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

BULLETIN NUMBER 168 MARCH 27, 1937

1. TAVERNS - HISTORY AND EVOLUTION OF INNS AND ORDINARIES - HEREIN OF THE EARLY TAVERN AS AN OFFICIAL MUNICIPAL CENTER AND OF SIC TRANSIT GLORIA.

We are indebted to the Keyport Weekly for the following Editorial:

"FAREWELL THE ORDINARYS!

"Selling and drinking of alcoholic beverages has a history, like everything else, and in it may be read the changes in public and private morals, customs, etc. thru the ages. Time was when the provincial legislature of New Jersey found it in the interest of the general good to compel local governing bodies to see that each town had an 'ordinary,' in fact a law to this purpose was one of the very first enacted in this state.

"Antiquarians have pictured the ordinary, or public house, as the center, social, political, governmental, intellectual, and oft times the religious assembly place of almost every community in the colonial and early republican periods of this nation. The inn-keeper was more often than not the leader, or a leader, in civic affairs, and a man of parts.

"In those days the township committee met at the inn; court was held there; the militia called it headquarters; church bodies anxious to organize a local unit used its public rooms before a church was built; and in short every sort of gathering depended on it. True, these inns were primarily for the purpose of providing shelter and food for 'man and beast' in a relatively sparce-settled country, and it was to this end that the law-makers insisted each town should have one.

"The vending of intoxicants was merely incidental and designed to cater to the weary traveler. In fact there were legal penalties for inn-keepers who sold more than 3 drinks to local residents who liked to hang around the inn and learn the news from the outside world in those days when papers were few.

"No protest seems to have been voiced at this prohibition. The inhabitants had a generous stock at home and came to the inn, or tavern to hear or take part in the informal debates on current topics, frequently made doubly interesting by the presence of some noted personage, or a group, who had stopped for a meal or the nite, enroute from New York to Philadelphia in the saddle, and in later years by the stage coach.

"The Willow Tree Tavern and the Old Stone Tavern in Millstone Township, near the present Clarksburg, entertained Benjamin Franklin on several of his journeys across the state when he was first postmaster-general. There at close range the farmers for miles about were able to hear opinions from a leader of the land and he was able to get a 'line on' local sentiment regarding public matters. Of course, the fore-runners of modern Pullman car smoker stories also had a part on the program.

"Many years had elapsed after the founding of the provinces before legislature hit upon alcoholic drinks as a source of tax or something which needed regulation in that manner. Within the memory of many living the municipal bodies still held their regular sessions in the taverns which then had generally become known as hotels.

"In Matawan Township not so many years ago these sittings were alternated between Fury's Matawan House, at Main and Little Sts., and Applegate's Hotel, Freneau. Temperance sentiment developing had much to do with the erection of township halls to transact the public business.

"Following the national prohibition experiment 'booze' returned to legal status and with it came the nite clubs as its most characteristic contribution to the American scene. As history records this additional chapter along comes D. Frederick Burnett, commissioner of the state Alcoholic Beverage Control Board, with a nostalgic utterance.

"Under date of Mar. 8 in an official communication to the clerk of Chesilhurst Boro. he wrote:

> "'I well understand how last October with the general election but 4 days hence you could not conveniently change the polling place from Peter Hornbach's tavern, already designated . . . . . Do not, however, select any premises licensed to sell liquor for a polling place in the future. Regardless of its reputation for good conduct or of facilities to separate the part used as the polling place from the premises proper, a liquor store or tavern is no place to hold an election or tabulate the resulting vote. Mr. Hornbach's license will be imperiled if this happens again.'

"So it would seem that not until 1937 was the saloon ushered out of its last surviving stand as an official municipal center. Very gradually losing its once important function the 'pub' in what now the United States has in nearly 300 years reached the point where except in cities it seldom offers bed to the transient and food is incidental to drinking."

* * *

Cf. address of Dr. Frank H. Sommer, at National Conference of State Liquor Administrators, Bulletin 131, Item 1. After declaring that complete success of Control requires the cooperation of license holders, he said:

"In this connection I would commend to Chairman Burnett a requirement that there be posted in every 'tavern, inn, and ordinary' under his jurisdiction as a constant reminder to those conducting them of the 'true use' of such establishments, these words from the preamble of the New Jersey Act of 1639, '...the true use and original design of taverns, inns and ordinaries is for the accommodating of strangers, travelers and other persons; for the benefit of men's meeting together for the dispatch of business, and for entertaining and refreshing mankind in a reasonable manner; and not for the

encouragement of gaming, tippling, drunkenness and other vices....'

