

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

BULLETIN 262

JULY 25, 1938

1. APPEALS REPORT - TABULATION OF APPEALS SUBMITTED AND DECIDED.

Period ending June 30, 1934:

Affirmances - - - - -	49	
Dismissed - - - - -	18	
Reversals - - - - -	40	
Reversals on condition- - - - -	7	
Withdrawn - - - - -	<u>17</u>	131

Period ending June 30, 1935:

Affirmances - - - - -	89	
Affirmed on condition - - - - -	1	
Dismissed - - - - -	20	
Remanded- - - - -	1	
Reversals - - - - -	89	
Reversals on condition- - - - -	18	
Reversed and remanded - - - - -	1	
Withdrawn - - - - -	<u>23</u>	242

Period ending June 30, 1936:

Affirmances - - - - -	68	
Dismissed - - - - -	28	
Remanded- - - - -	4	
Reversals - - - - -	37	
Reversals on condition- - - - -	4	
Reversed and remanded - - - - -	1	
Withdrawn - - - - -	<u>8</u>	150

Period ending June 30, 1937:

Affirmances - - - - -	101	
Affirmed on condition - - - - -	1	
Dismissed - - - - -	4	
Remanded- - - - -	2	
Reversals - - - - -	50	
Reversals on condition- - - - -	2	
Reversed and remanded - - - - -	1	
Withdrawn - - - - -	19	
Approval of Ordinance - - - - -	1	
Disapproval of Ordinance- - - - -	1	
Approval of Condition to issuance of license- - - - -	1	
Carried forward (not decided by June 30)- - - - -	<u>2</u>	185

Period ending June 30, 1938:

Affirmances - - - - -	78	
Affirmed on condition - - - - -	1	
Dismissed - - - - -	4	
Remanded- - - - -	2	
Reversals - - - - -	31	
Reversed on condition - - - - -	7	
Withdrawn - - - - -	19	
Approval of Regulation- - - - -	1	
Carried forward (not decided by June 30)- - - - -	<u>13</u>	<u>156</u>

TOTAL APPEALS FILED JUNE 30, 1938 - - - - - 864

- 2. RETAIL LICENSES - TRANSFERS - DISPOSAL PERMITS - THE ALCOHOLIC BEVERAGES REMAINING ON HAND AT THE TIME A TRANSFER OF LICENSE IS MADE, MAY NOT BE TURNED OVER TO THE NEW LICENSEE UNTIL A DISPOSAL PERMIT HAS BEEN OBTAINED.

July 15, 1938

Mr. Fred K. Wachtel,
Jersey City, N. J.

My dear Mr. Wachtel:

I understand that Mr. Muller's license has been transferred to Frank Teraskiewicz, 351 Grove Street, and that Mr. Teraskiewicz hesitates to take over the stock of alcoholic beverages until Mr. Muller obtains the permit.

Mr. Teraskiewicz is absolutely right. He should not take over the merchandise until the permit is issued. The reason is that Mr. Muller no longer holds a license, and a non-licensee cannot sell any alcoholic beverages. And Mr. Teraskiewicz cannot buy alcoholic beverages for purposes of resale except from a duly licensed New Jersey wholesaler or manufacturer, or pursuant to special permit.

Mr. Muller has made application for permit to dispose of the merchandise to Mr. Teraskiewicz and has paid the necessary fee. The issuance of the permit is now awaiting certification from the City of Jersey City that the transfer of the license was duly made and the receipt of release from the Beverage Tax Division of the State Tax Department that all taxes have been paid.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES AFTER HOURS - HEREIN OF ADVICE TO LICENSEES TO INSTITUTE DISCIPLINARY PROCEEDINGS ON THEIR OWN ACCOUNT TO TEACH BARTENDERS THAT ORDERS ARE ORDERS.

