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

BULLETIN NUMBER 195 JULY 13, 1937.

1. LICENSEES - PERMANENT DISQUALIFICATION - WHAT CONSTITUTES "TWO OR MORE VIOLATIONS" - HEREIN OF STRICT CONSTRUCTION AND OF SECOND CHANCES AND SIMULTANEOUS CONTRASTED WITH SUBSEQUENT OFFENSES.

June 30, 1937

In Re: Case No. 63

This is to determine the eligibility of applicant to hold a solicitor's permit.

Applicant was convicted in November, 1935, for violation of the Control Act and fined $100.00. The occasion for his arrest was the illicit possession of approximately one gallon of colored alcohol in his home. His plea was guilty.

Applicant admits that for three or four months prior to his arrest he had knowingly made a series of small purchases of illicit alcoholic beverages from a Camden "bootlegger," and that on five or six occasions he bartered small amounts of this liquor for various articles. The practice, although never on a large scale, was apparently a consistent one while it lasted.

Applicant, having thus violated the Control Act on more than two occasions, is disqualified under Section 22 of the Control Act.

It is recommended that applicant be declared ineligible to hold a solicitor's permit.

Nathan Davis,
Attorney.

DISAPPROVED:

It is true that one "who has committed two or more violations of this Act" is permanently disqualified by Section 22. It is true that he was arrested and convicted for one violation. It is also literally true that applicant, by his own frank admissions, violated the Control Act on five or six occasions prior to that arrest. But that Section, being penal in nature, must be strictly construed. Re Case #59, Bulletin 193, Item 6. That means not being over quick on the trigger to maim someone for life who already has his back to the wall and his hands up. So construing it, I find that no charges of violation subsequent to that conviction have ever been preferred against the applicant. Necessarily he has never been adjudicated guilty of a second offense. To be sure, his admission of guilt may be said to dispense with proof of it. Therefore, it would be logically possible to declare that he is barred for all time from any license of any class because, by his own admission, he has committed two or more violations of the Act.

But this is giving the Act the widest possible latitude. It is not strict construction. Neither is it within the intendment of the Act which declared that a person who had, at least on two occasions, violated the Act, should be permanently barred. That contemplates an adjudication of guilt followed by punishment, and then, still unregenerate, a subsequent violation. Such a person ought to be barred. He has had a second chance, but he didn't stay put. Therefore, the Statute permanently disqualifies him. But

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unless there is some hiatus between the first and second violation - some period wherein genuine repentance may have its innings - some locus poenitentiae - the deservedly severe objective of the Statute has not been met. Otherwise, if what he did happened by chance to involve two or more simultaneous violations of different sections of the Act, the applicant would be barred for all time merely because of accidental and technical subdivisions of the Statute.

For instance: If he made bootleg whiskey and delivered it to a customer, he might technically be guilty of three different violations of the Act, viz.: illegal manufacture, illegal sale and illegal transportation. Yet in fact, the three acts of the series are really steps in the one transaction, and so related that they should be treated together, for the present purpose, as constituting one violation. If, then, he is adjudged guilty on this score and punished, or even though sentence be suspended, anything that gives him cause for pause and a chance to think it over and to resile as well as repent - but then later does the same thing all over again, or subsequently commits some other violation of the Control Act, then he ought to be barred. Re Wismer, Bulletin 171, Item 5; Re Sedlak, Bulletin 178, Item 12; Re Siwek, Bulletin 180, Item 14.

But that is not the present case. Here he frankly admits that, prior to his arrest and conviction, he had purchased bootleg and sold it until finally caught. He was convicted. That's one strike. For aught that appears, he has gone straight ever since. He has never had the second strike called on him. He is, therefore, not permanently barred.

Issue the permit.

D. FREDERICK BURNETT,
Commissioner.

2. LICENSES - ISSUANCE - OBJECTIONS MADE AT MEETINGS OF THE LICENSE ISSUING AUTHORITY NEED NOT BE IN WRITING.

Dear Mr. Commissioner:

The following question has come up in the course of the issuing of licenses in the Borough of Somerdale and I am referring it to you for a decision:

While the Notice of Intention specifically states that objections must be in writing, may a member of the governing body present his objections orally?

Very truly yours,
Wilmer J. Tanier, Jr.,
Borough Clerk.

July 8, 1937

Wilmer J. Tanier, Jr.,
Borough Clerk,
Somerdale, New Jersey.

My dear Mr. Tanier:

The purpose of advertising the Notice of Intention is to give notice of the pending application to the public at large, and where objections are made by the general public, it is desirable that they be in writing in order that the Council may have definite and specific information regarding the complaint before it. See Rules 2 and 6 of the Rules for Advertising Notice of Intention, Compiled Rules, page 22.

