

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

BULLETIN 250

JUNE 6, 1938.

1. APPELLATE DECISIONS - LYSAGHT v. DENVILLE.

CHARLES E. LYSAGHT,	)	
Appellant,	)	
-vs-	)	ON APPEAL
TOWNSHIP COMMITTEE OF THE	)	CONCLUSIONS
TOWNSHIP OF DENVILLE,	)	
Respondent.	)	
-----	)	

Arthur M. Karl, Esq., Attorney for Appellant.  
Frederick C. Henn, Esq., Attorney for Respondent.  
John H. Grossman, Esq., Attorney for Women's Christian Temperance Union, Undenominational Church of Denville, and a number of Objectors.

BY THE COMMISSIONER:

Appellant appeals from the denial of a seasonal retail consumption license for the period expiring November 1, 1938, for premises located at 8 Main Street, Denville.

Appellant and the premises in question are the same as those considered in two prior appeals. Lysaght v. Denville, Bulletin 163, Item 13; Lysaght v. Denville, Bulletin 233, Item 6. In the first of said appeals the denial of a plenary retail consumption license was sustained because it appeared that a majority of the Township Committee had decided that a sufficient number of licenses had been previously issued in the Township and because appellant failed to sustain the burden of proof in showing that an additional license was necessary. In the second of these cases the denial of a plenary retail consumption license was affirmed because appellant had not sustained the burden of proof in showing that one of the Township Committeemen was improperly motivated, or in showing that public necessity or convenience demanded the granting of appellant's application.

The application herein was for a seasonal instead of a plenary license, but it was denied by a vote of two in favor and three against.

In the instant case, it was stipulated that the testimony introduced at the two previous hearings was to be considered as part of the testimony in this case. Thus, it appears that there are ten consumption and two distribution establishments in Denville to service a normal population of thirty-five hundred, and a summer population estimated at ten to twenty thousand. Appellant has introduced some additional testimony herein showing that there are seven or eight lakes in the vicinity of Denville; that there are summer colonies surrounding each of these lakes, which colonies contain a total of approximately two thousand bungalows occupied principally during the summer months; that the section of the

Township in which appellant's premises are located is the shopping center for these summer residents; that the "Wayside Inn" and "The Stage Door" are both located across the road from appellant's premises and, hence, are inconvenient for persons visiting the shopping district.

It is unnecessary in this case to consider whether public convenience and necessity has been shown for a seasonal license in view of the great influx of summer population or whether the P.O.S. of A. Hall, in which religious services are held constitutes a church, (Manning vs. Trenton, Bulletin #247, Item 1), for there is an underlying defect which is fatal to this appeal, viz.: Respondent has not fixed any fee in respect to the kind of license for which appellant applied.

This question was raised in Asarnow vs. Warren Township, Bulletin #249, Item 8, but was there unnecessary to decide. Decision on this point now becomes imperative. Appellant argues, as in the Asarnow case, that since the municipality has not provided by ordinance, as it may under R.S. 33:1-12 (Section 13(2) of the Control Act), that no seasonal retail consumption license shall be granted, the local issuing authority, therefore, cannot, without some valid reason, refuse an application for a seasonal retail consumption license if the person and place are otherwise satisfactory; further, that it is unnecessary that the municipality shall fix, by ordinance or resolution, the fee for this particular kind of license because, having heretofore fixed the fee for plenary retail consumption licenses, the fee for a seasonal retail consumption license is automatically fixed by the above cited section at seventy-five per centum of the fee fixed for plenary retail consumption licenses. On that ground, it was sought to distinguish Miller vs. Greenwich Township, Bulletin #57, Item 9, where an appeal was dismissed because no license fees whatsoever had been fixed by the municipality, whereas in the instant case the fee for a plenary retail consumption license had been determined.

