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

BULLETIN 311 APRIL 19, 1939.

1. PIN BALL MACHINES - PERMISSIBLE ON LICENSED PREMISES SO LONG AS THERE IS NO PAY-OFF OR GAMBLING.

April 10, 1939

Mr. Alfred E. Hime,
West Englewood, N. J.

My dear Mr. Hime:

It is permissible, so far as the State Alcoholic Beverage Law and Regulations are concerned, for the holders of retail liquor licenses to have pin ball machines on their premises, provided there is no pay-off and they are not used in any way for gambling. If used for gambling, it would not only be a misdemeanor under the Crimes Act, but also in violation of State Regulations No. 20, and cause for the suspension or revocation of the license.

This, of course, does not purport to authorize the maintenance of such machines contrary to local municipal regulations generally licensing or restricting their use. Whether there are such regulations in any particular municipality, and if so, what they provide, you can determine by communicating directly with the Municipal Clerks.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. TRANSPORTATION INSIGNIA - MUST BE PERMANENTLY AFFIXED TO THE VEHICLE - NOT PERMISSIBLE TO HAVE THEM ON REMOVABLE CARDS.

April 11, 1939

Star Liquors, Inc.,
West New York, N. J.

Gentlemen:

Transportation insignia must be affixed to the vehicle itself. It is not permissible to have them on removable cards.

Unless the cards or panels you propose to install over your rear windows are made a permanent part of the vehicle, they may not be used to carry the transportation insignia.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FAIR TRADE - MODIFICATION OF ORDER.

In the Matter of Disciplinary Proceedings against

ISIDORE C. HORN,
379 Centre Street,
Nutley, N. J.,

Holder of Plenary Retail Distribution License No. D-3, issued by the Board of Commissioners of the Town of Nutley.

ORDER

BY THE COMMISSIONER:

It appearing that this licensee pleaded guilty to a charge of violating Rule 6 of State Regulations No. 30 in advance of the date set for hearing, and that an order was entered on December 10, 1938 suspending his license for a period of ten (10) days commencing December 11, 1938 at midnight (Bulletin 287, Item 6); and

It further appearing that said suspension was temporarily lifted on December 17, 1938 (Bulletin 289, Item 1), at which time the licensee had already served six (6) days of his suspension; and

It further appearing that, in accordance with my present policy of reducing the penalties for violations of the Fair Trade regulations from ten to five days where the Department has been saved the time and expense of proving its case (see Re Polonsjy and Kiewe, Bulletin 308, Item 9), this licensee is entitled to the benefit of the practice therein adopted;

It is, accordingly, on this 8th day of April, 1939, on the Commissioner's own motion,

ORDERED, that the balance of the suspension heretofore ordered against Plenary Retail Distribution License No. D-3, issued to Isidore C. Horn by the Board of Commissioners of the Town of Nutley, be and the same is hereby lifted, effective immediately.

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - MODIFICATION OF ORDER.

In the Matter of Disciplinary Proceedings against

PAUL DAVID RAPPAPORT,
205 Madison Street,
Passaic, N. J.,

Holder of Plenary Retail Consumption License No. C-99, issued by the Board of Commissioners of the City of Passaic.

ORDER

BY THE COMMISSIONER:

It appearing that this licensee pleaded guilty to a charge of violating Rule 6 of State Regulations No. 30 in advance of the

date set for hearing, and that an order was entered on December 13, 1938 suspending his license for a period of ten (10) days commencin December 13, 1938 at midnight (Bulletin 288, Item 2); and

It further appearing that said suspension was temporarily lifted on December 17, 1938 (Bulletin 289, Item 1), at which time the licensee had already served four (4) days of his suspension; and

It further appearing that, in accordance with my present policy of reducing the penalties for violations of the Fair Trade Regulations from ten to five days where the Department has been saved the time and expense of proving its case (see Re Polonsjy and Kiewe, Bulletin 308, Item 9), this licensee is entitled to the benefit of the practice therein adopted;

It is, accordingly, on this 8th day of April, 1939, on the Commissioner's own motion,

ORDERED, that the suspension heretofore ordered against Plenary Retail Consumption License No. C-99, issued to Paul David Rappaport by the Board of Commissioners of the City of Passaic, be and the same is hereby reduced from ten (10) days to five (5) days, leaving one day of the suspension still to be served. Pursuant to notice of December 17, 1938 (Bulletin 289, Item 1), the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - MODIFICATION OF ORDER.

