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

BULLETIN NUMBER 172. APRIL 28, 1937.

1. LICENSEES - EXHIBITIONS AT BUSINESS SHOWS - PERMISSION STRICTLY CONSTRUED GRANTED UNDER CONDITIONS WHICH WILL BE RIGIDLY ENFORCED.

April 21, 1937

Quality Cut Rate Liquor Store, Inc.,
Burlington, N. J.
Att: Sidney W. Bookbinder, President.

Gentlemen:

I have yours of April 20th. Pursuant to the ruling which I made in re Krueger Brewing Co., Bulletin 71, Item 7, you may display your goods at the Burlington Business Show, but, under no circumstances may you make any sales or solicit or accept any orders at that show. In short, your status is that merely of an exhibitor and nothing more. The permission hereby granted will be strictly construed. That means, for illustration, that you may not give out any samples of your liquor at the show.

I note that the Rules and Regulations require that, in addition to the booth rental fees, every exhibitor is required to contribute merchandise door prizes having a list price of not less than $10.00, which prizes may be either merchandise from the exhibitors' stock or souvenir articles obtained specially for the purpose. Your contribution on this score must be something other than liquor.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - LEWD PERFORMANCES - OUTRIGHT REVOCATION INDICATED.

April 22, 1937

Township Committee of Pennsauken,
c/o Robert V. Peabody, Clerk,
Merchantville, N. J.

Gentlemen:

Enclosed is synopsis of the Department's investigation at licensed premises of Joseph Deluca, trading as Red Hill Inn, 9712 Westfield Avenue, Pennsauken, operating under your plenary retail consumption license C-35.

The charges arise out of incidents witnessed by my Investigators Gold and Tracy at an affair held by a branch of the American Legion on the night of April 15, 1937.

The investigators report that they witnessed female entertainers perform not only practically in the nude but also during the performance engaged in indecent actions, viz.:

"Upon arriving at the second floor, Gold observed curtains over the doorway leading to the banquet room and peering through them he noticed about two hundred men sitting in a circle and a female performer wearing a pair of lace 'scanties,' her body being exposed from the waist up. She was singing a song, and upon completion of it mingled with the audience, during which

time she straddled the laps of several men, facing them and permitting the free use of their hands over her body. She would tauntingly flaunt her breasts into the face of the particular man she was straddling at the moment."

Such conduct in a licensed premises is in wanton violation of State Rule #5 of Rules Concerning Conduct of Licensees and Use of Licensed Premises, reading as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

I recommend that revocation proceedings be instituted immediately and if the allegations set forth in the synopsis be substantiated, that the license be revoked outright.

Upon receipt of your advices as to the time and place set for hearing, Investigators Gold and Tracy will be present prepared to testify in support of the matters set forth in the report. If we can be of any further service to you in the preparation of the case or the hearing, do not hesitate to call upon us. I depend on you to do your full duty.

Kindly acknowledge receipt of this letter and certify to me the action taken.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - LEWD PERFORMANCES - OUTRIGHT REVOCATION EFFECTED.

April 22, 1937

Hon. Alton V. Evans,
Mayor of Long Branch,
City Hall,
Long Branch, N. J.

My dear Mayor Evans:

I have staff report and also certification from Mr.Wooding, City Clerk, of the proceedings before the Long Branch Commissioners against Henry A. Muhlenbrink, trading as Hi-Henry Inn, for violation of the Rules by allowing the showing of a lewd and immoral performance by female entertainers and the exhibition of filthy moving pictures of the same type.

I note that the licensee was found guilty and his license revoked outright.

Expressing no opinion on the merits because the case might come before me on appeal, I thank you and each member of the Board profoundly for your inspiring action which every right-thinking citizen and clean licensee will applaud.

Licensees who foul their own nests with filth and degrade their places with wanton lewdness will be exterminated as fast as we catch up with them.

I note from the report that Muhlenbrink attempted to pass responsibility for the whole dirty mess to the organization that ran

the affair. That doesn't go so far as licensees are concerned. It is their duty to know and control at all times what goes on in licensed premises.

Your pledge that Long Branch would do its full duty has been promptly and admirably kept.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

4. ADVERTISING - GIFTS OF EQUIPMENT - MANUFACTURERS AND WHOLESALERS MAY NOT FURNISH TO BALL TEAMS UNIFORMS BEARING ADVERTISEMENT OF ANY BRAND OF LIQUOR.