This does not mean, however, that the Council cannot entertain objections made orally at its meetings. Anyone who will appear and personally press his complaint is entitled to be heard. There is no reason why the Council should not entertain objections raised orally by one of its members at the Council meetings. In fact, if a member of a governing body believes he has a good reason why a certain license should not be issued, it is his duty to present his objections at any time.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. LICENSES - ISSUANCE - INVESTIGATION - NO TIME LIMIT ON INVESTIGATIONS - ANY TIME REASONABLY NECESSARY TO INSURE COMPLIANCE WITH THE LAW, MAY BE TAKEN.

Dear Sir:

Please advise, at your convenience, whether there is a time limit set in which an investigating committee on Alcoholic Beverage Applications must make their report.

Very truly yours,
Benj. F. Patterson,
Borough Clerk.

July 8, 1937

Benjamin F. Patterson,
Borough Clerk,
Riverdale, New Jersey.

My dear Mr. Patterson:

Where there are objections by the general public to the issuance of a license, I have recommended that the date for the hearing be fixed at not less than two days nor more than seven days after the second insertion of the notice of intention shall have been published. See Rule 7 of the Rules for Advertising Notice of Intention, compiled Rules, Page 23. For good cause, however, the municipal license issuing authority, in the exercise of sound and fair discretion, may fix the hearing date later than the said seven days or may adjourn the hearing. Some such delay is often necessary in order to give the issuing authority time in which to gather the evidence believed obtainable to demonstrate whether the application should be granted or denied.

Where no objections have been made by outsiders, no time has been suggested within which final decision on the application should be reached. How long need be required will depend in each individual case upon the facts. I do think that in fairness to the applicant, the matter should be handled with dispatch. He is entitled to a decision and his ninety per cent rebate if his application is denied, so that he may know where he stands. On the other hand, the interests of the municipality must also be protected. Very often protracted investigations must be made. It is the duty of the municipality to find each applicant and premises fully qualified and fit or else not issue the license.

There is no fixed time within which your Investigating Committee must report on an application to the Council. Any time reasonably necessary to carry through the Committee's investigations and insure compliance with both the State and municipal requirements, may be taken.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

4. COMPARATIVE STATEMENT
STATE LICENSES ISSUED
REPORT #1

	LICENSES ISSUED				PRO-RATED FEES	
Form	Number for period	Total to date	Total last year		Total this year to date	Total last year to this date
B		3	3	Plenary Brewery	12,000.00	12,000.00
BL		14	15	Limited Brewery	18,000.00	17,000.00
V		30	27	Plenary Winery	15,000.00	13,500.00
VL		39	30	Limited Winery	3,275.00	2,675.00
SL		3	5	Limited Distillery	3,000.00	4,250.00
SD		6	10	Supplementary Limited Distillery	750.00	1,550.00
R		17	22	Rectifier and Blender	42,500.00	55,000.00
W		75	75	Plenary Wholesale	112,500.00	112,500.00
WL		51	55	Limited Wholesale	38,250.00	41,250.00
WW		8	5	Wine Wholesale	8,000.00	5,000.00
SBD		183	186	State Beverage Distributor	91,498.63	93,000.00
EW		14	16	Plenary Export Wholesale	28,000.00	32,000.00
EWL		3	1	Limited Export Wholesale	3,750.00	1,250.00
M		13	8	Plenary Retail Transit	1,950.00	1,200.00
T		88	91	Transportation	17,600.00	18,200.00
X		14	17	Public Warehouse	1,400.00	1,700.00
WR		18	23	Warehouse Receipts	1,800.00	2,300.00
ML		101	104	Municipal	1,010.00	1,040.00
AP		24	18	Additional Premises	4,462.50	2,775.00
WN		0	4	Wine Permits	--	4.00
SP		234	142	Special Permits	2,996.91	2,086.64
SOL		1934	1787	Solicitors' Permits	9,670.00	8,935.00
ARC		390	245	Employment Permits	390.00	245.00
ETI		0	1	Emergency Transportation Permits	--	2.00
		3262	2890		417,803.04	429,462.64

Dated: July 3, 1937.

J. J. Scanlon,
Certified Correct.

Respectfully submitted,
Erwin B. Hock,
Deputy Commissioner.

5. MUNICIPAL EXCISE BOARDS - APPOINTMENTS - TERMS OF OFFICE - ACCEPTANCES.

July 9, 1937

Harry S. Reichenstein,
City Clerk,
Newark, New Jersey.

