Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 148. November 18, 1936

1. CHRISTMAS ADVERTISING

NOTICE TO LICENSEES

November 9, 1936.

Opinion has been voiced that there is nothing wrong with using a picture of Santa Claus in connection with holiday liquor sales. Statement was made:

> "Santa Claus is identified with the spirit of the Christmas holiday season, and I can see no harm in the use of Santa Claus in connection with liquor. He is not a biblical character but is synonymous with the season of happiness and good cheer. I don't think it is harmful for the liquor industry to make use of Santa Claus in ads or containers."

I do not agree.

True, the Christmas Season is one of happiness and good cheer, but the primary significance of Santa Claus is as a bearer of gifts to children. He is not associated with grown-ups except in the secondary sense. It would be short-sighted indeed for the brewers or distillers to commercialize the secondary significance of Christmas and defile it by pictures of Santa Claus carrying liquor as well as toys. It would be trifling with public sentiment to hook up Santa Claus in any liquor advertising.

No occasion has arisen in New Jersey to cause enactment of a formal Rule. I shall, therefore, appreciate your valued cooperation in honoring these advisory views.

D. FREDERICK BURNETT
Commissioner

2. APPELLATE DECISIONS - STACEWICZ vs. TRENTON.

ALEX STACEWICZ,)
Appellant,)
-vs-)
CITY COUNCIL OF THE CITY OF TRENTON,) ON APPEAL
Respondent.) CONCLUSIONS

. . . . . .

David Kelsey, Esq., Attorney for Appellant.
Adolph F. Kunca, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located at 81 Fillmore Street, at the corner of Fillmore and Taylor Streets, Trenton.

Appellant heretofore appealed from the denial of a consumption license for the same building, and the action of respondent in that case was affirmed. Stacewicz vs. Trenton, Bulletin #35, item 10. Appellant now seeks a distribution license instead of a consumption license, and intends to make structural changes so that the entrance to his place of business will face on Taylor Street instead of on Fillmore Street.

Among the reasons cited by respondent for the denial of this application is the proximity of the proposed licensed premises to a public school.

The factual situation is substantially the same as in the prior appeal. By moving the entrance from Fillmore Street to Taylor Street, appellant has increased the distance from the entrance door of his premises to the entrance door of the school building and the entrance gate to the school and playground. It appears, however, that the proposed entrance on Taylor Street will be about one hundred seventy (170) feet from the entrance to the playground, which is also the entrance which the children use in going to and coming from school. In considering the provisions of Section 76 of the Control Act, the distance should be measured between the proposed entrance on Taylor Street and the gate to the playground and school. In re Ackerman, Bulletin #48, item 11; in re F. & A. Distributing Co., Bulletin #127, item 4. Since it appears that this distance is only one hundred seventy (170) feet, the license could not be granted.

Appellant contends that while a consumption license might be objectionable near a school, these objections would not apply to a distribution license, especially where the store is located upon another street. While it is true that consumption licenses may involve problems which do not apply to distribution licenses, Lackowitz vs. Waterford, Bulletin #125, item 12, nevertheless, the Legislature has not distinguished between these two types of licenses so far as Section 76 of the Control Act is concerned. That section applies to both types.

The action of respondent is, therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 10, 1936.

3. EMPLOYEES - ELIGIBILITY AFTER CONVICTION OF CRIME INVOLVING MORAL TURPITUDE

June 10, 1936.

Dear Madam:

Section 23 of the Control Act provides that no person who is ineligible to receive a license may be employed by or connected in any business capacity whatsoever with a licensee. Section 22 provides that no person who has been convicted of a crime involving moral turpitude may receive a license. It follows that no per-

son who has been convicted of a crime involving moral turpitude may be employed by a licensee.

When your husband's application for a solicitor's permit was filed with this Department a hearing was held and it appeared that he had been convicted of the crime of aiding and abetting a robbery and had served 52 days in jail, thereafter being placed on probation. The record of conviction and the surrounding circumstances disclosed that the conviction was for a crime involving moral turpitude. The application was therefore denied.

Under the statute the Commissioner has no power to waive the statutory disqualification, which is absolute and mandatory. He sympathizes with the situation and recognizes that it might well be that in some proper cases more good would be done than harm by allowing a person who has made a mistake to have a license or work for a licensee. Re Vandervalk, Bull. 39, Item 12. However, this is a matter which has been fixed by the Legislature, which made the law that if a person has been once convicted of a crime involving moral turpitude he is permanently disbarred from having a license or being employed by a licensee. Re Boettner, Bulletin 17, Item 1. It is the Commissioner's function to execute that law and not to pass upon its wisdom. He therefore regrets that he cannot consider modifying the original denial of your husband's application.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By: Mortimer J. Shapiro
Senior Inspector

4. DISCIPLINARY PROCEEDINGS - ILLICIT BEVERAGES - OUTRIGHT REVOCATION.

November 11, 1936.

