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

BULLETIN NUMBER 177. MAY 24, 1937

1. DISCIPLINARY PROCEEDINGS - IRREGULARITIES OF PROCEDURE CURED BY CONSENT - HEREIN OF THE KEYPORT VIGILANTES AND THE SPEED RECORD THEY ESTABLISHED.

May 14, 1937.

Dear Commissioner Burnett:

I am writing you in reference to an action taken by the Police Committee of the Borough of Keyport.

It seems that the Monmouth Wine and Liquor Company of Keyport have a plenary retail consumption license and on Sunday morning, May 9th, 1937, I understand that they were guilty of a violation in keeping open after the regular closing time.

The Police Committee immediately met and received evidence of the police officers.

They called Mr. Einzinger in who is head of the Monmouth Wine and Liquor Company and he admitted his guilt and waived the required notice of hearing and the Police Committee imposed a penalty by suspending his license for five days, from the morning of May 12th, 1937 until the opening on May 17th, 1937.

The council of course took a short cut to justice and I advised them that what they should have done was to have a regular complaint signed, revocation proceedings taken, being served with the proper notice and holding a hearing.

However, on checking up the matter, I find that if they erred at all, it was in their zeal in the direction of enforcement.

At least other license holders in the Borough will know that in case of violations, punishment will not only be certain but action will be speedy and I think will have a salutary effect.

I understand that the licensee is complying with the action of the Police Committee and has suspended business and will observe the penalty, regardless of the informal procedure.

I enclose you herewith a copy of the letter that was served upon him by the police officers.

In order that the matter may be in proper shape upon the records of the Borough of Keyport, as the Council meets at their next regular meeting on May 24th, I thought that I would have prepared a complete report of the matter by the Police Committee and have their action ratified by the Council by formal resolution so that this will be on the records of the Borough Council.

I would appreciate your comments in the matter,

Yours very truly,

HOWARD W. ROBERTS
Borough Counsel of the Borough of Keyport.

New Jersey State Library

May 17th, 1937.

Howard W. Roberts, Esq.,
Atlantic Highlands, N. J.

My dear Mr. Roberts:

I have yours of the 14th re Monmouth Wine and Liquor Company.

The speed of Jersey justice is proverbial but for sheer sprinting ability, Keyport leads us all! The Soviet itself couldn't have moved faster, or more highhandedly!! Even the Caliph of Bagdad, the old Shinto himself, who meted out justice ambidextrously as he walked to and fro, - indicting, convicting and sentencing poor devils in the twink of an eye - would have had to step on the gas to keep pace with the Keyport Police!!!

Since the licensee was caught red-handed, admitted its guilt, "waived the required notice of hearing", and has submitted without a murmur to an enforced vacation, no rights have been invaded and no injury done, assuming, of course, that it was the licensee who did the "waiving" and not the Police Committee as proxy for him. The incantation volenti non fit injuria has saved many another day as well!

When licensees know that punishment is swift and sure, a giant stride is taken toward the goal of law and order. That is why my hat is off to the Keyport vigilantes.

In the future, however, it would be preferable to do it the American way and give the licensee a chance to plead, if not pray, before he did penance, for if the licensee had appealed, it would have been my painful duty, much as I applaud the celerity of the Police Committee, to have set aside the procedure unless the evidence were cogent and convincing that he had waived his rights to be heard, and that without any duress.

The ratification proceedings you recommend are approved as submitted.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. LICENSEES - LEWD PERFORMANCES - DUTY OF LICENSEES TO KNOW AND CONTROL AT ALL TIMES WHAT GOES ON IN LICENSED PREMISES.

We are indebted to The Community News, of Merchantville, for the following editorial:

"DROP THE CURTAIN ON THESE SHOWS.

"The other night an agent of State Commissioner Burnett went to an inn in Pennsauken Township and stopped a 'girl show.' It isn't in the news because there were no arrests and no legal action taken. It was a 'private party', away from the regular customers.

"Not mentioning names might be unfair to some of the

township inns, but not to those inn-keepers generally known as men with too much sense to stoop to such methods of helping the cash register. Such shows are operated carefully and the police didn't know about this one until after the evidence had been disposed of.