The fallacy of this argument is that the Control Act is not mandatory in respect to issuing licenses. There is no requirement that municipalities must issue seasonal licenses. The privilege is merely permissive. Municipalities may do so, but are not required. There is nothing in the Statute to indicate that, if the municipality issues plenary licenses, they must also issue seasonal licenses. The Statute, R.S. 33:1-12 (Section 13(2) of the Control Act) expressly states that the fee for this kind of license "shall be fixed by the governing board or body of the municipality in which the licensed premises are situated." This is the same language - haec verba - as in the respective statutory provisions creating consumption, distribution and club licenses. Surely, the presence of such language in the other provisions does not make the issuance of consumption, or distribution, or club licenses mandatory in cases where the municipality has failed or refused to fix any such fee. Miller vs. Township of Greenwich, supra, set that point at rest. Neither does it in the instant case. All that the section means is, that if the governing board or body do fix a seasonal fee, it is to be fixed at a certain definite figure, i.e., at seventy-five per centum of whatever fee is fixed for plenary retail consumption licenses, instead of within the optional limits afforded by the other provisions. By fixing a fee for a class or classes of licenses, the municipality indicates its willingness that such class or classes of licenses may be issued in that municipality. Until the municipal volition has thus been manifested, in respect to a particular class of retail license, no license of

that class may be issued. That applies both to the municipality and to the State Commissioner. The Commissioner has neither original nor appellate power to fix those fees. Miller vs. Township of Greenwich, supra.

It is placing a false emphasis upon the statutory option above cited, which confers upon the governing board or body of each municipality the right to enact that no seasonal retail consumption license shall be granted within its respective municipality, to deduce therefrom the negative pregnant that, in the absence of such an ordinance, the municipality must issue such kind of licenses. Failure to exercise the option has no such surprising effect. Such a result sounds as if the municipality were in some way in default - as if what was meant as a privilege has, by some strange twist, been converted into a duty. No such result was ever contemplated by the Legislature. Full significance is given to such statutory option by holding that, when it has been exercised, the governing board or body, thereafter and so long as the ordinance is in effect, cannot issue such kind of license even if, perchance, they so desire. Bachman vs. Phillipsburg, 68 N.J.L. 552; Talbot vs. Mendham, Bulletin 117, Item 1; Beringer vs. Camden, Bulletin 144, Item 5; Duffield vs. Allenhurst, Bulletin 236, Item 12. If the option is not exercised, then the local issuing authority may issue such licenses, provided they first fix the fee therefor. That is the most that can be made of it. It is a far cry from "may" to "must".

Since no fee has been fixed by the respondent municipality in respect to a seasonal retail consumption license, it follows that appellant's application was properly denied.

The action of the respondent board is affirmed.

D. FREDERICK BURNETT  
Commissioner

Dated: June 2, 1938.

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

May 25th, 1938.

RE: CASE NO. 223

In his application and questionnaire applicant denied that he had ever been convicted of a crime. Fingerprint records disclose that, in October, 1930, he had been convicted in the State of North Carolina on a charge of violating the National Prohibition Act, and sentenced to four months in a County jail.

At a hearing duly held, applicant admitted the conviction and sentence. He testified that the conviction followed his arrest for selling a quart of liquor to a Federal Prohibition Agent; that at the time of his arrest he was not in the bootlegging business but that, while visiting some of his relatives in South Carolina, he had brought about six quarts of liquor from a distant city where he was regularly employed, and had sold one of the quarts of liquor to the Prohibition Agent. The fact that the conviction arose from a single transaction is confirmed by subsequent investigation. Under these circumstances, there is no question of moral turpitude involved.

In explaining his reason for denying that he had been convicted of a crime, applicant testified that he had actually

served only a week or ten days of his sentence, at which time he was released after payment of a fine. He testified that he "thought this case had been all quashed from the records." He is a married man with two children and appears to be very sincere and honest. For some years past he has been engaged in the sale of liquor in other States and desires to be employed as a missionary man in New Jersey by a New Jersey licensee. I believe his testimony that he did not deliberately conceal this conviction which occurred more than seven years ago, and which I think he honestly believed was expunged from the records when he paid the fine. The question of course, is not whether the conviction was expunged, but whether the applicant honestly believed that it had been expunged.

It is recommended that the solicitor's permit be issued.

Edward J. Dorton,  
Attorney-in-Chief.

Approved but not to be effective  
until June 6, 1938.

