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

BULLETIN NUMBER 204. SEPTEMBER 13, 1937

1. STATE BEVERAGE DISTRIBUTORS - NOT PERMISSIBLE TO EMPLOY RETAIL LICENSEE TO TAKE ORDERS OR OTHERWISE ACT AS SOLICITOR.

Gentlemen:

We represent a state beverage distributor who serves a liquor store which is properly licensed by the city in which it is located. Our client would like to place a sign in this store to read as follows:

"Half and quarter barrels beer delivered to your home
Coolers rented
United Beer Distributors, Inc.
Leave orders here"

This sign is to be left in the state beverage distributors' customer's place and in the event any orders are left with this customer, he would immediately call the distributor and the distributor would make delivery. We would appreciate very much if you would advise us whether the placing of such a sign in this store is permissible as we do not wish to violate any rules of the department.

Very truly yours,

GLICKENHAUS AND GLICKENHAUS

August 14, 1937.

Glickenhaus and Glickenhaus, Esqs.,
Newark, N. J.

Gentlemen:

You ask whether it is permissible for a state beverage distributor to place a sign in a retail licensee's store stating that orders upon the distributor for its beer may be left at the store, and to have the retail licensee upon receipt of these orders notify the distributor who will then make delivery to the home of the consumer. Under this arrangement, the licensee is in effect acting in the capacity of solicitor for the state beverage distributor. Aside from the fact that he is unlicensed to act as such solicitor, there is the more fundamental objection that, being a retail licensee, he is prohibited under Section 40 of the Control Act, from serving as solicitor for a state beverage distributor.

That section forbids a manufacturer or wholesaler of alcoholic beverages from being directly or indirectly interested in a retail licensee, and vice versa. A state beverage distributor, although a retailer, is nevertheless also a wholesaler. In re Carabelli, Bulletin #174, Item #15, I ruled that a state beverage distributor is forbidden to hold a chattel mortgage on the equipment of a plenary retail consumption licensee because of the prohibition in Section 40.

The arrangement that you propose is prohibited.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. APPLICATION FOR RETAIL LICENSES - FUNCTION OF QUESTION #11 - HOW ANSWER THERETO SHOULD BE TREATED BY LICENSE ISSUING AUTHORITY - HEREIN OF HOW THE UGLY TERM "VIOLATION" MAY MEAN MUCH OR LITTLE.

Dear Sir:

Applications for renewals of Alcoholic Beverage Licenses from two of our licensees disclose in answer to question #11 in their applications that they have paid fines or penalties during the year now expiring for violations of the law.

No reports from your office have been received covering violations and we have no details except the statements of the applicants.

Is it not in order for your office to advise us promptly concerning fines assessed or collected in connection with violations, thereby rendering assistance to our officials in reaching decisions concerning the granting of licenses?

Very truly yours,

S. Willard Smith,
Borough Clerk.

S. Willard Smith,
Borough Clerk,
Bernardsville, N. J.

Dear Sir:

Question 11 reads:

"Have you ever paid a fine or penalty in settlement of any prosecution against you for any violation of any Federal or State law concerning the manufacture, sale, possession, distribution or transportation of alcoholic beverages?"

When the application form for Retail Licenses was originally prepared, this question was inserted to elicit information as to convictions for violation of Federal or State prohibition laws. The question, therefore, still serves a useful purpose although the answer must necessarily now include fines for violations which have occurred since as well as before Repeal. The answer, therefore, should be scrutinized with discrimination. The goal of the question is not the fact of payment of a fine or a penalty, but rather the nature of the violation for which it was incurred. If the answer or other questions based on it or other avenues of information opened up thereby bring out that the applicant has been convicted of a crime involving moral turpitude, that of itself is a bar to any license. On the other hand a <u>mere</u> violation of the New Jersey Beverage Tax Act or of the Federal Tax Act - e.g., failure to file a report punctually or delinquency in payment of taxes or to affix or to keep affixed proper stamps, or to cancel the stamps in manner required, does not cause disqualification of the applicant unless the applicant is disqualified by the Control Act because the tax or penalty remains unpaid.

It thus becomes apparent that the ugly term "violation" may mean much or little.