Arthur C. Malone,
City Clerk,
Hoboken, N. J.

Dear Mr. Malone:

I have staff report and your certification of proceedings before the Board of Commissioners of Hoboken against Charles Prester, charged with having possessed "illicit alcoholic beverages".

I note the licensee pleaded guilty and that his license was immediately revoked.

It is quite evident from this severe penalty, as well as from penalties that have been imposed for violations in previous cases that it is the avowed purpose of your Board to impress upon Hoboken licensees that the law and the rules and regulations affecting the conduct of their businesses were made to be obeyed. I am most appreciative of this kind of backstopping in the interest of proper law enforcement.

Incidentally, Investigators from my staff covering Hoboken during the hours while the polls were open for voting on Election Day, November 3rd last, were high in their praise of the strict observance by your licensees of the State Rule prohibiting sale or delivery of alcoholic beverages during that period. Licensees soon learn when governing boards mean business.

Please convey to the Mayor and the other members of the Board my sincere appreciation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. HOLIDAY PACKAGES - NOTICE TO LICENSEES.

November 11, 1936.

W. S. Alexander, Administrator of the Federal Alcohol Administration, writes me under date of November 10th:

"The Administration has recently been advised that certain permittees are planning to furnish retailers with alcoholic beverages packaged in elaborate boxes designed for the Christmas trade. It is understood that the boxes are made of durable materials and that they have a value to the ultimate purchaser distinct from their value as packages, in some cases being made in the form of miniature bars and other useful articles. It is also understood that some firms contemplate preparing Christmas packages of liquor containing cocktail shakers, muddlers, lamps, bottle openers or other useful articles of appreciable value.

"In this connection the industry's attention is invited to the prohibitions of Section 5 (b) (3) of the Federal Alcohol Administration Act and to Regulations No. 6, Relating to the Furnishing of Equipment, Fixtures, Signs, Supplies, Money, Services or Other Things of Value to Retailers of Distilled Spirits, Wine and Malt Beverages. In Section 3 of these regulations are set forth various articles, including consumer advertising specialties, which may be furnished to retailers for unconditional distribution to consumer patrons, provided that such furnishing is not conditioned directly or indirectly on the purchase of distilled spirits, wine or malt beverages.

"It would appear that the furnishing of consumer advertising specialties, such as valuable package boxes or special articles packed in combination with alcoholic beverages for conditional distribution to consumer buyers, would not come within the exceptions listed in Regulations No. 6 and might, accordingly, involve the violation of Section 5(b) (3) of the Act. The administration deems it advisable at this time to announce its views in this matter, in order that members of the industry may avoid liability under the Act, and may save themselves any financial losses which might be incurred through commitments for special package boxes or other articles of this type".

I commend your attention to the foregoing views of the Federal Alcohol Administration which are hereby endorsed and approved.

D. Frederick Burnett
Commissioner

6. CHRISTMAS ADVERTISING - USE OF SANTA CLAUS IN ASSOCIATION WITH HOLIDAY LIQUOR SALES - COOPERATION PLEDGED BY NEW JERSEY LICENSED BEVERAGE ASSOCIATION

November 11, 1936.

Dear Commissioner:

Referring to your Notice of November 9th concerning the association of Santa Claus with liquor advertising, the Executive Council of the New Jersey Licensed Beverage Association at their meeting on November 10th unanimously adopted the following resolution:

> "RESOLVED that the advisory statement of Commissioner Burnett urging brewers, distillers, wholesalers and retailers to refrain from the use of the picture or name of St. Nicholas or Santa Claus in advertising or display copy during the coming Christmas Season be, and hereby is, endorsed for the reason that the patron saint has, since time immemorial, been associated with children and it is for the best interest of the industry that its advertisements should in no way associate such a symbol with alcoholic beverages.
>
> "FURTHER RESOLVED that the members of the New Jersey Licensed Beverage Association shall extend every cooperation in this direction and refrain from using such advertising or display copy and from selling any alcoholic beverage products on which the picture or name of Santa Claus or St. Nicholas appears.

Respectfully yours,

NEIL F. DEIGHAN
President

November 12, 1936.

New Jersey Licensed Beverage Association,
R.D. Palmyra, N. J.

Attention: Neil F. Deighan, President

Gentlemen:

I have copy of your resolution disowning offensive advertising and pledging your membership accordingly.