My dear Sir:

I am a manager of a softball team and a certain distillery is to sponsor us with uniforms. And on the back of these uniforms they would like to put their favorite brand of whiskey.

Will you kindly let me know if there is any state law that prohibits such advertising.

I will appreciate an answer as soon as possible.

Respectfully yours,
Walter Koziol.

April 24, 1937

Mr. Walter Koziol,
Elizabeth, N. J.

My dear Mr. Koziol:

The present Rules forbid manufacturers and wholesalers from furnishing to retail licensees advertising matter the cost or value of which exceeds $100.00 a year with respect to each licensed premises. So far as giving out souvenirs and advertising matter direct to the public is concerned, there has heretofore been no occasion to make any rule. Without attempt to formulate a general rule until further experience shows the necessity and furnishes a guide as to its proper boundaries, I now, pursuant to the power conferred to make special rulings concerning gifts of equipment, products, and things of value, rule that manufacturers and wholesalers may not furnish to ball teams or anyone else uniforms bearing advertisement of any brand of liquor.

I am really sorry if this means that the fellows on your team will have to buy their own uniforms, but I am sure they will play a better game and hold their heads higher if they carry their own colors and their own name on their backs instead of advertising some brand of Scamper Juice.

With best wishes to you and the team for a successful season, I am

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

5. ADVERTISING - LIQUOR ADVERTISING OVER RADIO DEPRECATED - AND THIS IS PARTICULARLY TRUE OF HOOKING UP THE LURE OF BASEBALL WITH THE BLESSINGS OF BEER.

April 26, 1937

L. H. Hartman Co.,
New York, N. Y.

Gentlemen: Attention: S. A. Halpern.

I have yours of April 21st re proposed advertising over Station WOR.

Any advertising of liquor over Radio is disapproved because it carries its message directly to the family fireside, whether welcome or not.

This is particularly true when the radio program is built on baseball and hooked up with a contest requiring essays on beer and its blessings. The hero-worshipping youngster tunes in with bated breath and pulsing heart to the baseball exploits of today's ace or yesterday's star, subconsciously resolving all the while to imitate and become tomorrow's headliner, as well he might, right through the thrilling climax and up to the bait of a pass, a season ticket, or a trip to the World Series, providing he writes twenty or so words on "Why I like Blank's beer" or "Why I prefer beer in cans," or some other question designed to intrigue the listener to taste, test and tell. You say "the answers would be sent in on official entry blanks that would be handed out by dealers at the time the beer was purchased." Just so! Of course, that's the object of the advertising! But right there is the objection for the probable incidence of the lure of the national game falls largely on plastic youth.

That's why all licensees are forbidden to handle such entry blanks or to possess them on licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - ZUPKUS v. LINDEN.

WALTER ZUPKUS,)
Appellant,)
-vs-) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF LINDEN,) CONCLUSIONS
Respondent)

Walter H. Flaherty, Esq., by John J. Molson, Jr., Esq., Attorney for Appellant.
Lewis Winetsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of an application for a plenary retail consumption license for premises located at 1520 East Elizabeth Avenue, Linden.

At the time the original application was made, it was denied for the following assigned reasons, viz.:

"that the applicant has already held a liquor license for the said premises and has seen fit to transfer it; and after this license was transferred, the premises

became the subject of two other licenses which were either transferred or are in the process of being transferred."

In its answer to the petition of appeal, respondent set up as its sole justification for its action:

"The denial of the application was proper and just and was required in the exercise of the duty imposed upon the Respondent."

In fairness to applicants, local issuing authorities should state fully the reasons for their actions. Certainly such reasons should be set forth in the answer filed on appeal. The object of pleadings is to define the issues. The answer filed herein is objectionable because it does not apprise appellant that any issue is raised as to his personal fitness.

Despite the fact, however, that the issue of personal fitness was not mentioned in the reasons given below for rejecting the license, or raised in the pleadings, appellant did not plead surprise at the hearing of the appeal, and made no objection to the introduction of evidence given on that issue. At the hearing on the appeal, one of the members of the Municipal Board of Alcoholic Beverage Control testified that the denial of the license was based not only upon the reasons stated below for such denial, but also upon applicant's history. He stated that it is the practice of the Board not to insert in their minutes that "a man has a bad record." Because of the waiver, and likewise because I am satisfied from the record that the issue of personal fitness was considered below, I shall consider it in reaching a determination in this case. It is important, however, to point out the defects in the record below and the pleadings for the guidance of parties to future appeals.