Now to answer your third paragraph specifically:- My Department never imposes fines. Consequently there are none for me to report. It follows that the fines or penalties mentioned in your first paragraph, as having been paid "during the year", have nothing to do with the Department of Alcoholic Beverage Control.

This Department is glad to be of service to all municipalities but cannot adopt your suggestion as we have nothing whatsoever to do with the imposition of such fines or penalties. The "violations" to which you refer, therefore, probably amount to no more than mere technicalities arising under the State or Federal Tax Acts. If so, they have no bearing on the decisions of your Borough concerning the granting of licenses, unless the tax or fine is still unpaid.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. CATERERS - MAY SERVE HOST'S LIQUOR IN LATTER'S HOME OR PRIVATE FUNCTION AS WOULD A SERVANT BUT MAY NOT THEMSELVES FURNISH ANY ALCOHOLIC BEVERAGES.

Dear Mr. Burnett:

This will acknowledge with thanks your letter of August 5th ruling upon our position as a caterer and your interpretation as to the service and sale of liquor.

With your indulgence permit me to ask one more question. Regarding the service of liquor under the New Jersey State Liquor Laws, is it not possible for us to merely service liquor in the State of New Jersey which has been purchased from a licensed retailer or wholesaler by the guest who we are catering for? In other words our only participation as far as liquor is concerned would be the service thereof and in no way would we act as providers.

If it is not possible for us to service the guest's own liquor it would be hardly possible for us to obtain any catering contracts in the State of New Jersey inasmuch as almost all parties serve liquor at their functions and we, as providers of food and equipment thereof, would normally be required to serve the liquor.

Very truly yours,

E. L. Stemen,
Auditor

August 15, 1937.

The Sherry-Netherland,
New York City.

Gentlemen: Att: E. L. Stemen, Auditor

It has been ruled that an unlicensed restaurateur may not mix or serve liquor which his patrons have brought into

the restaurant with them. Re Murnane, Bulletin #153, Item #5; re Walsh, Bulletin #187, Item 9.

The restaurateur maintains a definite place of business into which all members of the passing public are free to resort for refreshment and food. It is far from the ordinary practice for members of the public to enter a restaurant bringing their own liquor with them.

The ordinary caterer, however, is in a different position. He does not have an establishment to which members of the passing public may resort; instead, he furnishes and serves refreshments and food to a home or hall on some individual occasion and pursuant to a contract entered with the host of the affair being catered. The host is privileged to make gratuitous distributions of his own liquor to the guests at the affair. The caterer whom he hires to furnish the food and to serve the meal, may take the protection of the host and on his behalf serve the liquor as incidental to the general task of serving the entire meal. There is here no such excessive risk of a hidden sale by the caterer as there is in the case of the restaurateur. Indeed, it is quite customary for persons to call upon a caterer to furnish food for a special affair and to serve both that food and also, as incidental thereto, to serve the host's liquor.

However, the caterer is absolutely forbidden from directly or indirectly furnishing any alcoholic beverages. The risk is upon him at all times satisfactorily to explain any suspicious circumstance which implies that he is directly or indirectly furnishing the liquor. Subject to this condition, which he must keep in mind at all times, a caterer is permitted to serve the host's liquor as an incident to his contract of furnishing the food and general equipment and of serving the meal. This he may do, however, only off his own premises.

Very truly yours,

D. Frederick Burnett
Commissioner

4. RETAIL DISTRIBUTION LICENSEES - NOT PERMISSIBLE BY INDIRECTION TO WHITTLE AWAY RESTRICTIONS IMPOSED BY THE CONTROL ACT.

Dear Sir:

I represent a client who has a plenary retail distribution license in the Township of Downe, Cumberland County, New Jersey. In said Township, the local governing body has decided against issuing any plenary retail consumption license, so that such a license can not be obtained. My client owns the building for which he obtained a distribution license and said building is three stories high. My client would like to know whether he could sell beer in unopened bottles on the first floor and permit the purchasers to go up to the second floor and there consume the same.

My client has a prospective tenant who would like to lease the second and third floors of his building. This prospective tenant is only interested in leasing, however, if he could permit people who purchased beer or other alcoholic beverages elsehwhere to consume the same on the premises he wishes to lease, namely the second story of the building.