"It is becoming fashionable to have a 'strip tease' act in some shows in some cities that will permit what racy burlesque companies have offered for several years. Such acts are 'refined' compared with what is commonly called a 'girl show'.

"We take no pleasure in knowing that we live in a community in which 'girl shows' are conducted. They are held privately and the next day 'half the town' knows about them. When one is held at an inn, it injures the reputation of every other inn in the township with someone hearing the gossip, and not knowing which inn. It is no credit to the members of the governing body, the police or the citizens when some Philadelphia or Camden 'play boy' tells of the 'hot show' he saw in Pennsauken Township.

"There is nothing we know of that can be dispensed with to cause less loss than obscene shows. Holding them privately in a club or inn makes them no less offensive to honest citizens and the law, than if they were held openly."

May 15, 1937.

William J. Paul, Editor,
The Community News,
Merchantville, N. J.

Dear Mr. Paul:

I have just come across, in the clipping service, your incisive and far-sighted editorial of last month entitled "Drop the Curtain on These Shows"; -- incisive, because it goes straight to the pit of this dirty mess; far-sighted, because it anticipated the house-cleaning which occurred only last week in New York City where renewal licenses were refused to so-called burlesque shows featuring "strip tease" and other orgies of lower smut; far-sighted too because every decent licensee knows that these revolting "girl shows" mark a milestone toward the doom of Repeal.

Long Branch, to its credit, revoked outright the liquor license of a place which staged a show of this kind.

Licensees who foul their own nests with filth and degrade their places with wanton lewdness should be exterminated as fast as possible. Responsibility cannot be shelved. It is the duty of licensees to know and control at all times what goes on in licensed premises.

I am sure that every right-thinking citizen and clean licensee applauds your editorial.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - BLUM VS. BOROUGH OF POMPTON LAKES.

ISIDORE BLUM, Appellant, -vs- BOROUGH COUNCIL OF THE BOROUGH OF POMPTON LAKES (PASSAIC COUNTY), Respondent.	ON APPEAL CONCLUSIONS

Nathaniel Weltchek, Esq., Attorney for Appellant.
John McNaughton, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of plenary retail distribution license for premises located at 124 Wanaque Avenue, Pompton Lakes. The parties to this appeal and the premises in question are the same as those involved in a previous appeal entitled Blum vs. Pompton Lakes, Bulletin #126, Item 4.

Respondent denied the application in this case for the same reason given for its denial in the previous case, namely, because the Borough Council of Pompton Lakes had adopted an ordinance on May 2nd, 1935 limiting the number of plenary retail distribution licenses to four and because the allotted number had already been issued.

In this appeal appellant makes no direct attack upon the reasonableness of the ordinance itself. He claims, however, that the terms of the ordinance have not been enforced and alleges, therefore, that respondent has acted unreasonably and in bad faith in denying his license because of the terms of said ordinance.

If in fact respondent has issued distribution licenses in excess of the number as limited in its ordinance, the application of the limitation to the exclusion of appellant would appear to be unreasonable and discriminatory. Cf. Kaplan vs. Trenton, Bulletin #41, Item 9.

The evidence in this case, however, does not show that respondent issued more than four distribution licenses after the adoption of its ordinance. Appellant does not so contend. His entire argument is based upon the fact that respondent made no attempt to close a package goods store opened by Louis Schlenger, Inc. in October 1936, despite the fact that appellant, prior to filing his present application, sent a letter to respondent, through his attorney, insisting that "since the Borough has seen fit to permit the continuance in fact of a fifth distribution establishment", the ordinance has been violated.

The files of this Department show that Louis Schlenger, Inc. is the holder of a plenary retail consumption license issued to it by respondent for premises known as 260 Wanaque Avenue, Pompton Lakes; that prior to October 1936 it conducted a tavern at that address; that in October 1936 it opened a separate package goods store at 258 Wanaque Avenue.

