

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

BULLETIN 348.

OCTOBER 2, 1939.

- 1. FINGERPRINTING - RECIPROCAL ARRANGEMENTS COMPLETED WITH PENNSYLVANIA MOTOR POLICE - HEREFIN OF THE VALUE OF INTERSTATE COOPERATION.

September 27, 1939.

Hon. C. M. Wilhelm,
Deputy Commissioner,
Pennsylvania Motor Police,
Harrisburg, Pa.

Dear Mr. Wilhelm:

I have yours of the 25th.

Your prompt acceptance of Chief Deputy Commissioner Garrett's plan and request for cooperation is gratifying. It will enable applicants for New Jersey state-wide licenses or permits who are resident in Pennsylvania to be fingerprinted at any of your many Police Sub-Station.

We require fingerprinting to insure disclosure of criminal record, if any there be. Issuance of permits is withheld until identification returns on the fingerprints are made. Delay in issuance is often important to the applicant who cannot work in this State until he has his permit. Many Pennsylvania applicants reside at places not conveniently accessible to the Sub-Station of the New Jersey State Police, who have been cooperating with us for several years in taking these fingerprints.

I note the long list of your Troop and Squadron Headquarters and Sub-Station. This makes a wide extension of the reciprocal resources of law enforcement agencies and illustrates afresh the value of interstate cooperation.

We are grateful to the Pennsylvania Motor Police.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

- 2. CANCELLATION PROCEEDINGS - TWO HUNDRED FEET RULE - SUSPENSION VACATED UPON PROOF OF WAIVER BY BOARD OF EDUCATION.

In the Matter of Cancellation)
Proceedings against)

CHARLES F. MILLER,)
226 State Street,)
Camden, N. J.)

Holder of Plenary Retail Con-)
sumption License No. C-70 (fiscal)
year 1938-1939), issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

O R D E R

New Jersey State Library

.....
Charles E. Kulp, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

WHEREAS on September 25, 1939 an Order was entered herein suspending Plenary Retail Consumption License No. C-30 for the present fiscal year, issued to Charles F. Miller by the Municipal Board of Alcoholic Beverage Control of the City of Camden, after a finding made in these proceedings that the licensed premises are in fact located within two hundred feet of Cassidy Public School; and

WHEREAS, after said Order was served upon the licensee, he has advised me that, subsequent to the institution of these proceedings and prior to the issuance of the license which he holds for the present fiscal year, he filed with the Municipal Board of Alcoholic Beverage Control of the City of Camden a waiver pursuant to the provisions of R.S. 33:1-76; and

WHEREAS, the Deputy City Clerk of the City of Camden has advised me that such waiver is now on file in the office of the City Clerk and attached to the application for the license; and

WHEREAS, it appears from a certified copy of said waiver duly executed by the Board of Education of the City of Camden on June 13, 1939 that said Board has waived for the license year extending July 1, 1939 to June 30, 1940 the provisions of R.S. 33:1-76 and consents to and permits the licensing of premises of Charles F. Miller, located in the rear of 226 State Street, Camden, New Jersey, for the period aforesaid for the retail sale of alcoholic beverages; and

WHEREAS, no previous notice of the existence or filing of said waiver has been received by me; and

WHEREAS, R.S. 33:1-76 permits the issuance of the license in question for premises within two hundred feet of any public schoolhouse when the protection of said section has been waived at the issuance of the license and at each renewal thereafter by the duly authorized governing body or authority of such school;

NOW, THEREFORE, it is, on this 27th day of September, 1939,

ORDERED that the suspension of Plenary Retail Consumption License No. C-30, heretofore imposed, be lifted effective immediately.

D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - KENNAN vs. HOBOKEN.

JAMES KENNAN,)
Appellant,)

-vs-

THE MAYOR AND CITY COMMISSIONERS)
OF THE CITY OF HOBOKEN and)
THE FALCON WINES & LIQUORS, INC.,)

Respondents.)

.)

ON APPEAL

CONCLUSIONS

Meehan Brothers, by John J. Meehan, Esq., Attorneys for Appellant.

Horace L. Allen, Esq., by James A. Coolahan, Esq., Attorney
for Respondent Mayor and City Commission-
ers of the City of Hoboken.

