

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

BULLETIN NUMBER 205

SEPTEMBER 23, 1937

1. SPECIAL PERMITS - NOT ISSUABLE AS A SUBSTITUTE FOR A REGULAR LICENSE - HEREIN OF THE TRAINING OF SPORT EDITORS IN PREPARATION FOR CHAMPIONSHIP BOUITS.

September 8, 1937

Dear Sir:

Applied with the enclosed form but was told to write you. I have been a taxpayer in Chatham Township for over twenty years, and through hard struggling have gradually built up a fair-sized training camp for athletes, for the most part professional boxers. It so happens that several of the boys who have trained at my camp for a number of years are now champions, Lew Ambers and Sixto Escobar.

I asked the managers of Ambers and Escobar if their boys would train at my camp for the Carnival of Champions at the Polo Grounds, New York, September 23rd, so as to help me out financially, as conditions have been bad since the death of my husband. They said they would, provided I could give them the necessary requirements that go with a champion's training camp.

One of these was that I should be able to take care of the newspaper Press Headquarters with food and beverages.

As there was no bar in the vicinity, I rented a building for the purpose, but seem to have some difficulty in obtaining the permit for which I am applying to you.

The building is three hundred feet away from the training camp, and is to be used exclusively by newspapermen. I would like to have the permit for the 11th, 12th, 18th and 19th of September.

I am afraid if I do not fulfill this part of my contract, it will hurt my future business at the camp.

Trusting you will understand my position in the matter, and thanking you in advance for any consideration you might show, I remain

Very truly yours,  
Madam Bey.

September 10, 1937

Bey's Training Camp,  
Chatham, N. J.

Dear Madam Bey:

I have yours of the 8th and understand and sympathize, having learned considerable of the requirements that seem to go with a training camp.

I take it that what bothers you is not so much the training, the conditioning, and the rubbing down of the aspiring champions as it is the setting up exercises and vocal massage of the perspiring press. Some of them must have been considerably

New Jersey State Library

overtrained, judging from the doleful predictions they recently made concerning the staying power of one Mr. Thomas Farr.

It is not, however, either to clear the vision of the sport editors or to abridge the vaunted freedom of the Press in the ward you have dedicated to their exclusive use, that I must deny your application for a special permit. It is rather because special permits for the sale of alcoholic beverages for private profit on particular occasions are not issuable as substitutes for regular licenses. Otherwise every occasion of more or less public interest would be commercially capitalized.

As I wrote Mrs. Bier, of Pompton (Bulletin 190, Item 1), when she was confronted with the problem of quenching the insistent thirsts of the assistant trainers of the Brown Bomber:- "If you are going in the business, why not take out a plenary license for on-premises consumption?" This would certainly enable you to fulfill that part of your contract. The only other recourse would be for you to request the newspapers to send out their Ace Teetotalers to cover your camp.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SUPPRESSION OF MATERIAL FACTS AND SALES TO MINORS - THE PROBLEM OF APPROPRIATE PUNISHMENTS DISCUSSED.

September 10, 1937.

Daniel J. Lane, Esq.,  
City Clerk,  
Gloucester City, N. J.

Dear Mr. Lane:

I have staff report and your certifications of the two proceedings before the Common Council of Gloucester City, (1) against Thomas Lennox, charged with having concealed, in his application for a license, the fact that he had been convicted of a crime and (2) against John Joseph Murphy, charged with having sold alcoholic beverages to a minor -- a girl seventeen years of age.

I note adjudications of guilt were entered in both cases; that Lennox's punishment consisted of a withholding of a renewal of his license from July 1 to August 4, 1937 -- in effect, a thirty-five days' suspension; that Murphy's license was suspended for a period of five days.

No opinion is expressed on the merits of either case because they might come before me by way of appeal. However, I do wish to thank the members of the Council for their help and assistance in bringing these matters on for prompt hearing and final disposition.

So far as the Lennox case is concerned, your Common Council did extremely well. This man had been convicted of attempted rape and sentenced in 1929 to serve six months in the Camden County Jail, but did not reveal that conviction in his application for his liquor license. It is refreshing to note that your Council paid no attention to his attempted alibi for the lie. Its decision will go a long way in teaching licensees that it pays to tell the truth and the whole of it.