Prior to the opening of its package goods store, Louis Schlenger, Inc. inquired of this Department if the operation of the

package goods store was permissible under its consumption license, and was advised that the answer depended entirely upon the description of the licensed premises set forth in the application for the license. The application for its license described the licensed premises as 258-260 Wanaque Avenue. The entire premises at 258-260 Wanaque Avenue is known as the Colonial Hotel, but a sitting room about twenty (20) feet in width, and a hallway, separated the tavern and the package goods store in the Colonial Hotel. Investigators from this Department checked the application on file and, pending a final decision, Louis Schlenger, Inc. operated both the tavern and the package goods store under its plenary retail consumption license. At first sight it appeared that the operation was proper and within the rule laid down in In re Koehler, Bulletin #59, Item 13, wherein it was ruled that a consumption licensee might arrange the licensed premises in such manner that the front portion thereof is operated as a distribution store and the rear as a bar. Upon further consideration, however, it was ruled, on February 27, 1937, that upon all the facts disclosed by the investigation the operation of the tavern and package goods store under the consumption license issued to Louis Schlenger, Inc. was improper. The licensee was ordered to discontinue the operation of the package goods store. Bulletin #165, Item 11.

The weakness of appellant's contention in this case is threefold: (1) Louis Schlenger, Inc. is not a party to this proceeding and, hence, its right to operate cannot be tested herein; Steup vs. Wyckoff, Bulletin #155, Item 12; (2) the respondent admittedly has not issued a fifth distribution license in violation of its ordinance; (3) appellant has failed to show that any affirmative action was taken by respondent with reference to the alleged illegal operation of the separate package goods store at the Colonial Hotel. The most that appellant has shown is that respondent permitted the operation of the separate package goods store to continue. In view of the fact that no steps were taken by this Department to close the operation of the separate package goods store until February 27, 1937, it cannot be said that such permissive action by respondent was improper.

Appellant has failed to show any bad faith on the part of respondent in denying his application.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 16, 1937.

4. APPELLATE DECISIONS - GOLDBERG vs. LITTLE FALLS

MINNIE GOLDBERG, Appellant,	)	
-vs-	)	ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LITTLE FALLS, Respondent	)	CONCLUSIONS

M. Metz Cohn, Esq., Attorney for Appellant.
Walter J. Hunziker, Esq., Attorney for Respondent.
Vincent C. Duffy, Esq., by Joseph G. Sproviere, Esq.,
Attorney for Louis Cosloy, an Objector
Rev. J. C. Wiedenger, an Objector, Pro Se.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application to transfer her plenary retail consumption license for premises located at #7 Paterson Avenue, Little Falls, to premises including #5 and #7 Paterson Avenue, Little Falls.

Until his death in 1919 appellant's husband conducted the "Eagle Hotel" at Paterson Avenue and Main Street, Little Falls, and thereafter his widow, the appellant herein, continued its operation. In 1929 the premises were replaced by a two-story brick building containing four separate stores on the street floor. The corner store, numbered 7 Paterson Avenue, and the floor above were continued in use by the appellant as the "Eagle Hotel" - the store itself being used as a cafe and the rooms above being used for the accommodation of hotel guests and by the appellant as her living quarters. At present there are six guests. A register of guests has been regularly maintained and contains entries for many years. A large electric sign containing the words "Eagle Hotel-Cafe-Wines Liquors" hangs from the exterior of #7 Paterson Avenue.

The adjacent store, #5 Paterson Avenue, is at present vacant. The remaining two stores are occupied. Appellant desires to enlarge the licensed premises to include the vacant store. She proposes to close the entrance to #5 Paterson Avenue and operate the enlarged premises as a single place of business, using solely the entrance to #7 Paterson Avenue. To effect such purpose she applied for transfer of license in accordance with the procedure set forth in Bulletin 89, Item 7. Objections to the transfer were urged on the ground that that part of the premises presently sought to be licensed for the first time since Repeal were within 200 feet of the First Reformed Church, and on the basis thereof the respondent denied the application.

The Church property consists of a brown stone church edifice and a one-story shingle building used for Sunday-School, meetings of church societies, and in cases of emergencies, for the conduct of church services. The contention was advanced that the latter building, which is substantially less than 200 feet from #5 and #7 Paterson Avenue, should be considered as part of the church within the meaning of Section 76. The decision of the New Jersey Supreme Court in <u>Newark Athletic Club v. Board of Adjustment of Newark</u>, 7 N. J. Misc. 55 (1929) seems to compel a contrary result. However, in view of the findings hereinafter made, this issue need not be determined.