In the Matter of Disciplinary Proceedings against)
 CHRISTOPHER MECCIA,)
 461 N. J. R. R. Avenue,)
 Newark, New Jersey,)
 Holder of Plenary Retail Consumption License No. C-126 for the fiscal year 1937-1938, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
 -----)

CONCLUSIONS
AND ORDER

Christopher Meccia, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant is charged with selling and serving alcoholic beverages on his licensed premises on June 17, 1938 after 3:00 A. M., and also keeping his licensed premises open after 3:00 A. M. in violation of Newark Ordinance No. 6579, which forbids the sale or service of alcoholic beverages between 3:00 A. M. and 7:00 A. M. on weekdays (and 3:00 A. M. and 12:00 Noon on Sundays), and

which further forbids licensed premises, with certain exceptions including restaurants, to be open during those prohibited hours.

At 2:30 A. M. on June 17, 1938, two investigators of this Department visited the defendant's place of business. They were served with alcoholic beverages at 3:00 A. M., 3:30 A. M., and 3:45 A. M. They saw a patron served whiskey at 3:15 A. M. All services were made by Vito Meccia, a brother of the licensee who was in charge of the licensed premises. After the service was made at 3:45 A. M., one of the investigators left and went to Police Headquarters, returning with two detectives. When the investigator and the two detectives entered the licensed premises at 4:05 A. M. they found three glasses of beer on a table in front of three other patrons, and one glass of beer on the table in front of the investigator who had remained upon the premises. The bartender, Vito Meccia, was placed under arrest and subsequently pleaded guilty in a police court to a charge of violating said ordinance and was fined \$25.00.

The licensee testified that he knew nothing about the sales after hours; that at that time he was in his living quarters above the saloon, and that he had issued orders to his brother not to sell alcoholic beverages after 3:00 A. M. Vito Meccia testified that he did not look at the clock, which is behind the bar, at any time after 2:30 A. M.; that he failed to do so because he was busy; that at the time of his arrest he didn't know what time it was.

This testimony is of no moment whatsoever so far as the State is concerned. I commend to the licensee that he consider the institution of disciplinary proceedings on his own account against the erring brother.

I find the licensee guilty of selling and serving alcoholic beverages during prohibited hours.

As to the charge of keeping open during prohibited hours, the evidence shows that the premises are conducted as a restaurant and, hence, are excepted from the closing requirement.

The licensee is, therefore, not guilty of keeping the licensed premises open during prohibited hours.

Since these proceedings were instituted, the license then outstanding has expired, but said license was renewed for the present fiscal year and the licensee is now the holder of plenary retail consumption license No. C-147.

Accordingly, it is on this 16th day of July, 1938, ORDERED that plenary retail consumption license No. C-147, issued to Christopher Meccia by the Municipal Board of Alcoholic Beverage Control of the City of Newark, for the current fiscal year, shall be and hereby is suspended for five (5) days effective 3:00 A. M. (Daylight Saving Time) on July 20, 1938.

D. FREDERICK BURNETT,
Commissioner.

4. ADVERTISING - PORTABLE BILLBOARDS WITH ALLEGED PLEASING SOUNDS -
NO CHANCES TAKEN.

Dear Mr. Burnett:

Each community has its particular individual method of advertising that brings results and Camden is no exception.

Our method of portable billboards with a pleasing sound program has proven very effective.

Requests to advertise beers has opened a lucrative field which we never before considered, as our line was confined to merchants. Because of these requests we would appreciate an opinion or ruling from you as we understand, unofficially of course, that certain interests abused privileges thereby creating stern regulations.

We feel the sale of beer is no different than other merchandise, as far as our advertising methods are concerned, and because of present business conditions hope you will agree.

Yours very truly,

THE RADIO SERVICE
By: H. V. Mulford.

July 18, 1938.

The Radio Service,
726 Cooper Street,
Camden, N. J.

Gentlemen:

No portable billboard has a pleasing sound to me. I ruled out the previous request, not for abuse, but for blatancy. Re Quality Cut-Rate Liquor Store, Bulletin 203, Item 11.

It won't do for beer, but I would be glad to have you try it on the beetles.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. APPELLATE DECISIONS - BERKEY VS. PINE HILL.

HARRY AUGUST BERKEY, :

Appellant, :

ON APPEAL

-vs- :

CONCLUSIONS

BOROUGH COUNCIL of the :

BOROUGH OF PINE HILL, :

Respondent. :

Joseph R. Moss, Esq., Attorney for Appellant.