My client would like to know whether, if he cannot himself sell beer or alcoholic beverages in their original containers on the first floor and permit their consumption on the second floor, whether or not if he leased the second and third floor, his tenant could do so.

If you are in a position to give me the above information, I will gladly appreciate it since it will be of considerable help to my client. Thanking you in advance for any information you may be able to furnish me on that score, I am,

Yours very truly,

Joseph Narrow

August 15, 1937.

Joseph Narrow, Esq.,
Salem, N. J.

Dear Mr. Narrow:

Downe Township, by referendum vote of its citizens, decreed that there shall be no sales of alcoholic beverages for consumption on the licensed premises. Hence, the governing board of Downe could not even though it so desired, legally issue plenary retail consumption licenses.

Holders of plenary retail distribution licenses are entitled under the terms thereof to sell alcoholic beverages in the original containers for off-premises consumption only. See Section 13(3a) of the Control Act.

What your client seeks to do would, in effect, fritter away by indirection, the direct mandate of the people of Downe Township that alcoholic beverages shall not be sold for consumption on a licensed premises. I do not propose to allow any such situation to arise. Of course, I realize it is impossible for holders of plenary retail distribution licenses to know in every instance what the customers will eventually do with the liquor they purchase from their licensed premises. In the ordinary course of events, however, it is safe to say that such alcoholic beverages will be taken by the purchaser to his or her home and there disposed of. Enclosed is a copy of my observations in re Hullings, Bulletin #196, Item #9, relating to a situation somewhat similar to the facts as presented by your inquiry.

Either of the proposed set-ups as disclosed by your letter would be absolutely out of order for the following reasons:

FIRST: If your client sold beer in unopened bottles and then permitted his customers to go up to the second floor in the building owned by him and under his control, he would, in effect, be enlarging his licensed premises; this, of course, on the assumption that the second and third floors are not included as part of the licensed premises. Section 23 of the Control Act provides that "a separate license is required for each specific place of business and the operation in effect of every license is confined to the licensed premises." A violation of this provision would subject the licensee to arrest and revocation of his license. Of course, if the licensed premises include the second floor, the course of

conduct proposed by your client would be an out and out violation of the law, contrary to the terms of a plenary retail distribution license.

SECOND: As to the leasing of the second and third floors of the building to a tenant who would not enter into a lease unless he is assured that the people who come to his place would be allowed to consume the beer or other alcoholic beverages which are to be purchased from your client, the licensee, on the first floor; that would not go. What would thus be set up, is a regular business that could be conducted only under a plenary retail consumption license which, of course, could not be issued in the face of the referendum vote. If the tenant attempted any such sort of conduct, he would be subject to arrest for "operating without a license." Section 2 of the Control Act provides that "it shall be unlawful to manufacture, sell, possess with intent to sell, ****mix, process, bottle or distribute alcoholic beverages in this State, except pursuant to and within the terms of the license", etc.

Please advise your client not to attempt to carry out either of the above plans.

Very truly yours

D. FREDERICK BURNETT
Commissioner

5. LICENSEES - TOM MIX RADIO RIFLE - PERMISSIBLE

Dear Commissioner Burnett:

I have been gathering information on the Tom Mix Radio Rifle in order that I might explain it to you.

In one part of the room a glass cabinet is set which is probably twelve inches or less deep, and possibly two and one-half to three feet wide, standing about five feet off the floor. The upper portion of this cabinet is glass and has revolving arms in it which carry representatives of birds or ducks, and at a point about fifteen feet in front of the cabinet there is a slot machine for the insertion of a coin, probably five cents, and a rifle. To the rifle is attached an electric cord which runs to the cabinet. When the coin is inserted in the slot, the glass part of the cabinet lights up and the arms holding the birds revolve, passing from left to right as you face the cabinet. You sight the rifle and pull the trigger. In doing so, if you have aimed carefully, the bell rings and there seems to be some discussion as to whether or not the bird falls, or whether the bell merely rings. No projectile, shot or other missile is expelled from the gun, the action in the cabinet being controlled entirely by electricity.

I trust from the above you can get some picture of the contrivance and I have no doubt that your ruling on this novelty will be the same as skee-ball and other games of skill and amusement.

Yours very truly,

Charles H. Hanks, Jr.
Asst. Town Counsel

August 15th, 1937.