The entrance door to the church edifice itself is located approximately 42 feet from the sidewalk; about 9 feet from the sidewalk there are three steps connecting with a raised concrete path leading directly to the entrance door. There is a lawn located on both sides of the concrete path. The objectors contend that under these circumstances the 200 feet referred to in Section 76 should be measured from the beginning of the three steps to the entrance of the licensed premises, whereas the appellant contends that the measurement should be from door to door. The contention of the objectors is sound. Section 76 contains no mention of the phrase "entrance door" and refers solely to "entrance." The steps and raised path clearly separate the church from the walk used by the general public. The three steps constitute the entrance to the church. See Bulletin 48, Item 11; Bulletin 127, Item 4. Thus measured, the distance between the church

and #7 Paterson Avenue is substantially less than 200 feet. Hence the premises #5 Paterson Avenue, which is situated between #7 and the church, are even closer.

Appellant has held licenses for #7 Paterson Avenue since Repeal and three of her applications therefor expressly stated that the premises were within 200 feet of a church. Presumably, the licenses were granted in respect to #7, notwithstanding this statement, upon the finding that the premises consisted of a hotel within the statutory exemption from the 200 foot rule afforded to hotels "which own or are actually in possession of the licensed premises at the time this act becomes effective." See Section 76. Cf. Bulletin 59, Item 2. What constitutes a hotel is a question of fact, to be determined by a consideration of all the circumstances presented in each individual case. See Anthony v. Branchville, Bulletin 80, Item 9; Latz v. Somers Point, Bulletin 146, Item 5. In re Corona, Bulletin 29, Item 5, a hotel was defined as

> "***a public house for the lodging and entertainment of travelers or wayfarers for a compensation. In short, an inn of the better class. It is to be distinguished from a tavern or a house of public entertainment that does not provide lodging and from a boarding house which, while it provides lodging, is not a public house. The boarding house keeper may refuse accommodations to anyone he chooses. The innkeeper must entertain all travelers or wayfarers who are of good conduct and ready to pay the proper charges."

The evidence in the instant case sufficiently establishes that the premises at #7 Paterson Avenue have been and are being operated as a hotel within the foregoing definition.

The present entrance to #5 Paterson Avenue is over 14 feet nearer the church than is the entrance to #7 Paterson Avenue. Accepting the propriety of the issuance of a license for #7 Paterson Avenue, the question still remains as to whether the statutory exception in favor of hotels permits the enlargement via transfer of the licensed premises to include #5 Paterson Avenue.

The Courts have repeatedly held that provisos and exceptions to general enactments are to be strictly construed. See Clark Thread Company v. Kearny Township, 55 N. J. L. 50, 54 (Sup. Ct. 1892); State Board v. S. S. Kresge Co., 113 N.J.L. 287, 296 (Sup. Ct. 1934), aff'd 115 N.J.L. 495 (E. & A. 1935). In the former case, Mr. Justice Van Syckel said:

> "The rule is that a proviso is to be strictly construed and that it takes no case out of the enacting clause which is not fairly within the terms of the proviso. United States v. Dickson, 15 Pet. 141. This will justify an interpretation which gives the narrowest possible effect to the proviso, which is consistent with a reasonable reading of its language."

The legislative purpose in Section 76 is evident. Licensed premises are to be kept at a reasonable distance from churches, but out of considerations of fairness and in order to avoid substantial economic loss, hotels which owned or possessed their premises at the passage of the Act could obtain licenses for the hotel premises. Expansion of the special exception by permitting a hotel to enlarge its existing licensed premises so as to bring them even closer to a church is clearly beyond the legislative contemplation. Analogies in the law are readily to be found. The Zoning Act permits the continuance of a non-conforming use or structure existing at the time of the passage of a restrictive zoning ordinance. The courts have consistently held that this exception does not permit substantial enlargement or change of any non-conforming use. See DeVito v. Pearsall, 115 N.J.L. 323 (Sup. Ct. 1935); Kensington Realty Holding Co. v. Jersey City, 118 N.J.L. 114 (Sup. Ct. 1937). Similarly, in the law of easements it is established that the dominant tenant cannot burden the servient tenement beyond the express terms of the easement. See Diocese of Trenton v. Toman, 74 N.J. Eq. 702 (Ch. 1908).