My dear Mr. Reichenstein:

I have before me Resolution No. 285 adopted by the Board of Commissioners on June 30, 1937 which provides that:

> "Harry L. Wagman be and he is hereby designated and appointed as a member of the Municipal Board of Alcoholic Beverage Control of the City of Newark, for the term of 3 years; said appointment to take effect immediately."

According to my records, the Board was created by resolution of April 24, 1934 and the terms of the members originally appointed ran from that date. The statute contemplates that the terms of their successors shall run from April 24th of each year. The three initial appointments must be for one, two and three years respectively. Vacancies may be filled only for the unexpired term.

Mr. Hartdegen, whose term expired April 24, 1937, held over until his successor was appointed and qualified. Re Reichenstein, Bulletin 173, Item 9. However long the holdover lasts, the term of the successor dates back to the expiration of the predecessor's term and runs for the three years thereafter.

Mr. Wagman's term, therefore, although it does not actually commence until he is appointed and duly qualified, will end on April 24, 1940.

Mr. Wagman, I presume, is anxious to assume the duties of his office. Please ask him, then, to file with me his acceptance of the appointment at once. Section 45 of the Control Act conditions the effectiveness of appointments to Municipal Boards upon the filing of such acceptance. The acceptance should be accompanied by a statement of his political affiliation. The statute provides in Section 5 that no more than two of the three Board members may be of the same political party.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. ELIGIBILITY - FACTS EXAMINED - CONCLUSIONS.

July 6, 1937

Re: Hearing No. 171

Information having been received that respondent, who has a long criminal record, was working as a bartender, respondent was accordingly notified to appear at this Department for a hearing to determine his eligibility for employment by a licensee. Cf. Bulletin 173, Item 15.

Respondent is 27 years of age and unmarried. He is primarily engaged in contracting work, but occasionally "fills in" as bartender at the tavern which his employer is running as a side business.

In 1929, respondent pulled a fire alarm box as a drunken prank, was convicted as a disorderly person, and released on a year's probation and ordered to make payment of $1.00 per week for the year.

In 1931, respondent went to a party at a girl's home, where he and his friends became drunk and boisterous and refused to leave when requested. This led to respondent's arrest and conviction as a disorderly person and respondent was sent to county jail for 30 days.

During the same year, respondent had a quarrel with his father, a quick-tempered man, over the fact of respondent's unemployment. In the course of this quarrel, respondent chased his father out of the house. He was subsequently arrested on his father's complaint for attempted assault and battery, but was released when charges were withdrawn.

Respondent's record reveals that during the same year he was again arrested on an assault and battery charge but was this time convicted and was sentenced to six months in county jail. Respondent denies knowledge of this arrest or conviction.

In 1932, respondent was convicted as a disorderly person and given a 30-day suspended sentence. His story is that he and a friend were lying on respondent's front lawn when a police officer, considering that they were obstructing the public walk, insisted that respondent retire to the house; that respondent refused, and was arrested.

In the same year, respondent was again convicted as a disorderly person and was sent to the county jail for six months. He claims that the occasion for his arrest was a loud verbal quarrel which he was having with another patron in a lunch wagon.

In November, 1935, respondent was convicted of assault and battery and given an indeterminate sentence in State reformatory, where he remained for eleven and a half months. The assault and battery in question grew out of a quarrel with his father. For some reason which respondent cannot now recall, he and his father engaged in excited argument. Feeling ran high, and respondent struck his father a single blow; no physical damage was done. Respondent ran out of the house and remained with a friend until his father procured his arrest. At the trial his father endeavored to have charges withdrawn. The judge, however, upon viewing respondent's past record, refused.

None of respondent's convictions as a disorderly person can be taken as convictions for a crime within the meaning of Section 22 of the Control Act. See Re Hearing #167, Bulletin 182, Item 10; Re Application for Solicitor's Permit, Case #35, Bulletin 123, Item 2.

It is unnecessary to determine whether respondent's convictions of assault and battery involved moral turpitude within the meaning of that Section. His record, long in arrests and convictions, palpably indicates that he is unfit for employment as a bartender in this State. Cf. Bulletin 137, Item 6.

It is recommended that respondent be declared ineligible for employment by a licensee.

Nathan Davis,
Attorney.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

7. LICENSES - NOT ISSUABLE FOR PUSHCARTS - HEREIN OF GOOD HUMORS AND MOUNTED REFRIGERATORS.

Dear Sir:

The purpose of this letter is to request your opinion as to the legality of a proposed retail liquor business advanced by a client of mine.