D. FREDERICK BURNETT  
Commissioner

3. SALE - NO ALCOHOLIC BEVERAGES MAY BE SOLD EXCEPT PURSUANT TO A LICENSE - TO SELL ON FISHING BOATS A PLENARY RETAIL-TRANSIT LICENSE IS REQUIRED

My dear Sir:

Parties who charter the Cruiser COMMANDER for a day's fishing or cruising, have made the request that we have beer on board for them to use with their lunches and for their parties. Therefore, so we may break no law, I will appreciate it if you will answer the following question for me.

We have no license to dispense beer on board the boat and the amount of parties who would want such refreshments is so small that it would not pay us to take out a license, however, to retain the good-will of what few parties who do desire to have beer on board, will it be permissible for us in connection with parties who desire beer, to purchase it for them in either cases, quarter or half barrels, turn the receipt over to them and have them reimburse us exactly the amount we paid for same, the beer then becoming their property to dispense as they desire, making no profit whatever in the transaction, selling the beer drink by drink, or otherwise handling it after we turned it over to them.

The bulk of the parties who desire beer are workingmen, employed on weekdays, who do not have either the time or equipment to haul or transport their beer to Fortescue, and they go out on Sundays, when beer cannot be purchased.

This would mean a loss to businessmen in New Jersey, at Fortescue, in the sale of gasoline, bait, oil, meals and other incidental monies they would spend while in the town.

In every sense of the word, of course, as we would not engage in the sale of the beer, merely arrange to have it on board

for the parties who would reimburse us exactly for what we paid for it, would we be breaking any law by so doing.

Very truly yours,

JAMES J. BURKE

May 25, 1938.

Mr. James J. Burke,  
Philadelphia, Pa.

My dear Mr. Burke:

In order to sell beer on the fishing cruiser, you must first take out a license. No alcoholic beverages may be sold in New Jersey in any manner whatsoever except pursuant to a license. It makes no difference that the profit is small or almost negligible, or that there is no profit at all. It is still a sale in the contemplation of the law for which a license must be obtained.

The license to sell alcoholic beverages for consumption on boats is called the plenary retail transit license. It is described in Section 3 of the Instructions Pertaining to the Issuance of State Licenses, Pamphlet Rules, Page 9, a copy of which I have sent you under separate cover. The fee is \$150.00 per annum for each boat, except for boats under five tons gross tonnage in which case it is \$10.00.

Application for the license is made directly to this Department. Application forms will be furnished on request.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

4. APPELLATE DECISIONS - SCHWARTZ and CHODOSH vs. CARTERET.

M. ISRAEL SCHWARTZ and )  
ABE CHODOSH, trading as )  
Carteret Wine and Liquor )  
Center, )

Appellants, )

-vs-

BOROUGH COUNCIL OF THE )  
BOROUGH OF CARTERET, )

Respondent. )

On Appeal

CONCLUSIONS

.....  
Ambrose J. Mudrak, Esq., Attorney for the Appellants  
David S. Jacoby, Esq., Attorney for the Respondent  
Harry Lubern, Esq., Attorney for the Objectors.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for premises located at 565 Roosevelt Avenue,

## Borough of Carteret.

Carteret is 4.2 square miles in area, and has a population (1930 Federal census) of 13,339 persons. Presently outstanding in the Borough are 41 consumption, 2 distribution and 4 club licenses. By ordinance of September 7, 1937, consumption licenses in the Borough have, with certain exceptions, been limited to one for each 500 of population under the last Federal census, which quota is now exhausted. There is, however, no formal limitation upon any other type of license in the Borough.

Appellants' place is located in a business section. Within 400-500 feet to the west of those premises, there are 8 consumption establishments presently in existence. Of the 2 "package stores" now in the Borough, the nearer is located 3/4 of a mile and the farther 1-1/2 miles away.

Three petitions totalling 617 signatures were filed against appellants' application, declaring that sufficient licenses exist in Carteret. On the other hand, a petition with 127 signatures was filed on behalf of granting appellants' application. At the hearing before respondent, the only objectors who appeared were the President of the Carteret Liquor Dealers Association, its attorney, and a local distribution licensee.