Voluntary action of this kind means more than any rule I could make.

With deep appreciation, I am,

Cordially yours,

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - EFFECT OF HIT-THEM WITH-A-FEATHER ATTITUDE.

November 12, 1936.

Mr. James G. Scull,
City Clerk,
Somers Point, N.J.

Dear Mr. Scull:

I have staff report of the proceedings before your Common Council against Abe Cohen and Frederick Diorio, charged with having possessed a bottle of whiskey, the contents of which was 7.8 proof lower than that as represented by its label.

The report states:

"On August 5, 1936 Investigators Glenn and Soeder inspected the licensed premises. Both licensees were present. A test of an open bottle of 'Hirman Walker "Twin Seal" Straight Whiskey, 100 proof' indicated that it was below proof. A sealed bottle of the same brand was opened, and tested O.K.

"Report of Analysis by the Department Chemist revealed that the bottle was 7.80 proof short of the proof as indicated by the label.

"The licensees placed the blame on a porter who worked around the place.

"We are this day in receipt of a letter from the City Clerk reading as follows:

'A hearing this day was given Abe Cohen and Frederick Diorio for a violation of the Alcoholic Beverage Control Law. No penalty was imposed. The following is the report made by the Councilmen acting as a body.

'This body feels, after considering the evidence, that there was no intent on the part of the defendants to intentionally dilute the contents of this bottle of whiskey. Council feels that Mr. Diorio and Mr. Cohen should use more precaution in the future. We feel the investigators have done their duty in their findings.'"

I regret the failure of the Common Council to do its own duty. The law makes it a misdemeanor for any licensee to possess illicit alcoholic beverages. Whether the defendant intentionally diluted the liquor is immaterial. The fact is it was diluted. The law was violated by the mere possession of such a bottle. The familiar artifice of placing the blame on the porter or the ice man is sickeningly stale. The master is responsible for the acts of his servant, especially so as concerns liquor. Either these licensees were guilty of possessing illicit beverages or they were innocent. If guilty, a penalty should have been imposed. If innocent, they should not have been scolded. This "hit-them-with-a-feather" attitude is unfair to the thousands of honest licensees in this State who are trying to make a living in competition with the cheaters. It will drive them all out of business and soon bring about Prohibition.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - BORDEN vs. NEWARK

WILLIAM BORDEN,)
Appellant,)
-vs-) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,) CONCLUSIONS
Respondent.)
. . . . .)

Nathaniel J. Klein, Esq., Attorney for Appellant.
Frank A. Boettner, Esq., by Raymond Schroeder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application to renew his plenary retail consumption license.

Appellant obtained his first license in February 1934. Almost from the beginning there were complaints as to the manner in which his premises had been conducted for, when he sought his first renewal in July 1934, people objected because of too much music, other loud noises, disturbances and intoxication of patrons. At that time respondent renewed the license on condition that no music be permitted, that closing hours be observed and that all objectionable noise be eliminated.

In July 1935, when appellant again applied for a second renewal, sixteen (16) property owners appeared before respondent and objected. At that time respondent again renewed the license "on condition that all music and unnecessary noise be eliminated".

In July 1936 objections were filed to the renewal of his license; a hearing was held and thereafter respondent denied renewal. From this action appellant appeals.

It appears that the annoying music has been stopped. I find, however, that the other objectionable features have continued unabated. One witness who resides next door testified that the place has always been noisy, that the language of patrons was "terrible", that the police were called there six times; that recently a policeman who responded to a call "got the bartender out and he was drunk with the rest of them"; that "last year was one of the worst I ever put in there". Appellant asserts that this witness is coloring his testimony in a deliberate attempt to force appellant to lose his property, that there have been disputes between them and that the witness is anxious to destroy appellant's business because this witness formerly owned the same land and lost a large sum of money by reason of his ownership thereof. If this witness' testimony were uncorroborated, there might be some doubt in my mind. Ford v. Knowlton, Bulletin #84, Item 5. This witness, however, is fully corrobated in his testimony. A man and his wife who reside on the other side of appellant's premises testified to excessive noises until as late as 3 A. M., also to drunkenness of men and women patrons, brawls and indecent language. Both of these witnesses also testified that the police have been called by them on one

occasion. There is also the testimony of the owner of the premises in which the latter witnesses reside. He testified that while visiting his property he frequently saw intoxicated men and women going in and out of appellant's premises and heard boisterous and obscene language come from these premises.

Appellant produced some witnesses who reside nearby. Their evidence, of course, is entitled to weight. These witnesses testified in general that the place had been properly conducted. Some, however, have visited the place only occasionally.