As regards the Murphy case, the staff report states:

"A report was received by this Department that Margaret Batten, age seventeen years, had been taken to the West Jersey Homeopathic Hospital, Gloucester City, to be treated for injuries; it was alleged that she had been served alcoholic beverages at the above licensed premises some time before she was injured and also on occasions prior thereto. Accordingly, an investigation was made disclosing the following:

"On Sunday, July 25, 1937, Ernest Shaw (age thirty-two) visited the above licensed premises at about 11:00 P. M. accompanied by Margaret Batten whom he had met outside. He sat with her in the rear room and states that they were served beer during the course of the evening and the early part of the next morning. While in the licensed premises, they were joined by Harry Woodring (age twenty-one) and James Hodson (age twenty-three), who also drank beer with them. At about 1:00 A. M. on July 26, they were informed by the licensee that the place was about to close. Woodring and Margaret Batten went out first and were followed shortly thereafter by Hodson and Shaw. All met on the street and drank from a pint bottle of whiskey which Shaw had with him. Margaret Batten was in an intoxicated condition and fell, injuring herself. A large crowd gathered and the police were called. The girl was taken to the hospital and the men arrested.

"Margaret Batten stated to the investigators that she had been served beer on previous occasions at this licensed premises.

"Investigator Lockwood reports that your License Committee, through its chairman, John M. Faber, Esq., recommended that Murphy's license be suspended for a period of ten days, but that the Council by a divided vote of five to four saw fit to impose only a five days' suspension."

I believe that your Council should have unhesitatingly back-stopped the License Committee and imposed the full ten days' suspension. Sales of alcoholic beverages to children is a major offense. It amounts to a scandal. If the practice is not stopped, the people will rise in their wrath and take away the privilege of selling alcoholic beverages to anybody.

It is true that Murphy is reputable; that he did not personally serve the beverages; that they were procured from the bar by a customer and taken to the back room; but it was his business to know what was going on in the back room and control it at all times. It was these very back rooms which helped to bring about Prohibition. Licensees should know better.

It is true his offense was one of carelessness rather than deliberate intent, but carelessness is no excuse. It is the duty of those who hold special privileges to be especially careful. It is true that there was no actual intent to injure the girl. But anyone with ordinary sense should have foreseen that serving liquor to a seventeen year old girl might well lead to disastrous results. The Bayonne licensee who a year ago this summer served a seventeen year old girl with beer, little dreamed that a few hours later she would be charged with the brutal and unnatural murder of her own mother. She will be an old woman when she comes out of prison! Let each one of us help to keep our striplings young.

I think, therefore, it would have been preferable for the Council to have followed the recommendation of the Licensing Committee, which is charged with the duty of stamping out this evil, and to have imposed a sizable penalty so to show all comers its determined attitude.

Cordially yours,

D. FREDERICK BURNETT,  
Commissioner.

3. COURT DECISIONS - IN CHANCERY OF NEW JERSEY - FRANKLIN STORES CO. vs. BURNETT, COMMISSIONER.

IN CHANCERY OF NEW JERSEY

Between )  
FRANKLIN STORES CO., )  
Complainant, )  
-and- )  
D. FREDERICK BURNETT, )  
Commissioner, etc. )  
Defendant. )

ON BILL, &C

September 10, 1937

MR. LOUIS B. ENGLANDER, for the Complainant.  
MR. NATHAN L. JACOBS, for the Defendant

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M E M O R A N D U M  
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BIGELOW, V.C.

The only meritorious question involved in this suit is whether Rule 18, promulgated last month by the Commissioner of Alcoholic Beverage Control, is a valid rule. It reads: "No licensee shall sell or possess, or allow, permit or suffer, on or about the licensed premises, any malt, hops, oak shavings or chips, flavoring or coloring agents, cordial or liquor extracts, essences and syrups, or any ingredient, compound or preparation of similar nature."

The materials listed in the rule are suitable for the manufacture of alcoholic beverages and can be used equally for unlawful or lawful manufacture. The Commissioner takes the position, as I understand his counsel, that these materials are more apt to be used unlawfully when purchased from a liquor dealer than when purchased from another. "They are out of place in a present day licensed liquor establishment. What went during Prohibition doesn't go Now." The question is whether the Commissioner had power to make the rule. The Alcoholic Beverage Control Act provides, Section 3, "It shall be the duty of the Commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such manner as to promote temperance and eliminate the racketeer and bootlegger."

"36. The commissioner is hereby authorized and empowered to make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act, in addition thereto, and not inconsistent therewith, and to alter, amend, repeal and publish the same from time to time. Such rules and regulations may cover the following subjects: (listing a large number of subjects, none of which are cognate to the subject of Rule 18); and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this act."

Section 37 enacts that each municipality may, "subject to the approval of the Commissioner first obtained, regulate the conduct of any business licensed to sell alcoholic beverages at retail." The municipal body has power to make ordinances "to prevent the possession, sale, distribution and transportation of alcoholic beverages within its municipality in violation of this act."

"74. This act is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." If Section 36 is so construed that the general power given by the first sentence is restricted by the second sentence so that the rule-making is limited to the subjects therein listed and to similar subjects, then I think Rule 18 must fall, and that otherwise it should be sustained. The grant of power to municipal boards in Section 37 seems to be in addition to the power granted the Commissioner and does not take away from his power. Certain branches of regulation are not committed to the municipalities exclusively and other branches to the Commissioner exclusively.

