

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

BULLETIN NUMBER 65

March 7, 1935

1. APPELLATE DECISIONS - DE MATTIA VS. CLIFTON

VICTOR DE MATTIA, )  
Appellant )  
-vs- ) ON APPEAL  
 ) CONCLUSIONS  
MAYOR AND CITY COUNCIL OF )  
THE CITY OF CLIFTON; )  
Respondent )  
- - - - -

Meyer W. Stein, Esq., Attorney for Appellant  
John C. Barbour, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the revocation of the plenary retail consumption license.

Respondent contends that the license was properly revoked because appellant violated respondent's regulations in that (1) on September 16, 1934 the licensed premises were open at an hour prohibited under said regulations, and (2) appellant engaged hostesses or waitresses who were served with alcoholic beverages at a table with and at the expense of patrons and who sat at tables with such patrons upon the licensed premises.

The charge as to the hour of closing violation is admitted. Appellant denies the truth of the second charge.

On August 7, 1934 respondent by resolution adopted the following regulations with reference to the conduct of licensed premises within the City of Clifton:

"4. No hostess, waitress, waiter, entertainer or other employee of any licensee shall be served with any food or beverage, alcoholic or otherwise, at the table with or at the expense of any customer or patron.

"5. No hostess, waitress, waiter, entertainer or other employee of any licensee shall sit at any table or stand at any bar with any customer or patron."

These regulations were approved by the Commissioner pursuant to Section 37 of the Act.

One of the members of the Police Department of the City of Clifton testified that during the evenings of October 13th and 17th he was in appellant's licensed premises and on each occasion saw one of the appellant's waitresses seated at the table with male patrons. Another police officer testified that on October 19th, 1934, he, together with a male companion entered appellant's place, seated themselves at a table therein and ordered some food. When the waitress returned with the order she requested the offi-

cer to buy her a drink. He agreed to do so; she sat down at the table with him; they engaged in conversation; they had several drinks together. A few moments later a second waitress came over to the table, seated herself there and drank alcoholic beverages at the expense of the police officer.

The same officer testified to a like occurrence during the evening of October 22, 1934.

Appellant's denials were evasive and unconvincing. While he claimed that the incidents testified to by the officers did not occur, he admitted that he did not know whether or not they had occurred in fact; while he claimed that at least one of the girls involved was not employed by him at the time of the alleged violations, he admitted that she had been employed by him on occasion, and one officer testified she was wearing an apron when she sat with him at the table. Appellant throughout claimed not to know whom he had employed at any given time and his testimony indicates an ignorance of his business that does not square with human experience. The conclusion is irresistible that appellant throughout was consciously attempting to becloud the issue.

Respondent's factual determination that appellant had violated respondent's regulations in both particulars charged is clearly sustained by the evidence.

Accordingly the action of respondent is affirmed.

D. FREDERICK BURNETT,  
Commissioner

Dated: March 4, 1935

2. APPELLATE DECISIONS - RAYFIELD VS. CONOVER

GEORGE RAYFIELD, )  
Appellant, )  
-vs- )  
RUSSELL G. CONOVER, Judge of )  
the Ocean County Common Pleas, )  
Respondent )  
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ON APPEAL  
CONCLUSIONS

Morton C. Steinberg, Esq., Attorney for Appellant  
Percy Camp, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends the application was properly denied because (1) a sufficient number of licensed places now operate in the vicinity of appellant's premises and the issuance of an additional license in said vicinity would be socially undesirable, and (2) appellant is personally unfit to receive a license.

Appellant's premises consist of an hotel located in the Borough of Tuckerton, Ocean County, which is a resort community

with a permanent population of approximately 1,400. The summer population is considerably greater. Three plenary retail consumption licenses have been issued in the Borough, one for premises immediately adjoining appellant's hotel, a second for an hotel approximately one block away and a third approximately one mile away.