In the Matter of Disciplinary Proceedings against

HERMAN ADES,
73 Waverly Avenue,
Newark, N. J.,

Holder of Plenary Retail Distribution License No. D-86, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

ORDER

BY THE COMMISSIONER:

It appearing that this licensee pleaded guilty to a charge of violating Rule 6 of State Regulations No. 30 in advance of the date set for hearing, and that an order was entered on December 20, 1938 suspending his license for a period of ten (10) days (Bulletin 289, Item 12); and

It further appearing that the effective date of such suspension was reserved for future determination in accordance with notice of December 17, 1938 (Bulletin 289, Item 1); and

It further appearing that, in accordance with my present policy of reducing the penalties for violations of the Fair Trade regulations from ten to five days where the Department has been saved the time and expense of proving its case (see Re Polonsjy and Kiewe, Bulletin 308, Item 9), this licensee is entitled to the benefit of the practice therein adopted;

It is, accordingly, on this 8th day of April, 1939, on the Commissioner's own motion,

ORDERED, that the suspension heretofore ordered against Plenary Retail Distribution License No. D-86, issued to Herman Ades by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby reduced from ten (10) days to five (5) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

6. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938))

Case No. 53)

CONCLUSIONS AND ORDER

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BY THE COMMISSIONER:

On December 24, 1925 petitioner pleaded guilty in a Court of Quarter Sessions to a charge of breaking and entering, as a result of which he was fined $350.00 and placed on probation for a period of two years. At the hearing herein petitioner testified that he had not participated in the actual breaking and entry but that he had driven three men to and from the premises where the crime was committed. Aside from his plea of guilt, it sufficiently appears that he participated in the commission of the crime. Said crime clearly involves moral turpitude. Case No. 186, Bulletin 209, Item 6. Petitioner has no other criminal record except that, in 1926 or 1927, he was fined $200.00 for operating an automobile while under the influence of liquor, in violation of the terms of the Motor Vehicle Act.

Petitioner has resided in the municipality where he now lives for more than forty-two years except for a period of about two years when he resided in an adjoining municipality. He was engaged in the painting business until December 1933, at which time he obtained a retail liquor license. He has operated licensed premises continuously since that time.

Petitioner's record as a licensee is clear except that on one occasion he paid a fine of $10.00 to the Federal Government because of a stamp missing from a barrel of beer, and further except that disciplinary proceedings were recently instituted against him, which will be considered hereafter.

At the hearing petitioner produced three character witnesses: the recorder who, in 1925, held him for the Grand Jury and who has known him for forty years, a motion picture operator who has known him for three years, and a court attendant who has known him for twenty years. All testified that petitioner's reputation in the community is good and that, so far as they knew, he had never been arrested or convicted at any time other than those set forth herein.

It appears from our records that, as a result of an investigation instituted by this Department, a synopsis of said investigation was recently forwarded to the Mayor and Council of the municipality wherein petitioner conducts his business, recommending that disciplinary proceedings be instituted because of petitioner's failure to disclose the 1925 conviction in his application for a license. On March 14, 1939 petitioner herein pleaded guilty to said charge and his license was suspended for three days. In advising me of said suspension, the attorney for the Mayor and Council says:

> "The Council, in imposing the penalty, took into consideration the fact that even though there was an omission in the application and some punishment should be meted out to the defendant, that the three day period would be sufficient inasmuch as he has conducted his tavern in an orderly manner without any difficulty or without any complaints being made, and since the crime alleged he has also conducted himself as a good citizen."

At the hearing herein petitioner testified that he had failed to disclose his conviction in his application for his license because he thought "that a man had to serve time in jail for a year before he was convicted of any crime." This, of course, is not so.