"The 'true use' of these establishments in 1639 is their 'true use' today. The problem then was, as it is today, of holding their conduct to that 'true use'."

2. BULLETIN ITEMS CORRECTED.

The citation mentioned in paragraph 2 of Bulletin 140, Item 8, on Sheet 13, should be "Bulletin 79, Items 7 and 8" instead of "Bulletin 76, Items 7 and 8."

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - "HANG-OUTS" WHICH CATER TO KIDS SHOULD BE STAMPED OUT.

March 22, 1937

Municipal Board of Alcoholic Beverage Control,
Municipal Building,
West Orange, N. J.

Gentlemen:

Enclosed is synopsis of the Department's investigation and action at licensed premises of Harold's White Rock Inc., holder of your plenary retail consumption license C-6 for premises 605-609 Eagle Rock Ave., West Orange, N. J.

It discloses sales to four minors, viz., two young girls each seventeen years old, and two boys, one nineteen and the other twenty.

Your particular attention is called to this case because of complaint received by this Department that this licensee catered to young people and that it was common practice to serve alcoholic beverages to minors.

I recommend that revocation proceedings be instituted immediately and if the allegations set forth in the synopsis be substantiated, that severe punishment be inflicted.

Sale of liquor to young boys and girls is not only a crime but a curse. "Hang-outs" which cater to kids should be stamped out unflinchingly.

Upon receipt of your advice as to the time and place set for hearing Inspector Brewster and Investigator Bianco will be present to testify. Of course, the minors mentioned in the synopsis should also be subpoenaed as witnesses.

Kindly acknowledge receipt of this letter and certify the action taken.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. ADVERTISING - FILTHY ADVERTISING IS CAUSE FOR REVOCATION.

March 22, 1937

Philip Sebold,
Acting Chief of Police,
Newark, N. J.

My dear Chief:

I have yours of the 18th transmitting business card of Vanderpool Tavern, Inc., 78 Frelinghuysen Avenue, Newark, on the back of which is printed supposedly funny, but in fact, filthy quips of toilet and adolescent variety.

No formal rule has been made forbidding lewd or filthy advertising. I had thought it unnecessary, believing that instinctive common decency and intelligent self-interest would suffice. It will be made promptly, if necessary, for the benefit of licensees who do not know how to conduct themselves.

You will please confiscate forthwith these cards; also serve notice that further circulation of any such advertising will be cause for revocation. Also report his attitude.

Business stimulated by such devices usually gets a tavern-keeper into trouble. If his crowd gets out of control, I shall recall the lure that fetched them. Such advertising sows the wind and reaps the whirlwind. It must be stopped short.

Thanks very much for your initiative.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. MUNICIPAL ORDINANCES - DECLARATION OF POLICY AGAINST ISSUING LICENSES IN PARTICULAR SECTIONS - PRINCIPLES APPLICABLE.

March 22, 1937

Charles L. Smith,
Clerk of Egg Harbor Township,
R. D. Mays Landing, N. J.

Dear Mr. Smith:

I have before me your letter of the 11th; also, the resolution adopted by the Township Committee on the 10th, as to which you ask my approval, which provides:

> "BE IT RESOLVED by the Township Committee of the Township of Egg Harbor that that part of the Township of Egg Harbor between Lyons Court and Fish Creek be and hereby is zoned against the granting of a license to sell intoxicating liquors."

According to Section 37 of the Control Act, my approval is required only of municipal regulations which deal with the conduct of licensed businesses or the nature and condition of licensed premises.

You understand, of course, that no issuing authority has any arbitrary power to subdivide a municipality and grant the license privilege to applicants hailing from one section and

exclude applicants from another. Brighton Hotel Co. v. Loder, Bulletin 41, Item 6. In that case, the premises were situated in a business section in the First Ward of Wildwood and denial of license was sought to be justified because the premises were in the First Ward which had been zoned by the issuing authority against licenses. It was held that mere Ward lines bear no reasonable relation to inherent police power and hence afforded no basis for discrimination. The license was, therefore, granted on appeal.

So, in re Strathmere, Bulletin 40, item 5, it was held that the issuing authority has no power arbitrarily to divide a municipality and grant the privilege of Sunday selling to one part and exclude the other.