In the midst of this conflict of testimony and in order to learn firsthanded just what kind of a place really is being conducted, I directed an investigation to be made by my staff. Business was being conducted notwithstanding the denial of renewal, because of my order extending the license pending the determination of this appeal.

On October 1st, while the investigator was in the tavern, two women remarked that they would take any man in the alley if he would buy them a drink.

On October 4th, the Investigator, accompanied by his wife, visited the premises at 2:45 A.M. They observed three men and one woman at the bar. The bartender was very intoxicated and requested one of the patrons to serve the investigator.

On October 17th, entering the premises at 2:00 A. M., the Investigator found three men and a woman standing at the bar. The woman was intoxicated. One of the men was trying to persuade her to leave the tavern.

On October 18th, the Investigator was accompanied by a detective from the City Police Department. They observed two women at the bar who appeared to be solicitors. One of the women tried to get the detective and the investigator to buy her a drink. At 3:15 A. M. a man entered the tavern and bought one of the women a drink. Shortly after this, the man left with her, but both returned to the premises in ten minutes. The detective and Investigator left the tavern at 3:30 A. M., thirty minutes after the closing hour.

On October 20th, the Investigator observed a drunken, boisterous crowd. Two women in the place were trying to make all the men on the premises. The Investigator left at 3:30 A. M.

I am satisfied that the picture drawn by respondent's witnesses has not been exaggerated.

There is sufficient evidence in the record to sustain respondent's finding that the place has been improperly conducted and its determination that the license should not be renewed. Appellant cannot complain that he had no warning even if, as appears, he was never arrested or brought up on charges. This is not a case in which the disturbance complained of was an isolated incident. There is ample evidence of a long continued course of this conduct which has developed into a nuisance. Schelf vs. Weehawken, Bulletin #138, item 10; Conte vs.Princeton Bulletin #139, item 8; Lalliker vs. New Milford, Bulletin #141, item 8.

The action of respondent is affirmed.

Order will be entered cancelling the order extending the license pending the appeal.

D. FREDERICK BURNETT
Commissioner

Dated: November 14, 1936.

9. APPELLATE DECISIONS - HILL vs. MONTVILLE TOWNSHIP

WILLIAM F. HILL,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MONTVILLE,) CONCLUSIONS
Respondent.)

. . . . . .

McCarter & English, Esqs., by Richard J. Congleton, Esq., Attorneys for Appellant.
Hillery and Young, Esqs., by David Young, 3rd, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

Appellant, who holds a retail consumption license for premises on Boonton Turnpike, about one-half mile from Towaco, applied for a transfer to a store located on the same Turnpike directly opposite the railroad station in Towaco. The application was denied. Hence this appeal.

Towaco is a residential community, many of its residents commuting to New York. The premises to which the transfer is sought is an empty store in a row of business buildings directly opposite the railroad station. The other stores in this row are two groceries, a meat market, a barber shop, a candy store and lunchroom, a garage and the postoffice. This small business section caters to the needs of those residing in Towaco. There are some residences immediately to the rear of the stores. The school is located almost directly behind the premises in question. The principal residential section of Towaco, however, is located on the opposite side of the railroad tracks and, in order to reach the business section or the railroad station, those residing across the railroad must use an underpass built beneath the railroad tracks. The great majority of the children attending school must also use this underpass and must walk directly past the premises to which the transfer is sought in order to reach the school. There are about one hundred ten (110) children attending the school.

Transfer to other premises is a privilege not inherent in appellant's license. The issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Van Schoick vs. Howell, Bulletin #120, item 6. In determining whether the denial was reasonable, all the surrounding circumstances of this case must be considered.

Respondent contends the premises are too close to the school. The school is about four hundred (400) feet away if measured along the path which the children use, or about five hundred (500) feet if measured along the Boonton Turnpike and thence along the street upon which the school is located. If measured in an air line, the school is about two hundred (200) feet away. The minimum requirement set forth in Section 76

of the Control Act does not deprive issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near a school although beyond the two hundred (200) feet minimum. Serafin vs. Bayonne, Bulletin #107, item 3, and cases therein cited. So likewise the rule shall be as to transfers.

Respondent declares it has adopted a policy not to issue any liquor licenses in the Towaco section of the Township. It appears that no licenses have been issued in that section of the Township known as Towaco, and that an application heretofore made for the lunchroom on the same block was denied. The action of local issuing authorities in refusing to issue licenses in certain sections of a municipality has been upheld where it appeared that such policy was reasonable under all the circumstances and was not used merely to cloak discriminatory action against the appellant. Norton vs. Camden, Bulletin #97, item 9; Ely vs. Long Branch, Bulletin #99, item 2; Walsh vs. Egg Harbor, Bulletin #146, item 7.

