

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

BULLETIN NUMBER 198

JULY 30, 1937

1. TRANSFERS - A LICENSE MAY NOT BE TRANSFERRED WHERE NO APPLICATION FOR TRANSFER WAS EVER APPROVED BY THE ISSUING AUTHORITY WITHIN THE TERM OF THE LICENSE, AND WHERE THE APPLICANT FAILED TO COMPLY WITH THE STATUTORY REQUISITES BEFORE THE LICENSE SOUGHT TO BE TRANSFERRED HAD EXPIRED.

LIMITATION OF LICENSES - UNDER A MUNICIPAL REGULATION PROHIBITING THE ISSUANCE OF NEW LICENSES (EXCEPTING RENEWALS) A GRANT OF A NEW LICENSE IS FORBIDDEN TO AN APPLICANT CLAIMING AS TRANSFEREE OF A PREVIOUS LICENSE, WHERE THE TRANSFER HAD NOT IN FACT BEEN APPROVED BY THE ISSUING AUTHORITY WITHIN THE TERM OF THE LICENSE AND WHERE THE APPLICANT HAD FAILED TO COMPLY WITH THE STATUTORY REQUISITES WITHIN SAID TERM - SUCH A GRANT IS THE ISSUANCE OF A NEW LICENSE AND NOT A RENEWAL.

July 2nd, 1937.

Dear Sir:

As per our telephone conversation of this morning, I am writing regarding the application of Joseph Feinstein, for a Plenary Retail Consumption license, at the premises known as the Hudson Cafe, #12 Hudson Street, Camden, New Jersey.

On Wednesday, June 30, 1937, we filed application for a transfer from the then present licensee: to wit, Harry Robinson, Sr. to the said Joseph Feinstein, for license #C50 of the City of Camden, for the year 1936. This application was advertised in Wednesday evening's paper and naturally the license itself expired with the expiration of that day, namely, at midnight. I might state that all details of the application itself were in order; that is, the payment of the transfer fee, etc.

We also on Wednesday, June 30, 1937, filed an application with the City Clerk for a new license for the same premises, in the name of Joseph Feinstein, which application was advertised on Thursday, July 1st, 1937 for the first time, and will be advertised the second time on July 8th, 1937.

As I explained by telephone, the reason for filing the application for the transfer was to transfer to Mr. Feinstein the privileges which were incidental to the license. I felt that while the license itself may expire at midnight, June 30th, these privileges would not, and the said privileges, whatever they might be, could be transferred to Mr. Feinstein after the expiration of the license.

The thing I had more particularly in mind, was to bring to the attention of the public and the governing body, the fact that this is not a new application in the name of Mr. Feinstein, but is merely a transfer of an existing license, so that he will not be barred by the limitation on the number of licenses, which the local board has set up.

As I have also explained by telephone, some members of the Board feel that my procedure has been somewhat irregular and

I would appreciate it if you would forward me a letter setting forth your opinion in regard to this matter, so that I may present same to the Board at their meeting and they can be guided by it.

Appreciating your consideration and courtesy in this matter, I remain

Very truly yours,

MADDEN AND GOLDSTEIN

July 25, 1937.

Madden & Goldstein,  
Camden, N. J.

Gentlemen:

I have before me yours of the 2nd.

I understand that on June 30th Joseph Feinstein filed with the Camden Municipal Board of Alcoholic Beverage Control (1) an application for transfer of the plenary retail consumption license for the past fiscal year of Harry Robinson, Sr. to Feinstein, and also (2) an application in his own name for a new license for the present fiscal year; that the Camden regulation limiting the number of liquor licenses prohibits issuance of new licenses but does not affect transfers or renewals.

Since Feinstein had no license during the past year just closed, it follows that his is a new license and therefore barred by the local limitation unless his license is a renewal of the Robinson license the privileges of which had been transferred to and vested in Feinstein at the time he made his application for the present fiscal year.

The question, then, resolves itself into two inquiries: 1st, Had the Robinson license been transferred during its lifetime to Feinstein? 2nd, What rights, if any, did Feinstein have in respect to the Robinson license, on June 30th?

The answer to the first inquiry is plainly in the negative. Transfer is not a right, but, like the original issuance of any liquor license, a mere privilege. Until the Camden Board approved the application, the transfer could not be effective. No action was ever taken by the Camden Board on this application while the license was in existence. Hence it never was transferred in fact.