In view of the foregoing authorities, Section 76 must be construed to prohibit persons operating licensed premises within 200 feet of churches or schools, pursuant to statutory exceptions, from enlarging and transferring their premises so as to bring them closer thereto. The appellant's application for transfer to the enlarged premises was, therefore, properly denied.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 18, 1937.

5. LICENSEES - CHECK SHAVING IS NOT PERMISSIBLE IN LICENSED PLACES.

Dear Sir:

I would like to know whether a State law exists which regulates the deduction of a small fee from all customers' checks, when cashed in saloons and taverns.

Gus Stein
THE AVENUE REALTY CO., INC.

May 19, 1937.

The Avenue Realty Co., Inc.,
Passaic, New Jersey

Gentlemen:

There is nothing in the Alcoholic Beverage Control Act or in the State regulations prohibiting the cashing of checks in saloons.

Deduction of a fee for cashing checks sounds more like running a bank of discount than operating a tavern. Aside from the statutes restricting banking to those duly authorized, I rule that check "shaving" is not a permissible practice in licensed places.

Even when done for mere accommodation and without any charge, the cashing of checks - especially pay checks - in taverns is not good practice. Far-sighted licensees would help themselves and the whole trade by refusing to cash any checks.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. LICENSEES - MANAGERS - LICENSEES MAY EMPLOY MANAGERS BUT THE LICENSEE MUST BE THE ACTUAL OWNER AND IS FULLY RESPONSIBLE FOR ALL THAT OCCURS ON HIS PREMISES - HEREIN OF THE ADVISABILITY OF RUNNING ONE'S OWN BUSINESS.

LICENSEES - THE CONTROL ACT DOES NOT PREVENT A LICENSEE FROM BEING EMPLOYED IN A HOSPITAL.

Dear Sir: RE BLANK

Could you advise me in a small matter which I'm very much concerned about. I've started action to obtain a license for a Tavern.

What really worries me most is I'm at present employed by a Hospital as a truck driver or supervising attendant. I need my job. I have been told that when a license of this nature is issued to me I would lose my job. Please advise me in regards to this.

My intentions were to get the license, hire a bartender and continue with my job. Is this a State law or have I been misinformed. I'm really worried, if this is true I'll have only one course to take, drop the action and keep my job.

Respectfully yours,

May 18, 1937.

Dear Sir:

I understand that you are presently employed by a Hospital, that you are applying for a liquor license for a tavern and if the license is issued, wish to keep your job in the Hospital and hire a bartender to take care of the tavern.

There is no objection, so far as the Alcoholic Beverage Control Act is concerned, to your holding a liquor license and your job at the Hospital at the same time. The issuance of liquor licenses to public officials and employees is prohibited only if the applicant is employed as an officer entrusted with the enforcement of the law. Of course, there

may be some objection on the part of the Hospital. I therefore suggest that before you go any further with your application, you communicate at once with the Hospital authorities and get their reaction.

Noting that if your application is successful you anticipate hiring a bartender to run the tavern for you, I must caution you that the person to whom the license is issued must actually be the real owner of the business and not merely a front for the so-called manager-bartender. If the manager you are going to hire is the real owner, then he, not you, should take out the license.

The employment of a manager will not relieve you of any responsibility. A licensee is held fully accountable for all that happens on his premises, for all of the acts or omissions of his employees or agents and for any violations which may occur whether committed with his knowledge or in his presence or not. Lack of knowledge or ignorance of the law is no excuse.

It is, therefore, a great risk that you will assume by hiring someone else to run your business for you. Whatever he does you are responsible for and you may lose your license on account of it. It is better that licensees run their own businesses and not take chances on managers. My candid advice to you is that you now decide whether you want to run a liquor business or work in the Hospital and if the former, that you arrange, when the license is issued, to take active charge of the liquor business yourself.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. TRANSFERS - WITHDRAWAL OF APPLICATION IS EQUIVALENT TO DENIAL - NO REFUNDS.

REFUNDS - NONE ON TRANSFERS - TRANSFER FEES MUST BE RETAINED BY THE LICENSE ISSUING AUTHORITY REGARDLESS OF WHETHER OR NOT TRANSFER IS GRANTED.

Dear Sir:

My client, one Felice Mobilia, sought to procure a transfer of his plenary retail consumption license in his community, in Clifton, New Jersey, but withdrew the said application before the City Council considered it. The transfer was to be from place to place and not from person to person. The reason for the withdrawal being that the landlord decreased the monthly rental of the licensed premises.