As to the merits. Since Repeal the premises in question have been conducted by four different licensees, the first of whom was the wife of the present applicant. The last licensee was dispossessed by appellant's wife on December 26, 1936. Appellant says that the last licensee was dispossessed because she failed to pay her rent. She, however, testified that she was dispossessed because her lease had expired, and the owner of the building, acting through her husband, appellant herein, had refused to renew the lease unless lessee would enter into an agreement to sell her license and fixtures to any one who might buy the building. If the then licensee's version is true, it appears that an effort was made by appellant to obtain an interest in or control over the outstanding license, contrary to the provisions of the Control Act. The scheme proposed by appellant to the then licensee, as a condition precedent to granting a renewal of the lease, is contrary to the policy of the law. The purpose of the Legislature is clear that licensees should hold their licenses free from any device which would subject the licenses to control of other persons. See opinion of Vice Chancellor Bigelow in Walsh v. Bradley, Bulletin 166, Item 4.

Appellant's denial that he attempted to force the then licensee to enter into such an agreement is weakened by his testimony given at the hearing on the appeal. He testified that he had not been arrested or held in bail in 1923. The records of the Linden Police, however, show that he was arrested in that year and held under $500.00 bail to await the action of the Grand Jury on charges of sale and possession of liquors. It appeared also that, in answering a question in his sworn application requiring him to state "all residences of applicant during five years immediately preceding date of application," he had answered "810 Bergen Avenue," whereas on the trial he admitted that he had lived at that address for only two and one-half years and that, prior to that time, he had resided at 1520 East Elizabeth Avenue. Because of this false testimony, I must

disregard his version of the transaction with his former lessee and give credence to the former lessee's explanation that her license was not renewed because she would not agree to sell her license.

Appellant stresses the fact that he has never been actually convicted of a crime. That is true. It is clear, however, that he was arrested in Linden in 1923 for sale and possession of liquors in violation of the National Prohibition Act, and also that some years ago he admittedly conducted a "speakeasy" at 1520 East Elizabeth Avenue, Linden, which latter premises were at one time raided and padlocked for a violation of the Volstead Act while appellant was in possession thereof.

It may well be that the reason given below for denying the license, namely, that four separate licenses had been granted for these premises since Repeal, is not in and of itself a sufficient reason for sustaining respondent's action. Nevertheless, the history of the place, coupled with the consideration of appellant's past activities, might well lead respondent to believe that the application for the license was not made in good faith, and that appellant is not a proper person to have a license. Municipal authorities are not required to issue licenses solely for the purpose of enabling persons to obtain a buyer for their property. A license is a privilege. While appellant is not arbitrarily disqualified by statute from receiving a license, he does not on that account have a right to a license. Local issuing authorities have the power and are under a duty to examine into the character and fitness of applicants and to deny the applications of those who are unfit or who do not act in good faith. Cf. Sylvester v. South Belmar, Bulletin 38, Item 15; Speranzo v. Millburn, Bulletin 57, Item 8; Tuccillo v. Princeton, Bulletin 97, Item 11; Hodanish v. Trenton, Bulletin 121, Item 6.

Viewing all the evidence, it does not appear that the action of respondent was arbitrary or unreasonable but, rather, that said action was based upon sufficient evidence to sustain respondent's decision that the issuance of the license would be contrary to the best interests of the community.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 26, 1937.

7. DISCIPLINARY PROCEEDINGS - ASSIGNMENT OF REASONS FOR DECISIONS CREATES PUBLIC CONFIDENCE IN AND INCULCATES RESPECT FOR THE LAW.

April 27, 1937

J. Cory Johnson, Town Clerk,
Bloomfield, N. J.

My dear Mr. Johnson:

I have your certified copy of the findings and action of the Town Council in the Mangen matter.

The decision and order is so well thought out and clearly expressed that I believe it will be of great help to other officials who have to wrestle with similar problems. Certainly it will be useful to me to cite this decision and quote from it from time to time. It is a pleasure to attest wholehearted agreement with every word of it. It will therefore appear in the Official Bulletins as Item 8 of Bulletin 172.