Charles H. Hanks, Jr., Esq.,
Assistant Town Counsel,
Town Hall,
Montclair, N. J.

Dear Mr. Hanks:

I find, upon investigation, that the rifle shoots a beam of light which, when it strikes the photo-electric cell in the center of the target, registers a hit. No projectile is fired. Hence, there is no danger that anyone will be hurt.

I also find that the game is a game of skill, the player's success depending solely on the accuracy of his aim. It may, therefore, be maintained on licensed premises so long as it is not used for gambling and no gambling is permitted. It is not a gambling game per se.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - CALLAHAN v. KEANSBURG.

JOSEPH CALLAHAN,
Appellant,
-vs-
MUNICIPAL COUNCIL OF THE BOROUGH OF KEANSBURG,
Respondent

ON APPEAL
CONCLUSIONS

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorney for Appellant.
Howard W. Roberts, Esq. and John M. Pillsbury, Esq., Attorneys for Respondent.
John H. Jobes, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal is from the refusal to renew a plenary retail consumption license for the "College Inn," 30 Sea Breeze Way, Borough of Keansburg.

The "College Inn" is a fancy name for there is no university in or near Keansburg. Its activities, then, are wholly extra-mural. It is located in the midst of a developed bungalow section, not far from the beach. 90% of those who live in the vicinity are summer residents; the remaining 10% - representing some 12 families - are all year round inhabitants.

For the past 30 years the Inn has been operated as a summer boarding house. It is a three-story building; the first floor is occupied chiefly by a barroom and a dining hall; there are 8 rooms and a bath on the second floor; the same on the third floor; and two additional baths on the first floor.

During the fiscal year 1934-5, appellant maintained a small bar at the Inn. In March 1935 a mortgage upon the premises was foreclosed. From then, and until July or August of the following year, the place remained idle. Appellant's 1934-5 license was transferred to 68 Maplewood Avenue, a different part of the Borough. He obtained renewals of the Maplewood Avenue license for the fiscal years 1935-6 and 1936-7.

In July 1936 appellant took a lease on the Inn with an option to purchase. In May 1937 he applied for a transfer of license from 68 Maplewood Avenue back to the Inn. Protest was made against this application. Several residents of the vicinity voiced vigorous objection that the neighborhood was residential; that the noise and activity of a tavern would be highly objectionable. It appeared that appellant's conduct of the Inn had not been altogether exemplary in 1934-5; that when an establishment but a block away had been licensed as a tavern, much trouble had ensued; that as a result of these experiences respondent had refused several applications for this vicinity.

Nevertheless, the application for transfer to the Inn was finally granted on appellant's assurance that he would not operate a barroom at the premises but would merely sell and serve drinks in connection with his dining room at the Inn, and on the further assurance that there would be no noise objectionable to neighbors.

Having gained the coveted transfer, appellant soon forsook, if not forgot, the assurances upon which it had been acquired. He established an independent tavern room. He imported a band consisting of drum, saxophone, piano, violin and guitar, a harmonic battery capable of moving the paid tuition list at the College Inn to the depths of great emotion wholly unrequited, however, by the neighbors who desired to get a little sleep in the early hours just before the dawn. Some of the more savage of the insomnists thought in terms of assault; the more pacific, about moving away - "If this is what Keansburg is going to be, we'll sell out and go to Asbury." Complaint apparently led to the elimination of the drum and the saxophone as the chief offenders, but not to the muffling of disturbing music, singing and loud noises at hours when the neighborhood wanted and was entitled to sleep. A loud mechanical music box was not without its harrowing effect.

On June 1, 1937, several of the nearby residents appeared at open meeting of the Borough Council and protested against the noise at appellant's premises; one was a person who had previously signed a petition favoring the transfer of appellant's license to the Inn.

Pursuant to this complaint, respondent adopted a resolution that in the case of premises being operated under a consumption license -

> "....no music shall be played on said premises where the same is audible more than one hundred feet (100 feet) distant from said premises."

This resolution was approved on June 16, 1937.

The noise at the Inn, however, did not abate. As late as the July 4th week-end, when appellant was operating under a special order, loud noises and music continued until 4:00 and 5:00 A. M.

On June 22, 1937, when appellant's application for renewal was given a hearing, respondent, in view of the continued protests of nearby residents, refused to renew.