While there is, therefore, no power in municipalities, in the absence of statutory enactment, to zone their territory finally and dispositively in respect to liquor licenses, nevertheless if such zones are established, and are not arbitrary, and are actually based on public convenience and necessity, then those zones may be honored as establishing a reasonable local policy. See for illustration, Walsh v. Egg Harbor Township, Bulletin 146, Item 7.

I therefore think it well for municipalities to put themselves on record as to such declarations of policy. Of course, the mere fact of enacting such a resolution does not give it a finality beyond review on appeal. It is reviewable at the instance of anyone who considers himself aggrieved thereby. Putting it down in black and white, as a matter of record, and then living up to it, goes far to show good faith and to show that the policy back of the resolution was established and is to be exercised with fairness and equal justice to all. Or, as I said in re Scull, Bulletin 125, Item 5:

> "The resolution expresses the Council's future licensing policy with respect to the Shore Road district. It establishes the rule before, instead of waiting until after further applications are made. That is the way it should be done. It gives prospective applicants something definite to go by and avoids, in event of future denials, the frequent charges of discrimination or that the refusal constituted mere excuse or alibi for turning some particular person down. Re Renton, Bulletin 115, item 8."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. SALE - WHAT CONSTITUTES - RAFFLE OF LIQUOR.
LOTTERIES - ALL RAFFLES OF LIQUOR PROHIBITED.
ADVERTISING - DISPLAY OF LIQUOR TO BE RAFFLED IS UNLAWFUL.

March 22, 1937

Dear Sir:

I understand that your club wants to sell chances at ten cents each and then have a drawing for a prize, being an order on a licensee for $25.00 worth of liquors bought and paid for by the club.

The scheme is illegal. Raffles are against the law.

A raffle of liquor may not be conducted by non-licensees because it would be unlawful sale. The delivery is not purely

gratuitous. No one could win the liquor without first buying the chance. Sales of alcoholic beverages may be made only pursuant to proper permit or license.

Nor may it be held by licensees because that would be in violation of the State Rules. The scheme constitutes a lottery and so far as liquor licensees are concerned, is prohibited by Rule 6 of the State Rules Concerning Conduct of Licensees. A copy of the Rules is enclosed.

The Rules apply to the holders of special permits as well as to the regular licensees. Each special permit issued carries that express condition. For violation, either the license or the permit may be suspended or revoked. Acts done outside of or in violation of a permit afford no protection to anyone.

I note your final question whether the licensee from whom the club intends to purchase the liquor could display it in his window as the prize to be awarded at the raffle. I suppose that he purposes to cut the price for your club but make it up by display advertising. This too is unlawful because his boosting of the raffle and advertising is a promotion thereof and a participation therein and will subject him to disciplinary measures.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

March 22, 1937

IN RE: Application for Solicitor's Permit, Case No. 46.

Applicant having admitted that he was convicted in 1928 of conspiracy to violate the National Prohibition Act, a hearing was held to determine whether said conviction involved moral turpitude.

At the hearing applicant testified that he was appointed executor of his father's estate in 1926; that among the assets of his father's estate were an interest in a distillery in Illinois and also an interest in a denaturing plant in the State of New York; that applicant herein conducted the New York denaturing plant for about a year after his father's death and then sold the business; that about a year later he was indicted for conspiracy to violate the National Prohibition Act because some alcohol had been diverted from legitimate channels in said denaturing plant during the time that applicant herein was in charge thereof as executor of his father's estate; that about thirty people were indicted in said conspiracy, four of whom, including the applicant, were convicted; that applicant appealed his conviction and that said conviction was affirmed; that applicant was sentenced to two years in a Federal penitentiary and served about eighteen months of his term.

Subsequent investigation disclosed that the case in which applicant herein appealed from his conviction is reported in one of the Federal Reports. An examination of the reported decision discloses the following: Six defendants of the thirty-three individuals and four corporation defendants named in the indictment, were convicted of conspiracy to violate the National Prohibition Act. Four, including the present applicant, appealed from that conviction; the indictment charged that the applicant herein and another

did on various occasions bribe and offer to bribe officers of the United States charged with the enforcement of the law in order that they would falsify reports as to the business activities and operations of the denaturing plant. In the reported decision, the Court found that the conspiracy was established and that the jury's verdict was sufficiently sustained by the proof; that there was testimony that the applicant herein was practically in charge at the New York denaturing plant and was active from the commencement of the enterprise there down to the time of the indictment.