Samuel Moskowitz, Esq., Attorney for Respondent Falcon Wines &
Liquors, Inc.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license to Falcon Wines & Liquors, Inc., by the Mayor and City Commissioners of Hoboken, for premises 740 Washington Street, Hoboken, New Jersey.

Appellant alleges that the issuance of the license was erroneous in that (1) the entrance to the licensed premises was within 200 feet of an entrance to a church, and (2) that the officers and stockholders of Falcon Wines & Liquors, Inc., are fronts for other persons.

The church and the licensed premises are on opposite sides of Washington Street. Appellant's surveyor has computed the distance between the entrance of the licensed premises and the nearest entrance of the church as 198.2 feet. But in making his measurements, the surveyor did not cross the street at the crosswalk but stopped approximately 12 feet short thereof. In crossing streets, the course to be taken must follow the near side of the crosswalk. Re Dunn, Bulletin 256, Item 6. Had the measurement been made to the nearest side of the crosswalk on one side of the street and then back again on the other side, the distance would be well over 200 feet from the nearest entrance of the church.

As to the allegation that the stockholders are fronts: Appellant testified that he knew "from hearsay" that one Jack Schwartz was "interested" in the business. One of his witnesses testified that he had a conversation with John Fulcher, who holds fifty per cent of the stock, in which Fulcher said that as a personal favor to Jack Schwartz, his best friend, he was in the corporation. That is the extent of appellant's proof. However, the testimony of Fulcher (who denied the alleged conversation) and the President of the corporation, who holds twenty-five per cent of the stock, is convincing that the stockholders of Falcon Wines & Liquors, Inc., are the real owners of the stock and the corporation the real owner of the business to be conducted; that they are not fronts for Schwartz or anyone else.

The action of the respondent Mayor and Board of Commissioners of the City of Hoboken in granting a license to respondent Falcon Wines & Liquors, Inc., is therefore affirmed.

Dated: September 27, 1939. D. FREDERICK BURNETT, Commissioner

4. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK DENIED.

In the Matter of the Seizure on August 4, 1939 of a Number of Still Parts in a Garage Owned by Julius Preiss, located at Damstead and Duerr Streets, in Mullica Township, County of Atlantic and State of New Jersey.

Case No. 5534 CONCLUSIONS AND ORDER

.....

Julius Preiss, Pro Se.

Harry Castelbaum, Esq. Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On August 4, 1939, investigators of this Department found the articles described in Schedule "A", annexed hereto, in the loft of a garage on a farm located at Damstead and Duerr Streets, Mullica Township. There was no still operating on the premises and the seized equipment did not constitute a complete still.

At the hearing, Julius Preiss testified that he resides in Philadelphia and is employed as a machinist; that he purchased the farm in Mullica Township about eight years ago; that the copper cooker and coils were placed in the garage about seven years ago by a friend of his who had been in the restaurant business; and that he never manufactured liquor.

Since the parts were not registered under the provisions of R.S. Title 33, Chapter 2, the articles seized are unlawful property. Under the circumstances, however, the premises will not be padlocked.

Accordingly, it is determined that the seized property constitutes unlawful property and it is ORDERED that the same be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5 and that it be retained for the use of hospital and State, county and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

Dated: September 20, 1939. D. FREDERICK BURNETT Commissioner

SCHEDULE "A"

- 1 - copper cooker
- 1 - set of copper coils

5. ADVERTISING - LOG CABIN MADE OF BEER CANS - HEREIN OF THE "KEGLINED INN."

September 28, 1939

F. R. Schmidt,
Ridgefield Park, N. J.

My dear Mr. Schmidt:

I have before me the picture and your letter of August 30th re display in a window of a local florist of the "Keglined Inn", which is constructed of more than a thousand beer cans soldered together to represent a log cabin.

Your letter assures me that if allowed to display it at the florist shop, you will omit all advertising signs.

While I have disapproved the renting of vacant stores to display beer cans and bottles and advertising matter, Re Trommer, Bulletin 222, Item 1, this project seems quite different. I admire the inventive turn of mind and the evident pains which this work must have taken and see no harm in allowing its display - with orchids if you choose.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONTS - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

BUSINESS MEN'S ASSOCIATES, INC.,)
526-28 South 10th Street,)
Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-826 for the term)
expiring June 30, 1939, and now holder)
of Plenary Retail Consumption License)
No. C-825 for the current term, is-)
sued by the Municipal Board of)
Alcoholic Beverage Control of the)
City of Newark.)