Ordinarily where it appears that a petitioner has filed a false application, I am hesitant to exercise my discretion in lifting his disqualification. Case No. 39, Bulletin 279, Item 6. However, in this case the issuing authority has imposed a mere three day suspension because of the false application probably only in order to vindicate the law and to teach him that he must disclose his conviction in future applications. His only lapse during the last twelve years has been concealment of past wrongdoing. That, however, is quite understandable, especially so since it is clear that he has made a sincere and successful effort to live it down. On the other hand, it was his duty to disclose it to the license issuing authorities. If he had, he never would have gotten his license at all for conviction of a crime involving moral turpitude is an absolute disqualification. The Mayor and Council which granted the license were, therefore, deceived. They have, nevertheless, taken that deception lightly as shown by the mere three day suspension. It is manifest that, instead of revoking the license, as they well could, they are willing to let things stand as they are and give this man a helping hand on his long up-hill comeback. My refusal to lift the disqualification would be equivalent in effect to a revocation — in fact, would be felt more than twice as long a time. It would extend the local suspension from three days to the better part of five years. I am always heartily in favor of giving a man another chance when he has really turned over a new leaf. I shall, therefore, defer to the judgment of the local authorities and place no more obstacles in his way.

On all the evidence, I, therefore, conclude that petitioner has led an honest and law-abiding life for more than twelve years last past, and that his continued association with the alcoholic beverage industry will not be prejudicial to the interests of that industry.

It is, therefore, on this 12th day of April, 1939, ORDERED that petitioner's disqualification from holding a license, or being employed by a licensee, because of the convictions referred to herein, be and the same is hereby removed, in accordance with R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

7. ALIENS - ALIEN NATIONALS OF ITALY - DEFINED.

April 15, 1939

Giordano,Golden & Hurley,
Counsellors at Law,
Long Branch, N. J.

Gentlemen: Att: Julius J. Golden, Esq.

I have yours of the 12th requesting my definition of "Alien Nationals of Italy" as used in Re Woertendyke, Bulletin 304, Item 8.

An Alien National of Italy is a person who, instead of being a citizen of the United States, is a subject of the Kingdom of Italy.

Such person remains an Alien National until he obtains his second papers and is actually admitted to American citizenship. Declaring his intention to become such a citizen by taking out his first papers does not make him a citizen.

An American citizen of Italian extraction does not come within the term.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - PROSTITUTION - REVOCATION INDICATED AND EFFECTED.

In the Matter of Disciplinary Proceedings against

LOUIS SENGEBUSH,
88 Belmont Avenue,
Newark, New Jersey,

Holder of Plenary Retail Consumption License C-494, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
David P. Wiener, Esq. and Joseph A. D'Alessio, Esq., Attorneys for the Defendant-Licensee.
Leon J. Lavigne, Esq., Attorney for Jean S----, a witness.

BY THE COMMISSIONER:

The defendant is charged with having "allowed, permitted and suffered prostitutes and other persons of ill repute" at his tavern "contrary to Rule 4 of State Regulations No. 20."

The defendant moves for dismissal on the ground that the charge is fatally defective in that it does not allege that the defendant permitted "known" prostitutes and other persons of ill repute at his tavern.

The contention rests upon the fact that the word "known" appears in Rule 4 of State Regulations No. 20, which reads as follows:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute."

It is definite that a licensee, to be found guilty of violating this Rule, must have tolerated the undesirables in his licensed premises while knowing of their unsavory character. Re Kaas, Bulletin 239, Item 1; Re Foster and Clauss, Bulletin 248, Item 4. The question presented by the defendant's motion is whether the charge sufficiently apprises him of the fact that he is alleged to have permitted "prostitutes and other persons of ill repute" at his tavern while knowing of their character.

The charge, in accusing the defendant of having "allowed, permitted and suffered" prostitutes and other persons of ill repute at his licensed premises is, by use of those words, reasonably clear to the effect that the defendant is being accused of having tolerated the undesirables at his tavern while aware of their character. As I said in Re Kaas, supra:

> "Each one of these operative verbs just quoted necessarily mean that the licensee, knowing who these people are and what they are, nevertheless tolerated them on licensed premises."

There is no contention that the defendant was actually misled by the charge or unaware of what he was being called upon to answer. Being clear in character, and specifying the State Rule allegedly violated, the charge, while not embodying the exact language of the Rule, is nevertheless sufficient. Cf. Sawicki v. Keron, 79 N. J. L. 382 (Sup. Ct. 1910).

