

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

BULLETIN 265

AUGUST 10, 1938

1. ENFORCEMENT DIVISION ACTIVITY REPORT FOR JULY 1 TO 31, 1938, INCL.

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - 79  
Licensees - - 12 Non-Licensees - 67

SEIZURES:  
Still - total number seized - - - - - 21  
Capacity 1 to 50 gallons - 12  
Capacity 50 gal. and over - 9  
Motor Vehicles - - total number seized - 3  
Trucks - 1 Passenger cars - 2  
Alcohol  
Beverage alcohol - - - - - 170 gallons  
Mash - Total number of gallons - - - 40,162  
Alcoholic Beverages  
Beer, Ale, etc. - - - - - 143 gallons  
Wine - - - - - 4,127 "  
Whiskies and other hard liquor - - - 302 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1,609  
Illicit (bootleg) liquor - - - 3  
Gambling Violations - - - 26  
Sign Violations - - - 50  
Unqualified employees - - - 288  
Other Violations - - - 111  
  
Total violations found - - - 478  
Total number of bottles gauged - - - 10,845

STATE LICENSEES:

Plant Control Inspections completed - - - 181  
License applications investigated - - - 10

COMPLAINTS:

Investigated and closed - - - - - 285  
Investigated, pending completion - - - 294

LABORATORY:

Number of samples submitted - - - - - 115  
Number of analyses made - - - - - 115  
Number of poison liquor cases - - - 0  
Number of cases of denaturants - - - 0  
Number of cases of alcohol, water and  
artificial coloring - - - - - 4  
Number of cases of moonshine (home-made  
finished product of illicit still) - - 13

Respectfully submitted,  
E. W. Garrett,  
Deputy Commissioner.

*New Jersey State Library*

2. OTHER MERCANTILE BUSINESS - THE RULE APPLIED - ALCOHOLIC BEVERAGE ACCESSORIES - BOTTLED LEMON AND LIME JUICES MAY BE SOLD BY PLENARY RETAIL DISTRIBUTION LICENSEES AS ALCOHOLIC BEVERAGE ACCESSORIES NOTWITHSTANDING THE EXISTENCE OF AN ORDINANCE PROHIBITING THE CONDUCT OF OTHER MERCANTILE BUSINESS.

August 2, 1938

Mr. Thomas E. Healy,  
East Orange, N. J.

My dear Mr. Healy:

You inquire if package liquor stores may sell bottled lemon and lime juices for the purpose of mixing alcoholic beverages.

The principles are fully set forth in Re McCauley, Bulletin 264, Item 15.

The items you mention are accessory beverages, and hence may be sold by plenary retail distribution licensees in all municipalities, irrespective of whether they have adopted an ordinance similar to that set forth in the McCauley decision or not.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

3. OTHER MERCANTILE BUSINESS - THE RULE APPLIED - FOODSTUFFS AND ALCOHOLIC BEVERAGE ACCESSORIES DISTINGUISHED - PRETZELS, POTATO CHIPS, COCKTAIL CRACKERS, ETC. MAY NOT BE SOLD BY PLENARY RETAIL DISTRIBUTION LICENSEES IF THERE IS AN ORDINANCE PROHIBITING THE CONDUCT OF OTHER MERCANTILE BUSINESS.

August 2, 1938

Passaic Pretzel & Biscuit Co.,  
Passaic, N. J.

Gentlemen:

You inquire if package liquor stores may sell pretzels, potato chips, cocktail crackers, etc.

The principles are fully set forth in Re McCauley, Bulletin 264, Item 15.

The items you mention are foods and not accessory beverages, and hence, applying the principles of the McCauley case, may not be sold by plenary retail distribution licensees in any municipality which has enacted an ordinance prohibiting the issuance of such licenses to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on; otherwise, in municipalities where there is no such ordinance in existence.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

- 4. OTHER MERCANTILE BUSINESS - THE RULE APPLIED - GINGER ALE AND OTHER SODAS, COCA-COLA, GRENADINE, BOTTLED LIME JUICE AND BITTERS MAY BE SOLD BY PLENARY RETAIL DISTRIBUTION LICENSEES AS ALCOHOLIC BEVERAGE ACCESSORIES NOTWITHSTANDING THE EXISTENCE OF AN ORDINANCE PROHIBITING THE CONDUCT OF OTHER MERCANTILE BUSINESS.