The question is one of law and should be determined by a law court if an adequate remedy is there open to complainant. The Commissioner suggests three remedies, of which two are these: That complainant sue for a declaratory judgment, or that he ignore the rule, whereupon the Commissioner will revoke complainant's license and complainant, on certiorari of the revocation, may test the validity of the rule. Neither of these remedies is adequate. Complainant would thereby be required to stake its whole business on its counsel's opinion that the rule is invalid. No sensible man would run such a risk.

The Commissioner also points out that complainant may have a review of the rule itself on certiorari; that the granting of the certiorari would act as a stay, so that complainant's license would not be jeopardized by his pursuit of the remedy. This, I think, is sound.

Complainant should apply for a writ to one of the Justices of the Supreme Court at the earliest opportunity. Meanwhile, and until the application is decided, the Commissioner will refrain from instituting against complainant proceedings for revocation based on the violation of Rule 18.

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4. DISCIPLINARY PROCEEDINGS - LIMITED RETAIL DISTRIBUTION LICENSEES - TWO DAY SUSPENSION.

September 15, 1937.

Walter Beisch, Esq.,  
Secretary  
Municipal Board of  
Alcoholic Beverage Control,  
North Bergen, New Jersey.

Dear Mr. Beisch:

I have staff report and your certification of the proceedings before the Municipal Board of Alcoholic Beverage Control against Harry Frank, Max Katz, and William H. Persin, all holders of limited retail distribution licenses and charged with having sold chilled instead of unchilled beer in quantity less than 72 fluid ounces, in violation of the express terms of their licenses.

I note all licensees were adjudicated guilty and that their licenses were suspended for two days.

I sincerely trust that these penalties will have the effect of stopping this type of violation in North Bergen. If not, more drastic penalties are in order or better still, if violations persist, the violators should be denied future licenses of this kind. Limited retail distribution licensees should be compelled to confine their sales strictly within the terms of their license obtained at the nominal fee of \$25.00. Any other course would be manifestly unjust to the retail consumption and distribution licensees of North Bergen who pay \$350.00 for the additional privileges accorded them.

My thanks to the Board for their cooperation.

Cordially yours,

D. FREDERICK BURNETT  
Commissioner

5. FORFEITURE PROCEEDINGS - DELIVERY OF BILL OF SALE TO AUTOMOBILE DEALER IS NOT CONCLUSIVE EVIDENCE OF PASSAGE OF TITLE - APPLICATION BY AUTOMOBILE DEALER FOR RETURN OF FORFEITED VEHICLE DENIED WHERE IT APPEARED THAT WRONG-DOER WOULD BENEFIT BY SUCH RETURN AND THAT APPLICANT WOULD SUFFER NO SUBSTANTIAL LOSS BY DENIAL OF ITS APPLICATION.

IN THE MATTER OF THE SEIZURE OF A )  
LA SALLE SEDAN AND ITS CONTENTS ON )  
MARCH 12, 1937, ON THE PUBLIC HIGHWAY )  
AT OR NEAR THE INTERSECTION OF 18TH )  
AND COLUMBIA AVENUES, IN THE TOWN OF )  
IRVINGTON, COUNTY OF ESSEX, STATE OF )  
NEW JERSEY )

On Hearing  
CONCLUSIONS AND ORDER

Appearances:

McCarter & English, Esqs., by Herbert R. Baer, Esq., for  
Fisher Cadillac Corporation

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

On March 12, 1937, police officers of Irvington seized a LaSalle sedan, together with a jug containing an alcoholic beverage, found therein, and arrested Angelo DeCarlo on the charge of possession and transportation of an illicit beverage. Thereafter, Angelo DeCarlo was held under bail for action by the Grand Jury and the seized property was turned over to the Department of Alcoholic Beverage Control for disposition. The records of the Department indicate that Angelo DeCarlo has a long criminal record and that he has never held any license under the Control Act.

Pursuant to the provisions of the Control Act, notice that a hearing would be held to determine whether the seized property constitutes unlawful property and should be forfeited to the State was sent to Angelo DeCarlo and his wife, Agnes DeCarlo, in whose name the seized LaSalle was registered. No one appeared at the hearing on behalf of either of the DeCarlos but an appearance was entered for the Fisher Cadillac Corporation, which claimed ownership of the seized LaSalle and sought its return.