His idea is to sell canned beer from small wagons in the same manner that the Good Humor Co. sells ice cream. There is no doubt that this would be peddling the product, and I have advised him that in my estimation, the plan is illegal, although I have not been able to find any law dealing specifically with the situation in question.

Chapter 85, Laws of 1934, page 238, relating to retail licenses, provides that "A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises." In your opinion would the above law prohibit the business in question, in spite of the fact my client would have a principal place of business and any licenses which might be necessary.

Your opinion of such an enterprise will be greatly appreciated.

Yours very truly,
Edwin H. Carlton.

July 10, 1937.

Mr. Edwin H. Carlton,
Jersey City, N. J.

Dear Mr. Carlton:

Emulation of Good Humor salesmanship makes persuasive appeal in these heated days when one, almost wistfully may we say, contemplates a mounted refrigerator with treadle and chimes and frosted glasses.

The trouble is that licensed premises are not as transitory as the movable life-saving station your client has in mind. To be sure, a license may be issued for boats, trains or airplanes, but the Legislature has not provided consumption licenses for wagons, push-carts or trailers.

It would be all right to try the idea out at a garden party in one's own back yard, providing, of course, that the guests were gratuitously served, but it will never do on the streets.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES - IF CLEMENCY IS TO BE GRANTED IT SHOULD BE CANDIDLY PLACED ON THAT GROUND INSTEAD OF PLAYING HORSE WITH THE LAW

July 10, 1937

John L. Haney, Esq.
City Clerk
Trenton, New Jersey

Dear Mr. Haney:

I have staff report and your letter of July 6 relative to proceedings before the Mayor and Council of Trenton against John O. Vrabel, charged with possession of illicit alcoholic beverages.

The report reads as follows:

"On April 30, 1937, Investigators Perry and Roxbury, in the course of a routine inspection at the above licensed premises, gauged and tested sixteen open bottles of alcoholic beverages. Three of these bottles tested to contain an alcoholic beverage other than as represented by their labels. Two unopened bottles were obtained from the licensee with identical labels to two of the open bottles. A comparative test made of the contents of these bottles proved that they were both as represented by their labels. The five bottles were labeled and marked by Investigator Perry and turned over to the Department chemist for analysis and test. They were given laboratory numbers and the results of the tests are set forth below:

Lab. No.	Description	Alcohol by vol.	Proof	Color
A-2008	Qt. bottle ¾ full of alleged whiskey labeled, 'Three Feathers Blue Label Blended Whiskey - 90 Proof'.	45.15% Alcohol by weight 37.98% Specific gravity 0.9433 Solids: 88 grams in 100 L.	90.3	natural
A-2009	Qt. bottle ¾ full of alleged whiskey labeled, 'Green River Blended Whiskey 90 Proof'.	45.20% Alcohol by weight 38.02% Specific gravity 0.9432 Solids: 94 grams in 100 L.	90.4	natural
A-2010	Full original qt. bottle of alleged whiskey labeled as A-2009.	44.95% Alcohol by weight 37.81% Specific gravity 0.9437 Solids: 220 grams in 100 L.	89.9	blend
A-2011	Qt. bottle ¾ full of alleged whiskey labeled, 'Wilken Family Blended Whiskey 90 Proof'.	45.20% Alcohol by weight 38.02% Specific gravity 0.9432 Solids: 130.8 grams in 100 L.	90.4	natural
A-2012	Full original qt. bottle of alleged whiskey labeled as A-2011	44.80% Alcohol by weight 37.67% Specific gravity 0.9440 Solids: 961.2 grams in 100 L.	89.6	blend

Sample A-2008 is a natural straight whiskey and not a blended whiskey as per label reading.
Samples A-2009 and A-2011 are natural straight whiskies and not blended whiskies as per their respective labels. They do not compare with the respective original bottles, incolor or solids.
Samples A-2010 and A-2012 are blended whiskies as per their labels.
All above samples are fit for beverage purposes.

"At the hearing, Investigator Perry testified as to the seizure. He states he identified the bottles, each having his initials and date of seizure thereon; also an A.B.C. label containing his own printing and handwriting thereon. He also reports that he readily picked out the bottles which were illicit from those which were genuine; that he explained in detail the field method of making tests which showed that the three opened bottles had contained natural and not blended whiskey as represented by their labels. Investigator Perry further reports that the bottles were received and marked in evidence and that a certified copy of the analyses made by the Department chemist Battista was also received and marked in evidence.

"Counsel for the licensee moved to dismiss the charges. Investigator Perry states the motion was based on the point that there had been no proof that the bottles marked in evidence were the same as those referred to in the Chemist's report.