August 2, 1938

Gold's Drug Stores,  
Jersey City, N. J.

Gentlemen:

My records indicate that by ordinance of February 6, 1936, Section 4(b), the Board of Commissioners of Union City has ordained that no plenary retail distribution license shall be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on.

The principles are fully set forth in Re McCauley, Bulletin 264, Item 15.

The items you mention, viz., ginger ale and other sodas, Coca-Cola, grenadine, bottled lime juice and bitters, are accessory beverages, and hence may be sold by plenary retail distribution licenses in Union City, notwithstanding the adoption of the ordinance hereinabove mentioned.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - SPECIAL RULINGS - NECESSITY FOR BRINGING NOTICE HOME TO LICENSEES - HEREBIN OF THE UNFORTUNATE END OF AN AFFAIR IN WHICH THE LICENSEE OFFERED ALL THE BEER ONE COULD DRINK FOR A DOLLAR.

In the Matter of the Proceedings )  
to cancel or suspend Special Permit )  
#19411, issued to )

Melrose Cocktail Bar, Inc., )  
901 - 18th Avenue, )  
Newark, N. J., )

CONCLUSIONS  
AND ORDER

By the State of New Jersey, )  
Department of Alcoholic Beverage )  
Control. )

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Stanton J. MacIntosh, Esq., for the State Department of Alcoholic  
Beverage Control.

James L. McKenna, Esq., for the Permittee.

BY THE COMMISSIONER:

Charges were preferred against Melrose Cocktail Bar, Inc., the holder of Special Permit #19411, which was issued pending renewal of its plenary retail consumption license, for premises 901 - 18th Avenue, in the City of Newark, for violation of a special ruling promulgated March 2, 1938 in Re Sugrue, Bulletin 232, Item 3, which prohibited all offers of unlimited quantities of alcoholic beverages for a fixed price.

On the evening of June 29, 1938 Melrose Cocktail Bar, Inc. conducted an affair on its licensed premises at which it offered

all the beer one could drink for a dollar. A number of persons paid a dollar and were served all the beer they could get away with. Respondent frankly concedes that the ruling was violated.

The defense is that respondent was not aware at the time that what it did was forbidden; that although the ruling was promulgated in the official bulletin and published in the press, its officers had not read either bulletin or newspapers and did not know of it; that the ruling was not brought home by service upon it as with the printed rules and regulations.

It would be but smug and complacent to declare that ignorance of the law excuses no one and, therefore, dire punishment must follow if one of the special rulings made by the State Commissioner, pursuant to the power and trust reposed in him, were violated, and this irrespective of whether it had been incorporated into the formal printed rules and regulations or not. Mindful, however, that these special rulings must necessarily be made day by day, as occasion presents and experience teaches, it would be utterly unfair to condemn and punish a licensee for doing something which he did not know or have good reason to know was a violation. All the curse of ex post facto legislation justly attaches to such an un-American procedure.

Hence, there being no proof that notice of the ruling was brought home to the licensee or that it was otherwise warned or had reason to know of it, there is nothing that I can do, in fairness, except to grant the defendant's motion and dismiss the complaint.

The result is unfortunate because the ruling, I believe, was salutary and made because promotional schemes of this type are not conducive to temperance; that human nature being what it is, patrons make it a point to get their money's worth, regardless of consequences.

Again, it means, in order to enforce the rulings which are made from time to time, the tremendous expense of serving some 12,000 licensees in the State with personal notice of every ruling which declares "Thou shalt not" must be incurred. The best that can be done is to conventionalize and codify every special ruling into a formal regulation and reprint the official rules with more frequency, in the meanwhile hoping that licensees who are able to read have the decency and the sense to apply to themselves what they see in the press.

It is unfortunate, too, for this is the place where Irene Gaertner was last seen alive on the night that this drinking bout was held on respondent's premises. Unbridled practices all too often result in unbearable shocks.

It was urged by the learned attorney for the State that the special permit, under which the respondent was operating, reserved to the State Commissioner the power to cancel it in his absolute discretion, and hence that the considerations aforesaid of service, knowledge or notice of the special ruling would not apply as they might in the case of a license actually issued. But this special permit had been issued because the respondent had held a previous license, had applied for renewal and done everything on its part to be done, only that its application for renewal had been filed too late to grant it on or before July 1st, whereupon the local municipal Board of Alcoholic Beverage Control had consented to the granting of such ad interim permit during the period required for

investigation and issuance of license. The special permit was, therefore, in substance, a temporary license. The same considerations of fairness above mentioned therefore equally apply. The condition upon which it was issued, namely, subject to immediate cancellation at absolute discretion, was imposed to protect the public against time and red tape but not to wreak private injustice. The more absolute the discretion, the greater the trust that it shall not be abused or exercised unfairly.