It would be of real service if all license issuing authorities similarly assigned definite reasons in black and white for the conclusions which they reach. It creates public confidence in and inculcates respect for the law. A decision which can stand the pitiless test of publicity clears the atmosphere like an electric storm from the murk of charges of political or personal favor or fear.

Please express to the members of your Council my respect and esteem.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES - THE RESPONSIBILITY OF LICENSEES.

For the reasons expressed in Bulletin 172, Item 7, the following decision of the Town Council of Bloomfield is set forth in the Official Bulletin, viz.:

"IN RE: MANGEN, INC.

"DECISION AND ORDER

"Mangen, Inc., operating a tavern at 122 Bloomfield Avenue under Plenary Retail Consumption License C-29, is charged by the Commissioner of Alcoholic Beverage Control with the possession of illicit alcoholic beverages, contrary to Section 48 of the Control Act. The basis of the charge is that on February 17, 1937, investigators of the State Department of Alcoholic Beverage Control found on the premises three bottles of alcoholic liquor which did not test according to label in that they contained natural or straight whiskey instead of the blended whiskey called for by the label.

"The licensee appeared before the Town Council by its President and attorney. It stated that it had no knowledge of the contents of the bottles in question and, therefore, could not dispute the charge of substitution. We must, for the purpose of this proceeding, deem this as an admission of the charge as made. The licensee, however, disclaims any knowledge of how or by whom the substitution was made, but offers as a possible explanation the fact that it had some difficulty with one of its employees who left its employ on the very day on which the inspectors appeared. The licensee also produced a letter from the Federal authorities, certifying that they had made a test on the day before the test in question and found nothing out of order. The licensee further stated that the State inspectors had made another test within the week prior to the one in question and made no complaint. It was further stated that during the course of a year and a half there had been approximately a dozen inspections by Federal and State authorities. The licensee claimed further that if, as claimed, there was natural whiskey in the bottles in question, and if that whiskey was taken from its stock, then it was more expensive whiskey than that called for by the labels since it had no natural whiskey in its possession as cheap as the blended whiskey. The licensee urges all of these facts in support of its claim that the charges should be dismissed.

"We cannot agree. Mere possession of liquor other than that called for by the label on the container, even though it may be of a better quality and a higher price, is a violation of the law. Some affirmative act by someone on the licensee's premises was required to bring about the substitution. It could not have occurred otherwise. It is not suggested that a trespasser was responsible. Even assuming that it was made by a disgruntled employee for the

purpose of revenge, the licensee must accept responsibility for the actions of the persons whom it hires. If we were to hold otherwise, every accused licensee would be furnished with a convenient alibi and the public would be deprived of the assurance that it is getting what the label on the bottle calls for.

"While we cannot accept the licensee's alleged inability to account for the substitution or even the deliberate act of a disgruntled employee as ground for dismissal, we may consider these facts in fixing the penalty. Were we convinced that the substitution was deliberate or had the licensee previously committed similar violations of the law, we might feel inclined to go to the extreme of revoking the license. Despite the almost continuous inspections to which the licensee has been subjected, however, no previous complaint of any violation has been made to us by either Federal or State authorities. Neither have we had any cause to prefer any charges or find any fault locally. While, as pointed out above, the substitution of more expensive natural or straight whiskey for cheaper blended whiskey is no defense to the charges, still it has a bearing on the question of knowledge and intent. In other words, there would have been no financial motive for the substitution and the absence of such a motive is rather convincing support for the licensee's claim that any substitution was unauthorized. For that reason we feel that while the licensee must stand the consequences of the substitution the circumstances in this case warrant the infliction of a milder penalty than would otherwise be the case.

"It is therefore ORDERED, that Plenary Retail Consumption License C-29, held by Mangen, Inc., for premises 122 Bloomfield Ave., Bloomfield, N. J., be suspended for the period commencing at 7:00 A. M. on Wednesday, April 21st, 1937 and ending on Wednesday, April 28, 1937, at 7:00 A. M.

"FURTHER ORDERED, that the Clerk be directed to notify the said licensee and the Chief of Police to that effect and to send a certified copy of this decision and order to the Commissioner of Alcoholic Beverage Control.

"Mr. Huck moved that the foregoing be the decision of the Council in this matter, which motion was seconded by Mr. Muller. Roll Call vote showed the following: Huck, Milbank, Muller, Ernst, Schafer and Newell voting "aye." Mr. Rees absent."