The remaining inquiry is as to Feinstein's rights to obtain a transfer now as of June. Neither the filing of an application or the payment of a fee on June 30th gave him any right to a transfer. Before he could even seek approval of his application by the Board the statute requires publication of notice of intention once a week for two weeks successively. He advertised once but not twice. Any appeal by him to me based on the denial of the local board to grant the transfer would be affirmed without looking into the merits because the statutory prerequisites had not been complied with while the license sought to be transferred was still alive. As you say, the license itself expired at midnight on June 30th. Thereafter there was nothing to transfer.

In short: a license may not be transferred where no application for transfer was ever approved by the issuing authority

within the term of the license, and where the applicant failed to comply with the statutory requisites before the license sought to be transferred had expired.

If Feinstein, on or before the last day of the fiscal year, had complied with all the statutory prerequisites to a transfer, then, if the Camden Board had failed to pass upon his application within the fiscal year or had denied it, he could have appealed on the merits. The question then would be -- Was the Camden Board right or wrong in failing or refusing to grant such a transfer? Such a decision would relate back, now as of then, to the time when the application for transfer was made and perfected. In the instant case, however, it was Feinstein himself who was at fault in not complying with the statutory requisites until after the license itself had expired. He waited until the very last day of the fiscal year and then the time ran out on him. His intention is immaterial. The law requires compliance.

It follows, therefore, that the 1936-1937 license of Robinson not having been transferred to Feinstein during its term and Feinstein not being in a position to enforce the transfer because of his own failure to comply with the statutory requisites, the issuance of a new license to Feinstein for the current year, 1937-1938, would be in violation of the Camden limitation of licenses and therefore beyond the power of the local Board.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

2. LIMITATION OF LICENSES - UNDER A MUNICIPAL REGULATION PROHIBITING THE ISSUANCE OF NEW LICENSES (EXCEPTING RENEWALS) A GRANT OF A NEW LICENSE IS FORBIDDEN TO AN APPLICANT CLAIMING AS TRANSFEREE OF A PREVIOUS LICENSE WHERE THE TRANSFER HAD BEEN DENIED BY THE ISSUING AUTHORITY AND NO APPEAL EVER TAKEN - SUCH A GRANT IS THE ISSUANCE OF A NEW LICENSE AND NOT A RENEWAL, AND THEREFORE VOID BECAUSE OF THE ORDINANCE.

July 16, 1937.

Dear Commissioner:

I am of the opinion that the Board of Commissioners of the Town of Irvington erred in issuing a tavern license to Edward Machino at 223 Orange Avenue, this town. This is the tavern formerly operated by Samuel Felsenfeld, whose license was revoked for the sale of illicit liquor. In the Friday, July 9 issue of the Irvington Herald, you are quoted as saying to William Untermann, Attorney for Felsenfeld and Machino that:

"The Board of Commissioners had no power to transfer the license by resolution of June 29th because the board, at its meeting of June 15, 1937, had voted to deny such transfer.

"It follows that the moment that the Irvington Board denied the application for transfer that it lost all jurisdiction and the only remedy was by appeal."

Since the license issued to Machino was in effect a renewal of the license formerly held by Felsenfeld, it would appear that the Board of Commissioners acted without power. If, as you say in another part of your letter to Untermann, "there is no license in existence on which to lift any suspension", then the license issued to Machino should be properly classified as a new license rather than a renewal of the one formerly held by Felsenfeld. If this be the case, the issuance of the license to Machino was a violation of the Irvington ordinance regulating the sale of alcoholic beverages.

I am enclosing a marked copy of the Irvington ordinance and respectfully request an official ruling on the issuance of Machino's license.

Very truly yours,

PERCY A. MILLER, JR.

July 25, 1937.

Hon. Percy A. Miller,  
Mayor,  
Irvington, N. J.

Dear Mr. Miller:

I have before me your request for ruling of July 16th.

Your conclusion that the Board of Commissioners of the Town of Irvington erred in issuing a tavern license to Edward Machino is correct for the reasons following:

In re Untermann, Bulletin 193, item 7, decided July 1st, I denied an application to lift a statutory automatic suspension of the Felsenfeld license, saying:

- "1. The Felsenfeld license expired yesterday and there is no license in existence on which to lift any suspension.
- "2. The Board of Commissioners had no power to transfer the license by resolution of June 29th because the Board, at its meeting of June 15, 1937, had voted to deny such transfer. (Plager v. Atlantic City, Bulletin 80, Item 11, and cases cited therein).