For the reasons aforesaid, the charges are dismissed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: August 3, 1938.

6. LOTTERIES - ABOUT TO BE PULLED OFF IN PARKING LOTS - HEREIN OF THE SCHEME OF THE BIG BEAR.

August 3, 1938

Big Bear,  
Hoboken, N. J.

Gentlemen:

I have before me your circular reading:

"\$3,500.00 IN CASH PRIZES

"FOR ELIZABETH, JERSEY CITY, PATERSON,  
HOLLIS, TEANECK, IRVINGTON, E. ORANGE,  
NEW BRUNSWICK, NORTH BERGEN, BELLEVILLE

"We are planning to stimulate summer business by two powerful factors - smashing prices and gifts to the consumer in the form of cash prizes.

"We take it for granted that price smashing is an established feature with you, however, cash gifts to consumers is an occasional program that proved itself most successful on previous occasions.

"No need to remind you that your whole-hearted support is essential to make the forthcoming program a success. This program will cost Big Bear well over \$7,000.00, and naturally your financial support is necessary, which amount we know will come back to you many fold in additional business and profit.

"Attached to this letter is an indorsement slip indicating the amount that your department or departments will be charged each week for a period of ten weeks.

"The program is as follows:

"Will start Thurs., July 7th and end Sept. 12th.

"There will be two drawings, first drawing Monday, Aug. 8th, second drawing Monday, Sept. 12th at 9 P. M. on Big Bear parking lots.

"\$175.00 in each store at each drawing:

"\$100.00 First Prize  
\$25.00 Second Prize  
10 - \$5.00 Prizes

"Your department will be given sufficient tickets to be given out with each 25¢ purchase.

"Your immediate acceptance, signing and mailing of the attached indorsement slip in the enclosed stamped and addressed envelope will be appreciated.

"Very truly yours,  
BIG BEAR,  
Joseph H. Neubauer."

Also letter written by you on June 16th to Nathan Galpern, Treasurer of Benham & Co., Inc., one of your concessionaires who runs the Liquor Department at your Jersey City store, reading:

"Failing to hear from you regarding your indorsement of the forthcoming \$3,500.00 cash gift program, we take it for granted that you agree to the program. We are, therefore, proceeding with our plans and your department will be charged accordingly."

Benham & Co., honoring State Regulations No. 20, Rule 6, prohibiting lotteries, have refused to participate in your unlawful drawing of cash prizes, but I note from the letter you addressed to Mr. Galpern on July 25th that he is to be charged just the same.

It reads:

"Dear Nat:

"I have been informed that you refuse to pay the weekly charge for Lucky Tickets.

"I appreciate the fact that you cannot give out these Lucky Tickets in your department, however, you will understand that this promotion does you a lot of good and I would appreciate that you pay these charges weekly, in fact, I am instructing our manager, Mr. Mayer, to collect these charges from you.

"Your cooperation will be appreciated."

I presume these high-pressure methods are being employed in the other Big Bear markets.

Accordingly, I am today writing to each of the Prosecutors in the Counties in which your several stores are located, calling their attention to the lotteries to be conducted on August 8th and September 12th.

Furthermore, if your unlawful scheme is not abandoned immediately, I shall consider appropriate measures to bar the issuance of any liquor licenses hereafter in Big Bear markets in every municipality.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

7. LICENSEES - SALES FOR OFF-PREMISES CONSUMPTION - A PRIVILEGE AND NOT A DUTY - HEREIN OF DWELLING IN AMITY WITH THE SWISS.