In its decision the Court discussed the contention made by the present applicant at the trial below that his interest in the denaturing plant represented solely caring for an investment of his father's estate and found that said contention was without merit. In discussing the evidence given at the trial below, the Court refers to testimony showing that the present applicant deposited more than $164,000. in his account during a period of five months and further says "In less than three years these appellants under cover of the permit, obtained by misrepresentation that they intended building a denaturing plant, received, possessed and sold over one million gallons of pure grain alcohol which was fit for beverage purposes."

It appears also that the United States Supreme Court denied a writ of certiorari to review the decision affirming conviction.

It has been decided in a number of cases that, where no aggravating circumstances are disclosed, a conviction for violation of the National Prohibition Act does not involve moral turpitude. Application for Solicitor's Permit Case No. 27, Bulletin 100, Item 7; Application for Solicitor's Permit Case No. 34, Bulletin 123, Item 12. Here, however, the situation is different. It appears that the present applicant was engaged in bootlegging activity on a grand scale and that the indictment on which he was found guilty charges bribery as having occurred during the course of the conspiracy.

It is recommended that the permit be denied.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

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

March 22, 1937

In Re: Hearing No. 144.

Fingerprint records disclose that solicitor was arrested on February 4th, 1933, "charge number writer; disposition $50.00 fine or 50 days." Since solicitor had sworn in his application that he had never been convicted of a crime, he was notified to appear for a hearing to explain the above conviction.

At the hearing solicitor testified that he had been arrested on the above date for violating a city ordinance forbidding lotteries. He was tried before a city police recorder, found guilty, fined $50.00 and paid his fine. Subsequent investigation of the records of the police department in the city where he was convicted confirmed testimony given by solicitor.

Since his conviction was merely for violating a city ordinance, his answer that he has never been convicted of a crime is correct. It is recommended that no further action be taken in this case.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
Technically correct but warn him not to try to play "horse" with this Department in other matters because he got away with this.
D. FREDERICK BURNETT,
Commissioner.

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

March 22, 1937

In Re: Hearing No. 147.

In his questionnaire and application solicitor swore he had never been convicted of a crime. Fingerprint records disclose that he was convicted in 1930 for transporting and possessing alcohol in violation of the National Prohibition Act.

At a hearing duly held, solicitor testified that he was convicted for transporting five gallons of alcohol; that he was in the grocery business and had received the alcohol from a customer in settlement of an account; that he was found guilty by a jury, sentenced to a year and a day and fined $200.00; that the sentence was immediately suspended and the fine paid. Applicant's version of circumstances surrounding his conviction is corroborated by the United States Attorney of the District in which trial took place.

There appear to be no aggravating circumstances and, hence, his conviction for violation of the National Prohibition Act does not involve moral turpitude. In re Hearing No. 145, Bulletin 167, Item 5.

As to his false affidavit, solicitor testified that he did not think the conviction was serious enough because it was a liquor case. The answer, however, was false.

It is recommended that solicitor's permit be suspended for thirty (30) days because of his false application.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

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

March 22, 1937

In Re: Hearing No. 148.

In his questionnaire and application, solicitor swore he had never been convicted of a crime. Fingerprint records disclose that he was arrested in May 1932 for possession and transportation

of illegal beer in violation of the Volstead Act, and was found guilty in February, 1933.

At a hearing duly held, solicitor testified that at the time of his arrest he was transporting five half barrels of beer; that thereafter he pleaded guilty to possession and transportation of the beer and was fined $50.00, which he paid. Report received from the State Police corroborates solicitor's version of the facts concerning his conviction.

There appear to be no aggravating circumstances and, hence, the conviction for violation of the Volstead Act does not involve moral turpitude. In re Hearing No. 145, Bulletin 167, Item 5.

As to his false affidavit, solicitor testified that he did not think a violation of the Volstead Act was a crime, and that he had been told by an agent of his employer that she did not believe his conviction constituted a crime. This may be considered in mitigation but it is, of course, no defense.

It is recommended that solicitor's permit be suspended for ten (10) days because of his false application.

Solicitor is employed as a truck driver and solicitor by a State beverage distributor. It is further recommended that he be advised that he may continue his employment as driver, since he has not been convicted of a crime involving moral turpitude, but that he may not solicit orders during said suspension period.