Adolf Haslauer, President of Business Men's Associates, Inc.,
for the Defendant-Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant is charged with:

- (1) Aiding and abetting others to exercise the rights and privileges of its license, contrary to R. S. 33:1-26, 52;
- (2) Falsely stating in its application for 1938-9 license that no one else had proprietary interest in the business to be licensed, contrary to R. S. 33:1-25; and

- (3) Failing to file written notice with the Municipal Board of Alcoholic Beverage Control of the City of Newark of the interest of various persons in its licensed business within ten days after each such person became so interested, contrary to R. S. 33:1-34.

This proceeding, though instituted during the last licensing term, which expired June 30, 1939, does not abate but remains effective against the renewal license which has been issued to the defendant for the current term. State Regulations No. 15; Re Laurence Brook Country Club, Inc., Bulletin 335, Item 6.

As to (1): The defendant, a non-pecuniary association, has held a plenary retail consumption license for the premises in question since 1935. In July 1937 one Adolf Haslauer became its president and conducted its tavern under his personal supervision until February or March 1938. Thereafter, through Haslauer, a series of so-called "managers" were successively installed in the tavern under the arrangement that they actually conduct the tavern business and foot the bills and take the profits in return for paying a stipulated rental to the owner of the premises, the Juno Fasteners, Inc. (of which Haslauer has also been the president for the last ten years) and posting a deposit of \$200.00 or \$300.00 with that corporation.

The first such "manager", Claude or Almond Riley, remained until May 1938; the next, James Flack, until November 1938; the next, Louis Sengebush, Jr., until January 1939; thereafter, Anna Sengebush and, later, Julius Sengebush became the "managers."

It is clear that the defendant, at least during the existence of these "managers", held its license as a device to attract tenants to the premises for the landlord, apparently an affiliate corporation, by permitting them, as "managers", to conduct a tavern there under color and guise of the defendant's license.

I find the defendant guilty on the first charge.

As to (2) and (3): At no time did the defendant inform the Municipal Board of Alcoholic Beverage Control of the City of Newark, either in its application for license or by any written notice, of the proprietary interest of these various "managers" in the business.

I find the defendant guilty on charges (2) and (3).

A licensee who deliberately farms out its license to others for financial gain of itself or an affiliate organization perpetrates a serious fraud upon the State which strikes at the very root of the liquor licensing system.

As I said in Re Laurence Brook Country Club, Inc., supra:

"A licensee may not play horse with the whole licensing system by obtaining a license and then constitute himself an extra-legal issuing authority and grant the license to another."

The defendant has proved itself unworthy to hold a retail liquor license.

Revocation is, therefore, indicated.

It is unnecessary here to consider whether the defendant, by reason of its being a non-pecuniary association, was disqualified from holding its plenary retail consumption license.

Accordingly, it is, on this 28th day of September, 1939,

ORDERED, that Plenary Retail Consumption License No.C-825, heretofore issued to Business Men's Associates, Inc. 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.

7. COUPONS - REDEEMABLE IN MERCHANDISE OR CASH - PROHIBITED.

Gentlemen:

One of our clients, a national brewing concern, is, at our suggestion, considering a government post card coupon mailing.

The card will read either one of two ways, namely:

1. If receiver of card redeems the coupon card at any retail beer outlet where this particular make of beer is sold, they can receive four cans of beer for the regular price of three. The price of three is about 25¢

or

2. Inasmuch as the coupon government post card is worth 5 to 10 cents (the exact amount would be printed on the card) the bearer can redeem this card at any retail beer outlet and receive the three cans of beer less the cent value of the card (5 to 10 cents).

It is our hope that we will be able to mail these coupon cards to every householder in your state, but we would like to know before hand if you know of any adverse conditions, such as legal angles, that would prohibit such a mailing.

R. L. Polk & Company.

September 28, 1939

R. L. Polk & Company,
Chicago, Ill.

Gentlemen:

Plan No. 1, in which the consumer receives a coupon redeemable by the retailer in four cans of beer for the regular price of three, is not permissible because in violation of Rule 20 of Regulations 20 (Pamphlet Rules, page 63). Retail licensees may not, directly or indirectly, offer or furnish any gifts, coupons, rebates, discounts or similar inducements with the sale of alcoholic beverages for off-premises consumption, excepting only advertising novelties of nominal value.