9. LOTTERIES - RAFFLES MAY NOT BE CONDUCTED ON LICENSED PREMISES REGARDLESS OF WHETHER THE TICKETS ARE SOLD OR GIVEN AWAY FREE.

Dear Sir:

We are contemplating the opening of a large market, which will also handle liquor, and during the first three days that the market will be opened we will give away tickets to every individual entering the store. These tickets will be given away free to everyone entering the store for a chance to win a turkey. It is not necessary to make a purchase to secure a ticket.

We have carefully read over Bulletin 155, Item 3 in which you very clearly rule against the distribution of tickets where the ticket is given away provided a purchase is made. The same is true for your ruling in Bulletin 159, Item 8 where tickets were sold to the purchaser.

Is it permissible for us to conduct such a drawing for prizes on our licensed premises provided the chances or tickets are given away free to all people entering our store?

Very truly yours,
THE GREAT ATLANTIC & PACIFIC
TEA COMPANY.

April 26,1937

The Great Atlantic & Pacific Tea Company,
Paterson, New Jersey.

Gentlemen:

It is true that the cases you cite involve the sale and not the gift of a lottery ticket. Rule 6 of the Rules Concerning Conduct of Licensees applies, however, even though the chances or tickets are given away free for the rule prohibits not only the sale of tickets or participation rights but goes further and expressly provides: "No licensee shall allow, suffer or permit any lottery to be conducted.....on or about the licensed premises."

Hence, so long as the market holds a liquor license, raffles are forbidden whatever the manner in which the tickets are distributed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. LICENSEES - DISQUALIFICATION - PERMANENT DISQUALIFICATION AUTOMATICALLY FOLLOWS ADJUDICATION OF SECOND VIOLATION OF THE CONTROL ACT - HEREIN OF THE DIFFERENCE IN EFFECT SO FAR AS STATUTORY DISQUALIFICATION IS CONCERNED BETWEEN VIOLATIONS OF THE CONTROL ACT ON THE ONE SIDE AND VIOLATION OF STATE RULES AND REGULATIONS AND OF MUNICIPAL ORDINANCES OR RESOLUTIONS ON THE OTHER.

LICENSES - RENEWALS - PRINCIPLES APPLICABLE.

Gentlemen:

Is it not the case that when a licensee has twice been convicted by the Township Committee of violation of the terms of his plenary retail distribution license (one conviction as a member of a partnership and the other as an individual in this case), he automatically becomes ineligible to receive any further license?

Very truly yours,
H. L. Bailey,
(Clerk of Downe Township).

April 27, 1937

Mr. Harold L. Bailey,
Clerk of Downe Township,
Dividing Creek, New Jersey.

Dear Mr. Bailey:

If a licensee has been found guilty of having committed two or more violations of the Control Act, he is forever after barred from obtaining any liquor license in this State. The disqualification is accomplished even though the two violations may have been committed while holding different licenses. It is not necessary that both should have occurred within the term of the same license nor even in the same municipality. Any two violations anywhere in the State are sufficient. See Section 22 of the Act (C. 436, P. L. 1933 as last amended by C. 194, P. L. 1934). The pertinent part is reprinted in Bulletin 36, Item 2. See also Re Wismer, Bulletin 171, Item 5.

The statutory disqualification, however, does not necessarily follow from the finding that a licensee has committed two violations of the State Rules and Regulations or of the provisions of municipal resolutions or ordinances unless the municipal resolution or ordinance so provides or, perchance, the violation is likewise a violation of the statute and the offender has been found guilty of such. That does not mean, of course, that in spite of the licensee's commission of two violations of the State Rules or of the local ordinance, he must be entitled to a renewal simply because he is not automatically disqualified thereby. Far from it. If the violations warrant the denial of the renewal, even though they do not amount to statutory disqualification, then by no means should it be granted. Renewals should be given only to those who have good records. For a general discussion of the problem involved and the principles applicable, see re Hinchcliffe, Bulletin 171, Item 7.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. TRANSPORTATION INSIGNIA - NOT NECESSARY ON BICYCLES - HEREIN OF MINOR THOUGH MODERN SUBSTITUTES FOR THE HORSE AND BUGGY.

My dear Mr. Burnett:

Would you please advise me if it is imperative that one have a license on a vehicle delivering alcoholic beverages if that vehicle is only a bicycle. Our deliveries are small and few, so we use a bicycle. If so, please let me know as soon as possible.