Accordingly, the defendant's motion is denied.

As to the merits: On the night of January 7, 1939, the Newark police placed the defendant's tavern under surveillance to investigate "complaints of women coming from the tavern.....and using the apartment at 104-106 Belmont Avenue, for immoral purposes." At 10:00 P.M., they observed Jean S----- (aged 22), and a man who closely followed her, leave the tavern and enter the nearby apartment house. They raided apartment #15 - belonging to one Alex - and there discovered Jean having intercourse with the man for hire.

In support of the present charge, Jean testified that she was first brought to the tavern in late November or early December 1938 by one Anna R-----, and was introduced to the defendant and to Maxie his bartender, and, at that or some later time at the tavern, also met Alex, whose apartment was the scene of the raid on January 7th; that she frequented the tavern "on Wednesdays or Fridays - sometimes on Saturday" until the night of the raid, and during that time had intercourse for hire at Alex's apartment with at least five men whom she had met at the tavern; that the procedure, when a man approached her in the tavern for intercourse, was to inquire of Alex (or of the defendant, if Alex was not there) whether he knew the man and, if all was satisfactory, to obtain the key and bring him to the

apartment; that her first occasion of having intercourse in the apartment was during the early part of December 1938, when Maxie the bartender came over and stated that "he had a customer for me....He told me to go to Alex's apartment, so I caught on right away what he meant", and gave her the key; that, on another occasion, when a man approached her in the tavern for intercourse, the defendant, in response to her inquiry, said that he knew the man; that once the defendant himself brought a "customer" over to her, and Alex gave her the key; that, on yet another occasion, the defendant handed her the key to the apartment when she had a "customer." She further testified that, on various occasions, she saw several other girls sitting around in the tavern "with some fellows" who had not accompanied them when they entered; that, to her knowledge, one of these girls had intercourse at Alex's apartment with a man whom that girl had met at the tavern. She denied that the defendant or Maxie had anything to do with her financial arrangement with her "customers" or with Alex for use of his apartment.

A Newark police officer testified that, when he and a fellc officer spoke with the defendant at his tavern during the early part of December 1938, the defendant remarked, "If you don't have women hanging around in the tavern, you cannot make a dollar"; that they (the officers) said, "Don't you know it is against the law to have women hanging around the tavern?"; that the defendant answered, "How else can you make a dollar?".

In defense, the defendant and his bartender, while admitting that Jean had been in the tavern, denied that they knew what she was doing or ever participated in her "business", and identified Alex (who was not produced at the hearing) as a person engaged in the tailoring business in New York and as one of the regular tavern "customers that comes in practically every other night - sometimes every night." The defendant admitted that he is friendly with Alex and lived with him several years ago for a period of eight months.

I am convinced by the testimony of Jean and the police officer that the defendant knowingly harbored prostitutes in his tavern and, in fact, cooperated with them in their "business" of soliciting men there for immoral purposes.

I find the defendant guilty as charged.

In view of the facts, outright revocation is indicated. Taverns dabbling in prostitution must be wiped out. The unholy union of liquor and vice will not be tolerated. Re Snyder, Bulleti 247, Item 9; Re Travisano, Bulletin 277, Item 13.

Accordingly, it is, on this 16th day of April, 1939, ORDERED, that Plenary Retail Consumption License C-494, heretofore issued to Louis Sengebush for premises 88 Belmont Avenue, Newark, N. J., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective immediately.

D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - NEWMARK v. WOOD-RIDGE.

MILDRED NEWMARK, :

Appellant, :

ON APPEAL

-vs- :

CONCLUSIONS

MAYOR AND COUNCIL of the BOROUGH OF WOOD-RIDGE, :

Respondent. :

Edward J. Sinder, Esq., Attorney for Appellant.
Murray Ludmer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located at 249 Valley Boulevard, Borough of Wood-Ridge.

Appellant contends that the denial was improper because the "chief" reason for denial was that the premises to be licensed are patronized by minors, which reason she contends is not legally sufficient, especially in view of the fact that licenses have been issued for other premises in the Borough which are also patronized by minors.