Plan No. 2, in which the consumer receives a coupon redeemable by the retailer in cash upon the purchase of beer, is not permissible for the same reason.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK DENIED.

In the Matter of the Seizure on)
May 29, 1939 of a still and a)
Ford Sedan at and in the vicinity)
of 88 LaSalle Avenue, in the)
Borough of Hasbrouck Heights,)
County of Bergen and State of)
New Jersey.)

Case #5432

On Supplemental Hearing
CONCLUSIONS AND ORDER

DiMaria & DiMaria, Esqs., by Anthony P. DiMaria, Esq.,
Attorneys for Carmino Russo.
Harry Castelbaum, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

At a hearing held in the above matter on June 21, 1939, no one appeared to contest the proceedings. Subsequently, Carmino Russo, the owner of premises at 88 LaSalle Avenue, Hasbrouck Heights, requested that a supplemental hearing be held solely as to the padlocking of the premises, and advised that he had no interest whatsoever in the property which had been seized. It was represented that Carmino Russo had been confined to a hospital on the date upon which the original hearing was held and, under the circumstances, he was given an opportunity to present his testimony at a supplemental hearing which was held on August 4, 1939.

Carmino Russo has owned the premises in question for the past sixteen years. On April 1, 1939 he and his wife were living in the first floor of the building located upon said premises, and the second floor was vacant. On said date he rented the entire premises, consisting of both floors, the cellar of the house and a garage, for \$50.00 a month and, since that date, he and his wife have been living in the rear room of a candy store which Russo conducts in Lodi, N. J.

Russo testified that, when he rented the premises to a man known to him as "Joe", he had no knowledge that the premises were to be used for unlawful activities. The rental of \$50.00 a month appears to be reasonable in view that he has rented the second floor of his premises since July 1, 1939 at a rental of \$20.00 per month. There is nothing in the case to show that Russo had any knowledge of the unlawful activities, at least until May 15, 1939. He admits that, on that date, he visited the first floor to get some of his clothes and "felt a lot of heat." He testified that, when he asked "Joe" what they were doing, he was told to keep his mouth shut or he might get killed. There is some evidence that Russo also visited the premises on May 22nd. The still was seized on May 29th.

There is no evidence that Carmino Russo participated in any way in the operation of the still. He has been in this country

for twenty-eight years and has never been in trouble before. He is a very sick man. He owes two and one-half years' taxes and has a thousand dollar mortgage upon his property. He testified that he has no other assets, and says that his store in Lodi is "like a chicken coop."

I am satisfied that padlocking the premises would result in undue hardship upon the owner of the property and inflict too severe a penalty upon him for his failure to notify the police two weeks before the still was discovered. Hence, I shall not padlock the property. The seizure and forfeiture of the articles set forth in Schedule "A" annexed hereto were not contested.

Accordingly, it is determined that the seized property constitutes unlawful property and it is ordered that the same be and hereby is forfeited, in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals, and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 28, 1939.

SCHEDULE "A"

3 - 100 lb. bags sugar
1 - steam boiler
1 - 5 gallon measuring can
1 - copper cooker
1 - 5 section mushroom type column
1 - 35 gallon galvanized cooler and coil
40 - 50 gallon barrels with mash
4 - 5 gallon cans alcohol
6 - 1/2 gallon jugs alcohol
Miscellaneous personal property
1 - Ford Sedan, Engine #A2438852
New Jersey, 1939 Registration RD45W

9. MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - EXCEPTION ALLOWING LICENSEES TO TRANSFER TO ANY LOCATION, AND ENCROACH ON OTHER LICENSEES, PROVIDING THEY MOVE NOT MORE THAN 1000 FEET AT ONE TIME, DISAPPROVED.

September 28, 1939

Edward DuPree,
City Clerk,
Paterson, N. J.

My dear Mr. DuPree:

I have before me the ordinance pertaining to plenary retail distribution licenses adopted by the Board of Aldermen on June 19, 1939.

I am not now considering for approval Sections 1 and 2, which limit the number of plenary retail distribution licenses. Such limitations do not require the Commissioner's approval in the first instance in order to be effective. They are, instead, as provided in R. S. 33:1-41, reviewable on appeal. The sections appear to be in proper form.