At the hearing, Patrolmen Durning and Krasle of the Irvington Police Department testified that they observed Angelo DeCarlo carrying a bag which "appeared to be round with some sort of bottle in it"; that they then observed him enter the LaSalle sedan and drive away; that they followed, stopped the automobile and ascertained that within the bag there was a jug which contained an alcoholic beverage, bore no stamp or other indicia of tax payment and was labeled "Fresno Lemon Cocktail Fruit Mixer". DeCarlo refused to tell Officer Durning where he had procured the alcoholic beverage and where he was taking it to, but did state to Officer Krasle that he was taking it to a friend. In response to Krasle's inquiry as to who the friend was, he said "you had wires tapped; you know it all." An analysis of the seized alcoholic beverage by the Department's chemist disclosed that it was apple jack fit for beverage purposes, containing some artificial coloring and having an alcoholic content of 49.85% by volume. Fisher Cadillac Corporation, the sole claimant at the hearing, did not dispute any of the foregoing nor did it introduce any testimony relating to the seizure.

The evidence establishes that the seized alcoholic beverage was illicit and that the LaSalle sedan was used in its transportation. Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property and is forfeited in accordance with the provisions of Section 64(a) of the Control Act (P.L. 1935, c.257, p.821).

Section 64(e,f) affords discretionary authority to the Commissioner to order, upon certain showings, the return of forfeited property to innocent persons. Prior to the hearing, a petition was filed by Fisher Cadillac Corporation alleging that it was the owner of the seized automobile; "that it acted throughout in good faith and had no knowledge of the unlawful use to which the said motor vehicle was put, or knowledge of such facts as would have led a person of ordinary prudence to discover such use"; and praying "that the Commissioner recognize the validity and priority of its claim of title". Presumably, its appearance at the hearing was for the purpose of asserting the same position and seeking the same relief.

In support of its assertion that it was the owner of the seized automobile at the time of its seizure, the following evidence was introduced on behalf of Fisher Cadillac Corporation:

On March 11, 1937, the day preceding the seizure, Agnes DeCarlo, accompanied by her husband, Angelo DeCarlo, visited the place of business of Fisher Cadillac Corporation and agreed to purchase a new LaSalle. The purchase price for the new car was \$1275.00 and the Fisher Cadillac Corporation agreed to accept the DeCarlo car as a trade-in and to allow therefor the sum of \$825.00 as partial payment of the purchase price. A written agreement dated March 11, 1937, and stating that it was accepted on March 12, 1937, was entered into and contained the following provisions, among others, under the general heading "AGREED PRICES AND TERMS":

"\$825. Credit, when received, being agreed value of used  
\*\*LaSalle \*\*\*\*\*"

"With respect to any credit hereunder to be allowed on delivery by me to you of a used car, in the event of the exercise by me of any right that I may have to cancel this contract and to the return of said used car. I agree that you are to have a lien on said used car for your storage and handling charges and any and all costs incidental to the reconditioning thereof preparatory to its resale by you. In the event that said used car shall have been sold or otherwise disposed of by you prior to the exercise by me of any right that I may have to cancel this contract, you are to refund to me the agreed value of said used car as fixed hereby, less twenty per cent, to cover charges in connection with the reconditioning and resale thereof."  
(Italics mine.)

On March 11, 1937, Agnes DeCarlo transferred her bill of sale for the DeCarlo car, together with an assignment thereof to the Fisher Cadillac Corporation. The DeCarlo car was never delivered to the Fisher Cadillac Corporation, but was retained by the DeCarlos and was seized on the following day while being driven by Angelo DeCarlo. The new car was likewise never delivered and no bill of sale was ever executed for it.

On March 13, 1937, the salesman for Fisher Cadillac Corporation, not having heard from the DeCarlos, telephoned and was advised that the car had been seized. Three days later the Fisher Cadillac Corporation filed the assignment of the bill of sale with an agent of the Motor Vehicle Department. A representative of the Fisher Cadillac Corporation testified that if the seized automobile is returned to it, the agreement of sale will be consummated by delivery of the new car; that if the seized automobile is not returned, the new car will not be delivered unless the full purchase price is paid; and finally, that although it has been in business for 35 years, it has never retained a deposit either in the form of money or a used car where a purchaser failed to consummate his purchase, notwithstanding any right it may have to do so.

The question presented is whether the foregoing facts establish that Fisher Cadillac Corporation was, as it claims, the owner of the seized vehicle at the time of the seizure. Its main reliance seems to be upon the contention that the delivery of the bill of sale and the assignment establishes its title. The authorities hold, however, that the delivery of a bill of sale is not conclusive evidence of the passage of title (cf. Thoss vs. Olb, 98 N.J.L. 842 (E. & A. 1923); Salmon vs. Pittenger, 122 N. J. Eq. 165 (Ch. 1937)),

and that in all events the transfer of title will be dependent upon the intention of the parties. Kerr vs. Henderson, 62 N.J.L. 724 (E. & A. 1898). In view of the nature of the transaction, the actual retention and use of the car by the DeCarlos, and the provisions of the contract quoted above, the Commissioner is satisfied that there was no intent to transfer title to the DeCarlo car pending final consummation of the purchase. Cf. Schutt vs. Scott, 62 Cal. App. 539, 217 Pac. 565 (1923); Andrews vs. DeLorm, 102 Cal. App. 623, 283 Pac. 393 (1930). The claim of Fisher Cadillac Corporation for return of the seized automobile, based upon its alleged ownership, cannot be sustained.