The right of an issuing authority to refuse to issue a license where the issuance thereof would result in the existence of too many licensed places in any one vicinity is settled. Bader vs. Camden, Bulletin #44, Item #8; Furman vs. Springfield, Bulletin #49, Item #6; Clement vs. Loder, Bulletin #52, Item #5; Faccidomo vs. Union Beach, Bulletin #55, Item #8; Snyder vs. Middletown, Bulletin #56, Item #2. In none of the foregoing cases, however, was the contention raised against an hotel. In A.B.C. Holding Co. vs. Newton, Bulletin #58, Item #11, an application for a plenary retail consumption license for hotel premises was denied for the stated reason that a sufficient number of licenses had been issued in the town and an additional license would be socially undesirable. The Commissioner overruled this contention saying:

"Hotels, as such, must be distinguished from ordinary liquor stores. Hotels are vested with a quasi-public function. They are charged with the duty of accepting all proper persons as guests and of furnishing them with accommodations so far as the capacity of the hotel permits. See Watkins vs. Cope, 84 N.J.L. 143 (Sup. Ct. 1913); see also Re Corona, Bulletin #29, Item #5. They discharge a public function. They are, therefore, not to be classed as ordinary drinking places. It is not fair to discriminate against a hotel unless good cause exists.

"In the instant case, no numerical limitation of licenses was ever adopted by respondent. In fact, none was even under contemplation until after appellant's application was filed. In view of the public nature of appellant's hotel, the interests of the community would be best served by the issuance of a license to it."

By a parity of reasoning it may be argued that although respondent's first contention is valid as applied to ordinary liquor stores, it cannot be asserted successfully against an hotel because of the quasi-public function with which hotels, as a class, are vested. The validity of this argument need not be determined in the instant case because the appeal must be dismissed for the reason hereinafter stated.

Appellant's application stated, under oath, that he had been convicted only once of a violation of the liquor laws. He so testified at the hearing, repeating the statement on several occasions. Certified copies of court records were introduced, however, showing that on October 8, 1931 appellant pleaded guilty to the possession of alcoholic beverages in violation of the State Prohibition Act then in effect (P.L. 1922, c. 255), and that on April 28, 1932, he pleaded guilty to an indictment charging him as a second offender with the same crime. Appellant did not offer any explanation of the misstatement in both his sworn application

and his sworn testimony on appeal.

The significance of the foregoing facts does not depend on the question of whether the crimes to which appellant pleaded guilty involved moral turpitude, but rather on the fact that his application contained a false statement and that he repeated this false statement under oath at the hearing.

Section 22 of the Control Act provides that any person who shall knowingly misstate any material fact, under oath, in an application shall be guilty of a misdemeanor, and that suppression of material facts in the securing of a license is ground for revocation thereof. A fortiori the denial of an application containing a wilfully false answer is proper. Severance vs. Barrington, Bulletin #47, Item #1; Re Vanderwalk, Bulletin #39, Item #12. Furthermore, as was said in Zelenak vs. Trenton, Bulletin #35, Item #9.

"the conduct of the appellant, in falsely testifying \*\*\* during the hearing on the appeal, is alone sufficient cause for sustaining the denial of the application".

In view of the foregoing, the appeal is dismissed.

D. FREDERICK BURNETT,  
Commissioner

Dated: March 4, 1935

3. APPELLATE DECISIONS - WILLIAM TELL HOTEL CORPORATION  
VS. RIDGEWOOD

WILLIAM TELL HOTEL CORPORATION, )  
a corporation of New Jersey, )  
Appellant )

-vs-

BOARD OF COMMISSIONERS OF THE )  
VILLAGE OF RIDGEWOOD, )  
Respondent )

ON APPEAL  
CONCLUSIONS

Jerome J. Dunn, Esq., Attorney for Appellant  
Thos. L. Zimmerman, Jr., Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends the application was properly denied because (1) the application is merely a subterfuge to permit one Dora Wirz, who has not been a resident of New Jersey for five years and therefore is not qualified under the Control Act to receive a license, to operate a licensed business, and (2) respondent had, pursuant to Section 37 of the Act, adopted a resolution limiting the number of plenary retail consumption licenses to be issued in Ridgewood to six and the allotted number had been issued prior to the denial of appellant's application. Since the action of respondent must be affirmed on the first ground stated above, it is unnecessary to consider the validity of the numerical limitation or the propriety of the exclusion of appellant thereunder.