Respondent contends that a traffic hazard might be created by the transfer of the license. There is a large amount of traffic on the Turnpike. The parking station for the railroad is directly opposite the premises in question. There is evidence that it is difficult to turn a car on the Turnpike at this point. A license may properly be denied if the issuance thereof would create a traffic hazard. Walstead vs. Matawan, Bulletin #133, item 2.

Respondent seeks to justify its denial because of petitions received protesting the transfer. General objections do not justify an issuing authority in refusing a license for premises located in an ordinary business district. Katz vs. Caldwell, Bulletin #143, item 3. Nor would general objections justify a local issuing authority in refusing to transfer a license into an ordinary business neighborhood. DeChristie vs. Gloucester, Bulletin #121, item 10; Shelby vs. Trenton, Bulletin #129, item 1. In the present case, however, the situation is different. The protests of the Board of Education, the Women's Club, the Parent Teachers Association and other representative and civically minded organizations, backed by the written protest of two hundred (200) residents and the verbal protests of about thirty-five residents who appeared at the hearing, are all founded upon the three reasons already considered, and upon the further objection that the issuance of a license in Towaco might attract undesirable persons and create a dangerous or at least disagreeable situation in so far as the underpass is concerned, particularly during the late hours of the night.

After reviewing the entire record, I find that appellant has shown no discrimination against him because no licenses have ever been granted in Towaco since Repeal. From all the evidence it appears that respondent has fairly reached the conclusion that a transfer of appellant's license from an outlying district to the center of the settlement in Towaco would not be conducive to the best interests of the community.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 14, 1936.

10. LABELING REGULATIONS - LABELS SHALL NOT CONTAIN ENDORSEMENT OF DISTILLED SPIRITS BY DOCTORS, CHEMISTS, OR RESEARCH INSTITUTES.

October 23, 1936.

Mr. Nathan L. Jacobs, Chief Deputy Commissioner,
Department of Alcoholic Beverage Control,
Newark, New Jersey.

Dear Mr. Jacobs:

Receipt is acknowledged of your letter of October 15, 1936, in which you inquire whether, under the regulations of this Administration regulating the labeling of distilled spirits, it is permissable for a bottler to place upon a label the legend "This product is endorsed by Dr. _____"; and also whether, as part of the label, there may appear a seal of endorsement of the American Institute of Food Products.

In this connection the Administration has held that pursuant to Section 41 (f) of Regulations No. 5 no label for distilled spirits may contain as part of the brand name, or in any other manner, the word "Doctor", whether standing alone or in conjunction with the name of a specific person, for the reason that the use of such a name implies that the product has curative or therapeutic effects, or has been manufactured in accordance with some special formula which makes it more suitable for medicinal use than other distilled spirits which may in fact be of the same identical character.

We have also held that under the provisions of Section 41 (a) (4) of Regulations No. 5, which prohibits the use of any statement, design, device or representation relating to analyses, standards or tests, seals indicating an endorsement of the product by chemical laboratories, research institutes and other similar organizations would be apt to mislead the consumer, and the use of seals, designs or statements of this character have not been permitted.

It is my opinion that distilled spirits should be sold upon the basis of their inherent quality as indicated by the statements of class, type, age and alcoholic content appearing upon the label, rather than upon the basis of endorsements by doctors, chemists, or food products institutes, which add nothing to the quality of the article but rather tend to mislead the purchaser.

Very truly yours,

W. S. ALEXANDER
Administrator

The foregoing ruling is approved and adopted with respect to the State of New Jersey.

D. FREDERICK BURNETT
Commissioner

11. GAMBLING - A ROULETTE GAME FOR MONEY VIOLATES THE RULES EVEN THOUGH THE PROCEEDS GO TO A CHARITABLE ORGANIZATION FOR A WORTHY OBJECT INSTEAD OF TO "THE HOUSE" AS PRIVATE PROFIT.

November 6, 1936.

Dear Sir:

During the month of December, we expect to have a Dinner Dance here under the auspices of a Charitable Organization, the intention being to raise funds for a charitable purpose.

The question has been asked as to whether it is permissable to have in operation on the night of the Dance, a wheel of chance, considering the fact that there is a Bar in the Club building. This, of course, would only be for the use of the members of this party and since it is for charity, I felt it better to obtain a definite ruling than to veto the idea without consulting your Department.

We shall very much appreciate your kind attention to this detail and trust that we may hear from you at your earliest convenience.