Yours truly,

N. P. Lioy.

April 27, 1937

Mr. N. P. Lioy,
Passaic, New Jersey.

My dear Mr. Lioy:

We require transportation insignia on commercial horse drawn or motor vehicles in order that the police may have an easy and effective means of identifying vehicles transporting alcoholic beverages as being duly licensed and the contents lawful even though concealed from public view. It helps us to combat unlicensed transportation and stop bootlegging.

Bicycles, boys' express wagons and kiddie-cars are exempt. The reason is as obvious as the packages they carry.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. LICENSEES - NO OBLIGATION TO REFUSE TO SELL TO A CUSTOMER IF SOBER - SALES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED ARE, HOWEVER, IN VIOLATION OF THE STATE RULES AND CAUSE FOR REVOCATION - HEREIN OF THE PROBLEM OF EXCESSIVE SALES TO PERSONS WHO CANNOT AFFORD TO BUY OR ARE NOT ABLE TO CARRY THEIR LIQUOR.

My dear Commissioner:

May I ask you to answer a question that has been put to me by one of my church members?

This individual has a relative, a married man with five children. This relative has the habit of receiving his pay (when and if he works) and then proceeding to drink up a goodly portion of it before going home, depriving his wife and family of much needed finances. The individual who asks the question has gone to the saloon keeper where his relative buys the liquor and requested him not to sell him sufficient to intoxicate him (he drinks in the saloon and does not take it with him). The request has been ignored.

Question: Is there any law or department regulation compelling the saloon keeper to obey the request of the individual and refrain from selling the relative an excessive amount of liquor?

Yours respectfully,

Charles E. Bloodgood.

April 28, 1937

Rev. Charles E. Bloodgood,
Rochelle Park, New Jersey.

My dear Rev. Bloodgood:

I have your letter of the 12th and am mighty sorry to learn of the unfortunate situation which caused you to write. I know that a lot of unhappiness can come from excessive drinking.

There is nothing in the law which obliges a licensee to refuse to sell to a customer, if sober, merely because some member of the family has requested it. That is up to the individual licensee himself. Of course, if he is conscious of what is in his own best interest, he will weigh the request carefully and if warranted, will comply. It means that he will be more highly regarded by his fellow men and respect for the business he engages in will increase, all of which will help to insure the continuance of his privilege to hold a license. A little more respect and sympathy for social consequences and a little less stubbornness in standing strictly on legal rights is, if licensees would only realize it, the wisest course for them to follow.

We do have, however, a State-wide regulation in New Jersey, applicable to all retail licensees, prohibiting them from selling, serving or delivering any alcoholic beverage to any person actually or apparently intoxicated or allowing any such person to consume alcoholic beverages on the licensed premises. It is Rule 1 of the

State Rules Concerning Conduct of Licensees. Violation of the rule is cause for the suspension or revocation of the license. I am enclosing herewith a copy of the Rules; also, re Culligan, Bulletin 135, Item 8, which deals generally with the problem.

If the licensee of whom you write is making sales in violation of the rule, I wish that you would write me further giving complete details. Give me specific instances, his name and address and if possible, names of witnesses. I will have my men warn him that any such conduct which he may have engaged in in the past must immediately be stopped and none further tolerated in the future. Formal charges will be brought if he persists. This, of course, I will do and gladly. As Commissioner, I am duty bound to see to it that licensed premises are conducted properly. Warnings of a general nature, however, are not likely to have much beneficial effect. They usually elicit from the licensee merely a general denial. It helps considerably to have specific instances to which to refer and to that end, I ask that you get for me permission to use the offending consumer's name. Without his permission, it will not be used. With his permission, I can give his name to my men in the field and thus provide them with tangible, specific information with which to carry through their investigation.

Unless you give me evidence of actual violations of the law, there is little that I can do to help. While I want to do everything that I can, you appreciate, of course, that family difficulties and domestic problems are not in my domain.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - 15 DAY SUSPENSION SETS A GOOD EXAMPLE.

April 26, 1937

Mrs. Margaret E. Wermuth,
Clerk, Delaware Township,
Erlton, N. J.

Dear Mrs. Wermuth:

I have staff report and your certification of the proceeding before the Township Committee of Delaware against Mrs. Sarah E. Burke, charged with having sold alcoholic beverages to minors and employing a non-resident.