The premises sought to be licensed are owned by said Dorz Wirz and operated by her and her husband as an hotel. Neither she nor her husband is qualified to receive a license. Mrs. Wirz, desiring to operate a bar in connection with the hotel and knowing of her disqualification, prevailed upon one Victor Froelicher to apply for a license in his name so that she might operate thereunder. This was done and respondent, unaware of the fraud being perpetrated upon it, issued a license to said Froelicher for the premises now sought to be licensed for the period expiring June 30, 1935. On November 27, 1934, after ascertaining the true facts, respondent revoked said license.

On November 28, 1934, one day after the license which had been issued to Froelicher was revoked, appellant corporation was organized, Mrs. Wirz not appearing as a stockholder. Her premises, however, constitute the registered office of the corporation. On November 30, 1934 what appears to be a bill of sale was executed purporting to convey to said corporation all her right, title and interest in the goods, chattels, furniture and fixtures of the premises now sought to be licensed and shortly thereafter the present application was filed. When the application had been rejected, Mrs. Wirz came to see a member of respondent board who testified that she was at that time in physical possession of the certificate of incorporation and to whom she admitted the corporation was merely a dummy.

At the hearing the secretary of appellant corporation, who claimed that he and his brother were the only stockholders, admitted that he was a good friend of Mrs. Wirz, that he knew she was not a resident of New Jersey for five years and that she was going to have sole charge of the business of the corporation. Such employment of a person who is not personally qualified to receive a license would be a violation of Section 23 of the Control Act.

In view of the foregoing, it is clear that the evidence reasonably supports respondent's factual determination that appellant's application is merely a subterfuge and that the real parties in interest have not been disclosed therein. See Boccis-tico Coloniale Club vs. Trenton, Bulletin #56, Item #8. Such finding renders the application fatally defective and justifies the denial thereof. Turano vs. Trenton, Bulletin #46, Item #12.

The foregoing conclusion is not affected by the fact that the stockholders of a corporate applicant for a license need not qualify as to citizenship or residence under Section 22 of the Act but rests on the failure of the application to disclose the real parties in interest without regard to the personal qualifications of those parties.

The action of respondent board is affirmed.

D. FREDERICK BURNETT

Commissioner

Dated: March 4, 1935

4. 200 FEET RULE - BAR WITHIN A SCHOOL - CONSIDERATIONS INVOLVED  
CLUBS - LICENSED PREMISES - NECESSITY OF EXCLUSIVE POSSESSION

Dear Sir:

The Holy Name Society of St. Elizabeth's Church of Linden are desirous of obtaining a club license for the purpose of dispensing alcoholic beverages in the auditorium of the Parochial School. The Society has been in existence for the past nineteen consecutive years and has been active for the same period.

The Society desires said license so that they may dispense alcoholic beverages at socials, entertainments, etc., which will be held in the school auditorium.

Does Section 76, Page 26 of the Control Act passed December 6, 1933, prohibit the granting of this license request?

Your opinion in this matter will be appreciated.

Very truly yours,  
THOMAS J. WIESER  
Clerk

March 4, 1935

Thomas J. Wieser, City Clerk,  
Linden, N. J.

Dear Sir:

Section 76 of the Control Act provides:

"\*\*\*for the benefit not of property but of persons attendant therein, no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or public school house or private school house not conducted for pecuniary profit; except to manufacturers, wholesalers, hotels, clubs and fraternal organizations which own or are actually in possession of the licensed premises at the time this act becomes effective; provided, however, that the protection of this section may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body on authority of such church or school."