Very truly yours,

ESSEX COUNTY COUNTRY CLUB
William Norcross,
General Manager

November 16, 1936.

Essex County Country Club,
West Orange,
New Jersey

Gentlemen: Attention: William Norcross, General Manager

I have before me your letter of the 6th regarding a wheel of chance which a charitable organization desires to operate at a Dinner Dance to be held at your Club next month.

Ordinarily a wheel of chance would constitute a lottery and hence, would be prohibited both by State statute and Rule 7 of the State Rules Concerning Conduct of Licensees. Whether what the organization, on whose behalf you write, proposes to do constitutes a lottery depends upon the facts. Let me know to whom the proceeds will go, what the prizes are, who contributes them, how the affair will be conducted, the fee which will be charged, the name of the organization, the date of the affair and who will be allowed to play and I will then endeavor to tell you whether or not it will be in violation of the State Rule.

In re Junior Service League, Bulletin 119, Item 6 (copy enclosed) question arose as to the use of a wheel of chance at a dance. It appeared that the prizes had all been donated and that the wicked sounding "wheel of chance" was merely the means of determining their distribution. I ruled that, if this were all, there was no reason from the standpoint of alcoholic beverage control why the young women of the Junior League should be denied the intriguing flutter and innocent fun of distributing such prizes by lucky chance, and hence the liquor license would not be jeopardized by the affair the young ladies purposed to conduct.

I note that the intention in the instant case is to raise funds for a charitable purpose. If the wheel of chance is in substance a roulette game for money, then, even though the proceeds go to a charitable organization for a worthy object instead of to "the house" as private profit, its operation would be a violation, not only of the State Rules and Regulations, but also would constitute a misdemeanor under the Crimes Act.

Suggestion has been made that the object of the law was to prevent gambling on a commercial basis and not to forbid it when done with a charitable objective. That may possibly be true as a matter of conjecture, but there are no permissions, no distinctions, no expressions at all in the Crimes Act on which to base or imply such a construction. Hence, however laudable it is to raise funds for charity, I must enforce the law as it is written until a Court of competent jurisdiction shall rule otherwise.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. RULES GOVERNING WINE PERMITS FOR PERSONAL CONSUMPTION.

November 16, 1936.

MEMO to: D. Frederick Burnett, Commissioner,

FROM: Erwin B. Hock, Deputy Commissioner.

Section 75A of the Control Act provides for the issuance of special permits authorizing the manufacture within homes, or other premises used in connection therewith of wines in quantities of not more than two hundred (200) gallons for personal consumption only. This Section was enacted in 1934 and supplemented the Control Act as adopted in 1933. Permits issued under authorization of this Section were first issued entirely without investigation or inspection.

Last November, after a year's experience in issuing special permits for wine consumption, it was deemed advisable and necessary to promulgate Rules Governing Wine Permits for Personal Consumption. As a result thereof, such rules were promulgated and made effective November 5, 1935.

The policy of the Department has been particularly liberal in the issuance of these permits. However, to effectuate proper control, certain rules must be promulgated and enforced to prevent undesirable persons from obtaining the privileges extended. Further experience, acquired during the past year, has resulted in the conclusion that persons who have wilfully violated the Control Act should not be eligible to obtain the privileges extended by wine permits for personal consumption. I, therefore, recommend that the following rule be hereby promulgated, effective immediately:

RULES GOVERNING WINE PERMITS FOR PERSONAL CONSUMPTION

Rule 9. No Wine Permit for personal consumption shall be issued to any person who has committed a violation of the Control Act involving the possession or operation of an illicit still, the possession

of illicit alcoholic beverages other than wine, or the sale of any illicit alcoholic beverages.

Respectfully submitted,

ERWIN B. HOCK

APPROVED & PROMULGATED
November 16, 1936
D. FREDERICK BURNETT
Commissioner

13. INSTITUTE OF PUBLIC ADMINISTRATION - STATEMENT BY LUTHER GULICK, DIRECTOR - HIGH TAXES HELD TO CAUSE BOOTLEGGING.

November 14, 1936.

Luther Gulick, Director of the Institute of Public Administration, by release of this date, declared:

"In preprohibition days a substantial portion of the federal government's income came from liquor sources. The power to levy an excise tax on liquor was looked upon as within the special domain of the federal government. With repeal, however, the states, in even more straitened circumstances than the national government, were determined to share in the much anticipated financial returns.

"Every possible form of liquor tax has been devised. The state governments have duplicated the federal excise taxes, and further, both are now exercising their power to exact an occupational tax and special license fees. In some cases the municipalities levy additional taxes, including a retail sales tax, which also help to increase the burden on the liquor industry, and indirectly, the cost to the consumer.