Appellant obtained his transfer to the Inn upon assurances which he violated. He had his chance from May 18, 1937, until renewal time to show that he could operate a licensed tavern without noise and complaints. As one of the members of the Council testified:

> "We granted the transfer with the understanding as the Mayor stated, that this was to run to July. If Mr. Callahan doesn't conduct his place as he promised, why we will not renew the license."

I find nothing arbitrary or unreasonable in the refusal of the respondent to renew appellant's license.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 23, 1937

7. In the Matter of Revocation Proceedings against

PEOPLES BREWING COMPANY OF TRENTON, JACOB HORNUNG BREWING COMPANY, THE CLASS AND NACHOD BREWING COMPANY, TRENTON BEVERAGE COMPANY, DISTILLED PRODUCTS CO., and FRANK J. GOLDMAN.

CONCLUSIONS

Jerome B. McKenna, Esq., Attorney for Department.
Crawford Jamieson, Esq., Attorney for Peoples Brewing Company of Trenton.
J. Gowan Roper, Esq. and Crawford Jamieson, Esq., Attorneys for Jacob Hornung Brewing Company.
Claude Olwen Lanciano, Esq., Attorney for The Class and Nachod Brewing Company.
Joseph Felcone, Esq., Attorney for Trenton Beverage Company.
Jay B. Tomlinson, Esq., Attorney for Distilled Products Co.
Hervey S. Moore, Esq., Attorney for Frank J. Goldman.
Charles Quinn, Esq., Attorney for Interstate Fair Association.

BY THE COMMISSIONER:

Charges and notice to show cause why their licenses should not be revoked for violation of the Act were served upon Peoples Brewing Company of Trenton, holder of limited brewery license #BL-4, Jacob Hornung Brewing Company, holder of limited wholesale license #WL-51, The Class and Nachod Brewing Company, holder of limited wholesale license #WL-53, Trenton Beverage Company, holder of plenary wholesale license #W-48, Distilled Products Co., holder of State Beverage Distributor's license #SBD-72, and Frank J. Goldman, holder of plenary retail consumption license #C-24 for premises known as Trenton Interstate Fair, Hamilton Township.

The matter concerns what happened at the New Jersey State Fair last fall. The director of the Fair, one George A. Hamid, gave, for a consideration of $1,000., a concession of the exclusive privilege of selling beer at the Fair to defendant, Frank J. Goldman, a retail licensee, subject to the agreement that only four brands of beer were to be sold by him and further that each purveyor of the four brands was to pay $250. apiece to

the Fair as an advertising charge so that the total amount to be received by the Fair, in respect to the beer concession, was $2,000. Goldman thereafter contacted the defendants, Peoples Brewing Company of Trenton, The Class and Nachod Brewing Company, the Trenton Beverage Company and the Distilled Products Co. and obtained from each a check to his order in the sum of $250., upon the assurance that these four brands of beer and no others would be sold at the Fair Grounds.

The Jacob Hornung Brewing Company is brought into the picture because it extended a $200. credit to its distributor, the defendant, Distilled Products Co., for advertising at the Fair, but there was no evidence introduced to establish that this brewery actually knew of the payment made by Distilled Products Co. to Goldman or otherwise how that credit had been used or applied, if at all. The charge against the Jacob Hornung Brewing Company is therefore dismissed.

Goldman testified that he was an advertising agent for the Fair and that while he had taken out the beer concession on his own personal account, he had, as such advertising agent, sold considerable advertising in behalf of the Fair, not only to the four defendant-licensees, but also to several other exhibitors, and that the monies he had collected from the licensees were openly declared by him as being collected solely for the benefit of the Fair and not for himself individually. His testimony is that he paid the Fair not only his own concession fee of $1,000., but also the $1,000. received from the four licensees, and this is corroborated by the records of the Fair and the testimony of Harry Labreque, Resident Manager of the Fair.

Goldman's testimony as to why these four $250. checks were made out to his order by the defendant-licensees and not direct to the Fair follows:

"Q Whom were you representing? A The New Jersey State Fair.

Q They are the lessees of the Interstate Fair? A Correct.

Q What was done with the money you collected from these people? A I gave checks to the New Jersey State Fair.