Edward J. Dorton,
Attorney-in-Chief.

Approved, as to ten days' suspension.
Disapproved, as to employment as driver because impractical. It's all one job. The orders will come in just the same so long as he is on the truck whether he has his credentials or not. The temptation is too great. He will have to stop all activities in alcoholic beverage lines during the period of suspension.

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ASSORTED VIOLATIONS INCLUDING MURDER - REVOCATION INDICATED AND EFFECTED.

March 23, 1937

Philip L. Lipman, Esq.,
Township Attorney for Buena Vista Township,
606 Landis Ave.,
Vineland, N.J.

Dear Mr. Lipman:

I have staff report and your letter of March 19th enclosing certification of the proceedings before the Township Committee of Buena Vista against Nicholas Yanetti, charged with (a) having permitted and participated in a brawl on the licensed premises which resulted in the death of one Howard Titus; (b) having permitted prostitution and immoral activities on the licensed premises; (c) having employed a minor; and (d) having sold alcoholic beverages after local closing hour.

I note the licensee, who is now in jail on a murder charge, was adjudicated guilty of these violations and that his license was immediately revoked.

While not expressing any opinion on the merits of the case because it may come before me by way of appeal, I am appreciative of the fine cooperation extended my investigators by you and the members of your Township Committee. The case was handled with neatness and dispatch.

It is just this kind of prompt action by law enforcing agencies which brings home forcibly the point that unless liquor licensees conduct their business right, the privilege which has been given can just as easily be taken away.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - NECESSITY OF CALLING POLICE TO VERIFY CHARGES MADE BY THEM - HEREIN OF THE CAUSE AND EFFECT RELATION OF FILTHY ADVERTISING OF A TAVERN TO COMPLAINTS OF LEWDNESS AND IMMORAL ACTIVITIES THEREIN.

March 23, 1937

Harry S. Reichenstein, Secretary,
Municipal Board of Alcoholic Beverage Control,
City Hall,
Newark, N. J.

Dear Mr. Reichenstein:

I have before me copy of the Conclusions of the Municipal Board in the revocation proceedings against Bessie Cooper, of 121-123 Leslie Street, Newark.

It states:

"The licensee is charged with suppression of a material fact in securing her license, employing a bartender not qualified, and permitting the licensed place to be conducted as a nuisance. The police record showed that the licensee had been placed on probation in New York City in 1912 for soliciting; had been convicted of petty larceny in New York City in 1919, and had been convicted of gambling in the City of Newark in 1925. Her explanation as to the reason for answering question number eight, in reference to having been convicted of any crime, in the negative, was, that she was under the impression that this applied only to convictions in the State of New Jersey. Upon going into the nature of the convictions, the licensee testified that she was fourteen years of age at the time of her conviction for soliciting; that she was accosted by a man on the street who then showed her a badge, and upon her attempting to run away, arrested her, and the conviction resulted. Since this happened before she was sixteen years of age, under the ruling of Commissioner Burnett this can be construed as not involving moral turpitude. The licensee testified that in 1919 she accompanied a female acquaintance to a department store in New York City, and while there noticed the acquaintance becoming involved in an altercation with another woman. She went to the rescue of her friend, and it then developed that this friend had taken

several waists, and the woman with whom she was involved was the store detective. They were both arrested for shoplifting and convicted. The licensee further testified that she had no idea that this acquaintance had gone to the store for this purpose. It appears that she was the innocent victim of circumstances in this instance, and therefore, the Board feels that no moral turpitude is involved. The gambling conviction was under the city ordinance and is therefore not considered a crime.

"The bartender had been convicted twice under the National Prohibition Act, which does not involve moral turpitude, and in 1911 he was sentenced to the State Reformatory in New York on the charge of abduction. The bartender testified that in 1911 he was eighteen years old and had been keeping company with a girl of fourteen. His family moved from New York City of Schenectady, and the girl objected to the parting. He wrote to his mother in reference to the matter, and the mother advised him to marry the girl and bring her to Schenectady. The girl and he then went to Schenectady before marrying, and he was arrested on the charge of abduction, convicted, and sentenced to the State Reformatory. After his release from the Reformatory he married the girl and lived with her up to the time of her death in 1921. He has two daughters by this marriage: one, twenty-one and the other sixteen. The Board feels that the explanation offered in this case is sufficient to show that no moral turpitude is involved. In reference to the conducting of a nuisance, there was no evidence introduced in reference to this charge. At the time of the application for the present license, June 19, 1936, the Board took cognizance of the report of the police in reference to the criminal record and held up the issuance of the license for two weeks due to the adverse police reports. At that time the Board took into consideration the fact that these offenses had been committed a long time previous, and except for the gambling charge, there had been no criminal charges or convictions against her since being a licensee. The answering of question number eight in the negative did not mislead the Board as it had the record of the licensee before it at the time it considered the application, and the Board felt that while she was guilty of a technical violation in improperly answering question eight, that she was sufficiently punished by having the renewal of her license withheld for two weeks, and