The report states:

"On March 21, 1937, at about 11:00 A. M., Investigators Earl Howe and Roscoe C. Lockwood were summoned to the Delaware Township Police Headquarters.

"They found four young men in custody of the police, charged with having been drunk and

disorderly. The ages of the young men were, one 17, two 19, and the fourth 20.

"Questioning of these minors revealed that they had been served alcoholic beverages at Mrs. Burke's tavern the night before. They were taken to the licensed premises and identified the licensee and her bartender. Mrs. Burke stated they had been in her place of business the night before and that they had been served alcoholic beverages.

"In the course of questioning Mrs. Burke, it was revealed that she employed a waitress who resided in Philadelphia, Pennsylvania.

"Sentence: License suspended for fifteen (15) days, April 26 to May 10, 1937."

Please thank the members of the Committee for me for their prompt and effective action. It is the duty of licensees at all times to see that no sales of alcoholic beverages are made to minors. It is not sufficient just to ask a person suspected as to his or her age and upon receiving a reply that the person is over 21 years, to go ahead and serve. When in doubt a licensee, for his or her own protection, should refuse to make the sale.

The suspension for fifteen days sets a good example and should serve as a lesson to all Delaware Township licensees.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

14. LICENSES - MUNICIPAL ISSUING AUTHORITY HAS JURISDICTION WHERE PREMISES TO BE LICENSED ARE NOT BEYOND LOW WATER MARK.

LICENSED PREMISES - WHAT CONSTITUTES - CIRCUMSTANCES UNDER WHICH BOATS SUNK IN LOW WATER MARK MAY CONSTITUTE A SINGLE LICENSED PREMISES.

My dear Sir:

The City of Long Branch is about to receive an application for a Seasonal Retail Consumption License to be used on two discarded boats, formerly the Patten Line used as passenger and freight boats, which are located in low water mark of the South Shrewsbury River. These boats will be connected with the land by a solid walk and joined together with a solid walk. The bar is to be located in one boat but drinks will be served on both.

Kindly advise if the City of Long Branch has jurisdiction over the granting of this license and if one license will cover both boats.

Respectfully,

J. A. Wooding,
City Clerk.

April 26, 1937

Mr. J. A. Wooding,
City Clerk,
Long Branch, N. J.

Dear Mr. Wooding:

In Bulletin 126, Item 10, re Old Red Bank Yacht Club, Inc., application for a Special Permit was made to this Department authorizing the sale of alcoholic beverages on a house boat of the club located on the Shrewsbury River and Battin Rd., Fair Haven, N. J. Previous to application for the Special Permit, the yacht club had applied to the issuing authority of Fair Haven for a Club License but this application was not passed upon by the issuing authority on the ground that the premises sought to be licensed were situated beyond the low water mark and were, therefore, outside the jurisdiction of the municipality.

In your case the boats, you say, are located in, not beyond, the low water mark. If so, the case properly comes within the jurisdiction of your issuing authority.

You also inquire whether there is any objection to the granting of one license to cover both boats. There is no objection if the boats are under the same ownership, are permanently located and are connected both with one another and with the land by permanent walks and are so near that they may fairly be said to constitute a single licensed premises.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

15. DISCIPLINARY PROCEEDINGS - ENFORCING LIQUOR LAWS - EDITORIAL.

I am indebted to the Newark Star Eagle for its editorial of April 26th, 1937. It is here reproduced because of its permanent value throughout our State and elsewhere. It reads:

"ENFORCING LIQUOR LAWS

"Tavern keepers, night club proprietors and everyone else engaged in the liquor business must be taught that the era of good humored and amused tolerance of lawbreaking has passed, and that they are expected to conduct their legitimatized business on legitimate lines.

"If they do not wish to do this, the alternative is to get out of business. There should be no parleying with these offenders. They deserve no leniency from license officials or anybody else. They are perfectly aware of the

provisions of the law. If they are so constituted that they are unable to do this the place for them is outside the liquor business.

"And if the licensing officials find themselves, through politics or for any other reason, unable to enforce the law, they should get out of office."

16. LICENSEES - EMPLOYMENT OF ALIENS, MINORS AND NON-RESIDENTS - RESTATEMENT OF RULES.

Dear Sir:

I wish to call your attention to a condition which exists in this State with regard to the dispensers and servers of alcoholic beverages.