Section 3, which provides that no plenary retail distribution licenses, excepting renewals and transfers from person to person, shall be granted for or transferred to any premises within one thousand feet of another plenary retail distribution license, is approved with one exception, viz., the provision authorizing transfers to other premises within a thousand feet of the premises licensed at the time of the transfer. It seems to me that this would allow any distribution licensee to transfer to any location in the City, and encroach on any other distribution licensee, providing only that he didn't move more than one thousand feet at one time.

Perhaps the Board had some other result in mind. If so, an amendment would be in order. As it now stands, there is no point to that phase of the regulation.

Section 4 appears to be in proper form.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. SPECIAL PERMITS - FEES - BASIS.

Dear Sir:

We have recently formed the Bowline Club, composed of men who were formerly members of Troop Five, North Bergen, Alexander Hamilton Council, Boy Scouts of America. The organization has been formed for the purpose of directly and indirectly assisting the present Boy Scout Troop Five in particular, and the Boy Scout movement in general. The association is endorsed by Mr. Ralph H. Philo, Chief Executive of the Alexander Hamilton Council, Boy Scouts of America.

In our efforts to bring the alumni together for enrollment in the Bowline Club, we are planning an outing at the troop Camp Schreiber, Oakland, N. J., on October 7. At this outing we expect to have about fifty men, and it is our intention to serve beer, refreshments, and supper at a total cost of One Dollar per ticket. Inasmuch as this outing is not being run for profit, and inasmuch as its purpose is indirectly to further the Scouting movement, we should appreciate permission to operate without the usual liquor license.

Sincerely yours,
Howard Reilly,
President, Bowline Club

September 28, 1939

Howard Reilly, President,
Bowline Club,
West New York, N. J.

Dear Mr. Reilly:

Where there is a charge of any kind, as for food or other refreshments, and beer will be served, it is necessary that the organization first obtain a Special Permit from this Department. The reason is that if a person has to pay anything, regardless of what the payment is supposed to be for, before he can get beer,

then it is a sale in the contemplation of the Alcoholic Beverage Law, and would be unlawful unless a permit or license had been obtained.

The \$10.00 fee for such permits is uniform. The only exceptions are police, firemen's and letter carriers' organizations and then only for the reason that these men devote the whole of their time exclusively to public service. Even they have to pay a \$5.00 fee.

There is no question in my mind of the worthiness of the objectives in the particular instance. But if this were the criterion, then I would be swamped, day in and day out, with hearings to determine whether the objectives of a given club or organization were worthy; what overhead commissions they carried; what was the financial set up and how were the funds to be distributed, etc. etc. These matters would lead me far afield from the imperative work of alcoholic beverage control and would have no relation to it except for the single purpose of determining whether or not the applicant should be entitled to a concession in the fee. Obviously this would consume inordinate time. It would be a dangerous thing to make fish out of one and fowl out of another. Everybody should be treated alike. If there are to be any exceptions, the line of cleavage should be simple, exact, and one which can be applied by anybody. After all, these are mere administrative matters which should be determinable by an objective test and without the time and expense of a quasi-judicial hearing and be handled by subordinates as routine.

Consequently, the uniform fee must be paid irrespective of the presence or absence of a profit motive, or worthiness of objective, or of past or part time service to the public unless the applicant comes squarely within the spirit of the few exceptions made as aforesaid.

Herewith copy of similar ruling concerning the American Legion Re Hauser, Bulletin 310, Item 13, and also the Bulletin items referred to therein.

Hence, since you purpose to make a charge of \$1.00 for the outing, it will be necessary for the Bowline Club to obtain a Special Permit to serve beer.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. FAIR TRADE - SPECIAL PERMITS TO SELL BELOW ESTABLISHED PRICES - NOT ISSUABLE FOR SEASONAL CLEARANCES.

Dear Sir:

Each year after Labor Day we reduce our prices on wines and liquor in order to sell out our stock, rather than carry it over until the next year.

This year most of our stock is under Fair Trade prices.

Would it be possible to get a special permit to sell at a little less than regular Fair Trade prices after Labor Day in order to get clear of our stock, as we are only open from the latter part of May to October.

Stines & Burdge,
Bay Head, N. J.

September 28, 1939

Stines & Burdge,
Bay Head, N. J.