"It follows that the moment that the Irvington Board denied the application for transfer that it lost all jurisdiction and the only remedy was by appeal. Hence, even if your application had been made to me within the life of the license, I should have denied it because of the failure of the Irvington Board to approve the transfer of the license. As the record stands, they denied it and the reconsideration was ineffective. There is no ladies' privilege of change of mind so far as licenses or transfers thereof are concerned."

Since the Irvington ordinance limiting the number of liquor licenses prohibits issuance of new licenses (except renewals) and since Machino had no previous license but claims solely through the Felsenfeld license, which it now appears has never been lawfully transferred to Machino, nor could be until the statutory automatic suspension was lifted, which had never been done, it follows that the Board could not lawfully issue a license to Machino.

The grant of the Machino application was the issuance of a new license and not a renewal. It was therefore in violation of the Irvington ordinance limiting the number of licenses and consequently beyond the power of your Board of Commissioners and void. Re Madden & Goldstein, Bulletin 198, Item 1.

Please, therefore, instruct your Chief of Police forthwith to pick up the Machino license and to stop all alcoholic beverage activity on the premises at once.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

3. LICENSEES - NOT DISQUALIFIED FOR FREEHOLDER - OUTSIDE OF THE ADMINISTRATION OR ENFORCEMENT OF THE LIQUOR LAWS, LICENSEES ARE AS ELIGIBLE TO OFFICE AS ANY OTHER PERSON.

July 24, 1937.

William F. Lehman, Manager,  
Republican Committee of Camden County,  
Camden, N. J.

My dear Mr. Lehman:

There is no objection to an employee of a liquor licensee or the licensee himself running for election as County Freeholder and, if elected, serving as Freeholder and engaging in the liquor business at the same time because his official duties as Freeholder in nowise concern or relate to alcoholic beverage control.

The purpose of the rulings prohibiting certain officials from holding liquor licenses or being employed by licensees is to divorce the alcoholic beverage industry from the license issuing and revoking functions and from persons charged with the enforcement of the law. Sound public policy demands that those entrusted with the administration or the enforcement of the liquor laws shall have no personal or financial interest in the liquor trade. Outside of that licensees are as eligible to office as any other person.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 4. SOLICITORS' PERMITS - PROHIBITED INTERESTS - NO TIE-UP WITH RETAIL STORE PERMISSIBLE.

Dear Sir:

I am at present an officer and a major stockholder in the Clinton Wine and Liquor Store of 510 S. Clinton Ave., Trenton, N. J.

I now have an opportunity of representing A. Diani & Co. of Passaic, N. J. in this County if I am eligible for a solicitor's permit.

Would you grant me a permit to solicit sales of wine, provided I disposed of enough of my stockholdings in the Clinton Wine Store to hold less than ten per cent of the stock? Or would I have to sell my entire holdings?

Sincerely,

MICHAEL PICARDI

July 23, 1937.

Mr. Michael Picardi,  
Trenton, N. J.

Dear Mr. Picardi:

Section 40 of the Control Act states that it shall be unlawful for any owner, part-owner, stockholder or officer or director of any corporation or any other person whatsoever interested in any way whatsoever in any winery to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of alcoholic beverages. The records of this Department disclose that Ambrose Diani t/a A Diani and Company holds both a Plenary Winery and a Limited Winery License.

As a solicitor you would be interested in the winery. Hence, since you are a stockholder in the Clinton Wine & Liquor Co., Inc., 510 South Clinton Ave., Trenton, N. J., a retail licensee, you are ineligible to obtain a Solicitor's Permit. The only way in which you could become eligible for a Solicitor's Permit would be to divorce yourself entirely from any interest whatsoever in the retailing of alcoholic beverages. This means you would have to dispose of your entire holdings in the Clinton Wine & Liquor Co., Inc.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 5. LICENSE FEES - HOURS OF SUNDAY SALES - SCHEDULE FOR MUNICIPALITIES OF MORE THAN 15,000 POPULATION.

July 27, 1937.

John L. Haney  
City Clerk  
Trenton, New Jersey

My dear Mr. Haney:

I have before me your letter requesting the license fees and Sunday hours of sale fixed in the twenty-five or fifty of our largest municipalities.

I am setting out below the figures for all of the municipalities in the State which, according to the 1930 Federal Census, had a population of 15,000 or over. That will give you 46 in all and a good cross-section of what has been done.