Furthermore, even assuming that Fisher Cadillac Corporation had legal title to the seized automobile, its claim for return thereof must fail. The discretionary authority afforded to the Commissioner to return forfeited property is for the benefit of innocent persons who would otherwise suffer substantial harm and is not to be invoked for the benefit, directly or indirectly, of wrong-doers. If the seized automobile were returned to the Fisher Cadillac Corporation, DeCarlo would, in so far as the seized automobile is concerned, escape unpunished. If, however, the claim of Fisher Cadillac Corporation is denied, it will suffer no substantial harm. True, it might not be in a position to realize, as readily, its anticipated profit, although in this connection it may be noted that it has invariably, during the past 35 years, waived its claim for profit where the purchaser was unable to consummate his purchase for any reason. Under the circumstances, an exercise of the Commissioner's discretion in favor of Fisher Cadillac Corporation, notwithstanding the resultant effect that the wrong-doer will be enabled to escape just punishment, would not be warranted. The application by Fisher Cadillac Corporation for return of the seized automobile is therefore denied.

It is, on this 16th day of September, 1937, ORDERED that the seized LaSalle Sedan be retained for the use of hospitals, and State, county and municipal institutions and that the seized illicit beverage be destroyed.

D. FREDERICK BURNETT  
Commissioner

By Nathan L. Jacobs,  
Chief Deputy Commissioner

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

September 16, 1937.

In re Hearing No. 177

In his questionnaire and application for a solicitor's permit, solicitor admitted that he had been convicted in 1927 for transportation and possession of liquor in violation of the Hebart Act. A permit was issued, subject, however, to this proceeding, which is to determine whether said permit should be revoked on the ground that solicitor is ineligible to hold a solicitor's permit.

Solicitor states that the occasion for his said conviction in 1927 was as follows: that a friend of his, living near Lake Hopatcong, had purchased four cases (48 bottles) of scotch from a "bootlegger" for personal consumption; that in accordance with the request of and as a sheer accommodation to that friend, solicitor picked up this scotch and was transporting it in his automobile to his friend's home; that en route he stopped at a road-side stand near Boonton, where he purchased a bottle of gin for his own use; that this road-side stand, at the time, was under the surveillance of the police, on suspicion that the proprietor was making illegal sales of liquor; that when solicitor re-entered his car with the bottle of gin, the police accosted him and searched both him and the car, thus bringing to light the bottle of gin and the forty-eight bottles of scotch. Solicitor was arrested and a charge of illegal possession and transportation of liquor was laid against him. He pleaded guilty to such charge and was duly convicted and fined \$500.

Possession and transportation of liquor, in violation of the Hobart Act during the Prohibition days, is not per se a crime involving moral turpitude. In re Hearing No. 147, Bulletin 168, Item 9; In re Case No. 65, Bulletin 193, Item 11; In re Case No. 67, Bulletin 193, item 12. Since no aggravating circumstances appear in solicitor's case, his crime is free of that element.

Solicitor's record is otherwise blameless.

It is recommended that the present proceedings be dismissed and that no further action be taken.

Nathan Davis  
Attorney.

APPROVED

D. FREDERICK BURNETT  
Commissioner

7. MAGICIANS - WHEN SPECIAL PERMITS ARE NECESSARY TO CONJURE UP AND DISPENSE COCKTAILS - HEREIN MORE OF MAGICIANS AND THEIR POWERS OF PRODUCTION.

September 11, 1937.

Dear Commissioner Burnett:

In this week's paper, I noticed that you have promulgated a rule which prohibits magicians from producing spirits-the alcoholic variety-without either a license or a permit.

1. Will you please let me know whether a magician is permitted to produce liquors at a private gathering-and hand it to the audience-where the premises has no license?

2. Will you please let me know whether a magician is permitted to produce liquors at a public gathering-and hand it to the audience-where the premises has no license?

3. Is the magician permitted to produce the liquors, and give it to the audience, where the public place has a license?

4. Does it make any difference where the magician receives a fee in any of these three cases?

If possible, may I have an answer before Thursday, so I may give your answer to the Society at that time.

Yours very truly,

FRANK GOLDMAN

September 18, 1937.

The Society of American Magicians,  
Paterson, N. J.

Gentlemen: Attention of Mr. Frank Goldman

Kindly refer to your letter of September 11th.

I am enclosing a copy of Re Hoyt, Bulletin 204, item 9, which contains the ruling to which you make reference.