It may very well be that a denial of appellants' application because of respondent's belief that sufficient liquor establishments exist in the Borough, would be valid. The fact that appellants seek a distribution license and that there is no formal quota upon that type of license in Carteret would be no bar. Widlansky vs. Highland Park, Bulletin 209, Item 7; cf. Goff vs. Piscataway, Bulletin 234, Item 5, and cases therein cited.

But respondent, so far as appears, did not base its denial upon any personal determination that sufficient liquor places, whether consumption or distribution, exist in the Borough. On that question, it committed itself to no opinion. Instead, it assigns as ground for the denial the sole fact that the above-mentioned protesting petitions had been submitted to it for consideration.

Ordinarily, the weight to be given to petitions is left to the sound discretion of the issuing authority. Goff vs. Piscataway, supra. But they may not stand in lieu of a personal determination by the issuing authority upon all questions relevant to whether a liquor application shall be granted or denied. Dunster vs. Bernards, Bulletin 99, Item 1. Petitions may present arguments, suggest policies, and indicate the trend of local sentiment. But in all instances the issuing authority must determine, of its own judgment, the validity of any and all claims asserted therein.

I had occasion to consider the effect of petitions in Re Powell, Bulletin 59, Item 15, and there stated:

"Your conclusion that a petition has no legal standing as such is correct. Such petitions may serve, when favorable, to give massed character recommendation, or show economic cause, and, when unfavorable, to serve as a vehicle of protest.

"There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation without any considered thought of contents or effect or the argument on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides.

"A petition is not a substitute for, nor may it in any way dispense with independent investigation to determine that the law has in all respects been complied with and that the licensee is in fact worthy. Neither does it suffice as proof of non-compliance or of unworthiness. Such matters are not proved either way by merely counting noses. If the subject matter concerns local policy, the weight to be accorded to the petition is entirely within the discretion of the Mayor and Council. It is their power and their responsibility."

Respondent seemingly took stock only of the fact that many signatures are on the protesting petitions but reached no personal conclusion on the issue of local policy advanced therein, and on the propriety or desirability of granting or denying appellants' application. These conclusions, it should have reached. Dunster vs. Bernhards, supra

The case is accordingly remanded to respondent to inquire into and view all pertinent issues relative to appellants' application and to reach a personal determination on such issues.

D. FREDERICK BURNETT  
Commissioner

Dated: June 2, 1938.

5. LICENSES - PLENARY RETAIL CONSUMPTION LICENSES MAY NOT BE CONVERTED INTO PLENARY RETAIL DISTRIBUTION LICENSES - A CONSUMPTION LICENSEE MAY, HOWEVER, SURRENDER HIS LICENSE AND APPLY FOR A NEW DISTRIBUTION LICENSE AT ANY TIME.

CONVERSION OF LICENSES - WHAT CONSTITUTES - HEREIN THE DISTINCTION BETWEEN CONVERSION AND SURRENDER.

May 31, 1938.

Patrick F. Keelan, Secretary,  
Municipal Board of Alcoholic Beverage Control,  
Elizabeth, N. J.

My dear Mr. Keelan:

There is no objection to the holder of a plenary retail consumption license applying for a plenary retail distribution license

for the ensuing year.

The conversion of a plenary retail consumption into a plenary retail distribution license, which was prohibited in the Duffy ruling (Bulletin 103, Item 1), involves the changing over from one type to the other during the license year by using the unearned portion of the fee for the first as the fee for the second.

A plenary retail consumption licensee may surrender his license and apply for a new plenary retail distribution license, paying the regular required fee, at any time.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - HARBORING PROSTITUTES - TAVERNS SHALL NOT BE HOUSES OF ASSIGNATION - HEREIN ALSO OF FAILURE TO REPORT CONVICTION OF CORPORATE OFFICER WITHIN TEN DAYS AFTER OCCURRENCE.