Frank Nelson Jess, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises located at the southwest corner of Branch Avenue and Erial Road, in the Borough of Pine Hill.

In its resolution denying the license, respondent sets forth eleven different reasons for denial, and some evidence was presented concerning each of said reasons at the lengthy hearing on appeal. For the purpose of reaching a conclusion herein, however, it will be necessary to consider only Reasons 3 and 11, which read:

"3. There presently exists a duly licensed taproom on the northeasterly side of Branch Avenue, diagonally opposite the location for which the license is now sought, at a distance of approximately ninety-two (92) feet therefrom.

"11. That the taprooms in the Borough cater largely to transient trade and, therefore, no additional license is needed to satisfy the requirements of the citizens of the municipality at the place in question."

Appellant admits the existence of a saloon within ninety-two feet of premises for which he seeks a license, and that he intends to cater to a large extent to transient trade. He urges that an additional license is needed at his premises because he knows that a large number of residents in the Borough of Pine Hill are patrons of licensed places in Clementon, which is two miles away. There is scarcely any other evidence as to necessity. In view of the fact that appellant is seeking a license for a place not previously licensed, in a community which at the present time has four consumption licenses outstanding for a population of only fourteen hundred, I find that appellant has not sustained the burden of proof in showing that the Reasons 3 and 11 are not valid reasons for denying his application.

Appellant contends also that he is entitled to a license because, at the time his application was filed, the only limiting regulation was a resolution, passed on July 3, 1934, providing that the number of consumption licenses to be issued during any one current year shall not be in excess of six. It is admitted that, at the time the application was filed, only five consumption licenses were outstanding, and that at the time of the hearing of the appeal only four consumption licenses were outstanding.

Despite the vacancy in the resolution, however, respondent may lawfully deny a license upon the ground that there are sufficient licensed places in the immediate vicinity of appellant's place of business, provided its decision is backed by the facts of the case. Young vs. Pennsauken, Bulletin #114, Item 2. The fact that a licensed place already exists within ninety-two feet of appellant's premises is sufficient to substantiate the decision of the Borough Council that there was no need for an additional place in that neighborhood.

Appellant finally contends that one of the members of the Borough Council who participated in these proceedings is employed as a master of ceremonies or singer or entertainer in one of the licensed places in the Borough and, hence, was ineligible to act upon appellant's application. The Councilman denies the charge but only to the extent that he gets paid for these services. He admits that he does frequent the Five Points Inn, a rival tavern, twice a week and sings without charge and also does this at two or three other taverns each week but insists that he doesn't charge any of them. Asked whether as a member of the Alcoholic Beverage Committee it was his policy and his duty to visit these taverns, he interrupted to say, "Yes, and I go to every one I treat them all alike.

"Q. And you go to this one, and that one and the other one?

A. That's right.

Q. Do other persons come in and sing?

A. That's right but no one sings, and they don't get paid and they don't get a beer. That's why I believe they are peeved about it."

While I am glad to note that the Councilman takes his duties as a member of the Alcoholic Beverage Committee so seriously, week after week, I am not over-persuaded that these troubadour visitations are the best for the service. Without pausing to adjudicate the justification for fretfulness of those who don't get even a beer for a song or the soft impeachment that the much over-worked Councilman was an "entertainer", I should have no hesitancy, under the facts presented, in holding that his participation in the deliberations of the Council invalidated the proceedings below. For, a number of witnesses testified that they saw the learned Councilman and member of the Alcoholic Beverage Committee acting as master of ceremonies in one tavern or another. Of course, these witnesses didn't realize that this was done in the performance of duty - that, after all, it was naught but a snooping expedition. It must be comforting to the licensees whom he thus so subtly honored to leave their affairs and their interests in his hands. I am not concerned with whether he is paid and, if so, how, but only with the fact of his employment. But, I can well understand why, if more taverns were added, with only a limited number of nights in a

week, it would be more difficult to do full justice to all the taverns, especially since the Five Points Inn requires an inspection twice a week and, incidentally, or parenthetically as it were, the existing taverns would have more competition.

However, the fact that it would have been the better part of valor, if not vigilance, that the Councilman had not sat in the case below, does not mean that, therefore, the appellant automatically gets a license on appeal. That depends on the facts.