There is nothing to prevent a magician, who is displaying his unique art before a non-paying group, from "producing" liquor and giving the same to members of that group, provided that both the display and the gift is absolutely gratuitous. However, if members of the group, whether a private or public gathering, are in any way paying to be present, as for instance, if admission is charged or any fee exacted directly or indirectly, then the performance may occur only on licensed premises, and the magician must himself have first obtained a permit issued by this Department (I suppose a good magician could as readily produce a permit as conjure a cocktail!)

It is immaterial to me, if not to the magician, whether he receives any fee for his performance.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

8. LICENSEES - SALES TO INTOXICATED PERSONS - THE SITUATION DISCUSSED.

Dear Sir:

Please don't think me a nuisance for bothering you with my troubles. I was advised to write you.

You see every Saturday my husband drinks quite freely and I would like to know if a saloon proprietor has a right to sell drink to a man who is already drunk.

Mr. \_\_\_\_\_ of \_\_\_\_\_'s Inn claims the law says "a man is not drunk until he falls down." What is your opinion? Last Saturday my husband was there all afternoon

and evening, became intoxicated and was fighting with another drunk. He was brought home by two of my daughters Sunday School friends. After the fight and all his money gone, Mr. \_\_\_\_\_ put him out for police to pick up if my daughter's friends had not been coming by at that time. They brought him home with his mouth bleeding and a big bump on his chin. Please tell me if this is right.

Another thing I think, as well as others is not right, Mr. \_\_\_\_\_ has some sort of tokens which his customers play cards for the loser paying for drinks for the winner.

Isn't gambling prohibited in such places. You don't need to take my word for it if you come down there you can see for yourself.

I went to Mr. \_\_\_\_\_ as last Saturday almost cost my husband his job and asked him not to let him have drink when he has had enough and he said he is supposed to sell to anyone of age regardless of his wife or anyone unless the law says so. As I do not care if he drinks within reason and do not want publicity for my daughter's sake I am appealing to you. Please see what can be done. Thank you.

Respectfully,

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September 20, 1937.

Dear Mrs. \_\_\_\_\_:

I am indeed sorry to learn of your trouble. I shall do everything possible and proper, but count upon your full cooperation.

Mr. \_\_\_\_\_'s statement that he must sell liquor to your husband, if your husband asks for it, is entirely wrong. There is no law which requires a licensee to sell liquor to everyone. Indeed, so far as drunken persons are concerned, licensees are expressly forbidden to sell to any person "actually or apparently intoxicated." The only color for such a statement is a ruling made a year ago (re: Culligan, Bulletin 135, Item 8) to the effect that a tavern keeper was not obliged to discontinue sales to a man merely because his wife, or one of her relatives commanded him to desist. The reason was that while she or they may warn - i.e. notify, caution or put the tavern keeper on guard - yet, if the customer is in his full senses, neither she nor they have any authority to decide for him or to give orders to the tavern keeper. That ruling, however, only applies when the customer is sober. If he really is, then the tavern keeper may sell him despite the warning. If, however, the customer is either actually or apparently intoxicated, the duty of the tavern keeper is to refuse to sell him, and if he does, whether there was a warning or not, the license is subject to be revoked. If the licensee really believes the self-serving statement you say he made to you to the effect that he is supposed to sell to anyone of age regardless of his wife or anyone else, he is building a castle of self-delusion which will eventually crumble and crush him. And especially should he take heed whenever a warning is given by a suffering wife. It is quite short-

sighted always to stand on one's legal rights. If there is the slightest question as to whether the customer is drunk or sober, the only safe course is to gently and fraternally, but firmly, refuse to serve him. His brags that he "can hold it" are no protection to the barkeeper or proprietor who is more conscious of the cash register than of the rules and regulations.

His statement that, in the eyes of the law, a person is not intoxicated "until he falls down" is also wholly false. One does not have to be "soused" or "pickled" or "plastered" in order to be intoxicated. Speaking of drunken drivers, our New Jersey Court of Last Resort declared:

"\*\*\* it is not essential\*\*\*that the driver of the automobile be so intoxicated that he cannot safely drive a car. The expression - under the influence of intoxicating liquor - covers not only all the well known and easily recognized conditions and degrees of intoxication, but any abnormal, mental or physical condition which is the result of indulging, in any degree, in intoxicating liquors and which tends to deprive him of that clearness of intellect and control of himself which he would otherwise possess."

You are correct in your belief that the practice of playing cards or other games, where the loser is to pay for drinks, is a gambling practice which is forbidden on liquor premises.

These matters will be fully investigated at the earliest moment, and, if verified, appropriate action taken at once.

I shall treat your letter in utmost confidence. But I should like, if possible to have one of my investigators speak with you, in order to get all the possible leads from you, and hence to act with greater efficiency. Please inform me of the best time for an investigator to interview you.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

9. RETAIL LICENSEES - NOISE AND MISCONDUCT - THE PROBLEM AND THE RECOMMENDED PROCEDURE - HEREIN OF THE RESPONSIBILITIES OF MUNICIPAL AUTHORITIES.