The answer, however, alleges that the reason mentioned by appellant was not the sole reason for denial. It alleges that the application was denied because the premises wherein appellant intends to conduct her business are located in a neighborhood where there are two other holders of plenary retail distribution licenses which more than amply meet the needs of the neighborhood and make the issuance of another such license in this neighborhood undesirable.

Appellant, who is qualified to hold a license, desires to operate the business in the rear room of a store conducted by her father wherein candy, ice cream, magazines and tobacco are sold. The only entrance to the licensed premises would be through her father's store. She contends that less than one-third of the patrons of her father's business are minors, and that the denial of her license was discriminatory because minors patronize two delicatessens and a drug store for which distribution licenses have already been issued.

It is not the display of packaged goods in the presence of minors which does the harm to them for, if that were so, then every shop window of a store devoted exclusively to the sale of alcoholic beverages would in and of itself be against public policy as constituting a standing temptation to minors to drink. I have greater faith in our youth than that! Display of differently colored liquids and various shapes of bottles are, of course, designed to attract the eye. But that is something quite different from creating a desire in minors to be translated into decision to purchase liquor. We are always going to have minors and they are not as unhardy a lot as so often pictured by some adults who talk

about them as if they were hot-house plants never to be exposed to the chilling blasts of reality or become inured to resistance of temptation on their own volition.

The objection, in the instant case, might well have been grounded, not on the generality that the premises in question are a portion of a store patronized by minors, but, rather, that said premises are located in the rear of a candy and ice cream store of which, to all practical purposes, it is a part and through which is the only entrance to said premises, -- a place, therefore, not at all appropriate for a liquor license. If the case were put on that ground, I would have no hesitancy in denying the license. If, however, the only point in the case were that the license was denied because premises adjoining it were patronized by minors, I should then have to determine whether or not the denial was proper because of discrimination, because the delicatessens and drug store to which licenses have already been granted are likewise patronized by minors. It is not necessary to go into this point because, as above stated, there were other grounds assigned by the respondent as the basis of their denial, and, as hereinafter set forth, those other grounds were sufficient to warrant such denial.

It appears from the minutes of the meeting at which the application was unanimously denied that one of the objectors expressed the fear that Wood-Ridge would soon receive the name of the "booze town" of Bergen County. For the reasons aforesaid, it is likewise unnecessary to determine whether this left handed compliment would be earned if the instant license were granted. Decisions made in these appeal cases are not based on epithets or catch phrases conceived by objectors, however conscientious or however poignant the adjectives hurled may be.

At the hearing on appeal Councilman Dechert testified:

"Q. What were the objections voiced at the meeting in opposition to the granting of the license?
A. Primarily that there were sufficient licensed establishments to take care of the needs of the borough, from a moral angle for the control of the youth of the borough, and the fact the store was patronized largely by the younger element, and the fact there were two other stores within possibly five hundred feet of the applicant's store."

Mayor Staubach, who was not present when the application was denied, testified that, in his opinion, the people of Wood-Ridge contested this application because the premises are located in a shopping district which is one block long, and they "don't want a liquor store in every other store."

The testimony shows that appellant's premises are located on the westerly side of Valley Boulevard in a small business section which runs along the westerly side of the Boulevard for a distance of about two blocks, the easterly side of the Boulevard being vacant property; that this business section is located in a portion of the Borough known as "Sunshine City;" that approximately one-half of the seven thousand residents of the Borough reside in the "Sunshine City" section. It appears also that two of the five outstanding distribution licenses have been issued for premises on Valley Boulevard, one to a delicatessen store on the same block and the other to a chain grocery store located about midway on the next block; that at no time since Repeal have there been more than two licenses outstanding on Valley Boulevard.

Despite the fact that there is no municipal regulation limiting the number of plenary retail distribution licenses, respondent's determination that there is no need for an additional distribution license on Valley Boulevard appears to be reasonable. Grieb vs. Metuchen, Bulletin #217, Item 3; Wells vs. Matawan, Bulletin #284, Item 5.