Q And you were representing the lessee in that instance? A Yes, sir.

THE HEARER: Acting as Agent?
THE WITNESS: Yes.
THE HEARER: Why did you take the checks in your own name?
THE WITNESS: I work all my business that way. I am in the real estate business. If I sell a man's house, the check is given to me.
THE HEARER: Did you represent to these people that you were acting on behalf of the Fair Association?
THE WITNESS: Yes.
THE HEARER: Why didn't you turn the checks over to the Fair Association?
THE WITNESS: They were made out to me.
THE HEARER: You could have endorsed them.
THE WITNESS: Yes, that could be done.
THE HEARER: Did you represent this was to be used in partial payment of your concession?
THE WITNESS: No, sir."

Summarizing to this point: It clearly appears that each of the four defendant-licensees paid $250. to a retail licensee upon the agreement that their four respective brands would be the only ones sold at the Fair; that the retailer, however, pursuant to his concession, paid over the full proceeds of these payments to the Fair -- in short, looking through the form to the substance, the brewers and distributors paid the Fair $1,000. in order that their products would be sold exclusively at the State Fair.

The question is whether these payments violate Section 40 of the Control Act which prohibits breweries and wholesalers from being interested in the retailing of alcoholic beverages and expressly provides that the prohibited interests shall "include any payments or delivery of money or property by way of loan or otherwise, accompanied by an agreement to sell the products of said brewery.....or wholesaler."

The problem has given me grave concern. It is clear from the evidence that the arrangement was entered into because of the supposed advertising value and not the incidental profit on the beer which would be sold; that such profits were considerably less than the $250. paid - e. g., the Peoples Brewing Company sold altogether only thirty-eight half barrels; that, with emphasis on advertising, the defendants, in good faith, did not consider that a payment for the benefit of the Fair, a non-licensee, was subject to the rules applicable to ordinary taverns and retail licensees; that it was the Fair which had the strangle hold on the concessionaire-licensee, not the brewers.

On the other hand, the effect on the retail licensee is exactly the same as if the payment had been made to him and retained for his personal benefit, for, so long as the arrangement was in force, he could not sell under his agreement with the Fair any brand of beer except the four stipulated products. The control over the retailer and his policies is but one step removed. So far as selling any other beer is concerned, he is hog-tied. The fact that the money reached and stayed in the coffers of the Fair does not make the Fair a non-conductor of the violent shock given to the statute. The broad statutory language is not confined to payments made to retail licensees either directly or beneficially. The evil is identical whether the payment be made to the licensee or to another who controls his policies. If payment to the Fair purges the transaction, then payment by a brewery to any one other than a retailer would suffice, even though an agreement to sell the products of the brewery exclusively is thereby effectuated. Thus a payment could be made to a landlord of a tavern, himself not in the liquor business, conditioned, however, that any tavern tenant must sell that particular brewer's products exclusively. So, through the familiar medium of corporate devices, baffle plates could be artificed to circumvent, emasculate and defy the statute; anything - everything - would get by providing only that the payment of money were but once removed in relation to the retail licensee. Any sin against the statute could be committed with impunity if done in the name of advertising!

I am impelled, therefore, to construe Section 40 of the Control Act as prohibiting brewers and wholesalers from making any payments or contributions to anyone whatsoever, whether a licensee or not, if it is accompanied by an understanding or followed by the result that the products of that brewery are sold in whole or in part exclusively by any retailer. A less militant construction would allow any brewery truck to drive through the statute without respect for any STOP sign the people have erected. Brewery control over retail outlets and contracts for exclusive sale of brewery products, which were well recognized pre-Prohibition evils, are not to return to New Jersey by indirection.

I conclude, therefore, after much thought, that the payments made by the defendant-licensees to the Fair were in violation of the statute.

This case is one of first impression. There has been no pronouncement heretofore dealing with this kind of a situation. The result reached is not obvious on mere reading of the statute. It would smack of ex post facto legislation to make this new interpretation after the acts had been committed and thereupon convict these licensees for doing something which they did not know or have fair cause to know to be wrong at the time the acts were done. It would be, therefore, unfair in this case to find them guilty let alone to revoke or suspend their licenses. Hence, the charges are dismissed.