Dear Mr. Burnett:

It is my misfortune to live in a vicinity that has four taverns; each within fifty feet of each other.

A tavern that is quiet and well conducted may be forgivable. But when they gather crowds of screaming and yelling women, it is intolerable.

An average of once a week I have to call the Police to stop the racket at two and three in the morning.

Our tenant is complaining. People living close by, on the same block are complaining. What can be done?

The location is Brookdale Ave. and So. Orange Ave., Newark. The Vailsburg section. The worst one is the "101 Club" with an orchestra and singers.

As a property owner and taxpayer of both Newark and East Orange, do I have to lose good tenants, tolerate disturbed nights, after working all day, suffer depreciation of my property upon which I spend time and money keeping it attractive. All for what? Three saloons at my bedroom window!

It has become impossible to send the baby who lives on Brookdale Ave. to the store around the corner, for fear of a drunk stumbling over him.

You and your Department have been doing such fine work, that I am appealing to you for help. You are the only one who can do something for this "sore-spot" which law-abiding, civic minded people have to endure.

Won't you please help us?

Thanking you and your force, most kindly.

Sincerely,

---

September 21, 1937.

My dear Mrs. \_\_\_\_\_

I have before me your letter of the 4th complaining of the excessive noise and bad conduct in connection with the licensed places in the neighborhood of Brookdale Avenue and South Orange Avenue, Newark.

The normal procedure in cases of this kind is for the complainant to file his objections with the license issuing authority of the municipality which issued the licenses. In Newark, it is the Newark Municipal Board of Alcoholic Beverage Control. Mr. Harry S. Reichenstein is the Secretary and may be addressed at the City Hall. In East Orange, it is the East Orange Municipal Board of Alcoholic Beverage Control. Mr. Jacob L. Bock is the Secretary and you may address him at the East Orange City Hall. Such objections should be in the form of a formal complaint setting forth the names of the licensees, their places of business, complete details of the alleged misconduct, the time, dates, and names of witnesses. Excessive noise and disturbances on licensed premises are prohibited by Rule 5 of the State Rules Concerning Conduct of Licensees (copy enclosed) and are cause for the suspension or revocation of the license.

Upon such complaint being filed, it is the duty of the municipal license issuing authority to conduct a hearing, give the complainants, the licensees, and their several witnesses, full and equal opportunity to be heard, and then render a decision on the merits. If the licensees are found guilty, a suspension of the license of each for five days would go a long way to put a stop to such disturbances in the future.

I feel that matters of this nature, which are essentially local problems, are best handled by the local authorities. It is really their primary responsibility to keep their local licensees in order. That is why I suggest that you first exhaust your remedy with the local Board. If, however, that local Board refuses to act or you feel that the

action it takes is inadequate, I will then be glad, on further complaint being made, to have my own men investigate the matter direct.

Of course, you realize that complaints of noise are exceedingly difficult for any police officer to investigate. The trouble is that there is always bound to be some commotion incident to the operation of a tavern. It so often happens that at the particular time the officer is in the neighborhood the noise has temporarily subsided. It usually does when a blue coat appears unless perchance, he has partaken in that tavern too often of free lunch and free beer.

You must, therefore, in your complaint, be as specific as possible and, when hearing is held, be prepared to stand up and testify in person as to the cause of your complaint and the bad conduct you have witnessed.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

10. MUNICIPAL ORDINANCES - WARNING TO LICENSEES AS REGARDS PENALTY FOR POSSESSION OF ILLICIT LIQUOR

MUNICIPAL ORDINANCES - APPLICANTS FOR CLUB LICENSES - STRICT COMPLIANCE WITH THE LAW

September 21, 1937

A.D. Bolton  
City Clerk  
Passaic, N. J.

My dear Mr. Bolton:

I have before me the two resolutions adopted by the Board of Commissioners on June 15, 1937, which provide:

"RESOLVED, That it is the policy of the Board of Commissioners, that any and every licensee holding an Alcoholic Beverage License, who is convicted of having in his possession or offers for sale, any illicit liquor shall be severely dealt with and penalized."

and

"RESOLVED, That every new application for a Club Alcoholic Beverage License, shall appear before the Board of Commissioners by its duly authorized officers for preliminary examination to show strict compliance with the law regulating the issuance of club licenses."

Two splendid resolutions well expressed!

Please transmit to the Commissioners my appreciation.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 11. RADIO ADVERTISING - BY BREWERS - HEREIN OF "COMMERCIALS"

September 14, 1937.