Aside from appellant's testimony as to the need for another licensed premises, the only evidence of such necessity consists of a petition presented to the Mayor and Council containing the signatures of approximately one hundred seventy persons who state that they have no objections to the granting of the license. The petition opposing the granting of the license contains approximately one hundred ten names. Referring to the hearing held below, Mayor Staubach testified:

> "The ones that were opposed to this were there in person but the people favoring it were not there. It is a simple thing to get a petition and favor a thing as long as they have no bother of going before the Mayor and Council to voice their opinion."

The Mayor states the truth with admirable perspicacity. I have heretofore had to consider the effect of petitions. In Re Powell, Bulletin #59, Item 15, I said:

> "There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation without any considered thought of contents or effect or the argument on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides.
>
> "A petition is not a substitute for, nor may it in any way dispense with independent investigation to determine that the law has in all respects been complied with and that the licensee is in fact worthy. Neither does it suffice as proof of non-compliance or of unworthiness. Such matters are not proved either way by merely counting noses. If the subject matter concerns local policy, the weight to be accorded to the petition is entirely within the discretion of the Mayor and Council. It is their power and their responsibility."

See also Dunster vs. Bernards, Bulletin #99, Item 1.

The mere fact that the petition in favor contained more names than the other petition is not sufficient to show that the action of respondent in denying the license was erroneous. Masarik vs. Milltown, Bulletin #283, Item 10.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 16, 1939.

10. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - HEREIN OF NOTICES INDICATIVE OF GAMBLING.

In the Matter of Disciplinary Proceedings against ROBERT CAMPBELL, N. W.Corner Asbury Avenue and Route #35, Ocean Township, R. F. D. 1, P.O. Asbury Park,N.J., Holder of Plenary Retail Consumption License No. C-13, issued by the Township Committee of the Township of Ocean.	CONCLUSIONS AND ORDER

Benjamin Edelstein, Esq., Attorney for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

(1) On January 29, 1939 he sold and dispensed alcoholic beverages at his licensed premises, contrary to an ordinance adopted by the Township Committee of Ocean Township;

(2) On February 19, 1939 he sold and dispensed alcoholic beverages at his licensed premises, contrary to said ordinance;

(3) On February 19, 1939, and on divers days prior thereto, he allowed, permitted and suffered gambling on his licensed premises, contrary to Rule 7 of State Regulations No. 20.

The ordinance referred to provides that no alcoholic beverages shall be sold or dispensed between 4 A.M. and 7 A.M. on weekdays and between 4 A.M. and 12 Noon on Sundays.

On January 29, 1939 Inspector Murray and Investigator Poole, of this Department, were served with alcoholic beverages by a waitress on the licensed premises at 4:30 A.M. When they left, about five minutes later, sixteen or eighteen people remained on the premises, many of whom were drinking beer and other alcoholic beverages. The inspector and investigator did not disclose their identity at that time.

On February 19, 1939 Inspector Murray and Investigator Shafto, of this Department, were served with alcoholic beverages at 4:14 A.M. and again at 4:30 A.M. At 4:50 A.M. the inspector called a waitress and ordered two drinks of alcoholic beverages. The waitress expressed doubt as to whether the drinks would be served but, after speaking to the licensee, she brought the drinks to the table.

The evidence is sufficient to show the guilt of the licensee on the first charge, and he has pleaded guilty to the second charge. The license will be suspended for five days on each charge.

As to Charge 3: On February 19, 1939 the inspector and investigator discovered a large sign, a foot and a half by two and half, hanging on a wall near the shuffleboard, reading:

"NOTICE
A DRINK AFTER EACH GAME
THE LOSER PAYS
WINNERS CHALLENGED BY ADDITIONAL PLAYERS
WINNERS ALLOWED THREE
CONSECUTIVE GAMES."

The licensee says that the sign was placed above the shuffleboard by an unknown man who visits the tavern and plays the game, and that

> "I never paid off in beers to anyone for a high score or otherwise. I never cared who lost while playing the game, and was only interested to see to it that the drinks were paid for at the bar."

The presence of the above sign on the licensed premises leads to the inference that in all probability shuffleboard was played for drinks. There is, however, a total absence of evidence that any gambling took place on the licensed premises. Hence, the third charge is, therefore, dismissed. This sign is not to be replaced by any other sign of the same or similar import. The licensee is responsible for what happens on licensed premises and is hereby warned not to allow any gambling upon the licensed premises. Due notation will be made on the records that this warning has been given.