Under the facts presented and for the reasons first aforesaid, there is no good cause shown why there should be another license in the Borough.

The action of respondent is, therefore, affirmed, notwithstanding the activities of the knightly amateur troubadour.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 17, 1938.

6. SPECIAL PERMITS - SOCIAL OCCASIONS - NECESSARY WHENEVER ANY CHARGE, ADMITTANCE OR ASSESSMENT IS LEVIED, WHETHER NOMINALLY IN RESPECT TO THE ALCOHOLIC BEVERAGES SOUGHT TO BE DISPENSED, OR NOT.

Dear Sir:

The Veteran Firemen's Association is composed of veteran firemen who have served more than twenty years of active service in the Fire Department of New York City and have held a reunion for the past thirty-five years, and for the past twelve years this reunion has been held on the last Saturday of July each year at Blasberg's Grove in New Jersey, where dinner is served, as well as whatever liquid refreshments they desire.

There is no charge to the members for the liquid refreshments or dinner, the expense being borne entirely by the organization and paid for out of the annual membership dues, but each member is assessed \$1.00 to pay for his bus transportation from New York City to Blasberg's Grove and back.

In view of the facts stated above, I do not believe that the Act Concerning Alcoholic Beverages, P. L. 1933, c. 436, applies to our organization, but in order to be on the right side I would appreciate very much any advice you would give me on the matter.

Very truly yours,
Veteran Firemen's Association.
John J. Gilmartin, President.

July 18, 1938

John J. Gilmartin, President,
Veteran Firemen's Association,
New York City.

My dear Mr. Gilmartin:

I understand that your association will hold a reunion on July 30th at Blasberg's Grove in Hawthorne, N. J., and that alcoholic beverages will be served to the members without charge.

However, I note that each member attending the reunion will be assessed \$1.00 to pay for his bus transportation from New York City to the Grove and back.

I have invariably ruled that if there is any fee which must be paid, directly or indirectly, before the alcoholic beverages can be obtained, then the so-called "gift" is in contemplation of law a sale, and a license or special permit must first be obtained. In other words, the guests of the reunion are compelled to pay something before they can get the alcoholic beverages, and therefore they are not actually given away free, since no guest could get anything to drink unless he made the payment.

Although you state that the \$1.00 assessment is merely to cover the bus fare, and I have no reason to doubt your word, I am compelled to regard it as being in payment, at least in part, for the alcoholic beverages that will be consumed. You who are so fair and candid will realize that I have to make rules governing all kinds of organizations and create objective tests so that the rules become workable and capable of enforcement. Again, these special permits for social occasions, issued at \$10.00, bring in an annual revenue to the State in the neighborhood of \$50,000.00. I mention this so that you will realize the tremendous volume of this kind of work handled by the Department. To make a rapid, correct and practical disposition of each application there must be simple rules, so that quick determination may be made whether or not the particular case comes within the rules. Otherwise, I would have to set down each application for a special hearing and call witnesses, take testimony, and determine just what the assessment is for, whether it pays for the particular service alleged, or whether it is a blind to cover up the sale of alcoholic beverages under a pretense that the money is collected for some other purpose. Such a procedure would slow up the application, create extra work for the Department, and require attendance of the officers of these associations to give testimony and submit their proofs. All this is avoided by the simple rule that whenever any fee or assessment is charged by the organization, then a special permit is required.

Your organization must therefore obtain a special permit before it may conduct the contemplated affair. I am returning herewith the partially completed application form which you enclosed with your letter, together with a blank form of application. Fill it out, have the police chief and the clerk of the Borough of Hawthorne endorse their consent, and return it to me, together with the sum of \$10.00 in cash, certified check or money order, payable to D. Frederick Burnett, Commissioner.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. BEER - FOAM - A MATTER FOR SELF-REGULATION - HEREIN OF HIGH AND LOW COLLARS.

Dear Sir:

If your Commission has adopted any rules or regulations limiting the amount of foam or "collar" permitted on a glass or stein of draft beer served to consumers or patrons in taverns, restaurants, and similar places, we would appreciate having you send us three copies of such regulations.