Municipality	1930 Federal Census.	L I C E N S E		F E E S		Club.	Hours during which sales are prohibited on Sundays.
		Plenary Retail Consump- tion.	Seasonal Retail Consump- tion.	Plenary Retail Distri- bution.	Limited Retail Distri- bution.		
Atlantic City	66,198	\$ 500	**	\$ 500	**	**	6 AM - 1 PM
Bayonne	88,979	500	*	500	*	\$ 150	3 AM - 1 PM
Belleville	26,974	350	*	350	**	50	2 AM - 1 PM
Bloomfield	38,077	750	*	500	\$ 50	150	None
Bridgeton	15,699	500	*	200	*	75	All day
Camden	118,700	500	*	500	*	100	2 AM - Midnight
Cliffside Park	15,267	250	\$ 187.50	150	*	*	3 AM - 12 Noon
Clifton	46,875	400	300.	250	50	150	3 AM - 1 PM
East Orange	68,020	750	**	500	**	150	All day
Elizabeth	114,589	500	**	250	*	150	2 AM - 12 Noon
Englewood	17,805	675	506.25	450	50	100	2 AM - 12 Noon
Garfield	29,739	365	*	365	*	*	3 AM - 12 Noon
Hackensack	24,568	600	450	450	**	150	3 AM - 12 Noon
Hamilton Twp. (Mercer County)	27,121	400	*	250	*	100	All day
Harrison, Town (Hudson County)	15,601	365	273.75	300	50	100	3 AM - 12 Noon
Hillside	17,601	350	262.50	300	50	100	3 AM - 1 PM
Hoboken	59,261	365	*	365	*	100	3 AM - 6 AM
Irvington	56,733	500	375	350	*	100	3 AM - 12 Noon
Jersey City	316,715	500	*	500	*	*	2 AM - 1 PM
Kearny	40,716	400	*	300	*	100	2 AM - 12 Noon
Linden	21,206	350	262.50	200	50	75	2 AM - 12 Noon
Long Branch	18,399	500	375	350	**	150	3 AM - 1 PM
Lyndhurst	17,362	300	*	150	*	100	3 AM - 12 Noon
Maplewood	21,321	1,095	821.25	584	*	150	2 AM - 12:30 PM 10 PM - Midnight
Montclair	42,017	1,000	*	800	*	100	2 AM - Midnight
Morristown	15,197	350	262.50	300	**	50	All day
New Brunswick	34,555	500	**	400	**	150	2 AM - 1 PM
Newark	442,337	500	375	500	**	150	3 AM - 12 Noon
North Bergen	40,714	350	262.50	350	25	100	2 AM - 1 PM
Nutley	20,572	400	*	300	*	150	2:30 AM - 1 PM
Orange	35,399	500	**	500	**	150	2 AM - 1 PM
Passaic, City	62,959	500	*	300	**	150	3 AM - 1 PM
Paterson	138,513	400	*	300	*	*	3 AM - 1 PM
Pennsauken	16,915	500	375	200	**	150	2 AM - 1 PM
Perth Amboy	43,516	500	**	400	**	100	2 AM - 1 PM
Phillipsburg	19,255	300	*	150	*	150	All day
Plainfield	34,422	1,000	*	500	*	150	1 AM - Midnight
Rahway	16,011	500	*	500	*	75	3 AM - 9 AM
Teaneck	16,513	500	**	200	**	50	3 AM - 12 Noon
Trenton	123,356	450	*	300	**	150	2 AM - 5 PM
Union Township (Union County)	16,472	500	375	500	50	50	3 AM - 12 Noon
Union City	58,659	350	**	350	50	150	3 AM - 12 Noon
Westfield	15,801	1,000	*	600	50	100	All day
West New York	37,107	200	*	200	50	50	2 AM - 1 PM
West Orange	24,327	500	375	350	**	**	3 AM - 1 PM
Woodbridge	25,266	350	**	300	**	50	2 AM - 1 PM

\* No fee fixed.

\*\* Issuance of this class of license prohibited.

Very truly yours,

D. FREDERICK BURNETT

Commissioner.

6. LICENSEES - SELECTIVE CHOOSING OF CUSTOMERS - MAY REFUSE TO SERVE WOMEN IF THEY WISH.

LICENSED PLACES - SANITARY ARRANGEMENTS - SEPARATE ACCOMMODATIONS SHOULD BE SUPPLIED FOR MEN AND WOMEN.

July 23, 1937.

Dear Commissioner Burnett:

The new Plumbing Code of the City of Newark provides that where male and female patrons are employed or served in food establishments (restaurants, taverns, etc.) separate toilet accommodations must be provided.

Some tavern operators have propounded the following question to our Department: If they were to discontinue serving female patrons would our Department forego the recommendation for extra toilet facilities.