Accordingly, it is, on this 17th day of April, 1939, ORDERED, that Plenary Retail Consumption License No. C-13, heretofore issued to Robert Campbell by the Township Committee of the Township of Ocean, be and the same is hereby suspended for a period of ten (10) days, effective April 20, 1939 at 4:00 A. M.

D. FREDERICK BURNETT,
Commissioner.

11. LIMITATION OF LICENSES - TRANSFERS - WHERE THE NUMBER OF LICENSES OUTSTANDING EXCEEDS THE QUOTA, THE CONTINUATION OF THE LICENSED BUSINESS BY A NEW OWNER CAN BE ACCOMPLISHED ONLY BY FORMAL TRANSFER.

April 17, 1939

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

My dear Mr. Reichenstein:

Ordinance No. 2419, adopted by the Board of Commissioners on May 4, 1938, limits the number of plenary retail consumption and distribution licenses, excepting renewals of licenses outstanding upon the adoption of the ordinance and transfers from person to person, to 1,000 and 175 respectively. According to my records, there are 1,028 plenary retail consumption and 187 plenary retail distribution licenses presently outstanding.

Renewal is defined in Section 6 of the ordinance as "the granting of a license for a new license period, provided the licen- applying for said new license was the holder of a similar license in good standing on the last day of the period preceding the period for which the new license is applied for and granted....."

The issuance of a license for the new license year, to a person other than the holder of the license which has just expired, would be the issuance of a new license in the contemplation of the ordinance and would be in violation thereof, unless there was a vacancy in the quota.

Under the present ordinance, so long as the number outstanding exceeds the quota, the continuation of the licensed business by a new owner can be accomplished only through transfer of the license. It is not material to the administration of the limitation whether the license is transferred first and renewed in the name of the new owner, or whether it is renewed in the name of the present owner and later transferred. Which course will be followed depends on when the change of ownership takes place. The point is that when it does take place a formal transfer, in accordance with the Rules Governing Transfers (Pamphlet Rules, pages 37-43) is essential.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. RETAIL LICENSEES - EMPLOYEES - EMPLOYMENT PERMITS - ALIEN EMPLOYED PURSUANT TO PERMIT MAY MAKE DELIVERIES OF AND FILL ORDERS FOR PACKAGE GOODS AT THE DIRECTION OF THE EMPLOYER, AND GENERALLY ACT AS A PORTER AS DISTINGUISHED FROM A SALES CLERK, BUT MAY NOT TAP BEER KEGS.

Dear Sir:

An Italian national, who has filed his Declaration of Intention to become a citizen of the United States, has consulted me in reference to a special permit for employment with a licensed tavern proprietor.

The alien is at present employed by the licensee as a porter. Incidental to his employment as a porter and at the request of the licensee or person in charge of the tavern, he fills orders for cases or bottles of beer. In other words,"A" comes to the tavern for two cases of beer. "A" pays the licensee or person in charge of the bar. The licensee or person in charge orders the employee to get and put the two cases of beer in "A's" automobile. Or, "A" comes to the tavern for six bottles of beer. "A" pays the manager who orders the employee to get the six bottles of beer. The employee does not solicit orders.

In addition to this the employee, sometimes at the request of the person in charge of the tavern, taps a keg of beer.

Kindly advise me whether the employee qualifies for the special permit so that he may continue to be employed by the licensee.

Very truly yours,
Jerry J. Guarino.

April 18, 1939

Jerry J. Guarino, Esq.,
Newark, N. J.

My dear Mr. Guarino:

An Italian citizen may not be employed after April 15th on premises covered by a liquor license, unless an employment permit is obtained, and even then, because of his citizenship, not in any manner whatsoever to sell or solicit the sale of any alcoholic beverages. Re Woertendyke, Bulletin 304, Item 8.

I here heretofore ruled that persons disqualified by lack of citizenship, may, pursuant to permit, make deliveries of packaged alcoholic beverages where the sale has been previously effected by a duly qualified employee. See Re Zusi, Bulletin 85, Item 6.

I have also ruled that the restriction against handling alcoholic beverages, upon which all employment permits issued to minors and aliens are conditioned (Regulations No. 11, Rule 2), is limited to the handling of alcoholic beverages as part and parcel of the act of selling liquor for on-premises consumption. Re Zusi, supra.