Question immediately arises as to whether the foregoing prohibition applies as well to the buildings in which the church or school is located as to other premises within 200 feet thereof. It will be unnecessary to determine this question if the protection of this section is waived by the duly authorized governing body of the church or school in question, unless the Linden authorities in the exercise of their police power raise the question or deem it against public policy to issue a license in any school house.

As your inquiry deals with a club license, I call

to your attention the fact that such licenses may be issued only in accordance with the rules and regulations governing the issuance of club licenses. Bulletin #25, Item #1. Rule 5 provides in part:

"No license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously, immediately prior to the submission of said application and shall have been in exclusive, continuous possession and use of a club house or club quarters for the same period of time."

Whether the Holy Name Society is in exclusive possession of the club quarters is a factual question which should be determined by the municipal issuing authority in passing upon any application for a club license.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

5. 200 FEET RULE - HOTELS - RIGHTS OF A CONCESSIONAIRE

March 4, 1935

Leo Cluesmann, Secretary,  
Department of Public Safety,  
City Hall,  
Newark, N. J.

Dear Sir:-

I have your letter of February 21st, inquiring, in the case of a hotel which rents out the restaurant concession, may a plenary retail consumption license be issued to the operator of the restaurant where the hotel is within 200 feet of a church.

Although section 76 of the Control Act prohibits the issuance of licenses for premises located within 200 feet of a church, it contains an express exemption in favor of "hotels" which owned or were in possession of the licensed premises on December 6, 1933. The exemption clearly contemplates that the sale of alcoholic beverages in an hotel located within 200 feet of a church or school may be authorized if the hotel was in existence on December 6, 1933. Re: Ogilvie, Bulletin #59, Item #2.

Hotels as such, however, are not legal entities and licenses are not issued to hotels, but are issued to individuals or corporations. The use of the word "hotels" in the statute instead of other words apt to indicate the operator of an hotel, indicates that the exception applies to the hotel institution. It is the "hotel" as a peculiar class of quasi public building which is excepted from the prohibition of section 76. Accordingly, any applicant for a license in connection with an hotel is entitled to the benefit of the exception contained in section 76 with respect to hotels and if the hotel sought to be licensed was in existence on December 6,

1933, a license may be issued therefor, regardless of the fact that the applicant himself was not the owner or in actual possession of the premises at the time the Control Act became effective. Cf. Re: Ogilvie, Supra.

There still remains the question of whether a person who does not operate the hotel, but merely conducts a restaurant within it, may be deemed within the exception to section 76. A restaurant is an integral part of an hotel. Without a restaurant, it would be an anomaly. In modern hotel practice it is the rule rather than the exception that various functions which taken together constitute the hotel, such as the restaurant, valet service, bar, barber shop, and check room, be leased out on concession instead of being run directly by the actual operator of the hotel. The Legislature undoubtedly recognized this practice and must be deemed to have had it in mind when it used the word "hotel" instead of words expressly indicating the person actually conducting the hotel.

Accordingly, a license may be issued to the owner of a restaurant concession in an hotel which owned or was in actual possession of the licensed premises on December 6, 1933, even though the hotel is within 200 feet of a church.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

6. MUNICIPAL ORDINANCES - VALIDITY - NO RIGHT TO DELEGATE GOVERNING POWERS TO COMMITTEES - NO RIGHT TO CONFINE LICENSES TO THOSE WHO PREVIOUSLY HELD 3.2 BEER LICENSES

January 29, 1935

Arthur H. Abrams, Borough Clerk,  
Cliffside Park, N. J.

Dear Sir:

I have the resolution dated December 6, 1933 fixing plenary retail consumption and distribution license fees and regulating the sale of alcoholic beverages.