Dear Sir:

Has a tavern keeper the right as a licensed place to refuse to sell me beer in a container? He told me he would not sell me any beer in a container unless I spent money drinking at the bar, and thereafter only people that drank daily at the bar would only get beer in containers or pint cans. I am an American citizen, as are my parents of 14 children, and I am the father of six, born in greater New York. I feel an awful insult that a foreigner Swiss as this party is can tell me my American money can't buy any beer in a can unless I drink at his bar. Now, if the foreigner can tell us Americans whether they will sell us anything or not, I believe that it's time for something should be done. Why should any tavern, inn or saloon have the right to sell to one that stands at the bar all day or week and refuse a working man a pint just because he can't spend his time and hard-earned money at the bar. This sure is un-American, and I would like to hear from you if I can file a complaint against this and other place following this tactic of forcing people to spend his wages against a bar. I think this is a licensed place and must serve the people and public. And no Swiss Decrees should be allowed in our Own United States of America.

Yours truly,  
Charles W. Lauber.

August 4, 1938

Mr. Charles W. Lauber,  
Union City, N. J.

My dear Mr. Lauber:

I can well appreciate how a customer, ready, willing and able to rush the growler, feels in these dog days when refused a pint to take home but referred to high collared beer at the bar.

That, however, is the tavernkeeper's privilege, be he Swiss, Swede, or Sudeten. You see, it's like this: He is the boss of his place and responsible for what goes on, and therefore can run it to suit his own fancy providing he does nothing unlawful. Now, while he has the privilege of selling for off-premises consumption, he is under no duty to do so.

So you see, after all, he is just one of us and has the American privilege of choosing his own course. So don't bear any resentment, but go where your pail patronage will be welcome. And let us not think unkindly of our Swiss friends. It is refreshing even to day dream of their high mountains and glaciers - anything, so long as it's ice.

Cordially yours,  
D. FREDERICK BURNETT,  
Commissioner.

8. APPEALS -- TEMPORARY RELIEF PENDING FINAL DETERMINATION ON THE MERITS -- THE PRINCIPLES RESTATED -- PRELIMINARY RELIEF DENIED APPLICANT FOR RENEWAL LICENSE BECAUSE OF ADJUDICATED VIOLATION DURING PREVIOUS TERM.

K. & K. CO., INC., )

Appellant, )

-vs- )

ON APPEAL

MUNICIPAL BOARD OF ALCOHOLIC )

BEVERAGE CONTROL OF NEWARK, )

On Petition for Ad Interim Relief

Respondent. )

CONCLUSIONS

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George R. Sommer, Esq., Attorney for the Petitioner.

BY THE COMMISSIONER:

Appellant has today appealed the denial of its application for a plenary retail consumption license for the current fiscal year, which began on July 1st last.

Accompanying the notice of appeal is a petition which sets forth that Petitioner owns tavern at 137 Orchard Street, Newark; that it had a plenary retail consumption license for the previous fiscal year; that on June 2, 1938, after hearing, its license was suspended by the State Commissioner for 65 days (effective June 5th) and that the Commissioner ordered that no renewal or other license be issued to Petitioner before August 8th, 1938; that appellant has duly applied for a renewal license and done everything on its part to be done, but that, nevertheless, on August 3, 1938, "though no objections were filed to appellant's application and though both Captain McNally, the Captain of the First Precinct of the City of Newark (the precinct in which appellant's Tavern is located) and Deputy Chief Philip Sebold approved said application, the respondent without giving appellant an opportunity to be heard denied appellant's application without specifying any reason."

The Petitioner charges that the action of respondent was "erroneous, unlawful, arbitrary and capricious, in that appellant was not afforded a hearing and for the reason that there were no grounds upon which respondent could justify their action."

The Petitioner, alleging that unless a temporary or special license be issued to it pending the determination of this appeal, irreparable damage will be done, prays for an order to show cause why the term of the previous license should not be extended pending determination of the appeal, together with ad interim relief giving the Petitioner a special license or permit to conduct its business pending the return of the order to show cause, and for such other relief as may be equitable and

just.

Passing the point that, under the terms of the order above mentioned, no renewal or other license may be issued to appellant before the 8th day of August, the petition will be considered on its merits as this is the first case of its kind and the point should be settled.

The question, then, is: Should preliminary relief be given in this case as of August 8th?

The Statute provides, R.S. 33:1-22 (Control Act, Section 19):

"Where an appeal is taken from the denial of an application for the renewal of a license, the commissioner may, in his discretion, issue an order upon the respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the term of the license pending the return of the order to show cause. If it shall appear upon the return of the order to show cause that the action of the respondent issuing authority is prima facie erroneous and that irreparable injury to the appellant would otherwise result, the commissioner may, subject to such conditions as he may impose, order that the term of the license be extended pending a final determination of the appeal."