Under these circumstances will you kindly advise whether the City of Clifton was justified in refusing to return the $5.00 that was deposited with the filing of the application, even though this application had never been before them for consideration and had been voluntarily withdrawn in writing prior to the date when the same was to have been considered.

Very truly yours,

HARRY KAMPELMAN

May 18, 1937.

Harry Kampelman, Esq.,
Passaic, New Jersey.

My dear Mr. Kampelman:

So far as refunds are concerned, the withdrawal of an application is equivalent in effect to a denial thereof. Re Royal Liquor Stores, Ltd., Bulletin 59, Item 5; U.S. Pipe & Foundry Co. v. Burlington and Sozio, Bulletin 57, item 12. In the absence of any express provision in the statute for refund in the event application for transfer from place to place is withdrawn or denied, no right to a refund should be implied. Re Goff, Bulletin 76, item 3. Applications for such transfers must be accompanied by the required $5.00 fee, which fee must be retained by the municipal license issuing authority regardless of whether or not the transfer is granted. See the Rules Governing Transfers of Licenses, Rule 15.

Mr. Mobilia is, therefore, not entitled to any refund.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

8. APPELLATE DECISIONS - STEMPLE v. BRIDGEWATER.

MARY STEMPLE,)
Appellant,)
-vs-) ON APPEAL CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BRIDGEWATER,)
Respondent)

Leon Gerofsky, Esq., Attorney for Appellant.
George W. Allgair, Esq., Attorney for Respondent.
Gilbert E. Crogan, Jr., Esq., Attorney for Calco Chemical Co. and Sherwin Williams Co., Objectors.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located on Eastern Turnpike, Township of Bridgewater.

Appellant, who has never been engaged in the liquor business, sought a license for a small one-story structure, of which she is the lessee, and which is located on Eastern Turnpike between a brook and a road which leads to a plant owned and operated by Sherwin Williams Co. The license was denied because, among other reasons, the premises sought to be licensed will serve no community interest or need, and are so situated as to be an attraction only to those working in adjoining manufacturing plants.

The evidence shows that the only manufacturing plants of any size in the Township of Bridgewater are those owned and operated by Sherwin Williams Co. and Calco Chemical Co. The main

entrance to the Sherwin Williams plant is, as has been indicated, along the road which runs along one side of the premises for which the license is sought. Measured along this road, the distance between the licensed premises and the employees' entrance to that plant is about six hundred seventy feet. The entrance to the Calco Chemical Co. building is approximately one thousand feet from the premises for which the license is sought, but a part of the land owned by the latter concern and used by its employees for recreational purposes is only one hundred feet away. Both Sherwin Williams Co. and Calco Chemical Co. objected to the issuance of the license, and the license was refused after a hearing at which the representatives of these Companies presented their objections.

Appellant contends that she does not intend to rely mainly upon the trade from employees of these factories. It is extremely difficult, however, to see how there is any need for a licensed place in this vicinity except to cater to the needs of these employees. The entire surrounding neighborhood, apart from the factories, is very sparsely populated. There is farm land to the north. The nearest residence, aside from one on the opposite side of the brook, is about five hundred feet away. When appellant was asked if there were six houses within one-quarter of a mile of her premises, she said she did not know. Thus, aside from those employed in the two factories above mentioned, it does not appear that this license is necessary to take care of the needs of the residents of the Township.

A representative of Sherwin Williams Co. testified that they objected because all of their employees must come directly past the premises in question. As he said: "Our business is chemical, and the materials must be handled properly if injury is not to result to our employees. A representative of Calco Chemical Co., employing 2300 persons in various shifts throughout the day and night, testified that its business is the manufacturing of some of the heavy chemical and dyestuffs, including a great variety of chemical products, many of which have to be handled very carefully and which, if misused, are very dangerous. As I said in _Zavatarro v. New Brunswick_, Bulletin 173, Item 4:

> "The presence of a tavern directly in front of the industrial plant might well furnish a temptation, not otherwise present, to employees about to begin their shift to have 'just one drink' before entering the plant. Consequently, in the interests of efficiency and safety, it was open to the Board to decline the issuance of licenses for premises near industrial plants."