Section 8 purports to delegate to the Police Committee, but only with respect to applications made for the same premises by those who previously held licenses for the sale of 3.2% beer, the duty of administering the issuance of licenses which, by Section 18 of the Act, is conferred upon your governing body. The statute provides that the governing body shall constitute the authority for the administration of the issuance of licenses except in such municipalities as have created Municipal Boards of Alcoholic Beverage Control pursuant to said Act. No right exists to delegate this function otherwise than to the extent expressly mentioned. In your municipality, there being no Municipal Board, no licenses may be issued except upon affirmative action of the Mayor and Council. I therefore cordially recommend that this Section be repealed at once. Furthermore, if any licenses have in fact been issued or authorized by the Police Committee acting under this unauthorized delegation and without each such license having been expressly authorized or ratified by the Mayor and Council

sitting as the governing body of your municipality, it follows that all such licenses were improperly issued and hence to the extent that the same are now in force and effect, they should be at once submitted to your Mayor and Council, in order that all such issuances be either ratified or reconsidered, as your governing body may decide.

In no event may licenses be confined, as your resolution might, perhaps, imply, to those who previously held 3.2% beer licenses; i.e., it is not a good ground for denial that the applicant had not held such a license. Nor is the previous location of the 3.2% licensee a properly exclusive criterion by which to determine the suitability of other locations.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

7. MUNICIPAL ORDINANCES - VALIDITY - NO RIGHT TO DISCRIMINATE  
IN CLOSING HOURS OF CONSUMPTION LICENSEES BASED ON FULLY  
EQUIPPED KITCHEN

March 4, 1935

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

Dear Sir:-

I have the resolution adopted on November 27, 1934 by your Borough Council fixing the hour of closing for plenary retail consumption licensees which are hotels and restaurants maintaining fully equipped kitchens, at 3:00 A. M., and for plenary retail consumption licensees having only bars with no fully equipped kitchens, at 1:00 A. M. weekdays and 2:00 A. M. Sundays.

It purports to fix different hours of closing for restaurants and hotels on one hand and for bars on the other hand, all, however, holders of plenary retail consumption licenses. I have held that while different regulations may be applied to different classes of licensees, all those within the same license class must be treated alike. See Bulletin 7, Item 1, and Bulletin 19, Item 7. It is true that I have allowed, subject to later appeal by anyone aggrieved, certain exceptions, although possibly discriminatory, on the ground that they carry out a public purpose and may, therefore, be valid as a proper exercise of the municipality's inherent police power. Your resolution, however, does not set forth, and I am not at this moment aware of any good reasons which may exist for a discrimination in closing hours based on the presence or absence of a fully equipped kitchen. Consequently, this resolution is disapproved.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

8. MUNICIPAL ORDINANCES - VALIDITY - NO RIGHT IN MUNICIPALITIES TO PREVENT LICENSEES FROM SELLING TO EMERGENCY RELIEF RECIPIENTS IN ABSENCE OF EXPRESS PROHIBITION BY THE RELIEF ADMINISTRATION AGAINST THE PURCHASE OF ALCOHOLIC BEVERAGES

March 5, 1935

Annie B. Appleget, Clerk,  
Manasquan, N. J.

Dear Miss Appleget:

I have your telegram reading:

"Will it be in accordance with any rule or regulation that you have adopted for the Boro Council to provide in its liquor ordinance to prohibit a licensee from making sale of alcoholic beverages to any person receiving emergency relief and provide for a penalty for the first offense and for the second offense revocation of the license."