"IT IS THEREFORE ORDERED that the charges be dismissed."

I note from the above with particular interest that "In reference to the conducting of a nuisance, there was no evidence introduced in reference to this charge."

The synopsis transmitted to your Board by Attorney Jerome B. McKenna of my staff stated:

"Inspector Codd was informed by Deputy Chief Sebold that he first had knowledge of the criminal records of the licensee and her bartender on January 16, 1936 and immediately the following day transmitted these facts to Chief Harris; that even before he obtained knowledge of the criminal records in question, he recommended that the license be revoked due to the manner in which the licensed premises were conducted and the general attitude and reputation of the licensee. In support of his statements,

Deputy Chief Sebold produced copies of letters written to Chief of Police John F. Harris, dated January 16, 1936, January 17, 1936 and one letter undated. The undated letter urged the revocation of the license, inasmuch as the premises required the constant supervision of the police, as many complaints have been received that the premises were not conducted in a decent, orderly manner; that the licensee had been convicted of gambling by Judge Duveneck that morning on a charge brought about when a patron had come to the police complaining he had been defrauded of a sum of money in the premises."

I see by Mr. McKenna's letter of January 12th, which accompanied the transmission, that he recommended: "Deputy Chief Sebold, of the Newark Police, should also be summoned as a witness."

Investigators Boehm and Ilaria, who attended the hearing, report that Deputy Chief Sebold was not present. Whether he was summoned, I do not know. In any event, I regret that the Board dismissed the charges without calling and hearing the Police as to the alleged violation of the Rule that:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

So far as this charge is concerned, the question is not what occurred before the license was granted last June but what has happened since. Why should the case be heard without the testimony of the police as to what is going on now?

I regret it the more so because there was placed in my hands yesterday a business card bearing the name of "Bessie's Tavern, 121-123 Leslie St.", on the back of which appears printed matter so utterly rotten and revolting that it cannot be repeated in this letter, but of which I have had our male court stenographer make a copy for transmission to you herewith.

In the light of such advertising and the dirt it attracts, is it any wonder that complaints of lewdness and immoral activities are made about this place and that the Police urge revocation of the license?

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. SPECIAL PERMITS - TRAINS EN ROUTE - SALE OF LIQUOR BY TOUR PROMOTER OR OTHER PARTIES ON WHOSE ACCOUNT CARS ARE OPERATED.

Re: Sale of liquor by tour promoters or other parties on whose account cars or trains are operated.

Dear Sir:

This Company respectfully requests a ruling on the following set of facts:

The Railroad Company is operating a special car or train of cars for a party organized by a club or by a tour promoter. These people wish to take along their own liquor and beer and either (1) sell the same to the members of the party enroute or (2) serve the same without charge to the members of the party enroute.

The reason for these arrangements is, of course, that it may be cheaper than buying the beverages by the drink from the Railroad Company.

Our questions are:

1. Is either arrangement permissible under the law and regulations?

2. If so, what licenses are required of the club or the promoter?

Very truly yours,
R. W. BARRETT,
Vice-President.

March 23, 1937.

Lehigh Valley Railroad Co.,
New York City.

Gentlemen: Attention: R. W. Barrett, Vice-President.

It is possible for a bona fide club to obtain a permit to sell alcoholic beverages on a special occasion and for a day or so. A tour promoter, however, may not. For the object of such special permits is to confer a temporary and limited privilege upon bona fide mutual associations in respect to their social activities and yet keep them within the law, but not to enable individual promoters or any business enterprise as such to exploit liquor for commercial advantage or private gain. If anyone wishes to do the latter, he will have to take out a full-fledged annual license and pay the full fee.

Hence the answer depends on the person and the purpose.