"Since repeal, in spite of the danger of encouraging the bootlegger, the federal tax policy has also had revenue as a principal aim.

"WHY BOOTLEGGING CONTINUES

"The nation-wide survey of liquor control undertaken to gather material for this study also brought out the opinion from all walks of life that the high price of legal liquor is the main reason for continued patronage of the bootlegger.

"A questionnaire on the subject of the bootlegger elicited responses which further corroborate this point of view. Those who admitted patronizing the bootlegger since repeal presented as the sole reason the price differential between the legal and the bootleg product.

"Although the federal excise tax is the most important factor in the situation, the other federal and local taxes also influence considerably the cost of liquor to the consumer. When the many levies, including state and federal excise taxes, stamp taxes, license fees, and sales taxes, are added together, the total is unquestionably excessive.

"The federal internal revenue tax on a gallon of whisky is $2.00, the average state tax is approximately $0.80, and the cost in license fees and stamp taxes - including distillers', rectifiers', wholesalers', retailers', and consumers' - also amounts to about $0.80, making a total of $3.60 on a gallon of whisky. The selling price of medium-grade blended whisky is approximately $2.00 a quart. With a tax of $0.90 one can easily see how much a part of the total price the tax itself constitutes.

"HIGHER TAX ON CHEAPER GRADES

"If a cheaper grade of whisky is purchased the high percentage of tax is even more emphasized. For example, the customer who buys whisky at $1.50 a quart is getting $0.60 worth of whisky and $0.90 of taxes. Thus the consumer who buys cheap whisky because he cannot afford the more expensive grades must pay a greater proportionate tax than the purchaser of higher-priced liquors.

"Although universally adopted, the state liquor taxes must be regarded as unnecessary duplications of the federal levy. They serve to increase the selling price of the product, and the separate elaborate collection devices constitute an unnecessary expense.

"If the federal government were to act as the collector of all excise taxes, the states would be spared this expense. The elaborate structure devised in many states for collecting the excise tax is cumbersome. For example, some states require that when packages reach the wholesaler they be opened and their containers be unwrapped for the purpose of affixing an excise stamp on every container.

"MUCH UNNECESSARY DUPLICATION

"Such a procedure is a waste of effort, is an unnecessary expense, and, moreoever, is no absolute safeguard against such violations as the refilling of stamp-bearing containers with untaxed liquors. The expense entailed in this procedure could well be avoided by the simpler method, used in several states, of monthly production reports from the producer and similar importation reports from the importer. The state tax collector could easily verify the truth of these reports by comparing them with federal report forms or shipping documents.

"Although this simpler collection method is preferred to the more elaborate and expensive ones described, its advantages still fall far short of those to be reaped by integrating the collection of all liquor taxes under federal control. A few of the states are inclined to anticipate an arrangement of this sort.

"The recent developments in the federal taxing policy indicate a trend to lower imposts. The reductions in excise and import rates imply an appreciation on the part of the federal officials that post-repeal bootleg activities were made possible chiefly by the differential between taxed and untaxed goods. No similar change of policy is discernible among the states.

"Although the direct bearing high taxes have on illicit liquor activities is fully realized among states, the tendency is in the direction of still greater imposts. Funds for relief and other social-welfare purposes are so much needed that all considerations about the effect of high taxes on tax evasion are waived in favor of readily calculable prospects for returns from high levies.

"REVENUE BELOW ESTIMATES

"Congress had expected an annual revenue from liquor ranging between $500,000,000 and $1,000,000,000. This estimate was

arrived at by computations based on the present tax rate and the 1914 per capita consumption of spirituous beverages. The actual revenue for the first two years, however, amounted to approximately $400,000,000 per year.

"The reason given for this disappointing yield is the prevalence of the illicit-liquor traffic. The per capita consumption of tax-paid spirits at the present time is only 29 per cent of what it was in 1914 and it is held by many persons that the difference is accounted for by bootlegging rather than by a decrease in consumption.

"Like the federal government, the states have obtained much less revenue from liquor taxes during the first two years than they had anticipated. The revenue has amounted to approximately $110,000,000 a year exclusive of the net profits of the state liquor monopolies. However, the yield from the state taxes is also increasing, apparently due to the same cause which is behind the increase in the federal returns, namely, more effective collection. The state collections of liquor excises will probably never be as complete as the federal, however, because interstate shipments facilitate avoidance.

"TAX RECOMMENDATIONS

"A consideration of social implications indicates the use of great care in raising liquor taxes. Such consideration indicates the use of even greater care in raising taxes on the lighter alcoholic beverages. There is a general belief that the cause of temperance would be furthered by a substitution of lighter beverages for the heavier liquors. A lower tax on light beverages, and indirectly lower prices, might quite conceivably bring about such a substitution.