Under present State and Local Regulations can tavern operators rightfully and legally refuse to serve female patrons? Your opinion on this matter and any suggestions you might care to make on this subject will be appreciated.

Respectfully yours,

Charles V. Craster, M.D., D.P.H.  
Health Officer

July 27, 1937.

Charles V. Craster, M.D.,  
Department of Health,  
Newark, N. J.

My dear Dr. Craster:

I have your letter of the 23rd.

There is nothing in the Control Act or the State regulations which prevents a tavernkeeper from refusing to serve female patrons. Licensees may sell or refuse as they choose.

Under the Act to Protect all Citizens in their Civil and Legal Rights, tavernkeepers, among others, are prohibited from refusing to sell to anyone on account of race, creed or color. But that is not sex. I know no statute in point.

Municipal regulations prohibiting the sale of liquor to women at bars or in barrooms are lawful. Re Bocca, Bulletin 105, Item 7. What the municipality may compel licensees to do, licensees can do for themselves. It is undoubtedly true that the free and unrestricted intermingling of men and women in many of our licensed places, coupled with the release of inhibitions and the let-down that the consumption of alcoholic beverages brings,

creates a serious social problem Tavernkeepers are responsible for the maintenance of good order and decorous conduct on their premises. It is, then, but fair that they should have a correspondingly wide discretion in determining how their places should be run. He who takes the risk must be given the right to decide. Re Dorflinger, Bulletin 136, Item 12.

That, I believe, answers the question as you ask it.

Methinks, however, that the tavern operators who desire you to forego the recommendation are seized more with personal solicitude to save a few dollars than philosophic contemplation of women as the ultimate cause of our social problems - more a matter of economy than of Eve.

A promise to you to discontinue service to female patrons would have no legal sanction and hence would be incapable of enforcement. I suggest therefore that you insist on separate accommodations in every case.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

7. LICENSEES - MAXIMUM QUANTITY OF ALCOHOLIC BEVERAGES THAT MAY BE SOLD - NO LIMIT UNDER STATE LAW - THE MAXIMUM UNDER FEDERAL LAW DEPENDS ON THE TYPE OF TAX STAMP HELD.

Gentlemen:

We should like to be informed as to the maximum quantity of beer and liquors which a retailer is allowed to sell to a consumer.

Very truly yours,

Federal Wine & Liquor Co.

July 26, 1937.

Federal Wine and Liquor Company,  
Jersey City, N. J.

Gentlemen:

There is no limit, under State law or State regulations, on the maximum quantity of alcoholic beverages a retailer may sell to a consumer. So far as the State law is concerned, so long as the sale is made to a consumer and not for resale, the retailer may sell in as large a quantity as the consumer wants.

The State and Federal definitions of "retailer" and "wholesaler" are different. Under State law, a retailer is one who sells to consumers and a wholesaler is one who sells for purposes of resale. The Federal definitions, on the other hand, are based on the quantity of liquor comprising the sale.

I quote from the Notice of the Federal Bureau of Internal Revenue to retail liquor dealers and retail dealers in fermented malt liquor (Form 939, Revision of August, 1936):

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\* \* \* \* \*

"1. SPECIAL TAX ON RETAIL LIQUOR DEALERS. - Any person who engages in the sale of liquor, wine, or beer at retail must pay a special tax as Retail Liquor Dealer or Retail Dealer in Fermented Malt Liquor and secure a special-tax stamp from the Collector of Internal Revenue. This stamp is sometimes erroneously called a 'Government License', but in fact is only a receipt for the special tax. The tax is at the rate of \$20 for each fiscal year for those who sell only beer and other fermented malt liquors, and at the rate of \$25 for each fiscal year for those those who sell wine or whisky or other distilled spirits whether or not they also sell beer and other fermented malt liquors. To sell liquor, wine, or beer and willfully fail to pay the special tax required by law subjects the retail dealer to a fine of not less than \$100 nor more than \$5,000 and imprisonment of not less than 30 days nor more than 2 years. All special taxes become due on the 1st day of July in each year, or on commencing any trade or business on which such tax is imposed. In the former case the tax shall be reckoned for 1 year, and in the latter case it shall be reckoned proportionately, from the 1st day of the month in which the liability to a special tax commenced, to and including the 30th day of June following. Taxpayers should render their returns with remittances to the Collector at such times within the calendar month in which the tax liability commenced as shall enable him to receive such return, duly signed and verified, together with the remittance, not later than the last day of the month. (Sec. 1397 (a) (1), Title 26, U.S.C.; 3281 R. S.; Secs. 314 and 322, Liquor Tax Administration Act.)