In view of the plain lauguage above set forth, I believe that a warning as to severe penalties for any future violation is superfluous.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 7, 1937.

8. ENFORCEMENT DIVISION ACTIVITY REPORT FOR AUGUST 1 to 31, 1937, INCLUSIVE.

To: D. Frederick Burnett, Commissioner.

ARRESTS: Total number of persons - 74
Licensees - 6 Non-Licensees - 68

SEIZURES:

Stills - total number seized - 28
1 to 50 gal. capacity - 14
Over 50 gal. capacity - 14

Motor Vehicles - total number seized - 5
Trucks - 1 Pleasure cars - 4

Alcohol
Beverage alcohol - 152 gallons
Denatured alcohol - 0

Mash - total number of gallons - 26,350

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - 855 bottles
Wine- - - - - - - - - - - - - 8 gallons
Whiskies and other hard liquor 285 gallons

RETAIL INSPECTIONS:

Licensed premises inspected- - - - 1526

Illicit (Bootleg) liquor - - - 2
Gambling violations- - - - - -99
Sign violations- - - - - - - -42
Unqualified employees- - - - 192
Other violations - - - - - - - 34

Total violations found 369

Total number of bottles gauged - 9226

COMPLAINTS:

Investigated and closed - - - - - - - - -	278
Investigated, pending completion- - - -	205

LABORATORY:

Number of samples submitted - - - - - - -	139
Number of analyses made - - - - - - - - -	176
Number of poison liquor cases - - - - - -	0
Number of cases of denaturants- - - - -	1
Acetone cases - 0	
Isopropyl " - 1	
Number of cases of alcohol, water and artificial coloring- - - - - - - - - -	7
Number of cases of moonshine (Home-made finished product of illicit still)- - - - - - - - - - - -	17

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

9. MAGICIANS - SPECIAL PERMITS NECESSARY TO CONJURE UP AND DISPENSE COCKTAILS TO VOLUNTEER ATTESTANTS - HEREIN OF THE CONSTRAINT OF SPIRITS.

Dear Sir:

In preparation for a coming season of entertainment work I will appreciate some information about an act that will play night clubs, hotels, banquets, etc. The following questions cover the points in issue:

A: A magician performing professionally gives an entertainment during the course of which a limited number of cocktails are mysteriously produced and <u>given</u> to the audience for consumption. All alcoholic ingredients used are purchased by the magician in the open market and are tax paid at the source. Is this performance in violation of any law of your State?

B: If the above performance is sponsored by a liquor organization for publicity purposes and if such sponsor does not supply any of the ingredients used in the entertainment, will a performance so sponsored be a violation of any law of your State?

C: The above performance, either under question A or B, includes a female performer who is a professional actress, singer and dancer and who in the course of her performing hands the cocktails to the audience. Is it likely that she could be considered a waitress under any law of your State, if any, that governs the age of waitresses in establishments selling liquor?

D: If the answer to C is in the affirmative, what is the age minimum?

Other magical performers in the last few years have found little, or no, legal opposition to the proposition in question A. I will be very thankful to be advised.

Very truly yours,
Sedrick Hoyt.

September 8, 1937

Mr. Sedrick Hoyt,
Baltimore, Maryland.

Dear Sir:

It is with diffidence that one ventures reply to a necromancer who can command the spirits at will. I pluck up courage in noting that even you require ingredients, having always thought that magicians conjured up these viviparous cocktails full born from Minerva's brow! No trade secrets, however, will be invaded, The point is - the moment that spirits cross the frontier into New Jersey it's a job to control them!

So here are the rules:

1. No legerdemain in summoning up and dispensing alcoholic drinks is permissible upon unlicensed places. The mundane dollar paid for admission converts your "gift" to admiring and volunteer attestants into a sale. Some might even regard it as a lottery!

2. If the feat is accomplished on licensed premises you must take out a special permit for yourself to charm the spirits and for your bewitching assistant to dispense them. Both of you must be of age and good citizens.

Why wouldn't a cup or two of strong tea do just as well?

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

.0. PLENARY RETAIL DISTRIBUTION LICENSES - MERCANTILE BUSINESS - LIST OF MUNICIPALITIES PROHIBITING THE ISSUANCE OF PLENARY RETAIL DISTRIBUTION LICENSES FOR PREMISES ON WHICH OTHER MERCANTILE BUSINESS IS CONDUCTED.