"The new federal excise and impost rates on wine represent sound tax policies. Abolition of state taxes on wine, which do not really yield a rich enough revenue to compensate for the deterrent effect they have on consumption, would constitute further progress toward temperance. Increase in consumption of beer with a corresponding decrease in the consumption of spirits is perhaps the most important goal in this direction, because beer is the least intoxicating of the alcoholic beverages.

"The substitution of a three-dollar federal tax for the present five-dollar tax might constitute one factor for the achievement of this end."

The Commissioner, upon being asked for comment by the Press, made the following statement:

1. The reason we had bootleggers during Prohibition was to furnish the liquor. The reason we have them now is because alcohol costs less than 20¢ a gallon to produce. The Federal Tax is $2.00 a gallon and the New Jersey Tax $1.00 - $3.00 tax on a 20¢ article - 1500% ad valorem. So long as enormous profits are to be made, men will take the risk. Slash the taxes and you eject the outlaw. The Institute is right in its conclusion that these taxes, out of all proportion to the cost of production, are the cause of bootlegging. It is not necessary to eliminate the tax entirely. A substantial reduction will suffice. The low return to the racketeer would not pay for the chances run. The most effective way is to attack the traffic at the source.

2. There is no reason for the Federal Government to collect the New Jersey taxes. It is being done effectively by the Beverage

Tax Division of the State Tax Department under the direction of J. Lindsay de Valliere. New Jersey doesn't employ the cumbersome method of collecting taxes described in the release. There are no New Jersey Tax Stamps.

3. Subject to one exception, I have not noticed any appreciation by Federal officials that the cause of post Repeal bootlegging is the differential between taxed and untaxed goods. Only this week the press reported that there was no intention at Washington of reducing the tax so far as liquor was concerned. The one exception was Joseph Choate when head of the Federal Alcohol Control Administration. He declared himself against the policy of the high tax and we have stood back to back on that. That was two and one-half years ago.

4. The release states: "No similar change of policy is discernible among the States". That is not true so far as New Jersey is concerned. More than a year ago, the Senate and General Assembly of New Jersey enacted a joint resolution (Laws of 1935, Page 1096) memorializing the President and Congress to reduce taxes on distilled spirits and requesting Congress to call a conference between its representatives and representatives of the several States to consider the proper relationship between Federal and State Taxes on alcoholic beverages.

The resolution reads:

WHEREAS, Despite the repeal of the Eighteenth Amendment and the enactment by the several States of statutes regulating the manufacture, sale and distribution of alcoholic beverages the racketeer and bootlegger continue to flourish; and

WHEREAS, Investigation and study by the New Jersey State Commissioner of Alcoholic Beverage Control have resulted in the conviction that present excessive taxes are the major cause of illicit alcoholic beverage activity and that it is essential that the tremendous incentive resulting therefrom be withdrawn to insure the elimination of the racketeer and bootlegger; therefore,

BE IT RESOLVED by the Senate and General Assembly of the State of New Jersey:

1. That the President and Congress of the United States are hereby memorialized to reduce the present Federal Taxes on distilled spirits.

2. That the Congress of the United States is hereby requested to call a conference between its representatives and representatives of the several States to consider the proper relationship between Federal and State taxes on alcoholic beverages.

3. That a copy of this resolution be transmitted to the President and Vice-President of the United States, the Speaker of the House of Representatives and each member of the Senate and House of Representatives of the United States from the State of New Jersey.

4. This joint resolution shall take effect immediately.

It was approved by Governor Hoffman on June 27, 1935.

5. The Release attributes the increasing yield from State taxes as being "apparently due to the same cause which is behind the increase in the Federal returns, namely more effective collection". It is true that collection is getting better. The collection in New Jersey, under Deputy Commissioner de Valliere, is remarkably efficient. But that is not the main reason for the increasing revenue. The real cause is increased effectiveness in enforcement. Every indictment by a grand jury, every conviction by a trial jury, every revocation or suspension inflicted by a license issuing authority spreads a fear complex and dries up the retail outlet. The thirst continuing as a constant quantity is, therefore slaked with legitimate liquor which carries a tax, whereas bootleg pays nothing. The more effective enforcement becomes, the higher the revenue to the State.

6. I wholly agree that the new Federal Excise Tax on wine represents sound policy. Irrespective of the effect on revenue, the cause of true temperance would be furthered by reducing the tax on wine and beer.

November 14, 1936.

D. Frederick Burnett
Commissioner