"Investigator Wagi testified as to having taken the bottles in question from the New Brunswick office to Newark for the purpose of analyses and on the day of the hearing having taken them from Newark to Trenton.

"The motion to dismiss was granted.

"The licensee was not called to testify.

"A letter received this day from the City Clerk sets forth the following:

> 'Please be advised that charges were heard by City Council June 29, 1937, that Investigators Charles Perry and Horace Roxbury found illicit liquor on the premises of John O. Vrabel, holder of license #C-311 for premises 1261 Princeton Avenue, and, after testimony for the City by Messrs. Perry and Wagi, the said charge was dismissed on motion of Leo J. Rogers, Esq., representing Mr. Vrabel, on the ground that the liquor complained of had not been properly identified.'"

I fail to see anything lacking to the prima facie case presented by the testimony of Perry and the certified copies of the analyses made pursuant to the Statute. From Perry's testimony alone, the contents of the three opened bottles were shown to contain alcoholic beverages other than as represented by the labels. What more is necessary to put the licensee to his defense?

Again, if the Council felt the impelling urge to check upon the red tape, would it not have been the fair thing and solely in the interest of sound law enforcement, to have temporarily adjourned the case so to permit this Department to provide what the Council considered lacking?

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On a legal technicality, which on its face is apparently without any merit, this licensee was permitted not only to go scot-free, but not even called upon for an explanation as to his possession of three apparently refilled bottles upon his licensed premises. If clemency is to be granted to a man who, I understand, is eighty-three years old and the sole support of his wife and two daughters, as to which I admit there is something to be said, would it not have been the preferable way to place the decision candidly and squarely on that ground instead of playing horse with this Department? Even an oldster can be taught that the law which gives him the privilege under which he makes his livelihood, must be respected.

Throwing control out of gear gives color to the sweep of social disaster pictured by Dr. Poling. It is not the liquor industry which is on trial but our own ability to govern it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR CONTAINING INGREDIENTS HARMFUL TO THE HUMAN SYSTEM EVEN THOUGH TECHNICALLY NOT POISONOUS - MINIMUM SUSPENSION FIXED AT 90 DAYS.

In the Matter of Disciplinary Proceedings against)
)
OSCAR ANTICO,)
Squiers Corner,)
Hardwick Township, New Jersey,)
)
Holder of Plenary Retail Consumption License No. C-2, issued)
by the Township Committee of Hardwick Township.)

CONCLUSIONS AND ORDER

- -

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

Oscar Antico, Pro Se.

BY THE COMMISSIONER:

An inspector of the Alcohol Tax Unit, Internal Revenue Service, in the course of an investigation seized three bottles of alcoholic beverages from the back bar of the licensed premises, which he found to be off proof.

Testimony of a chemist attached to said Alcohol Tax Unit, who subsequently analyzed the contents of the three bottles, disclosed the following:

> Sample 1, labeled "Ascot Arms Distilled Dry Gin," 80 proof, was found to be 90.3 proof and contained a large quantity of solid matter and glycerine which showed, according to the chemist's testimony, that it was not a distilled dry gin as labeled. This sample also contained a small quantity of isopropyl alcohol and acetone.

> Sample 2, labeled "Ascot Arms Distilled Dry Gin," 80 proof, was found to be 90.3 proof and contained glycerine and a high amount of solids which, according to the chemist's testimony, showed that it was not a distilled dry gin, as labeled. This sample also contained small quantities of isopropyl alcohol and acetone.

Sample 3, labeled "Schenley's Bar Special Blended Whiskey," was found to have a proof of 69.4, whereas a genuine sample of this whiskey showed a proof of 90.2 The acid content of this sample was approximately three times that of a genuine sample, and the solid content approximately one-quarter that of a genuine sample.

This evidence shows that the contents of all three bottles were illicit, and that the contents of two bottles contained adulterants which are harmful to the human system even if not technically poisonous. In Re Grembowiec, Bulletin 178, Item 6.

Licensee testified that he conducts a restaurant on his property, which covers eighty-seven acres; that there is so much work to do on the property that occasionally it is necessary for him to hire a bartender; that four or five months before the seizure he hired a bartender at an employment agency in New York and discharged the bartender nine or ten days before the date of the seizure. The licensee testified that neither he nor his wife, who sometimes assisted him, tampered in any way with the contents of the bottles, and inferred that the tampering was done by the bartender. He did not produce the bartender and testified that he does not know the bartender's present address. The most that can be said in licensee's favor is that the presence of the illicit beverages was due to the acts of his employee. Licensees, however, are responsible for what goes on upon the licensed premises. In Re Kneller, Bulletin 49, Item 4.