Special permits, when granted, always specify the time and place where the social affair is to be held, and normally require, as a condition precedent to issuance, the approval of the local Chief of Police and the Clerk of the particular municipality. In the case of a railroad car or train in transit, such approvals would be unnecessary, but in lieu thereof, the consent of the railroad company itself would be prerequisite. The railroad company would then be chargeable, instead of the Chief of Police, in seeing that the law was obeyed and the conditions of the permit observed, as for instance, that no sales are made to minors. If you wish to assume this responsibility by giving your consent, you may, but without such consent, no special permit will be issued whoever the applicant or whatever the purpose.

As regards service of alcoholic beverages by the tour promoter "without charge" to the members of the touring party en route, that involves a self-contradiction, for it is obvious that the price of the liquor is included in the cost of the tour. Hence its service is not purely gratuitous and therefore constitutes an indirect sale which is a misdemeanor unless the promoter has received a special permit.

As a matter of general policy, I am not in favor of the sale of liquor on trains except under the auspices and control of the railroad company itself.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. RULES CONCERNING LICENSEES AND USE OF LICENSED PREMISES - NEW RULE 17 - LEWD, OBSCENE OR INDECENT ADVERTISING

March 24, 1937

NOTICE TO ALL LICENSEES

I had not thought it necessary heretofore to make any formal rule forbidding lewd, obscene or indecent advertising. I had thought that instinctive common decency and intelligent self-interest would suffice. While true of most licensees, there are some who apparently have no preferred sense of self-respect or even common sense.

Four times in the last ten days I have had to direct Police to destroy indecent business cards circulated by certain taverns. As these practices are growing to proportions which make necessary a general regulation on which to base revocation proceedings, the following rule is hereby promulgated effective April 1, 1937:

"17. No licensee shall allow, permit or suffer on or about the licensed premises or have in his possession or distribute or cause to be distributed any advertising matter containing any obscene, indecent, filthy, lewd, lascivious or disgusting printing, writing, picture or other such representation."

I shall ask intensive cooperation in meting out severe punishment for violation of this elementary rule. Licensees, worthy of the privilege, need no warning. Those so seared that they do not know, without being told, such advertising is repulsive, except to the dirt it attracts, may well be counted out on first offense. Sterile scoldings and soft sentences will be out of order in administering a rule designed to cut short the reprehensible and revolting solicitation which has come to light.

D. FREDERICK BURNETT
Commissioner

15. RULES CONCERNING SIZE OF CONTAINERS - RULES AMENDED - NIPS ABOLISHED FOR ALL PURPOSES EXCEPT ON TRAINS OR BOATS

March 24, 1937.

NOTICE TO ALL LICENSEES

The dangers inherent in the sale for off-premises consumption of liquor in miniature containers of two ounces or less, generally known as "nips", became apparent shortly after Repeal. Because of their cheap price, usually two for a quarter, they were particularly attractive to youngsters, who consumed them on the public streets and with disastrous consequences. As early as February, 1934, the sale of nips by package goods stores for off-premises consumption was prohibited by rule and shortly thereafter the rule was made applicable to consumption licensees. So far as sales on trains, and in taverns for immediate consumption therein, were concerned, nips seemed to have a legitimate place since they afforded to the purchaser assurance that he was getting exactly what he ordered. Such sales for on-premises consumption were therefore permitted.

Recently, however, numerous complaints have been received from trade associations, motor clubs and interested private citizens that nips are furtively sold by unscrupulous licensees for off-premises consumption. These complaints have not been directed against the rank and file of the tavern-keepers who are alive to the realization that sales to minors constitute one of the greater dangers to a continuance of Repeal and that unless effective steps are taken to check such sales, their livelihood will be jeopardized. They have, therefore, joined hands with many civic bodies in requesting that nips be excluded entirely from all retail licensed premises.

No complaints have been directed against the sale of nips for immediate consumption on trains and boats while in transit. Investigation does not indicate any abuses. Excepting such sales, I have concluded that possession and sale of nips by any retail licensee within this State shall be absolutely prohibited.

It is recognized that such prohibition will be burdensome to certain restaurants which have adopted the general use of nips as a distinctive method of service for on-premises consumption. They must, however, accept the resulting inconvenience for the sake of insuring the accomplishment of what is best for all.

In order to afford business a reasonable period within which to adjust itself to the amended rules, the effective date of the prohibition will be deferred until May 1, 1937.