Your question brings to focus the problem of spending relief money, in whole or part, in liquor stores and saloons. While, personally, I wholly disapprove of relief clients indulging in the luxury of alcoholic beverages, it is the function of the Emergency Relief Administration, not mine, to say how its checks should be spent. Its only present regulation (Family Service Procedures Under Cash Relief, A3b) at all relevant to your inquiry applies to "alcoholism" which is a diseased condition of the system caused by the excessive use of liquor--quite a different thing from buying a drink with cash relief. If it shall forbid relief recipients to buy any alcoholic beverages, I will back-stop it by forbidding licensees to sell them. So long, however, as cash relief is given without express restriction against the purchase of liquor, the recipient has as much right to buy legal liquor as legal milk. If he has the taste, he is going to gratify it whether from legitimate or illicit sources. All such an ordinance would now accomplish would be to discriminate against licensees and drive relief clients to the speakeasies and bootleggers.

Until the Emergency Relief Administration decides to make its own rules on this subject, I shall not approve any such ordinance.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

9. APPELLATE DECISIONS - SUMMIT QUOIT CLUB VS. SUMMIT

SUMMIT QUOIT CLUB, )  
 Appellant )  
 -vs- )  
 COMMON COUNCIL OF THE )  
 CITY OF SUMMIT, )  
 Respondent )  
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ON APPEAL  
CONCLUSIONS

George R. Sommer, Esq., Attorney for Appellant  
 Frederick C. Kentz, Esq., Attorney for Respondent  
 Herbert R. Gilson, Esq., Attorney for Summit Association for  
 Liquor Control.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a club license for premises located at 68 River Road, Summit.

At the outset of the hearing respondent moved to dismiss the appeal on the grounds that (1) appellant did not appeal to the Commissioner within 30 days after the application was denied and (2) appellant has not prosecuted its appeal diligently. It is unnecessary to pass on this motion because from the testimony taken at the hearing of the appeal it is clear that respondent's denial of the application was reasonable and its action will therefore be affirmed on the merits.

Respondent contends that the application was properly denied because (1) appellant is not a bona fide club qualified under the Control Act and the Commissioner's rules and regulations to receive a license, (2) certain persons interested in appellant organization are unfit to receive a license and the application is merely a subterfuge to permit one such person to sell alcoholic beverages on his own behalf, (3) appellant, under a 3.2 beer license had conducted its activities improperly and in such fashion as to become a nuisance, (4) appellant has no interest in the premises sought to be licensed, (5) the location and character of the premises sought to be licensed render them unsuitable and (6) the application was defective in that the addresses of the members were not stated therein.

Section 13 (5) of the Control Act, in part provides that:

"Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and comply with all conditions which, subject to rules and regulations, may be imposed by the Commissioner."

Rule 5 of the Rules and Regulations Governing Club Licenses, Bulletin #25, Item #1, provides:

"Club licenses shall be issued only to bona fide clubs. No license shall be issued to any club unless it shall

have been in active operation in the State of New Jersey for at least three years continuously, immediately prior to the submission of said application, and shall have been in exclusive, continuous possession and use of a club-house or club quarters for the same period of time; provided, however, that bona fide organizations, as aforesaid, deprived of the continuous possession and use of said quarters by reason of foreclosure, dispossession or other removal for a cause other than a violation of the laws of the State or of municipal ordinance, shall be permitted to obtain a club license upon proof to the satisfaction of the issuing authority that they are a bona fide organization as provided for under the laws and these rules and regulations and that possession of suitable premises has been obtained \*\*\*."

Rule 16 further provides:

"If the issuing authority to which such application is made shall have doubts as to the truth of the statements contained therein, or as to the good faith of said organization, or the honesty of purpose for which it was formed, it may require any further proof with respect thereto which it shall deem necessary, fixing a day and giving the applicant notice when the same shall be heard, and after such hearing, it may reject such application unless it shall be satisfied that such club was formed in good faith and only for the purposes set forth, and not for the purpose of evading any statute of the State or ordinance or resolution of the municipality with reference to the sale of alcoholic beverages."