In the Matter of Disciplinary )  
Proceedings against )  
K. & K. CO., INC., )  
Holder of License No. C-681 )  
issued by the Municipal Board )  
of Alcoholic Beverage Control )  
of the City of Newark. )

CONCLUSIONS  
AND  
ORDER

.....  
George R. Sommer, Esq., Attorney for Licensee.  
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were duly served upon the licensee, which may be summarized as follows:

(1) That on or about January 19, 1938 George Kaplan, President and holder of ten per cent. or more of the capital stock of corporate licensee, was convicted of a crime involving moral turpitude and the corporation is, therefore, disqualified from obtaining or holding a license;

(2) That subsequent to the above conviction of George Kaplan, the corporate licensee did fail to file with the Municipal Board of Alcoholic Beverage Control of the City of Newark a notice in writing of such conviction within ten (10) days after the occurrence thereof, in violation of R.S. 33:1-34 (Control Act, Section 31);

(3) That the corporate licensee allowed, permitted or suffered a lottery to be conducted on or about the licensed premises, in violation of Rule 6 of State Regulations No. 20;

(4) That the corporate licensee did, on or about April 27, 1938 and on divers days prior thereto, allow, permit or suffer in or upon the licensed premises a known prostitute, in

violation of Rule 4 of State Regulations No. 20;

(5) That corporate licensee did, on or about April 27, 1938, and on divers days prior thereto, harbor an immoral individual and did permit its place of business to be used in the procuring or furnishing of a woman for immoral purposes, in violation of Regulation No. 1 of a resolution adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark on May 23, 1934.

Licensee pleads guilty to the second charge, and not guilty as to the other charges.

As to charge (1): The evidence shows that George Kaplan, who was then the President of K. & K. Co., Inc. and the holder of thirty per cent. of its stock, pleaded non vult on January 19, 1938 to a charge of receiving stolen goods. It appears, however, that on the following day George Kaplan tendered to the corporation his resignation as President and director thereof, to be effective as soon as possible, for the stated reasons that he had sold his interest in the company to Ida Polikoff, and that he had been convicted of a crime. On the same day he endorsed in blank the certificate of stock which was then outstanding in his name and which has at all times remained in the stock book of the corporation. The minutes of the meeting of the Board of Directors of K. & K. Co., Inc., which was held on February 21, 1938, show that the resignation of George Kaplan was accepted, and that Ida Polikoff was elected as a director and President of the corporation at said meeting. The records of the corporation show that at the present time a certificate of stock is outstanding in the name of Ida Polikoff for a certain number of shares previously held by George Kaplan. The Secretary of the corporation testified that the certificate was issued to Ida Polikoff at the meeting held on February 21, 1938, in lieu of the certificate heretofore held by George Kaplan. There is no evidence which would in any way contradict the testimony of various witnesses for the licensee who testified that George Kaplan is not interested in the corporation at the present time as director, officer or stockholder. The first charge is, therefore, dismissed.

As to charge (3): On April 8, 1938 Officer Catena, of the Newark Police Department, found five number slips in the cash register of the licensed premises. George Kaplan testified that these number slips belonged to him and represented plays which he had made on various days. He denied that these plays had been made at the licensed premises. It is passing strange, however, that if George Kaplan is not interested in the corporation as a director, or officer, or stockholder, just why he should have the privilege of using the licensee's cash register as a safe deposit box for his policy slips! However, in the absence of any direct and satisfactory evidence showing that the licensee suffered or permitted any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale, and in view of the more serious accusations, I shall dismiss the third charge.

As to charges (4) and (5): These charges will be considered together, inasmuch as the alleged violations arise from the same facts. On April 15, 1938 two Investigators from this Department visited the licensed premises and sat at the bar. A woman, who was unescorted at that time, came to the bar and asked them to buy her a drink. Later the woman admitted to the Inves-