To effectuate the foregoing, Rules 3 and 4 of the Rules Concerning Size of Containers of Alcoholic Beverages are amended to read as follows, effective May 1, 1937:

> 3. No retail licensee shall purchase, possess or sell within this State any whiskey or other distilled spirits in containers of less than one-tenth gallon (sometimes known as a half-fifth or four-fifth pint); except, however, that plenary retail transit licensees may purchase, possess and sell whiskey or other distilled spirits in containers of not more than two ounces or not less than one-tenth gallon solely for consumption on their vehicles while in transit.
>
> 4. No licensed manufacturer or wholesaler shall sell or deliver to any retail distribution licensee any alcoholic beverage in containers which do not meet the foregoing minimum standards of fill; nor shall any licensed manufacturer or wholesaler deliver to any retail licensee any whiskey or other distilled spirits in containers of less than one-tenth gallon (sometimes known as half-fifth or four-fifth pint); except, however, that any licensed manufacturer or wholesaler may sell whiskey or other distilled spirits to plenary retail transit licensees in containers of not more than two ounces or not less than one-tenth gallon.

D. FREDERICK BURNETT,
Commissioner.

16. ADVERTISING - ALLEGED THERAPEUTIC PROPERTIES OF LIQUOR - HEREIN OF OVERPLAYING THE HAND.

We are indebted to the New York Herald-Tribune for the following Editorial:

"YOU CANNOT LIVE FOREVER

"Honest liquor unquestionably has its uses as the world's greatest social lubricant and dispeller of gloom. Millions drink it regularly, for no better reason than because they like to do so and because they find that somehow it makes a dull existence more endurable. But it will not grow hair on a billiard ball, renew faded beauty or turn back the inexorable march of the years. So when distillers, rectifiers and wholesalers of ardent spirits permit their products to be represented as a sort of elixir of youth they properly incur the displeasure of the Federal Alcohol Administration in Washington. Recent rhapsodical outbursts -- which imply that certain brands (used in gentlemanly moderation) promote health, long life and efficiency; causing the participant to leap jocund from his bed in the early morn, prepared for the best day's work of his life, without vestige of a hangover -- have brought official disapproval.

"Some venders have been so carried away by what they conceive to be the merits of their goods that they have claimed definite therapeutic properties for them; the plain inference being that to drink Old Vatted Gowanus was to prolong life and health beyond all actuarial expectancy. This, the Federal Alcohol Administration has decided, is going too far. A sharp warning that the use of distilled spirits must not be represented as beneficial to health has been issued. The Administrator's patience is exhausted, he told representatives of the spirit trade, and unless fabulous claims for products of the still are discontinued there will be penalties. This is undoubtedly a wise precaution.

"Moderation, which is commendable in all things, will now extend to liquor announcements -- a setback for excessive zeal but a victory for truth and good sense."

Cf. specific examples of such advertising in ruling of February 13, 1937, set forth in Bulletin 162, Item 12.

D. FREDERICK BURNETT
Commissioner

17. DISCIPLINARY PROCEEDINGS - CLUB LICENSES - SLOT MACHINES AND GAMBLING - THIRTY DAYS' SUSPENSION

March 24, 1937.

Mrs. Ann M. Baumgartner,
Secretary, Municipal Board of Alcoholic Beverage Control,
Camden, New Jersey.

Dear Mrs. Baumgartner:

I have staff report and your certification of the proceeding before the Municipal Board of Alcoholic Beverage

Control of Camden against Tenth Ward Organization Republican Club - Club License CB-27 - charged with having permitting gambling and slot machines on the licensed premises in violation of State rules.

I note the licensee was adjudicated guilty and that the license has been suspended for thirty (30) days - March 23 to and including April 21, 1937.

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I desire to express my approbation of the severe penalty inflicted.

Club licensees should appreciate that while they obtain their privilege to sell liquor at a much lower fee than other licensees a club license does not grant them any right to violate the law or the rules and regulations governing all licensees. When they abuse the special privilege by violating rules which other licensees scrupulously obey, it is vicious, unfair competition, and should not be tolerated. To condone such conduct would be an open invitation to other licensees to flaunt the law.

Please convey to the members of the Board my appreciation for their prompt and effective action in this case.

Sincerely yours,

D. Frederick Burnett

D. Frederick Burnett
Commissioner