The practice has heretofore been established, where the appeal is from the denial of a renewal license and it is reasonably clear, upon the return of the rule to show cause, that the refusal of the local license issuing authority to grant a renewal was proper, the application for the extension of the previous license pending determination of the appeal has been denied and the ex parte ad interim relief pending the return of the order to show cause has been terminated. Riegelhaupt vs. Newark, Bulletin 84, Item 4.

On the other hand, where it appears that the appellant's record is clear, and it is a matter of bona fide debate whether or not the local issuing authority was justified in refusing a renewal, and where, on the return of a rule to show cause and opportunity afforded for hearing of both sides, it appears on the whole that, if the appellant's contentions are well-founded, the action of the respondent issuing authority is prima facie erroneous then, to prevent the irreparable injury to the appellant which would otherwise result, the discretion is exercised in favor of such an appellant by preserving the status quo until the case can be fully heard on its merits. Great Atlantic & Pacific Tea Company, Bulletin 82, Item 6; Celentano vs. Clifton, Bulletin 98, Item 3.

It should be needless to add that any decision on the granting of preliminary relief has no bearing at all on the final adjudication of the appeal upon its merits. Thus, in Federko vs. Piscataway, Bulletin 85, Item 4, preliminary relief was denied, because it did not then appear that the action of the respondent Township was prima facie erroneous, but, at the final hearing, after the case was all in and fully tried out, the action of respondent was reversed and appellant received his renewal license. So also Ford vs. Township of Knowlton, Bulletin 84, Item 5.

In the instant case, appellant's record is not clear. After a full hearing, it had been solemnly adjudicated guilty of serious charges and its license had been suspended for the balance of its term, and to complete the full term of the penalty of 65 days' suspension, an order had been entered that no renewal be issued until a month and eight days of the succeeding fiscal year had elapsed. Re K. & K. Co., Inc., Bulletin 250, Item 6. Thus, when its license expired, appellant was not in good standing.

This, of itself, is good reason why the discretion vested in the Commissioner should not be exercised in granting any ad interim relief pending the return of an order to show cause.

The problem, therefore, boils down to the question whether an order, without any relief pending its return, should be issued to the local excise board calling upon it to show cause why the term of the license should not be extended pending determination of the appeal. This, too, is in the Commissioner's discretion. It is true that the Petitioner's allegations standing alone would, taken at full face value, indicate that the action of the respondent issuing authority was prima facie erroneous. But there was no legal obligation upon respondent excise board to afford appellant a hearing, Bulletin 9, Item 10; Re La Barre, Bulletin 10, Item 4, ("if the issuing authority, after investigating the applicant, disapproves his application nothing is to be gained by hearing additional objectors. As for such applicant himself, his remedy is not a hearing but like every other case of a rejected application, an appeal."); Bulletin 14, Item 5, or to specify reasons, Rosenvinge vs. Metuchen, Bulletin 249, Item 6, however desirable the practice may be. All this will be done when the case comes up for hearing on the appeal. If an order to show cause were issued, all that respondent need do would be to refer to the record in my own hands, that is, the decision in Re K. & K. Co., Inc., Bulletin 250, Item 6. That case, having been fully tried and a violation adjudicated after full hearing afforded, is sufficient to justify respondent's denial. Kirschhoff vs. Millville, Bulletin 254, Item 8, ("Reduction of outstanding licenses may be effected with fairness by eliminating, through revocation or through refusal to renew, those whose owners have misconducted themselves.")

It is only waste motion for the Commissioner to call upon a license issuing authority to show cause concerning a matter of which, in official capacity, he is aware in his own knowledge and which of itself is sufficient to deny any preliminary relief.

The petition is, therefore, denied.

The appeal will be heard in regular course as early as possible consistent with the large number of appeals now pending in other cases. Decision on its merits is reserved until the pleadings, transcript and exhibits of the final hearing are presented.

Dated: August 5, 1938.

D. FREDERICK BURNETT,  
Commissioner



11. TONICS - MADE FROM FRUIT JUICES AND HAVING MORE THAN MINIMUM ALCOHOLIC CONTENT ARE ALCOHOLIC BEVERAGES CLASSIFIED AS WINE AND HENCE REQUIRE SPECIAL PERMIT FOR MANUFACTURE.