We would also be pleased to receive for our files copies of any annual reports issued by your Commission containing discussions on this subject.

Very truly yours,
Frederick Rex,
Librarian.

July 20, 1938

Frederick Rex, Librarian,
Municipal Reference Library,
1005 City Hall,
Chicago, Illinois.

Frankly, I've been so busy enforcing the who, when and where of beer, that I haven't had time to consider the how of it.

Hence, the height of the collar is left to the stylists.

Regulation is hardly needed in New Jersey. If a bartender puts on a neckband of towering proportions, a la the late DeWolf Hopper, he will be reminded by the thirsty that, although sartorially impeccable, an overfoam is bibulously abominable and that beverages are made to be consumed and not admired for the elegance of haberdashery. If this doesn't suffice, it isn't long before the customer patronizes places which affect the low-roll or shoe-string collar.

Thus, beer seeks its own level.

These practical considerations have made unnecessary any previous discussion of the subject in annual or other reports.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS - THE PRACTICE IS TO BE BROKEN UP AND NOT TO BE ALIBIED.

In the Matter of Disciplinary Proceedings against)

THE GREEN PARROTT, INC.,)
1120 South Orange Avenue,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License No. C-336 for the term expiring June 30, 1938, and now holder of Plenary Retail Consumption License No. C-257, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Harold Simandl, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant, a Newark licensee, is charged with selling and serving alcoholic beverages to four minors on June 4, 1938.

This proceeding, though instituted during the last licensing term, which expired June 30, 1938, does not abate but remains effective against the renewal license presently held by the defendant. Rule 3 of State Regulations #15.

The defendant's tavern is large and attractively fitted. On the evening of June 4, 1938, approximately 50 patrons were seated at its circular bar, including two investigators of this Department who were detailed to investigate a complaint that sales to minors were occurring there.

Around 11:00 P. M., a party of two boys (19 and 20½ years old respectively), and another party of a girl and a boy (18¾ and 20 years old respectively) entered the tavern and sat at the bar near the investigators. A bartender waited on the party of two boys, took an order for "two beers" from the younger boy and served such drinks to them. Another bartender waited on the party of the girl and boy, took the boy's order for a "Tom Collins" and a "Rye Highball", and served those drinks to the young couple. The investigators, suspicious of these four youthful looking patrons, then disclosed their identity as investigators, uncovered the ages of the minors, and caused the bartenders to be arrested.

The defendant pleads non vult. It contests neither the aforementioned sales and service of liquor nor evidence that the girl and boy had frequented the tavern for the past year and had been sold and served alcoholic beverages there during that period. It rests its defense entirely upon "mitigating circumstances."

Both bartenders testified that they never sell or serve liquor at the tavern to any one whom they believe to be under age; that in doubtful cases they require the patron to sign a slip representing that he is 21 or over, or to establish his age by his driver's license or other "credential." However, they admit that on the present occasion they did not ask any of the minors to sign a written statement of age or to show any "credential." Their claim that they had run short on their usual "age cards" to be signed by youthful looking patrons fails to explain why, in view of their asserted caution in selling to such patrons, they did not improvise cards for the occasion or ask the minors to produce "credentials."

By their own testimony, the bartenders were suspicious of the minors. The barkeep who served the two boys testified (although on this point he was contradicted by the testimony of both those boys) that he asked the one who ordered the "two beers" whether he was of age and that the boy answered that he was. Similarly, the barkeep who served the girl and boy testified that he inquired of his fellow-bartender whether it was proper to serve them and was informed by that bartender that it was all right since the girl and boy had on a previous occasion signed a card representing that they were of age.

Bartenders do not exculpate themselves or the licensee by accepting, on blind faith, the statement of patrons that they are of age. The State men readily spotted these four minors.

The practice of selling to minors is to be broken up -- not to be alibied.

In 1934, a predecessor corporation of the defendant, with substantially the same stockholders and officers, was found guilty by the Municipal Board of Alcoholic Beverage Control of the City of Newark of being open during prohibited hours on Sunday (contrary to Newark regulation), and its license was suspended by that Board for

three days. The fact of this past record calls for a more severe penalty for the defendant's present violation than in the case of a violating licensee with a theretofore clear record. On the other hand, however, I shall also take into consideration the fact that many reputable witnesses speak exceedingly well of the calibre and conduct of the defendant's licensed premises, and that some have witnessed occasions when patrons were refused drinks because the bartenders believed them to be under age.