I find the licensee guilty of possession of illicit alcoholic beverages in violation of Section 48 of the Control Act, and possession of alcoholic beverages adulterated with isopropyl alcohol and acetone in violation of Rule 10 of the Rules Concerning Conduct of Licensees and the Use of Licensed Premises.

It appears that at the time these proceedings were instituted, Oscar Antico was the holder of Plenary Retail Consumption License No. C-2, issued to him by the Township Committee of Hardwick Township for the fiscal year 1936-1937, and that since these proceedings were instituted Plenary Retail Consumption License No. C-2 has been issued to him by said Township Committee for the fiscal year 1937-1938. Rule 3 of Rules Relating to Revocation Proceedings Pending or Contemplated at Expiration of License or Instituted Thereafter, provides as follows:

> "Where revocation proceedings are instituted and the license expires and is renewed during the pendency thereof, such proceedings shall be carried through to completion and any order of suspension or revocation therein shall apply without further proceedings to such renewal license."

The remaining question is the penalty.

In Re Grembowiec, supra, the ruling was:- "In Re Felsenfeld, Bulletin 175, Item 8, I established the precedent that when a licensee is convicted of the possession of liquor, illicit because of acetone content, that good cause is not shown why the statutory automatic suspension should be lifted. The application to lift it was, therefore, denied with the result that the suspension remained in effect until the end of the term of the license. Applying the same principle to the instant case, the foregoing finding of guilt requires that the license should be suspended until the end of its term." The Grembowiec decision was made May 25, 1937, and the suspension became effective May 28th, so that actually the suspension was in force for thirty-four days.

Later, In Re Cullen, Bulletin 182, Item 8, the respondent was found guilty of the possession of illicit liquor containing

acetone and also, on a supplemental charge, of permitting upon licensed premises bookmaking on horse racing. In that case the ruling was:- "The finding of guilt on the original charges calls for a suspension of the license until the end of its term. Re Grembowiec, supra. But the end of the term is now less than thirty days away. The minimum suspension for illicit liquor is thirty days. The finding of guilt on the bookmaking charge warrants a suspension of ten days, or a total suspension of the license for forty (40) days. Since, however, the present licensing period will expire prior to the expiration of forty days, the present license will be suspended for the balance of its term, and the Municipal Board of Alcoholic Beverage Control of the City of Newark will be directed not to issue any renewal of said license prior to the expiration of forty days from the effective date of the suspension ordered herein."

The charges in the instant case were signed on June 11, 1937. The hearing took place on June 22, 1937. If all the other pressing work of the Department had been dropped so that the transcript of the testimony in this case had been written out and immediate consideration given to this case on the very day of the hearing, a suspension, if ordered "to the end of the term," would have been effective only eight days unless it was expressly extended to continue into the new period, as in the Cullen case. The question, then, is how far should it be so extended.

The object of the Felsenfeld decision, supra, was to establish as a precedent that the possession of illicit liquor containing acetone or isopropyl alcohol should be punished more severely than where no substances harmful to the human system were involved, the minimum for which is thirty days. Re Morris, Bulletin 98, Item 10. It is apparent, however, that a suspension "until the end of the term of the license" is a term without fixed significance since everything depends on the time at which the decision happens to have been made. Since uniformity is the fairer way and, therefore, the more desirable, the penalty henceforth for the illegal possession of liquor containing acetone or isopropyl alcohol will, hereafter, be ninety days. This will be effective in all cases in respect to offenses occurring on and after August 1, 1937. This allows reasonable time for the publication of this decision throughout the State. If this punishment doesn't prove sufficient to drive out liquor doctored with acetone or isopropyl alcohol, the penalty will be appropriately stepped up.

As regards the instant case, the same penalty will be administered as in the Cullen case on the liquor count.

Accordingly, it is on this 12th day of July, 1937, ORDERED, that Plenary Retail Consumption License No. C-2, issued to Oscar Antico by the Township Committee of Hardwick Township, for the present fiscal year, be and the same is hereby suspended for thirty (30) days, namely, beginning July 15, 1937 to and including August 13, 1937.

D. FREDERICK BURNETT,
Commissioner.

10. TRANSPORTATION - CANINE - HEREIN OF de MENTHON, THE PATRON SAINT OF THE BERNARDS.

Dear Commissioner:

Would you be kind enough to enlighten me on the following:

Have a St. Bernard dog, and after several unsuccessful attempts to secure a brandy barrel which hangs around their necks, even to the extent of writing to the Hospice of the Great St. Bernard in Switzerland, have finally secured one.

