immediate vicinity of appellant's proposed liquor store.

Appellant obtained his license for 314 Suydam Street on July 1, 1938 and closed his place of business on February 27, 1939 because he was without funds with which to continue business. He testified that he has arranged to obtain further funds from a relative and that, on March 1, 1939, he filed his application to transfer his license to 179 Remsen Avenue, which application was denied on March 30, 1939. The minutes of the meeting at which said application was denied set forth that "In denying the application, Commissioner Baier explained there were sufficient liquor establishments already in the Remsen Avenue area."

The right to transfer is not inherent in a license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. VanSchoick v. Howell, Bulletin 120, Item 6; Semento v. West Milford, Bulletin 253, Item 2; Masarik v. Milltown, Bulletin 283, Item 10. On the other hand, where it appears that the refusal was arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed. Shapley v. Delaware, Bulletin 294, Item 7 and cases therein cited.

The premises now licensed in appellant's name are located about ten city blocks from the empty store on Remsen Avenue to which appellant seeks to transfer his license. On Remsen Avenue there are now outstanding five consumption licenses, four of which are located in an easterly direction from 179 Remsen Avenue and the other located in a westerly direction from said premises. The four to the east are all located within nine hundred feet of said premises, the nearest being about four hundred fifty feet away. The premises to the west are approximately fifteen hundred feet from 179 Remsen Avenue. This section of Remsen Avenue contains a number of small stores with residences above, but is not considered as one of the principal business sections of the City. The area seems to be well supplied with saloons. The only evidence as to necessity,

aside from appellant's testimony, was that given by two witnesses who reside in that section of the City and who testified that, in their opinion, another saloon was necessary because the premises which are located in a westerly direction are so far away. The most that has been shown is a mere difference of opinion, and the evidence is not sufficient to show that respondent abused its discretion in determining that the existing licenses are sufficient to take care of the needs of those residing in that section of New Brunswick.

On the question of discrimination, there is some evidence that a year and a half or two years ago a transfer of a license was granted to one Genco for premises on Remsen Avenue within close proximity to three existing taverns and that, in October 1938, the transfer of a license was granted to premises located on Spring Street in a section where a large number of consumption licenses were already outstanding. As to the Genco transfer: It is sufficient to say that, whatever the merits of that case, the granting of said transfer should not estop respondent from denying further transfers after determining that a saturation point has been reached As to the transfer to Spring Street: It appears that said transfer was granted for premises located on a main business street and that said neighborhood is not comparable with Remsen Avenue. I find no evidence of discrimination.

Lastly, appellant contends that no one objecting to said transfer appeared below. Even in the absence of objections, respondent is under a duty to investigate and determine whether the application should be granted and to reach a decision as a result of its independent investigation.

For the reasons set forth above, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 9, 1939.

13. DISCIPLINARY PROCEEDINGS - OUTRIGHT REVOCATION INDICATED AND EFFECTED - HEREIN OF THE SPEED OF JERSEY JUSTICE AT WASHINGTON CROSSING.

June 9, 1939

Raymond H. Cadwallader,
Hopewell Township Clerk,
Titusville, N. J.

My dear Mr. Cadwallader:

I have before me yours of June 6th re proceedings conducted by the Township Committee against John Zoller, t/a White House Inn, Washington Crossing-Pennington Rd.

You report that Zoller failed to appear at the scheduled hearing to answer charges of sale during prohibited hours, permitting gambling, and refilling liquor bottles, whereupon his license was revoked, the certificate picked up immediately, and the place ordered closed.

I could wish that some courtier would inform the King of the speed of Jersey Justice at Washington Crossing, as well as recall the earlier record set for the Delaware sweeps by oarsmen from Hopewell.

Please convey to the Committee my compliments for their prompt and appropriate action in revoking the license outright. Licensees who have so little regard for the law that they do not even appear at hearings are better out of the liquor business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. LICENSES - PUBLICATION OF NOTICES OF INTENTION - PRINTING OF NEWSPAPER DISTINGUISHED FROM ITS PUBLICATION - HEREIN THAT THE AMOUNT OF CIRCULATION IS IMMATERIAL IF A NEWSPAPER MEETS THE STATUTORY REQUIREMENTS.

Gentlemen:

We are publishing a weekly newspaper in this Borough for the past forty-five years and are disputing a legal question on which we would like information. Can you help us out?

Will you advise us if it is legal for a Borough Clerk to solicit applicants for renewal licenses and have them printed in a paper which is not printed and published in the same county. Or, is it legal to have same printed in a paper which is published but not printed in the same county as applicant is located? Also, is it legal to have these notices printed in a paper which only has a circulation of about 55 papers and has not been in existence two years, which we understand is necessary in order to make a paper eligible for legals according to the new law? This matter does not concern the town in which we are located.

Yours truly,
The Bulletin
E. S. McNomee

June 9, 1939

The Bulletin,
Pompton Lakes, N. J.

Gentlemen:

R. S. 33:1-25 (Control Act, Section 22) provides that notices of intention must be published in a newspaper, printed in the English language, published and circulated in the municipality in which the licensed premises are located; provided, however, that if there shall be no such newspaper, then such notice shall be published in a newspaper, printed in the English language, published and circulated in the county in which the licensed premises are located.

R. S. 35:1-2.2 provides that legal newspapers shall be printed entirely in the English language, shall have been published continuously for not less than two years and shall have been entered as second-class mail matter under the postal laws and regulations of the United States.

Thus, it would appear that, under no circumstances may a notice of intention be advertised in a paper which is not published in the county in which the licensed premises are located. A newspaper is generally considered as "published" where it is first issued for public distribution. The fact that it is printed elsewhere is

not controlling. The amount of circulation is immaterial if the paper meets the statutory requirements.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

15. LICENSEES -- MEMBERSHIP IN CHAMBER OF COMMERCE -- APPROVED.

Dear Sir:

The Chamber of Commerce is at present soliciting new memberships, to the end of making it more representative and effective in promoting and preserving the best interests of this community.

There are a number of liquor interests of substantial importance in Dover who we would like to have with us. However, we would like to be sure that their membership in the Chamber would in no way conflict with the standards set by your department. You will no doubt appreciate the fact that the Chamber is non-political and its efforts are devoted entirely for the best interests of the community.

Cordially yours,

DOVER CHAMBER OF COMMERCE
Willard Hedden, Pres.

James W. Rogers, Asst. Secty.

June 10, 1939.

Dover Chamber of Commerce,
Dover, N. J.

Gentlemen:

So far from objecting to licensees becoming members of a Chamber of Commerce, I think the idea is excellent. Membership by liquor licensees in an organization devoted unselfishly to community betterment widens the perspective of their fellow members and reacts favorably upon such licensees by making them civic-conscious. It is, therefore, consonant and not in conflict with the standards set.

Very truly yours,

D. Frederick Burnett

Commissioner

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

BULLETIN 323. JUNE 16, 1939.

TABLE OF CONTENTS

ITEM