Dear Commissioner:

We wish to confirm our request made this morning, that is, that you will give your full approval to any Jersey brewer who wishes to use radio as an advertising media providing that the following is definitely adhered to:

1. That the program be dignified and in keeping with his other advertising copy used in other advertising mediums.
2. That there will be no contest.
3. That the program is put on between 8:00 p.m. and 10:00 p.m. and with the idea specifically in mind of getting an adult audience.

The immediate program at hand that we wish you to okay is that of the Brewers' Radio Show Association which will be composed of between 30 and 45 outstanding brewers throughout the United States, each using the program to cover his specific territory and advertising his particular brand of beer. All of those brewers who have been selected are well-known organizations with splendid reputations.

The program will be over the Red N.B.C. Network and will star Paul Whiteman and his orchestra, Lou Holtz, the comedian, and perhaps Jessie Matthews the well-known English dancer. It should be one of the outstanding shows on the air.

I enclose herewith samples of the type of commercials that will be used. We will merely stress the reputation of the brewer, his many years of brewing knowledge, and the quality of his product, and the fact that good beer is healthful. That is about all we will stress. Of course this has to be elastic enough so the radio program will be a benefit to the brewer in selling his products, but it will, I assure you, all be dignified.

Respectfully yours,

Frederick Mayer  
Radio Counselor  
United States Advertising Corp.

BREWERS' RADIO SHOW ASSOCIATIONOpening Commercial

A.B.C\* Beer, Brewers since 1850, presents Lou Holtz, one of the most popular young comedians of the American stage, and the dean of modern American music, Paul Whiteman and his orchestra, in a half hour of glorious entertainment for your pleasure.

As you enjoy this program, remember this, A.B.C. Beer is known for its quality, its smoothness, its mellowness. Today with the facility of modern science and equipment, A.B.C. quality is always uniform. We believe you will enjoy A.B.C. Beer and when you are ordering beer, why not try a case of A.B.C. But now on with the show -- take it away, Paul Whiteman.

\* \* \* \* \*

\*A.B.C. Beer is a fictitious name, merely used as an example and has no specific reference to any product.

#### Middle Commercial

A.B.C. Beer brewed in old world tradition wins new friends every day with its mellow smoothness and uniform quality. Since 1850, over three quarters of a century, A.B.C. Beer has never varied from the policy of brewing only the best, and the secret of quality lies in slow aging, which is exclusive with A.B.C. on their own aging process.

When it comes to good beer, you can't beat OLD WORLD brewing knowledge combined with modern brewery methods. It produces beer at its finest. A.B.C. continues to stand behind the quality of its product. They are proud of their many friends and ask you to try A.B.C. Beer just for the sake of real enjoyment.

Remember that A.B.C. Beer is a healthful beverage. Its pure ingredients brewed by expert brew masters make A.B.C. Beer, in moderation, an excellent tonic. So for healthful enjoyment remember drink A.B.C. Beer.

#### Closing Commercial

Remember, next week at this same time, A.B.C. Beer will present your favorite comedian, Lou Holtz, and his bosom friend, Mr. P.W. - Paul Whiteman to you, and in the meantime, when you think of good, mellow beer - think of good old A.B.C. We hope you have enjoyed our program and will be with us next week at this same time.

This is your A.B.C. announcer, Fred Uttal, saying good night, everybody!

\* \* \* \* \*

September 23, 1937

Frederick Mayer, Radio Counselor,  
United States Advertising Corp.  
New York, N. Y.

Dear Mr. Mayer:

I have yours of the 14th.

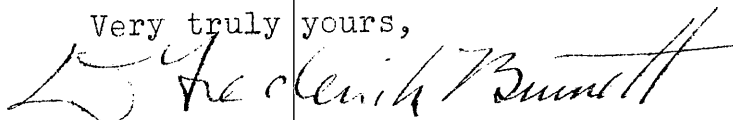
There is nothing offensive or intrinsically objectionable in the "commercials" you have submitted. The elimination of contests avoids the criticism voiced in re Gooderham & Worts, Bulletin 156, Item 5; Station WEST, Bulletin 159, Item 12, and Donnelley, Bulletin 161, Item 1. The timing and the content of

the advertising makes no special appeal to plastic youth as in re Hartman, Bulletin 172, Item 5 and in re Schneider, Bulletin 198, Item 8.

Hence I have no objection to New Jersey brewers participating in a program of the character you outline, if they wish.

While they thus have the power, they should carefully weigh the policy, conscious that the radio message is carried directly to the family hearth whether welcome or not. There are many who, from scruple or desire, want to keep liquor and any influence designed to promote it out of their homes. Great care and strict censorship should be taken lest, in sowing by radio, the industry reap the whirlwind, as it will unless its broadcasting is kept on a conservative and dignified plane. The less the "commercials", the greater the good will. Personally, I have often wished that the quinine could be left on the shelf.

Very truly yours,



Commissioner

J. EDGAR