tigators that she was a prostitute and offered to take them to her apartment. Shortly thereafter one of the Investigators had a conversation with the bartender, which is set forth in full in the testimony and which shows that the bartender knew that the woman was a prostitute. On April 20th two other Investigators from this Department saw the same woman on the premises, but had no conversation with her at that time. On April 22, 1938 the two Investigators just mentioned returned to the licensed premises, at which time the same woman was present and invited them to her apartment for immoral purposes. On April 27, 1938 these same Investigators saw this woman on the licensed premises but had no conversation with her. The criminal record of the girl, which was introduced into evidence, shows that she was convicted as a prostitute on three occasions in 1930 and once in 1934. The officers of the corporation and the bartender denied any knowledge as to the character of the woman. The licensee produced the woman's brother as a witness. He testified that he had accompanied his sister to the licensed premises two or three times a week for some time past; that he supported his sister, and that he had no knowledge of her immoral character. I have grave doubts as to the truth of the brother's testimony that he accompanied the woman to the licensed premises. The evidence shows that the woman was unaccompanied on the two occasions when she solicited the two Investigators of this Department. The evidence is sufficient to show that the woman's character was known to the agents of the licensee, especially in view of the conversation between the Investigators and the bartender, and the fact that the woman was on the licensed premises at least three times after that conversation took place. I find the licensee guilty on the fourth and fifth charges.

On the second charge the license will be suspended for five days.

On the charge of harboring a prostitute, the precedent of Re Bellucci, Bulletin 248, Item 3, which was likewise the first offense on a record otherwise clear of adjudicated offense, will be applied so that the suspension on this count will be for a term of sixty days, thus making a total suspension of sixty-five days. As declared in the cited case: "Our taverns are not meant to be houses of assignation, nor will they be allowed to be."

Accordingly, it is on this 2nd day of June, 1938 ORDERED that, effective at 3:00 A. M. (Daylight Saving Time) on June 5, 1938, plenary retail consumption license No. C-681, heretofore issued to K. & K. Co., Inc., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for the balance of its term.

And it is further

ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R.S. 33, Ch.1) be issued to said K. & K. Co. Inc., before the 8th day of August, 1938.

D. FREDERICK BURNETT  
Commissioner

7. ENFORCEMENT DIVISION ACTIVITY REPORT FOR MAY 1 to 31, 1938, INCL.

ARRESTS: Total number of persons - - - - - 62  
 Licensees - 3 Non-licensees - 59

SEIZURES: Stills - total number seized- - - - - 14  
 Capacity 1 to 50 gal. - 6  
 Capacity 50 gal. & over 8  
 Motor Vehicles - total number seized- - - - 10  
 Trucks - 2 Passenger Cars - 8  
 Alcohol  
 Beverage alcohol - - - - - 1209 Gals.  
 Mash - total number of gallons - - - - - 16,862  
 Alcoholic Beverages  
 Beer, Ale, etc. - - - - - 47 Gallons  
 Wine - - - - - 222 "  
 Whiskies & other hard liquors - 98 "

RETAIL INSPECTIONS:

Licensed premises inspected- - - - - 1,959  
 Illicit (bootleg) liquor- - - - - 8  
 Gambling violations- - - - - 97  
 Sign violations- - - - - 103  
 Unqualified employees- - - - - 273  
 Other violations- - - - - 98

Total violations found- - - - - 579

Total number of bottles gauged- - - - - 14,353

STATE LICENSEES:

Plant Control Inspections completed- - - - - 101  
 License applications investigated- - - - - 32

COMPLAINTS:

Investigated and closed- - - - - 304  
 Investigated, pending completion - - - - - 144

LABORATORY:

Number of samples submitted- - - - - 166  
 Number of analyses made- - - - - 180  
 Number of poison liquor cases- - - - - 0  
 Number of cases of denaturants - - - - - 5  
 (3 Acetone; 2 Isopropyl)  
 Number of cases of alcohol, water  
 and artificial coloring - - - - - 11  
 Number of cases of moonshine (home-  
 made finished product of illicit  
 still) - - - - - 19

Respectfully submitted,

E. W. Garrett  
 Deputy Commissioner

8. SIGNS AND ADVERTISING MATTER - THE AGGREGATE COST OR REASONABLE VALUE OF SUCH EQUIPMENT A MANUFACTURER OR WHOLESALER FURNISHES TO A RETAILER MUST NOT EXCEED \$50.00 PER YEAR - GLASS HOLDERS.

STATE REGULATIONS - FEDERAL REGULATIONS - CONCURRENT EFFECT.

Gentlemen:

We are selling a silver stem holder which carries three or four styles of glass insets, used for cocktails, sherbets, fruit cocktails, and champagne wine glasses.