Since obtaining it have thus fastened it to my dog's neck. Of course, I expect to put some brandy in it and have some fun with any friends that I meet when out walking with the dog. Due to the fact that there are many angles to the laws, my friends have been giving me a ride and telling me that I will have to do this and do that.

I do not expect to sell the brandy nor is the dog running loose at all times with the barrel in question. The barrel may be used for a few minutes a day until the novelty wears off and the kidding ceases. Further, I am not transporting liquor as the content of the barrel is very low, as you can realize that it must be small.

In view of the fact that since Bernard de Menthon, the great monk who later became a Saint for his fine work, developed this noble animal, and since time immemorial the wine cask has been associated with the dog in song and story and in actuality, as even today the dogs are dispatched with these barrels suspended from their necks to give aid and succor to any tired and weary traveler that may lose his way over the dangerous passes of the Alps, I feel that it would not be amiss to use the barrel in question as long as no commercial motive is involved.

Hope that you will give this a liberal interpretation and that I will hear from you, I remain

Very truly yours,
L. A. Mathis

July 12, 1937

Mr. L. A. Mathis,
107 No. Brunswick Avenue,
Atlantic City, N. J.

Dear Mr. Mathis:

I do not get very enthused over your scheme in this heated term. I doubt if your dog will either. There is nothing illegal about tying a rum barrel, or a bag of asafoetida or cattails, if you will, to his neck, but you will not be canonized by dog lovers for doing it.

As regards your noble thoughts on succor, are you not a rather late entry in Atlantic City?

Why not be kind to the dog and wait till there is snow on your boardwalk!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. ILLICIT PRODUCTION OF LIQUOR - THE UNPALATABLE FACTS CONCERNING ITS MANUFACTURE WITH AN UNSPOKEN MORAL.

We are indebted to the Texas Liquor Control Board for the following item which appears in its July Review:

"VET OFFICERS DESCRIBE HOW TEXAS MOONSHINERS OPERATE.

"Corn liquor — the moonshine variety — is not common in Texas, strangely enough.

"Contrary to popular belief, your modern day moonshiner prefers rye to corn because the latter 'works' slowly in mash and thus retards production. Speed, it might be added, is an important factor to the illicit operators; they know they have to work fast or be caught up with by Liquor Control Board inspectors and agents of the U. S. Alcohol Tax Unit.

"An important job is being done by the Liquor Board's inspectors assigned to this activity. During the prohibition era and even until recently, the campaign against illicit stills was conducted solely by federal agents and local officers. The federal agents are comparatively few in number and local officers have so many other duties they can give little time to the work. But two squadrons of liquor board inspectors concentrate on it exclusively, and their labors are producing results.

"In the last six months they have seized and destroyed more than 350 stills and helped to put many a moonshiner behind bars. The figure 350 is not particularly impressive until it is explained in more detail. Say, for instance, these stills have an average cubic capacity of 50 gallons, which is a conservative estimate. Each still can make four runs in 24 hours, and it is a known fact that 7 and 2/10ths gallons of mash are required to produce one gallon of liquor.

"Using this simple arithmetic, the potential production of these 350 stills during the six months reaches the almost astronomical figure of 1,749,600 gallons of illicit liquor. This represents plenty of money in tax evasion — $1,679,616 in state levies alone, to be exact, not to mention the federal duty of $2,499,200 more. So it's plain that the state inspectors have been accomplishing something; and these captures do not include stills taken by federal agents and local officers working independently.

"M. L. 'Mac' Eilers and F. O. Goen, both experienced officers, lead the two groups of state inspectors concentrating on illicit stills and moonshiners. In the liquor control board's offices at Austin are six maps stuck full of pins, showing the location of each of the stills taken in the last half year. These maps are more vivid than any word picture; they disclose at a glance the meaning of the phrase, 'The Bootleg Belt,' which stretches from the Red River to the Gulf. The maps also reveal the broad extent of the inspectors' operations since the serious campaign against moonshiners was undertaken.

"Eilers and Goen both will tell you that moonshine liquor is bad — unspeakably unfit for consumption. They know because they've seen the filthy, grossly insanitary conditions under which it is manufactured.

"'Not long ago we came across some barrels of mash near the Brazos river,' Eilers recalled one instance. 'Fermenting mash gives off a sweet smell and has a strong attraction for any insect that crawls or flies. Frogs and snakes and squirrels are not averse to getting in it themselves.