\* \* \* \* \*

"5. LIABILITY OF RETAIL DEALER TO SPECIAL TAX AS WHOLESALE DEALER IN FERMENTED MALT LIQUOR. - Any retail dealer who sells beer or other fermented malt liquor in quantities of 5 gallons or over to the same customer at the same time subjects himself to special tax as a Wholesale Dealer in Fermented Malt Liquor at the rate of \$50 for each fiscal year and he must pay such special tax accordingly under the same penalties as those applicable in the case of failure to pay the special tax as a retail dealer. No retail dealer in malt liquors shall be held to be a wholesale dealer in malt liquors solely by reason of sales of 5 gallons or more to the same person at the same time if such sales are for immediate consumption on the premises where sold. (Secs. 1394 (d), 1396, 1398 (d), Title 26, U.S.C., 3244 R. S., Sec. 324 (e), Liquor Tax Administration Act.)

"6. LIABILITY OF RETAIL DEALER TO SPECIAL TAX AS WHOLESALE LIQUOR DEALER. - Any retail dealer who sells wine or distilled spirits in quantities of 5 gallons or over to the same customer at the same time subjects himself to special tax as a Wholesale Liquor Dealer at the rate of \$100 for each fiscal year and he must pay such special tax accordingly under the same penalties as those applicable in the case of failure to pay the special tax as a retail dealer. No retail dealer in liquors shall be held to be a wholesale dealer in liquors solely by reason of sales of 5 wine-gallons or more to the same person at the same time if such sales are for immediate consumption on the premises

where sold. (Secs. 1394 (a), 1396, 1398 (a), Title 26, U.S. C.; 3244 R.S.; Sec. 323 (c), Liquor Tax Administration Act.)

\* \* \* \* \*

As you will see from the foregoing, the maximum quantity of alcoholic beverages a retailer is allowed to sell under Federal law depends on the type of tax stamp he holds.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

8. ADVERTISING - POPULARITY AND VOTING COUPON CONTESTS DISAPPROVED - SO WITH ANY CONTEST WHICH MAKES CHILDREN LIQUOR CONSCIOUS OR INDUCES AN ARMY OF KIDS TO BECOME ROVING LIQUOR SALESMEN.

July 22, 1937.

Dear Sir:

I conduct a retail drug store at the above address in conjunction with a retail liquor department. I am about to enter a "Popularity Contest" the pamphlet attached explains itself. Will you kindly let me know if this is permissible as I will give out the coupons in all departments.

Trusting this meets with your approval,

I remain,

William Schneider

July 28, 1937.

Schneider's Pharmacy, Inc.,  
278 - 16th Avenue,  
Newark, N. J.

Gentlemen: Attention: Mr. William Schneider

I have yours of the 22nd and the circular describing the popularity contest with its "Big Free Prizes That Will Bring Kids on the Run and Boost Business throughout your Store!"

The list is replete with offers of prizes attractive to children. Of course the youngsters will want to win the streamlined scooters, the ball-bearing skates and the Sweetums doll sets --not to speak of bats and bicycles and Indian beads!

I note that on "ice cream cone day" 20 votes go with each cone; 40 with a soda and 50 with a sundae. At this rate, the coupons on a quart of liquor would make a sugar barrel bulge, and that makes it "advantage out" for the cone eaters.

Any contest which makes children liquor conscious is disapproved. Hence you may not give out any voting coupons with sales of liquor. I don't want a whole army of neighborhood kids becoming roving liquor salesmen for you.

Violation will be cause for revocation. Don't do it.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 9. DISCIPLINARY PROCEEDINGS - SUNDAY CLOSING - FINES IN LIEU OF SUSPENSION DISAPPROVED.

July 29, 1937

Peter Menzak, Esq.  
Borough Clerk  
Manville, New Jersey

Dear Mr. Menzak:

I have staff report and your certification of the proceedings before the Borough Council of Manville against Chester Trojanoski, t/a Chester's Bar, charged with (a) having sold alcoholic beverages on Sunday during prohibited hours in violation of your local regulation, and (b) having permitted unnecessary noises on the licensed premises.

I note the licensee pleaded guilty to the charges and that the penalty imposed was - suspension of the license for one day, August 2, 1937, or \$25.00 fine in lieu of suspension.