The defendant's license will be suspended for fifteen (15) days.

Accordingly, it is, on this 21st day of July, 1938,

ORDERED, that plenary retail consumption license No. C-257, heretofore issued to The Green Parrott, Inc., be, and the same is hereby suspended for a period of fifteen (15) days, commencing July 24, 1938, at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

3. HOURS OF SALE - 3:00 A.M. IS PLENTY LATE ENOUGH - HEREIN OF DIS-
APPROVAL OF A RESOLUTION WHICH WOULD TAKE THE LID OFF ENTIRELY.

July 21, 1938

Thomas M. Madden, Esq.,
Camden, N. J.

Dear Mr. Madden: Re: Borough of Bellmawr.

I have before me the resolution of the Mayor and Council of Bellmawr, adopted June 30, 1938, which provides "that all Plenary Retail Consumption Licensees of the said Borough of Bellmawr be and the same are hereby allowed to operate at all times and during all hours, excepting those prohibited specifically by law of the State of New Jersey or by the rules of the Commissioner of Alcoholic Beverage Control.

The net effect is that Bellmawr will be wide open twenty-four hours a day, seven days a week. All the undesirables will be attracted into Bellmawr after the taprooms in other towns close.

Three o'clock in the morning is plenty late enough for any self-respecting citizen to be prowling around pleasure bent. It is this early morning carousing which brings the liquor traffic into disrespect. The self-respecting men in the trade don't want the lid off. These are the hours when decency vanishes, revelry becomes debauch and futures are blighted, not to speak of broken bones and saddened homes. Re Wayne Township, Bulletin 244, Item 3.

The resolution is, therefore, disapproved.

I cordially suggest that the Mayor and Council determine hours of sale for the Borough not later than 3:00 A. M. For form of approved regulation which will apply to either or both Standard and Daylight Saving Time (if the latter is in force in your Borough), see Re Cliffside Park, Bulletin 261, Item 3 (copy enclosed).

I shall appreciate the cooperation of your Mayor and Council.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - EMPLOYING MINOR AS HOSTESS AND SELLING WHISKEY TO MINOR - 130 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

ADAM PANASEWITZ (or Panasevitz), 109 West Street, Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-179 for the term expiring June 30, 1938, and now holder of Plenary Retail Consumption License No. C-318, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

-----) Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control. Walter P. Reilly, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant, a Newark licensee, is charged herein with selling and serving alcoholic beverages to a minor on June 5, 1938 and on various dates prior thereto, and with employing this minor as a hostess at his tavern. This proceeding, though instituted during the last licensing term, which expired June 30, 1938, does not abate but remains effective against the renewal license presently held by the defendant. Rule 3 of State Regulations #15.

Alice Brown, a 20 year old minor born in March, 1918, has been separated from her husband, and has been living with her mother next door to the defendant's tavern since April 15, 1938. She testified that between April 25 and June 5, 1938, she frequented the defendant's tavern (sometimes "practically every day"), being continuously urged by the defendant to come into the tavern to meet and drink with his customers; that throughout this period she was served and drank whiskey with those customers (without expense to herself) although sometimes, while ostensibly ordering whiskey, she was actually served tea from a Hennessey whiskey bottle; that, when she was in the tavern, the defendant introduced her to "people", such being the "method" of getting her to meet the patrons and to encourage them to buy drinks for themselves and her; that on May 9, as she was preparing to leave the tavern at 10:30 P. M., the defendant, though stating no sum, induced her to stay until 2:30 the following morning on promise of payment if she would remain; that on May 22 she asked the defendant for the money due her and was given \$2.00; that on June 2 the defendant promised that if she would stay in the tavern Friday and Saturday (June 3 and 4) he would pay her \$2.00 per evening, and that she accordingly stayed on both those evenings; that on June 5 she entered the tavern with her sister and, after being sold and served two drinks of beer, asked the defendant for payment of her services for the prior two days; that he, however, refused to pay.