"'For this reason moonshiners usually keep their mash covered But in this case a strong wind had blown the tarpaulin up from one side, leaving the mash exposed. When we looked into the barrels we couldn't even see the liquid; all that was visible was a seething mass of blue-green blow flies. They were matted in the barrels.'

"Another not-so-appetizing fact, Eilers points out, is that to color their liquor moonshiners often nail a couple of plugs of chewing tobacco about halfway up in their charred barrels.

"Methods in operation vary little among the outlaws. They take a 50 gallon barrel — or a number of them if the production is on a large scale — and put in it 20 pounds of rye grain, 50 pounds of sugar, a pound of yeast and fill it to within four or five inches of the top with water. It takes about 96 hours for this mash to get ripe in warm weather — that is, ferment to a point where it hovers around the 14 per cent alcohol mark. If allowed to work too long, it goes over the 14 per cent mark, gets sour and turns to vinegar. If taken off too soon, the finished product is even sorrier than usual.

"Some operators get a mixture, at almost any drug store, called 'four-day fermenter,' which is a compound of crystals resembling epsom salts, to speed up the fermentation. And in cooler weather they dig holes in the ground for the mash barrels and put cottonseed hulls or manure around them to increase the temperature of the content.

"Incidentally, the grain in the barrel is used three times. If it isn't straight rye, it might be a mixture known as 'chops,' consisting of bran, barley, rye or some other grains. This type of liquor is different from 'fruit whisky,' in which dried prunes, raisins or peaches take the place of the grain. Or it may be 'sugar whisky,' in which only sugar and water are employed. Grain whisky is the cheapest, costing $1 a gallon; both sugar and fruit whiskies sell for $3.

"When the mash reaches the point for taking off — and the old heads can tell by taste — the distilling job is ready to start. The 'cooker' is poured about three quarters full and the fire underneath is built up. From the cooker the vapor from the mash is carried through a 'thumper' which removes some of the impurities, and then it goes through a coil run through a 'cooling barrel.' The liquor — newly cooked liquor is pure white — drips from the open coil sticking out of the cooling barrel.

"Quite often there are two stills at a single site, one smaller than the other. The large one is used for the 'first run,' and the smaller for the 'second,' which is supposed to produce better liquor. And around nearly all home-made stills can be found a can of flour-paste, which to the uninitiated seems out of place. But it has a specific use: the moonshiner watches his equipment closely for leaks, and wherever he sees the vapor issuing forth he plugs the crack with the flour-paste.

"Burnt sugar is most commonly used to color the white liquor. In a charred barrel containing oak chips the whiskey colors in 24 hours. There are other ways, too, besides nailing the tobacco plugs in the barrel; some moonshiners get a few pieces of green leather and drop them in the liquid.

"In the seclusion of woods most stills are found, but many are located in the 'smoke houses' of farmers in outlying districts. Nearly always they are fairly close to water, be it a well or stream or river. And Goen says he likes nothing better than to walk up undetected on a moonshiner tending a still in the woods, and remarking: 'Well, fellow, do you think it'll rain?'

"Both Goen and Eilers believe moonshining is on the way out. Goen has seen too many 'rigs' and Eilers too many 'pots,' — as stills are called respectively in East and Central Texas — captured in the past half year to bode prosperity for the outlaws."

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12. DISCIPLINARY PROCEEDINGS - SUNDAY CLOSING HOURS - 9 DAYS' PENALTY.

July 13, 1937

Horace E. Barwis, Esq.,
Borough Attorney,
Highland Park, N. J.

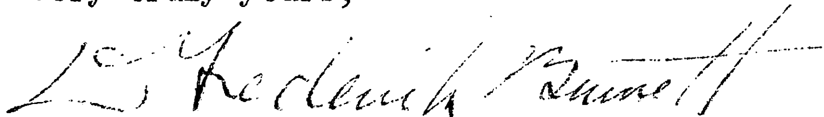
Dear Mr. Barwis:

I have staff report and your letter of July 7th relative to proceedings before the Borough Council of Highland Park against Anna V. Hart and Frances Yusko, charged with having sold alcoholic beverages during prohibited hours on Sunday, in violation of your local ordinance.

I note a plea of guilty was entered to the charge and that, taking into consideration the time intervening between the expiration of the license on June 30, 1937, a total suspension period of nine days was the punishment suffered by these licensees for their disregard of the law.

Please extend to the members of the Council my sincere thanks for their fine cooperation in proper law enforcement. My thanks to you also for the prompt and high-class manner in which you handled this case.

Very truly yours,



Commissioner.

Inspected by:
J. L. ARTS
and found O. K.

New Jersey State Library