The imposition of a fine in proceedings of this kind is improper. There is no provision in the Control Act that would permit a fine in lieu of suspension or revocation of the license. See Bulletin 67, Item 7. Section 28 of said Act provides that an issuing authority may revoke or suspend a license for various causes therein set forth after hearing duly held.

Then again, I have frequently stated that fines are quite ineffective to keep errant licensees in line. In commenting on a case where a fine had been imposed in a Recorder's Court under an ordinance and the question was asked if this fine should be permitted to take the place of disciplinary proceedings, I said, IN RE VOLCKER, Bulletin 151, Item 1.

"In a broad sense, to be sure, a fine is a disciplinary proceeding but it is more in the nature of criminal punishment. Only too often a penalty measured in money merely deprives the offending licensee of a mere part of his ill-gotten gains. Fines are quite ineffective to keep errant licensees in line. Then again, fines may be and often are remitted by the sentencing judge. If so, they are naught but a gesture so far as law enforcement is concerned. A suspension of the license, on the other hand, is feared by licensees more than any fine. You seldom have trouble a second time with a place which has been closed down for a while. It is the most powerful deterrent you have."

Please, therefore, bring this letter to the attention of the Borough Council at once, to the end that that part of your resolution imposing the fine be excinded.

Re the one-day penalty. Frankly, it is too short a period of suspension. Please request the Council in future cases involving sales during prohibited hours to inflict a penalty which will really be a deterrent. Licensees who sell during those hours are deadly conscious that they are violating the law. While I am sure that your Council acted in good faith, and appreciate its cooperation, I am of the firm conviction that cheating licensees must feel the heavy hand of the law to make them realize that disobedience doesn't pay.

I recommend in cases involving sales during prohibited hours, a penalty of five days' suspension for the first offense; double that for the second and revocation of the license for third offenders.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

10. WHOLESALERS - PEDDLING OF ALCOHOLIC BEVERAGES NOT PERMISSIBLE - THE LAW MAKES NO PROVISION FOR WAREHOUSES ON WHEELS.

July 29, 1937.

Milton Ridvas Konvitz, Esq.,  
Newark, New Jersey.

Dear Mr. Konvitz:

A wholesaler in alcoholic beverages is not permitted to adopt the business methods outlined in your letter, viz., to put a solicitor on a truck loaded with alcoholic beverages; to stop at customers' places, take orders, and then make delivery directly from the truck.

What you would set up is, in effect, a movable warehouse. The law makes no provision for warehouses on wheels.

The holder of a plenary wholesale license is entitled to distribute and sell to retailers and other wholesalers. His warehouse and salesroom constitute his licensed premises. That means a known fixed location open at all times to instant inspection and control, not merely of some of his stock in trade, but all of it.

Alcoholic beverages possessed by a plenary wholesale licensee cannot be peddled but must remain on its licensed premises until sold or otherwise lawfully disposed.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

11. RETAIL LICENSES - REGULATION AND LIMITATION - SAMPLE FORM  
OF ORDINANCE.

July 29, 1937.

Frank Sahl, Esq.,  
Solicitor for West Deptford Township,  
Woodbury, N. J.

My dear Mr. Sahl:

I understand that you want an ordinance prohibiting the issuance of seasonal retail consumption and club licenses. I offer for your consideration:

"BE IT ORDAINED: No seasonal retail consumption or club licenses, as described in 'An Act Concerning Alcoholic Beverages,' c. 436, P.L. 1933 as amended and supplemented, shall be issued in West Deptford Township."

And an ordinance limiting the number of other classes or retail licenses:

"BE IT ORDAINED: The number of \_\_\_\_\_ licenses issued and outstanding in the Township of West Deptford at the same time shall not exceed \_\_\_\_."

If it is the Township Committee's thought that a quota less than the number presently outstanding should be fixed, add to the foregoing the further proviso:

"Provided, however, that this limitation shall not prevent the issuance of renewals of \_\_\_\_\_ licenses to persons holding such licenses at the time this regulation was adopted, and further provided that this limitation shall not prevent the transfer of licenses, or the renewal thereof, according to law. No new \_\_\_\_\_ licenses shall be issued to anyone not holding such license at the time this regulation was adopted until the number outstanding shall be reduced by surrender, revocation or non-renewal, to less than \_\_\_\_."

In such case, insert in the space left blank the number to which you want licenses eventually reduced.

Limitations of licenses must be fixed with respect to each particular license class, not the aggregate number of all licenses irrespective of class. See re Somerville, Bulletin 110, item 6; re Hightstown, Bulletin 117, item 5.