Gentlemen:

Special permits are not issued to allow retailers to sell their entire stock of alcoholic beverages below Fair Trade prices in the regular course of their business. If that were permitted, the Fair Trade Act might just as well be written off the books because all licensees would make similar application and then everybody would be underselling.

Such permits are not intended as a substitute for the law. Rather, they are issued to ameliorate those situations in which all business men find themselves at times; i.e., where they honestly desire to close out and discontinue delivering a particular product, but cannot do so at the prevailing price. It is in such cases that applications may be made, and if the permit issues, the retailer is thereafter prevented from again reordering and selling the products for which the permit was sought.

Under the circumstances outlined in your letter, a permit to sell below the minimum consumer prices is not obtainable.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALES BY POLITICAL CLUBS TO NON-MEMBERS - 3 DAYS' SUSPENSION ON PLEAS.

September 28, 1939

Robert E. Beakley,
Borough Clerk,
Vineland, N. J.

My dear Mr. Beakley:

I have before me staff report and your letter of August 8th re disciplinary proceedings conducted by the Board of Commissioners against Franklin D. Roosevelt Democratic Club, 507 Quince Street, and The Borough of Vineland Republican Club, 215 South East Boulevard, both charged with sale of alcoholic beverages to non-members, and note that the license of each was suspended for three days.

Please express to the members of the Board of Commissioners my appreciation for their conduct of these proceedings and the penalties imposed. The recommended minimum for sale to non-members is five days for first offenses, but licensees who plead guilty in advance of hearing, thus saving the issuing authority the time and expense of hearing, may well be given a remission of two days.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. SEIZURES - ILLEGAL TRANSPORTATION OF WINE - MOTOR VEHICLES AND WINE RETURNED UPON CONDITION OF TAKING OUT RETROACTIVE LICENSE.

In the Matter of the Detention,)	
on September 26, 1939, of two)	
Mack Trucks and 48 barrels of)	On Application for Return
wine contained therein, from)	of Property
the Young Motor Haulage Corpora-)	
tion.)	ORDER
- - - - -)	

Daniel Cella, President of Young Motor Haulage Corporation, for Young Motor Haulage Corporation.

BY THE COMMISSIONER:

On September 26, 1939, Young Motor Haulage Corporation transported 48 barrels of wine in two of its Mack Trucks, and attempted to deliver the wine to the licensed premises of Lackawanna Terminal Warehouses, Inc. located at 629 Grove Street, Jersey City. Investigators of this Department detained the trucks and the wine because the trucks were not licensed to transport alcoholic beverages for delivery in New Jersey.

A verified petition has been filed by Young Motor Haulage Corporation praying for the return of the seized trucks and the wine. The petition sets forth that the petitioner has acted in good faith, did not intend to violate the law and that irreparable injury will result if the motor vehicles and wine are detained pending formal hearing.

The petitioner admits that it did not hold a transportation license. It does hold a special permit authorizing it to "pick up" alcoholic beverages from premises of a licensed New Jersey manufacturer, or export wholesaler, or public warehouses for delivery to points outside of New Jersey. Petitioner asserts that it transported the wine incidental to the removal from New York to New Jersey of the entire plant, consisting of furnishings, equipment and stock of Shewan-Jones, Inc., which holds a winery license in New Jersey and a similar type of license in New York; that petitioner, before it undertook the transportation, inquired of this Department whether it was authorized to transport the wine under its special permit and through some misunderstanding believed that it could do so because the delivery of the wine was to be made to a New Jersey warehouse.

The petitioner further evidenced its good faith by filing an application for a transportation license for the period from July 1, 1939 to June 30, 1940, accompanying its application with license and decalomania fees of \$202.00.

Heretofore, where a transporter unwittingly transported alcoholic beverages in this state without a license, I have required such transporter to pay the full annual license fee for the year in which the violation occurred. This was considered as an adequate deterrent in that it would penalize the transporter who did not apply for a transportation license until after he was caught. The petitioner sets forth in its petition that if the transportation license is granted to it, no application will be made for the refund or rebate of any portion of the license fees deposited.

The Department has conducted an independent investigation which discloses that the petitioner has engaged in the transportation of alcoholic beverages in the State of New Jersey substantially in accordance with the facts set forth in its petition.