Under these circumstances, I cannot say that the action of respondent in denying the license is either unreasonable or in any real sense discriminatory.

The only other evidence produced by appellant which would tend to show discrimination was that at one time respondent issued a license to another place which was located within two hundred feet of the Calco plant. That license expired more than a year and a half ago and was not renewed. There is presently no licensed premises within close proximity to these manufacturing plants and, apparently, the respondent's present policy is to refuse to issue any licenses to places which must depend for business solely upon the employees of these chemical manufacturers. The issuance of the license some years ago does not indicate any discrimination against the applicant at the present time.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 20, 1937.

9. DISCIPLINARY PROCEEDINGS - LEWD PERFORMANCES AND ORGIES OF LOWER SMUT - GIRL DEGRADATION SHOWS MARK MILESTONES TOWARD THE DOOM OF REPEAL - HEREIN OF BUCK PASSING AND THE EFFECT OF IGNORANCE UPON INSULATION.

May 21, 1937

Robert V. Peabody, Clerk,
Township Committee of Pennsauken,
Merchantville, N. J.

Dear Mr. Peabody:

I have staff report of the proceeding before the Township Committee of Pennsauken against Joseph DeLuca, trading as Red Hill Inn, for violation of the State Rule prohibiting lewd or immoral activities on licensed premises.

The show itself, beginning with Strip Tease and the higher "glorifications," eventually dipped into orgies of lower smut. No good is served by repeating the revolting detail.

The report states:

"The Committee retired and returned to announce its decision at 10:40 P. M. by Chairman Ludwick, in effect as follows:

"'We have considered the evidence as judge and jury and speaking for myself and the other committeemen we find the following: We believe the testimony of the agents as it was given. We also believe the testimony of DeLuca that he knew nothing about the entertainment. We have records of DeLuca and his establishment, and they show that we have never had any trouble with him or his place. This is the first case of its kind that has come before this committee. We believe that somebody was lax, and as licensee, DeLuca must pay the penalty for that laxness. As a warning to the other licensees of the Township, we have imposed a suspension of 5 days, beginning 2 A. M. Tuesday, May 18, 1937 until 1 P. M. Sunday, May 23, 1937.'

"On roll call, the committee so resolved unanimously.

"Attorney Primost then asked that the suspension be imposed so that the five day period would not include a Saturday since that was the busiest day. The request was refused because that aspect of the penalty was considered and it was the desire of the Committee to make it a real penalty."

Rendle S. Willgoos, Director of Public Safety, writes me:

"After hearing all of the evidence in this case, the committee felt that the revocation of the license would be too severe a penalty to inflict at this time. This was the first case of this character which has been reported in Pennsauken Township, and the licensee apparently heretofore conducted his licensed premises in a proper manner.

"The committee was satisfied that Mr. DeLuca himself was not conversant with the details of the show

which was to be presented in the banquet room on the second floor which had been rented by an American Legion Post, of Tacony, Pa. The committee further realized, of course, that legally that makes no difference and that DeLuca is chargeable with whatever occurs on the premises whether he is there or not."

This shows good faith by the Township Committee. I appreciate that they have promptly taken a sizeable, if not wholly satisfactory step, toward the cleansing of Pennsauken. I hope their warning proves sufficient. These girl degradation shows, if tolerated on licensed places, mark milestones toward the doom of Repeal. The point to be driven home is that licensees will not be allowed to "pass the buck." It may be that DeLuca actually knew nothing about the "entertainment" but even so, it is his business to know and control what goes on. Everybody else knew. We knew it up here in Newark. Why do you suppose my men were there that night? Convenient ignorance is bliss, but it is no insulator from responsibility.

A few good outright revocations will drive this dirty business out of New Jersey for keeps.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. SPECIAL PERMITS - NOT ISSUABLE TO RETAIL LICENSEES FOR SALES IN ANOTHER MUNICIPALITY - BUT PERMITTEE MAY ENGAGE CONCESSIONAIRE TO MANAGE REFRESHMENT STANDS AND HANDLE LIQUOR SALES PROVIDING THAT PERMITTEE ACCEPTS FULL RESPONSIBILITY FOR ACTS OF CONCESSIONAIRE AND RETAINS FULL CONTROL OVER HIM AND THE PREMISES.