I have set up the foregoing in the form of an ordinance because Chapter 135, P. L. 1937, amended Section 37 of the Control Act effective July 1, 1937, to provide that after July 1st all limitations of licenses must be enacted by ordinance. See Bulletin 185, item 3.

For a sample form of ordinance and examples of regulations dealing with various subject matters which have been adopted by municipalities and approved by the Commissioner see re Hillery & Young, Bulletin 53, item 9. As regards the penalty sections 5a and c, strike out the minimum penalties. The Home Rule act prohibits mandatory penalties. Re Hillside, Bulletin 69, item 9. Also strike out example 11-b. I have

since ruled that municipalities may not restrict sales of alcoholic beverages on Sundays to brewed malt alcoholic beverages and naturally fermented wines. See re Lebanon, Bulletin 64, item 6, and Bulletin 66, item 5.

I suggest that you also refer to Re Red Bank, Bulletin 91, item 2; Plainfield v. Pereira, Bulletin 91, item 3; re Plainfield, Bulletin 161, item 6; re Carteret, Bulletin 181, item 2; re Asbury Park, Bulletin 192, item 7.

Mr. McEwen, the Township Clerk, has a complete set of the Bulletins in his files.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

12. SOLICITORS' PERMITS- ELIGIBILITY - MORAL TURPITUDE - FACTS  
EXAMINED - CONCLUSIONS

July 27, 1937.

In re: Case #70

This is to determine applicant's eligibility to hold a solicitor's permit. Applicant has held a permit for the term expiring June 30, 1937, and his application for renewal is now on file awaiting determination of this proceeding.

Applicant is a man of good appearance, 58 years of age, 33 years married, with one child, an adult son.

In February, 1926, applicant was arrested in Florida for there issuing a worthless check in the sum of \$1200 drawn upon a certain New York bank. He was charged with violation of Section 5706 of Rev. Gen. St. of Florida, which provides that the issuance of a worthless check without making restitution within 24 hours after demand is a crime. Intent to defraud is not necessary under that section. Cf. Sections 5707 (2) and (9) of Rev. Gen. St.

Applicant pleaded guilty to the charge, was convicted and was sentenced to pay a fine of \$200.00 and costs or serve 30 days in County Jail. The fine was duly paid.

Applicant's story is that in 1925 he sold out his interest in a certain fashionable night club in New York City under the arrangement that the purchaser would deposit the sum of \$1100 in applicant's account at the bank; that, leaving affairs in this stance, he went to Florida to open an exclusive and elaborate night club; that in the ordinary course of business in this venture, he drew (amongst others) the check for \$1200 in the belief that his account at the New York bank had received the increment of the promised deposit; that the purchaser of his interest in the night club failed to make the deposit as promised since he had bought in the remaining interests in that

night club and was in need of ready cash; and that in consequence applicant's \$1200 check was protested, but was nevertheless later paid in full.

Applicant also states that when he issued the \$1200 check he also issued several other checks in small amounts to tradesmen; that he was arrested on "bad check" charges by those tradesmen but that these checks were made good and the matter dropped. Applicant has never been in trouble with the police on any other occasion and his record since 1926 is free of blame.

Since fraud was not a necessary element to applicant's crime and was not in fact present, I do not believe that it involves moral turpitude within the meaning of Section 22 of the Control Act.

However, there remains the fact that applicant failed to reveal the conviction in his questionnaire and in his past and present applications for a solicitor's permit. His fingerprint record brought that conviction to light.

Applicant's explanation is that he did not consider this matter of ten or more years ago as actually tantamount to conviction for a crime.

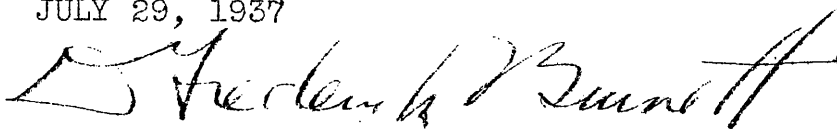
In view of the fact that applicant's failure to disclose that conviction has occasioned the present hearing and the consequent delay in granting his application for renewal, I think that he has been sufficiently punished for giving himself the benefit of the doubt with respect to his trouble in Florida.

It is recommended that a solicitor's permit for the period ending June 30, 1938, be issued to applicant forthwith, as applied for.

APPROVED

Nathan Davis  
Attorney

JULY 29, 1937



Commissioner

Inspected by:  
E. E. B. ANDERSON  
and found O. K.