Dear Sir:

I make a tonic from ripe figs and Dalmatian cherries, which I use as a laxative instead of medicine to keep my bowels in working order. Last year a friend told me I had to have license and I got one, but on actual test by hydrometer, it only shows at test from 10 to 15 as a test of cider, so I don't think there is any alcohol and it is not intoxicating. Please let me know whether I am right or wrong.

Sincerely yours,  
John V. Netschert.

August 8, 1938

Mr. John V. Netschert,  
Belleville, N. J.

Dear Sir:

On November 18, 1937 you applied for and were issued special wine permit WN-1604, entitling you to manufacture, for your personal consumption, up to 200 gallons of wine.

As regards the "tonic": You say that you do not think it contains any alcohol. However, you tell me that hydrometer test shows that it is between 10 and 15 proof, similar to hard cider.

Any fruit juice suitable for human consumption and having an alcoholic content of more than one-half of one per cent by volume is an alcoholic beverage, and all fermented fruit juices, including what is commonly known as hard cider, are classified as wines. Bulletin 48, Item 5, copy enclosed. Whether or not it is intoxicating, is of no legal moment, for that, as you see, is not the basis of classification.

Your tonic, therefore, being made from fruits and containing more than the minimum percentage of alcohol, requires for its lawful manufacture the special wine permit aforesaid.

It is therefore essential that you continue to file your monthly reports with the State Tax Department.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

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

August 5, 1938

Re: Case #228

In his application and questionnaire, the applicant denied that he had ever been convicted of any crime. Fingerprint records disclose that, in 1934, he was convicted of petty larceny, sentenced to pay a fine of \$10.00, and subsequently served twenty days in jail.

At the hearing applicant testified that he was twenty years of age at the time of his arrest; that he and two other young men had hired a canoe at the rate of \$1.00 an hour; that they had kept the canoe for three or four hours and did not have enough money to pay for the bill incurred; that they thereupon decided that the smartest thing to do was to take the canoe; that they were arrested while carrying the canoe along the highway. Following their arrest, all three were fined \$10.00 and costs. The applicant was released with the understanding that he would pay the fine and costs within two weeks, but at the end of that period he was unable to raise the money and, hence, was sentenced to serve twenty days in jail.

Petty larceny may or may not involve moral turpitude, depending upon the facts in each case. The applicant is a young man whose record is otherwise clear. His testimony is substantially corroborated by the police report. Under the circumstances, I believe that the crime did not involve moral turpitude.

As to the false affidavit, applicant testified that he wasn't sure that he had been convicted of a crime because of the fact that a fine had been imposed. The fact that he served time in jail should have led him to suspect that he had been convicted of a crime.

It is recommended that a solicitor's permit be issued to applicant, but that the issuance of said permit be withheld for ten (10) days, because of the false affidavit filed herein.

Edward J. Dorton,  
Attorney-in-Chief.

Approved: Except as to time of withholding. Twenty days will the better remind him of the days spent in jail and persuade him the more that it doesn't pay to make false affidavits. Withhold the permit until August 25th.

D. FREDERICK BURNETT,  
Commissioner.

13. LIMITED RETAIL DISTRIBUTION LICENSEES - NEW RULE - MAY NOT POSSESS OR ALLOW CHILLED BREWED MALT BEVERAGES ON LICENSED PREMISES.

August 9, 1938

The holder of a limited retail distribution license is entitled, subject to rules and regulations, to sell for consumption off the licensed premises, but only in original containers, any unchilled brewed malt alcoholic beverages in quantities of not less than 72 fluid ounces. R. S. 33:1-12 (Control Act, Sec. 13-3b).

Until now, it has not been necessary to promulgate rules and regulations to reinforce the statutory restrictions. However, experience has shown that many limited retail distribution licensees are keeping excessive quantities of chilled beer on their licensed premises and when pressed for explanation, put forth the flimsy excuse that it is intended solely for their personal consumption.

The subterfuge is apparent. Obviously, it is intended that the chilled beer shall be sold, contrary to law.

Accordingly, pursuant to the power conferred by R.S.33:1-39 (Control Act, Sec. 36), there is hereby promulgated as Rule 21 of Regulations No. 20, the following:

"21. No limited retail distribution licensee shall possess, or allow, permit or suffer any chilled brewed malt alcoholic beverages on the licensed premises."

The rule is effective August 15, 1938.

Violation will be cause for revocation.