May 21, 1937.

Mrs. M. Hartley Dodge,
Madison, New Jersey.

My dear Mrs. Dodge: Re Morris & Essex Kennel Club

I have letter from Leon E. Enslee stating that he has been granted a concession for May 28th and 29th for the Club Show to be held on those dates, and requesting special permit.

Enslee's license is in Madison. Your show is to be put on in Harding Township. No special permits are issuable to retail licensees for sales in another municipality. Re Zogg, Bulletin 132, item 10.

The Kennel Club itself, as a social organization, may, however, obtain a special permit the same as last year. I am therefore enclosing an application.

Should the Club obtain the special permit, it may buy the alcoholic beverages to be sold, from Mr. Enslee, or for that matter from any other duly licensed manufacturer, wholesaler or retailer. There would be no objection to the Club's hiring Mr. Enslee under the special permit to manage the refreshment stands and handle the sales of liquor for them, providing that the Club itself accepts full responsibility for whatever is done by the

concessionaire and that the Club retains at all time full control over the concessionaire and the premises so temporarily licensed.

With every good wish for the success of your Show which I understand attracts national attention, I am,

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISPOSITION OF SPECIAL CASES - HEREIN OF THE REFRESHING ABSENCE OF THE USUAL ALIBI.

May 22, 1937.

Edward J. Kappelmann,
Clerk of Green Brook Township,
Bound Brook, N. J.

Dear Mr. Kappelmann:

I have staff report and your certification of the proceedings before the Township Committee of Green Brook against Edwin B. Loomis, charged with having possessed illicit alcoholic beverages.

The report states that the inspectors "tested five opened bottles of alcoholic beverages and found that they were between six to ten points below the proof marked upon the labels.

"At the hearing, the licensee interposed no defense, but stated that he had no knowledge of how the adulteration of the alcoholic beverages occurred.

"Sentence - Licensed suspended for ten (10) days - May 17 to May 26, 1937, inclusive.

"NOTE: The Township Clerk in his letter to the Commissioner states that Mr. Loomis is well known in his community as an honest, upright and law-abiding citizen; that the police have attested to the fact that his place is one of the cleanest and most law-abiding places in the township; that the members of the Township Committee are well acquainted with this establishment and have never had a moment's trouble with it; that in view of the splendid reputation Mr. Loomis enjoys and being convinced of his personal innocence in connection with the adulteration, the penalty was made only 10 days; that in addition, the licensee was reprimanded and told in no uncertain terms that the responsibility was his and a second complaint would mean the unconditional revocation of his license."

In view of the facts certified I wholly approve the action of the Township Committee. It must be quite refreshing to hear a licensee frankly admit he doesn't know how it happened instead of attempting to alibi himself out by blaming

it on the barkeeper, the kitchen scullion or his wife's relations.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. LICENSEES - EMPLOYEES - THE PURPOSED LEGISLATIVE AMENDMENT.

May 18, 1937.

My dear Commissioner:

Will you please advise me the latest disposition on the status of seashore employees in licensed places as regards the item of residence.

Yours very truly,

I. GRANT SCOTT

May 22, 1937.

Hon. I. Grant Scott,
Cape May City, New Jersey.

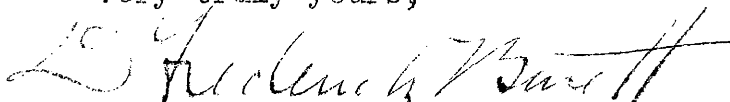
My dear Assemblyman:

I have yours of the 18th.

Section 23 of the Control Act in its present form prohibits the employment by licensees of a person who has not been a resident of the State of New Jersey for at least five years continuously immediately prior to his employment, except pursuant to a Special Permit which must be conditioned that the employee cannot serve, sell or solicit the sale of alcoholic beverages in any manner whatsoever.

Assembly 382, which has passed the Assembly and is now in the Senate, purposes to amend Section 23 by eliminating the last mentioned condition, so far as persons now disqualified merely by lack of residence are concerned. They must still be of age and American citizens and otherwise fully qualified.

Very truly yours,



D. Frederick Burnett
Commissioner

Inspected by:
J. EDGAR
and found O. K.

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