We have a distiller who is paying us a sum of money for advertising the name of one of their products on this glass. We have permission from the Federal Alcohol Administration under date of April 15th, 1938, which reads as follows:

"You also ask whether the rum manufacturer might purchase from you the advertising service of having its name stamped upon the glasses or the holders. The Act and regulations would not prohibit this type of advertising, provided, of course, that the advertising material complies in all respects with Article VI of this Administration's Regulations No. 5, a copy of which is enclosed, and further provided that the glasses or holders are sold by you to the retailer at their market value and that the amount paid for the advertising space by the distiller is not out of line of the service rendered. The distiller could not, of course, attempt to direct, guide, or supervise the sale of your glasses by your firm to retailers, and such sales should be kept entirely independent from the advertising space to the manufacturer."

We desire to know whether, in your state, we must conform to the above, or whether these glasses or holders or both, can be given away, up to a value of \$10.00 per annum per establishment.

Yours very truly,

J. A. Heely,  
Ass't. Sec'y.

May 31, 1938.

The Glassave Company, Inc.,  
New York City.

Gentlemen:

Pursuant to Rule 1 of State Regulations No. 21 licensed manufacturers and wholesalers may furnish New Jersey retailers with advertising specialties, such as the silver stem holders as described in your letter, provided the aggregate cost or reasonable value of all signs, equipment, and such advertising specialties furnished each retailer does not exceed the allowable \$50.00 per year.

For State Regulations No. 21 see the Pamphlet Rules, page 64, a copy of which I have sent you under separate cover.

The regulations of the Federal Alcohol Administration



Schaible girl testified that she had visited Eskow's premises on previous occasions, and that she had never been asked in Eskow's whether she was twenty-one. The Hearer reports that the Schaible girl appeared to be very young.

The evidence herein clearly shows that the bartender served alcoholic beverages to the minor, who was nineteen years of age, and the perfunctory inquiry which he alleges he made while he was employed by another licensee is not a mitigating circumstance. Apparently he was only too willing to resolve all doubts in favor of his employer's cash register.

Since the master is responsible for what his servant does in the scope and course of his employment, In Re Antico, Bulletin #195, Item 9, the licensee herein is guilty as charged.

I shall suspend her license for fifteen days.

Unlike the Sandago, Beatty and Fischer cases, Bulletin 249, Items 1, 2 and 3, the license held by Mary Eskow has not been automatically suspended because no criminal charge was laid against her for the act of her bartender.

Accordingly, it is on this 3rd day of June, 1938

ORDERED that Plenary Retail Consumption License C-1, heretofore issued to Mary Eskow, t/a Milford House, by the Board of Commissioners of Milford, be and the same is hereby suspended for a period of fifteen (15) days, commencing June 7th, 1938 at midnight (Daylight Saving Time).

D. FREDERICK BURNETT  
Commissioner.

10. PUBLIC BUILDINGS - WHAT CONSTITUTES - THE OPERATION OF A PREMISES AS A PRIVATE COUNTRY CLUB DOES NOT MAKE IT A PUBLIC BUILDING EVEN THOUGH IT IS OWNED BY THE MUNICIPALITY VIA FORECLOSURE OF TAX LIEN.

May 31, 1938.

Maurice P. Ingalsbe, Chairman,  
Township Committee,  
Scotch Plains, N. J.

My dear Mr. Ingalsbe:

I understand that the property of the Shady Rest Country Club, which holds a plenary retail consumption license, has been acquired by the Township through foreclosure of tax lien.

The only thing in the Alcoholic Beverage Control Act which applies to the licensing of municipally owned property is R.S. 33:-142 (Control Act, Sec. 39), which provides that no alcoholic beverages shall be sold in any public buildings unless the Commissioner's permission is obtained.

But Section 39 has no bearing unless it is a public building. The mere fact that it is owned by the municipality does not make it a public building. Thus, the continuation of the Shady Rest property as a private country club would mean that

Section 39 would have no application and hence, so long as the licensee was qualified and had legal possession, and the premises was suitable, there would be no objection to the continuance of the license. See Re Pierson, Bulletin 38, Item 12, and Re Kaplan, Bulletin 171, Item 16, copies enclosed.