D. FREDERICK BURNETT,  
Commissioner.

14. LICENSED PREMISES - GAMES - DARTS AND POKER DON'T GO TOGETHER -  
HEREIN OF SHOOT-A-HAND.

August 9, 1938

Shoot-A-Hand Co.,  
Baltimore, Md.

Gentlemen:

Staff reports indicate that the game consists of a board 24 x 24 inches, covered with glass. Mounted on a mat and visible beneath the glass are the conventional 52 playing cards arranged in four concentric circles around a joker. Interspersed in the outermost circle are six pictures of horses' heads labeled Battle-ship, War Admiral, Pompoon, Apathy, Man O'War and Seabiscuit.

The rest of the equipment consists of four spring guns designed to propel darts tipped with rubber suction cups, of which there are four sets of five each, each set having different colored shafts.

The object of the game is to shoot the darts at the board to make the best possible poker hand. Cards may be drawn to better a hand by removing one or more of the darts from the cards which are being discarded. The board bears in the lower lefthand corner a slogan, "Test Your Eye-- Test Your Skill -- Test Your Luck." In the lower righthand corner, there appears the statement, "Rules -- when a dart strikes more than one card, select the card YOU want."

The game is apparently draw poker with darts and every man his own dealer. I suppose the joker and horses at large with a whist deck are jackanapes wild. Hoyle was never like this.

Now the cards and the spring guns won't do. The game may not be played on licensed places.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

## 15. WHOLESALE LICENSEES - TRANSPORTATION - OVER NIGHT STORAGE OF TRUCKS.

Gentlemen:

Upon occasions our trucks, upon returning from regular delivery routes, carry either refused shipments or returns, which may amount at times to the equivalent of a few cases of merchandise. These trucks may at some time return after our warehouse has been closed for the night. Will you kindly advise us if it is any violation of any regulation for our truck, securely locked, to be parked in a public garage while it contains a small amount of merchandise. The public garage in question does not have any warehouse or other liquor license.

Your advice in this matter will be greatly appreciated.

Yours very truly,  
Majestic Wine & Spirits, Inc.

August 9, 1938

Majestic Wine & Spirits, Inc.,  
Camden, N. J.

Gentlemen:

Technically, the plan is in violation of the ruling Re Konvitz in Bulletin 198, Item 10, wherein I said:

".....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."

However, the Alcoholic Beverage Control Act and the rules and regulations must be construed in a practical manner. In your case, I assume that you intend to store the alcoholic beverages over night only during the course of regular and bona fide deliveries and returns. There is no question here concerning the peddling of beverages from your truck. Your transportation insignia authorizes you to transport alcoholic beverages within this State. During the course of deliveries you must, of necessity, park your truck from time to time, but it cannot be said that the moment motion ceases, so does transportation.

It is therefore ruled that a wholesale licensee may, during the course of bona fide deliveries, store its duly licensed trucks containing alcoholic beverages in an unlicensed garage over night, provided, however, that no alcoholic beverages other than bona fide orders and returns are so stored.

The privilege afforded by this ruling must not be abused. Any variance from its terms will result in disciplinary action.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

16. PLENNARY RETAIL CONSUMPTION LICENSEES - OTHER MERCANTILE BUSINESS-  
WHAT CONSTITUTES - SALE OF PIPES AND RAZOR BLADES PROHIBITED.

August 9, 1938

Hudson County Tobacco Co.,  
Trenton, N. J.

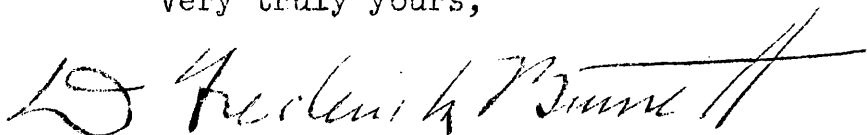
Gentlemen:

Saloons and cafes may not handle pipes, razor blades, or similar items.

Aside from conducting a hotel or restaurant and from engaging in the alcoholic beverage business, the only other things that consumption licensees may sell are cigars and cigarettes (and then only as an accommodation to patrons) and non-alcoholic beverages as accessory beverages to alcoholic beverages.

The sale of pipes and razor blades would constitute the conduct of other mercantile business, which the State Law prohibits. By way of illustration, see Re Daniels, Bulletin 199, Item 6; Re McCauley, Bulletin 264, Item 15.

Very truly yours,



Commissioner.

New Jersey State Library

L. CANDY