Alice Brown's sister testified that she saw Alice in the tavern on frequent occasions between April 25 and June 5, drinking with men; that once she witnessed the defendant come to Alice, who was seated in front of her mother's home, and lead her in the tavern "by the hand"; that on June 5, when she entered the tavern with her sister, she demanded that defendant pay Alice as he had

promised; that the defendant at first denied that he ever "hired" her but later stated, "I promised to pay her \$5.00, if she would work all week."

The defendant does not dispute that Alice frequented his tavern and was served with drinks throughout this period. He denies, however, that he knew or should have known that she was a minor and further denies that he ever paid her to act as hostess in his tavern or ever asked her to serve in any such capacity.

He testified that he allowed Alice to come into and stay at the tavern and to drink there because his family and hers had been friendly for years; that the \$2.00 which he gave her on May 9 was a loan which he extended to her because she was in need of funds; that he had similarly lent her 50¢ on another occasion; that he never stated to her sister that he promised to pay Alice "\$5.00, if she would work all week."

I find the defendant guilty as charged.

The defendant has a record of a previous violation. In 1935, the Municipal Board of Alcoholic Beverage Control of the City of Newark found him guilty of opening his tavern on a Sunday before the permissible hour (contrary to Newark regulation), but, nevertheless, suspended sentence.

For the defendant's service of whiskey to a minor from April 24 to June 5, 1938, and for his sale and service of beer to her on the latter date, the defendant's license will be suspended for thirty (30) days. For his employment of this minor to be a hostess at his tavern, there will be an additional suspension of one hundred (100) days.

Accordingly, it is on this 21st day of July, 1938, ORDERED, that plenary retail consumption license No. C-318, heretofore issued to Adam Panasewitz (or Panasevitz) by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of one hundred and thirty (130) days, commencing July 24, 1938, at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

11. BARTENDER - EMPLOYMENT AS SPECIAL OFFICER TO POLICE GOLF COURSE AND KEEP OUT TRESPASSERS - APPROVED ALBEIT UNNATURAL.

My dear Commissioner:

I am in receipt of your letter of July 11th, answering my inquiry as to whether or not a person who is employed as a bartender can be appointed a constable to do purely private work.

The exact situation in the matter referred to you is as follows:

The Hackensack Golf Club is located in our Borough and the officers desire to have some of their employees act as special officers to police their grounds at all times and keep out trespassers.

They are encountering some difficulty with persons going on their grounds in the evening and defacing the golf course. The Club desires to have a number of their employees appointed constables so that they may police the grounds at all times.

Those whom they seek to have appointed are employed at such times that they are at liberty in the evening. In that way, these employees can utilize part of their time in patrolling the grounds. One of the employees designated by the Club is the bartender at the Club bar.

The Council was of the opinion that it might not be proper to appoint this bartender as a constable. In his appointment, his duties will be particularly limited to police the grounds of the golf club.

Will you kindly advise whether or not this appointment would be proper under the circumstances.

Very truly yours,
Michael D. Franco,
Borough Clerk.

July 21, 1938

Michael D. Franco,
Borough Clerk,
Emerson, N. J.

My dear Mr. Franco:

Your Council properly raised the question, for normally a bartender may not be also a constable. Re Schepis, Bulletin 115, Item 3; Re Osborne, Inc., Bulletin 174, Item 16. However, in Re Higgins, Bulletin 203, Item 14, I ruled that there was nothing incompatible when the duties as constable were merely to guard a watershed and prevent people from cutting trees and committing nuisances.

So here the bartender may be appointed as a special officer provided that his police duties are strictly limited to the grounds of the Club.

Just what the members will do when the supposedly indispensable bartender is out on patrol is a matter of internal management with which you and I have no concern. I suppose they prefer to keep what they've got rather than seek to "have another."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. LICENSES - SANITARY REQUIREMENTS - NECESSITY FOR STRICT COMPLIANCE.

In the Matter of the Application)
of)
OLD RED BANK YACHT CLUB, INC.)
For a Club License.)

CONCLUSIONS

No Appearance on behalf of Applicant.
Dr. R. L. Ticehurst, Sanitary Inspector, and W. A. Clayton,
Secretary, for the Department of Health of the Borough
of Red Bank, Objector.