As long, therefore, as the alien porter does not sell or solicit the sale of alcoholic beverages, but confines his duties to making deliveries of and filling orders for packaged goods at the direction of his employer, and generally act as porter as distinguished from a sales clerk, he may continue to be employed on the licensed premises provided he obtains the necessary permit.

An alien porter, however, may not tap beer kegs. Servicing of beer kegs is a necessary part of the act of selling beer for on-premises consumption. It is, therefore, forbidden to an alien porter.

Under separate cover, I am sending you three copies of application for employment permit. The application must be completely executed, signed by both the employer and employee and filed at this office in duplicate. The fee is $1.00 and must accompany the application.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. LEGISLATION - FAIR TRADE - ASSEMBLY BILL 521 REQUIRING MANDATORY REGISTRATION OF ALL BRANDS.

April 8, 1939

Neil F. Deighan, President,
N. J. Licensed Beverage Association,
Palmyra, N. J.

Dear Mr. Deighan:

A-521 raises momentous questions of public policy. It prohibits retail licensees from selling any brand of alcoholic beverages except beer unless the minimum retail selling price of the brand has been filed with the State Commissioner. It prohibits manufacturers and wholesalers from selling any brand to any retail licensee unless the minimum retail selling price shall have been so filed. That means that prices on all brands must be listed or else they cannot be sold in this State. The present Fair Trade listing is

permissive. The proposal makes it mandatory. The present theory is that the manufacturers have a property right and goodwill in their brands which they ought to be able to protect by choosing and filing a price which the State Commissioner maintains. The proposal would make them fix a price and file it willy nilly under penalty that if they did not, they could not sell at all. It, therefore, is a radical departure from previous concepts. It is not a matter for mere rule or regulation. It is rather a legislative problem of prime importance. Whether the permissive listing of prices in respect to selected brands under the present Fair Trade legislation should be converted into mandatory listing of prices in respect to all brands, is a matter not fathomed by previous experience.

The proposal may be a practical solution to the problems which now arise because the present rules are based upon voluntary action of manufacturers and wholesalers in listing or withdrawing such products as they select. It may be the only solution! It certainly would stop the price cutting of goods not now listed. There would be no such thing as withdrawal of price unless accompanied by its own death warrant on sales. It would thus take away all incentive to get off the list. It would necessarily include all the so-called "private" brands as well as those nationally advertised. It would set at rest the present price disturbance caused by a few brands being listed but the majority continuing as price targets.

On the other hand, there would be no such thing as competition. There would be a mark-up on every brand of liquor. The consumer would have to pay the freight. Question arises as to whether the increased prices might not drive the consuming public to other markets in adjoining states, or, worse, to resort to the bootlegger as in Prohibition days. We know that a higher tax encourages the predatory fraternity. Question, then, whether raising the price of legitimate liquor all along the line would not play into their hands.

In short, the question is whether the proposal would not only stabilize the industry but stagnate it as well.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. LEGISLATION - FAIR TRADE - ASSEMBLY BILL 521 REQUIRING MANDATORY REGISTRATION OF ALL BRANDS - FURTHER COMMENT.

April 12, 1939

S. Emlen Stokes, Chairman,
Assembly Alcoholic Beverage Control Committee,
Moorestown, N. J.

My dear Dr. Stokes:

Referring further to this bill:

Dr. Albert V. Roche, representing the New Jersey Wholesalers, has proposed an amendment charging the manufacturers $100.00 for each brand listed.

I disapprove both his proposal and the original bill.

The present Fair Trade listing is entirely voluntary, just as a man may take out a patent if he chooses. The new proposals make the listing mandatory. Schemes to maintain prices arbitrarily usually fall of their own weight. Business isn't done that way. So will the present proposals. Their fatal defect is that a manufacturer or a wholesaler under compulsion to fix a minimum retail selling price can fix any old figure he pleases. Suppose that he, impishly, fixes 2¢ a quart as the minimum! In form, he has complied. In substance, he has defied. The whole structure thus tumbles.

Very truly yours,

Frederick Burnett

Commissioner