In view of the foregoing, the motor vehicles and wine will be returned upon compliance with the following conditions: (1) that the petitioner complete all steps necessary to and obtain the transportation license referred to; (2) that the petitioner pay the costs and charges incident to the detention of the motor vehicles and wine; (3) that petitioner comply with whatever requirements may be imposed by the State Tax Commissioner of the State of New Jersey.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 29, 1939.

14. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)	
)	
WEST END WINE & LIQUOR STORES, INC.,)	CONCLUSIONS
150 Elmora Avenue,)	AND ORDER
Elizabeth, New Jersey,)	
)	
Holder of Plenary Retail Distribution License D-2, issued by the Municipal Board of Alcoholic Beverage Control of Elizabeth.)	
-----)	

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.
West End Wine & Liquor Stores, Inc., Defendant-Licensee, by its President, Morris Zucker.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at his licensed premises on July 21, 1939, in violation of Rule 6 of State Regulations No. 30. Its license will, therefore, be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 29th day of September, 1939,

ORDERED, that Plenary Retail Distribution License D-2, heretofore issued to West End Wine & Liquor Stores, Inc. by the Municipal Board of Alcoholic Beverage Control of Elizabeth, be and the same is hereby suspended for a period of 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.

15. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)

LOUIS JACOB,)
87½ French Street,)
New Brunswick, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-8, issued by the Board of Commissioners of New Brunswick.)
-----)

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control

Louis Jacob, Pro Se.

BY THE COMMISSIONER:

This licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at his licensed premises on September 8, 1939, in violation of Rule 6 of State Regulations No. 30. His license will, therefore, be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 29th day of September, 1939,

ORDERED, that Plenary Retail Distribution License D-8, heretofore issued to Louis Jacob by the Board of Commissioners of New Brunswick, be and the same is hereby suspended for a period of 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.

16. LICENSE AND INVESTIGATION FEES - REFUND - ON REVERSAL OF DENIAL OF APPLICATION AFTER LICENSING YEAR HAS EXPIRED THUS MAKING ISSUANCE OF LICENSE APPLIED FOR IMPOSSIBLE, NEITHER LICENSE NOR INVESTIGATION FEE IS "EARNED" AND HENCE FULL POSTED FEE MUST BE RETURNED.

September 28, 1939

Elvin R. Simmill, Esq.,
Asbury Park, N. J.

Dear Mr. Simmill:

On August 3, 1939 I reversed the denial of the Spring Lake Heights Borough Council of a license to the Monmouth's Old Mill, Inc. for the term ending June 30, 1939 but, since that term had already expired, did not, of course, order the issuance of the license applied for. See Monmouth's Old Mill, Inc. v. Spring Lake Heights, Bulletin 339, Item 9. You now ask what refund, if any, should be made to the Monmouth's Old Mill, Inc. of the license fee which it posted with its application.

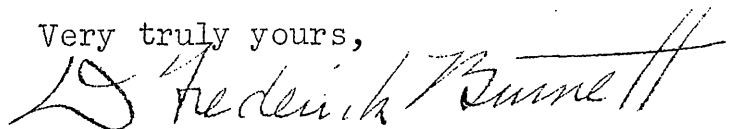
Although an application must, when filed, be accompanied by the annual fee prorated from the date of filing, nevertheless (since June 8, 1935) the fee to be charged against the applicant, when his application is granted, is prorated from the date of actual issuance of the license and the surplus must be returned to the applicant. See Re Lane, Bulletin 263, Item 2. R.S. 33:1-26.

Where, as in the case of the Monmouth's Old Mill, Inc. an application is denied and the denial reversed on appeal but too late for issuance of the license applied for, the applicant has, through no fault of his own, never been issued a license and hence is not chargeable with any license fee. He has never received any "quid pro quo" for which the municipality may claim such a fee.

The remaining question is whether the municipality may nevertheless, under R. S. 33:1-25, retain ten per centum (10%) of the posted license fee. That section provides that on denial of an application for issuance of a license the municipality shall retain such per centum as an investigation fee. However, where a denial is reversed on appeal, such denial, in legal contemplation, is voided. The denial being voided, so too is the municipality's claim for the ten per centum (10%) investigation fee based upon that denial. See Re Ross, Bulletin 167, Item 12.

Hence, since the Borough of Spring Lake Heights has no claim to all or any of the posted sum either as a license or as an investigation fee, the Borough must make a full return of the money.

Very truly yours,



Commissioner.