One specific instance is the _____Golf Club. The steward engages all help for the club from an organization in New York City, thereby discriminating against residents and taxpayers in the State of New Jersey.

It may be the steward is ignorant of our State laws as he hires bartenders, waiters and locker men (who dispense and serve liquor in their respective line of work) and who are non-residents of our State, also of doubtful U. S. citizenship.

I am

Yours sincerely,

April 26, 1937

Dear Mr. Blank:

Section 23 of the Control Act prohibits the employment by licensees of persons who are aliens or minors or who have not been residents of the State of New Jersey for at least five years continuously immediately prior to their employment, except pursuant to a Special Permit issued by this Department. Such permit, even if issued, is conditioned that such employee cannot in any manner whatsoever serve, sell or solicit the sale of alcoholic beverages.

The records of this Department fail to disclose the issuance of any Special Permits to the _____Golf Club to employ non-residents or aliens or minors. Therefore, if, in fact, such persons are employed at the present time, such employment is in violation of the Control Act.

In respect to employment of aliens, certain nations have concluded reciprocal trade agreements with the United States which extend to the alien nationals thereof the same rights and privileges as those enjoyed by American citizens. Persons so protected by treaty may hold a license or be employed by a licensee, if they qualify in every other respect. Enclosed is a copy of Bulletin 130, Item 5, listing the nations which have concluded such treaties. Alien nationals of any one of the countries listed, if not disqualified on some ground other than citizenship, may be employed by a licensee without necessity for Special Permit.

Investigation will be made forthwith in respect to the _____Golf Club and, if any violation is found, appropriate steps will be taken.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

17. LICENSES - FOR SALE OF CHILLED BEER IN MUNICIPALITIES WHICH HAVE PROHIBITED BY REFERENDUM SALE OF ALCOHOLIC BEVERAGES FOR ON-PREMISES CONSUMPTION.

LICENSE FEES - PRORATION - THE STATUTORY REQUIREMENTS RESTATED.

Dear Mr. Burnett:

Mr. John Jansen of this borough has made application for a license to sell chilled beer. I am quoting you herewith his letter: "Would you be so kind as to put in my application to sell chilled beer, for the summer season, that is, for the months of June, July, August and September. Please let me know what will be the charge or license fee."

This party has a small refreshment stand and rents boats, during the summer months, in connection with the stand. He has, therefore, little or no business the remainder of the year.

Would appreciate your advising me if we would be permitted to issue such a license as requested. If same was issued would it be proper to charge one-third of our regular fee for the entire year, or should we work on some other basis.

Yours very truly,
Fred L. Ayers,
Borough Clerk.

April 26, 1937

Mr. Fred L. Ayers, Borough Clerk,
Little Silver, New Jersey.

Dear Mr. Ayers:

You inquire as to the type of license which may be issued to permit the sale at Jansen's refreshment stand of chilled beer for the summer season and request the license fee therefor.

All sales of alcoholic beverages for consumption on the licensed premises are prohibited in the Borough of Little Silver because of a referendum passed upon by your voters on November 5,1935. Your Borough has, therefore, properly provided for the issuance of only Plenary Retail Distribution and Limited Retail Distribution Licenses for which the fees respectively are $200.00 and $25.00 per annum.

The Limited Retail Distribution License permits only the sale of <u>un</u>chilled malt alcoholic beverages for consumption off the licensed premises and in quantities of not less than seventy-two fluid ounces. This license, therefore, cannot apply in the instant case.

Although the Plenary Retail Distribution License permits the sale of chilled malt alcoholic beverages, such beverages may be sold only for consumption <u>off</u> the licensed premises.

There is no such thing as paying for a license according to the time that a man actually uses it. Or, taking it out originally

for a limited time. All licenses except Seasonal Consumption licenses run from the time they are issued to the end of the current fiscal year. A license, however, may be surrendered and a proportionate rebate made for the period not used, but from this rebate there must be first deducted 50% of the amount paid for the license so that actually the amount of the rebate is comparatively small. Before any license may be issued, the full fee must first be paid.

Therefore, no license can be issued to Mr. John Jansen to sell chilled beer for consumption on the licensed premises and, if he desires to sell chilled beer in original containers only and for consumption off the licensed premises, he must obtain a Plenary Retail Distribution License and pay the full fee therefor.

Very truly yours,

D. Frederick Burnett,
Commissioner.