BY THE COMMISSIONER:

This is an application for renewal of a club license for a house-boat or "floating club" moored near a public dock in Shrewsbury River at the foot of Maple Avenue in the territorial waters of the Borough of Red Bank. It was made direct to the State Commissioner instead of the Borough Council of Red Bank (the local issuing authority) because two members of the Council are also members of the applicant. R. S. 33:1-20 (Control Act, Sec. *18A).

On June 11, 1938, the applicant, on similar procedure, obtained a club license for the licensing term which expired June 30th last for its boat at the present mooring. Prior to issuance of that license, the Department of Health of Red Bank protested that the sewage disposal system on the boat was unsatisfactory from a health view-point; but such protest was withdrawn, apparently on the understanding between the Club and the local health department that a satisfactory system would be installed.

When the Club filed its present application for renewal, protest was again made that the method of disposing of sewage from the boat was unsatisfactory, this time by both the State and local Departments of Health. Hearing was held to inquire into the merits of the protest.

The Club, although duly notified of such hearing, did not appear but, instead, sent a letter stating the facts as it saw them and claiming that its present method of sewage disposal is satisfactory and that the method suggested by the health authorities is too expensive for the Club to afford. The Secretary and a Sanitary Inspector of the local Department of Health appeared and gave testimony.

The Inspector testified that the boat, originally moored in the river at Fair Haven, moved to its present anchorage at the end of May, 1938; that it is now located in a cove of the river - a natural shallow beach - where 70 to 100 children bathe daily during the warm months; that tests with dye thrown into the river disclose that sewage from the boat will flow to the shore, thus creating a substantial health hazard to the nearby bathers and also a malodorous nuisance; that the Club, when its boat was first moored at its present site, used a system whereby the sewage from

its toilets emptied directly into the river; that this method was condemned by the local Department of Health and the toilets were therefore on June 5, 1938 sealed by order of that department against further use; that the Club has now installed a system whereby sewage from the toilets will empty into a 250-gallon pontoon floating along-side the boat, the pontoon to be emptied periodically; that this system, however, is unsatisfactory because it still leaves substantial danger that sewage will escape into the river and be washed to the shore; that this danger results from the fact that the duct leading from the boat into the pontoon is merely the inner tube of an automobile tire, and that the pontoon may not be water tight and that the pontoon must be emptied as it floats on the river; that as a result the toilets are still kept under seal.

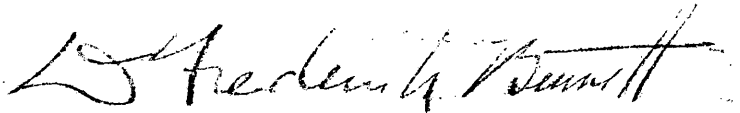
The Inspector further testified that one method of sewage disposal which would be satisfactory would be the installation of a septic tank at the bank of the river to be connected with the boat by a conduit pipe; that another satisfactory method would be the installation of a chemical tank in the boat itself.

The Secretary of the Health Department testified that the protest against the Club's previous license had been withdrawn on the understanding with the Club that it would install the chemical tank system, and produced a letter of the Club "guaranteeing" the installation of that system if the protest were withdrawn. He also produced a letter from Dr. A. W. Sweet, District Health Officer of the State Department of Health, advising against the present pontoon system.

In view of the fact that the toilets on the boat are under seal by the local health authorities and that both the State and local Departments of Health protest against the present sewage disposal system, I cannot consider the boat as presently suitable for a liquor license.

However, there is no other protest against renewal of the Club's license, and the Club has produced a resolution from the Borough Council of Red Bank agreeing to such renewal. Hence, if the Club adopts a satisfactory system of sewage disposal on its boat, no objection remains against the renewal license. To effect substantial justice and yet preserve proper safeguards of health, I hereby grant the Club's application for renewal but expressly subject to the condition that no license shall issue (and consequently no alcoholic beverage business be conducted) until the Club furnishes me adequate proof that it has installed a satisfactory sewage disposal system on its boat.

Dated: July 22, 1938.



Commissioner

New Jersey State Library