September 8, 1937

Nathaniel Rogovoy, Esq.,
Millville, New Jersey.

My dear Mr. Rogovoy:

Following is a list of the municipalities which, so far as our records show, have ordinances presently in effect prohibiting the issuance of package goods licenses for premises on which other mercantile business is conducted:

Atlantic City
Atlantic Highlands
Bayonne
Belleville
Boontown, Town of
Camden
Dumont
East Hanover
East Orange
Egg Harbor Township
Elizabeth
Garfield
Garwood
Manville
Middletown
Monroe Township (Middlesex County)
New Brunswick
Newton
Passaic, City of
Pequannock
Perth Amboy
Piscataway
Pleasantville
Ramsey
Sayreville

Hackettstown
Hightstown
Hopatcong
Keansburg
Kenilworth
Landis
Little Falls
Madison Township
(Middlesex County)
Manasquan
Somerville
South Plainfield
South River
Spring Lake
Tenafly
Trenton
Union City
Vineland
Wallington
West Deptford
Woodbridge

Municipalities which are not on this list but which issue plenary retail distribution licenses, permit the sale of package liquor in connection with other mercantile business.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - TEN DAY PENALTY APPROVED - HEREIN OF LIES TOLD BY CHILDREN IN ORDER TO BE SERVED WITH ALCOHOLIC DRINKS.

September 10, 1937

Arthur Lozier, Clerk,
Borough Council of Paramus,
Hackensack R. D. 1,
New Jersey.

Dear Mr. Lozier:

I have staff report of the proceedings before the Borough Council of Paramus against Catherine Gorman, t/a Silver Glen, charged with having sold alcoholic beverages to minors, to which she pleaded guilty.

The report states:

"Complaint had been received by this Department that 'young high school girls and boys had no difficulty in being served with intoxicating liquors in Silver Glen, in Paramus.' Accordingly, investigators were assigned and the licensed premises kept under observation on various dates, including July 23, 1937.

"On this latter date, Investigators Kaufman and Grover entered the licensed premises at about 9:45 P. M. They observed numerous young couples dancing, many of whom appeared to be under the age of twenty-one (21) years. They also noted that many of these young people were being served alcoholic beverages by a waiter in booths which were located along the side of the room. Kaufman and Grover approached one of these booths where the waiter had just served three beers and three whiskies to six young people. One young man upon being questioned by the investigators told them that he was twenty-one (21) years of age, but an examination of his automobile driver's license disclosed that he was only eighteen (18) years of age. The other two boys seated at the table were also eighteen (18) years of age. The ages of the three girls were seventeen (17), nineteen (19), and twenty-one (21). The investigators were informed by the waiter that the five minors had misrepresented their ages.

"The minors, the waiter, and Frank Gorman, the manager, were taken to the Paramus Police Headquarters, where the minors were charged as disorderly persons for having misrepresented their ages.

"The waiter and manager were charged with having sold alcoholic beverages to minors and subsequently were held for Grand Jury action.

"Later, in the Second Criminal Judicial District Court of Bergen County, four of the minors pleaded guilty to having misrepresented their ages. One girl pleaded not guilty but was later adjudicated guilty after trial. Sentence will be imposed upon these minors on September 22 next.

"After deliberation, the Borough Council decreed that the

"Sentence to be License suspended for ten (10) days beginning midnight, September 9 to midnight, September 18, 1937, inclusive."

I think your Council did just right. Sales of alcoholic beverages to children must be stamped out unflinchingly. Licensees who indulge in this practice deserve the substantial punishment handed out by your Council. It is true that the minors lied about their ages. The court will take care of that in due course and teach these young people that it isn't "smart" to lie in order to get a drink. But licensees are not absolved because children lie. One must believe the evidence of his own eyes. If my men can "spot" the minors, so can the licensee. The very reason my men went there was because of complaint previously received that the practice was going on regularly -- that "young High School girls and boys had no difficulty in being served with intoxicating liquors in Silver Glen, in Paramus."

Please extend to the members of the Council and to their attorney, Charles Schmidt, Esq., my sincere thanks for their prompt and effective action in this case.

Cordially yours,

Commissioner.

J. EDGAR