Whether the Township has the legal power to rent property so acquired for private purposes is a question of general municipal law as to which the Township Attorney should be consulted.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

11. LICENSES - INTEREST IN LICENSED PREMISES - WHEN NEW LICENSE MAY BE ISSUED FOR VACATED PREMISES - EFFECT OF DISPOSSESSION - A LICENSE UNDER SUSPENSION MAY, UPON REINSTATEMENT, BE EXERCISED AT THE OLD PREMISES IF POSSESSION IS RESTORED, OR TRANSFERRED TO A NEW PREMISES.

May 31, 1938.

Mrs. Florence D. Clayton,  
Clerk of Chesterfield Township,  
Crosswicks, N. J.

My dear Mrs. Clayton:

If Mr. Bensel has been dispossessed and no longer has any interest in the premises for which his license was granted, a new license may lawfully be issued to another person for those premises, provided the new applicant is personally qualified, has an enforceable right to possession and the statutory prerequisites have been complied with.

Of course, so long as Bensel's license remains under suspension, or there is no licensed premises to which it applies, it cannot be used. If, however, the license is subsequently reinstated, as it may be if he pays up his back taxes, he may apply to the Township Committee for a transfer to a different premises if he wishes. I say "different" premises. What I mean by that is that if your local issuing authority issues a license to some other person in respect to the premises previously occupied by Bensel he will have to make application for a different place if he wants to exercise his license. Of course, if no new license has been issued in the meantime for the premises so previously occupied and he pays his back taxes so that his license is restored, he can resume business at the original place, provided, necessarily, that the landlord who dispossessed him relents and restores possession to him.

For rulings regarding the relicensing of premises in which the original licensee no longer has a legal interest, see Re Potanski, Bulletin 239, Item 9, Re Morrissey, Bulletin 228, Item 7, Re Kappelman, Bulletin 211, Item 1, and Re Boettiger, Bulletin 98, Item 11.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 12. FREE LUNCH - NOT PROHIBITED.

PROMOTIONAL OFFERS OF UNLIMITED QUANTITIES OF BEER OR LIQUOR FOR A FIXED PRICE - PROHIBITED.

DISPLAYS - COMBINATION OF ALCOHOLIC BEVERAGES AND OTHER MERCHANDISE IN WINDOW DISPLAYS - HEREIN OF EASTER EGGS, CHILDREN'S TOYS, AND EASTER BUNNIES.

May 31, 1938.

Miss Leah O. Stanton,  
Ridgewood, N. J.

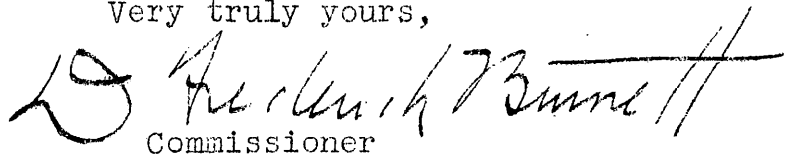
My dear Miss Stanton:

I think you have been misinformed. There is nothing in the State law or regulations which would prevent licensees from serving free lunch. What is prohibited is the giving away of unlimited quantities of beer or liquor for a fixed price, such as promotional schemes offering all the beer the patron can drink for \$1.00. See Re Sugrue, Bulletin 232, Item 3.

Unless there is a municipal regulation prohibiting package liquor stores from conducting any other mercantile business on the licensed premises, there is no objection to combining alcoholic beverages and other merchandise in window displays. While personally I see no objection to showing liquor with canned goods and groceries, I agree with you that it is bad taste to mix it with Easter eggs, children's toys and Easter bunnies. Many of our licensed places are not conducted with as much propriety as we would like. It has been my constant interest and endeavor to set up standards of conduct which will eventually bring all above reproach.

Bad taste, however, is not against the law. And as you undoubtedly appreciate, liquor licensees are not the only offenders. Such displays do not provide grounds for disciplinary action.

Very truly yours,

  
Commissioner

New Jersey State Library

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