In 1923 an organization called "Summit Quoit Club" was formed under the act to incorporate associations not for pecuniary profit. This organization had no club rooms of its own, held no meetings, had no officers and charged no dues. Groups of men would gather informally behind the private garage of one of the incorporators, Frank C. Kane, and, it is alleged, would pitch quoits. No formal organization was ever set up and the entire club was practically defunct for some time prior to 1933. After the sale of 3.2 beer was legalized, said Kane engaged a store at 68 River Road, whether on his own behalf or for the so-called club is not clear, and a license for the sale of 3.2 beer was issued to appellant. Immediately thereafter, a membership list was drawn up, officers were elected and nominal dues of \$2.00 per annum, payable at the convenience of the members, were fixed. The organization, however, continued to be run in a most informal manner; no bank account was opened and no accounting of funds apparently made. Kane was the manager. Early in 1934, the organization fell in arrears for rent and abandoned the premises at 68 River Road. Both the President and Vice President of the club admit that since that time the club has not been active. On October 27, 1934 all the furnishings of the premises were sold under a landlord's distress directed against both the Summit Quoit Club and Kane.

It thus appears that for the past year the organization lapsed into the same kind of inactivity which characterized it prior to 1933, no dues are being paid, the officers are only nominal, having no fixed duties and no responsibility and there are no club quarters.

Respondent concluded that the present application was filed because said Kane, the prime mover of the so-called club, is not personally qualified to receive a license since he is a notorious bootlegger and that the application is merely a subterfuge to permit him to operate. In support of this conclusion, respondent points to the fact that until 1933, whatever activity the organization had was centered in the private garage of said Kane, that the lease for 68 River Road was made by him, that he represented himself to be the manager of the club, that he in fact exercised control over the activities thereof, that the rent was paid by him in cash and that the distraint was levied against both Kane and the club. There may also be added the fact that appellant, knowing the action of respondent was based in part at least on the connection between Kane and appellant, did not see fit to explain the same or to produce Kane as a witness.

It is clear from the foregoing recital of facts that respondent's finding that appellant is not qualified to receive a license and that the application is merely a subterfuge is reasonable and must be sustained. Boccistico Coloniale Club vs. Trenton, Bulletin #56, Item #8.

Since this finding is dispositive of the case, respondent's remaining contentions need not be considered at this time.

The action of respondent is affirmed.

Dated: March 6, 1935

D. FREDERICK BURNETT,  
Commissioner

10. RULES CONCERNING CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES - GAMBLING - PLAYING CARDS OR DICE FOR DRINKS

March 7, 1935

Mr. Harry Gott,  
17 Burgess Place,  
Passaic, N. J.

Dear Sir:-

I have your letter inquiring whether it is permissible to play cards and dice upon licensed premises, no money stakes being involved but the loser treating the others to a glass of beer.

Rule 7 of the rules governing the conduct of licensees and the use of licensed premises provides:

"7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises."

In applying this rule to the playing of games where the losers pay for drinks, the Commissioner said:

"As regards the loser paying for drinks: It was held in Brown vs. State, 49 N.J.L. 61, that playing cards for beer to be purchased and paid for by the loser was gaming".

The amount of beer involved is immaterial since, as the Supreme Court of New Jersey said in the case cited:

"It is just as clearly gaming to play cards for a glass of beer as it is to play for a barrel or 10 barrels of beer."

Accordingly, the playing of cards or dice upon licensed premises under an agreement whereby the loser is to pay for drinks is contrary to law and hence would constitute a violation of the rule and subject the license to revocation.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner

11. REFERENDUM - SECTION 42 - EFFECT - REFERENDUM CANCELLING PERMISSION TO SELL FOR CONSUMPTION ON PREMISES DOES NOT REVOKE PLENARY RETAIL CONSUMPTION LICENSE WHICH REMAINS IN FULL FORCE AND EFFECT AS TO SALES FOR OFF PREMISES CONSUMPTION

March 7, 1935

Mr. Zeh Dennis,  
Fortescue, N. J.

Dear Mr. Dennis:

I have yours of March 6th.

The referendum of November 6, 1934 in the Township of Downe, Cumberland County, resulted in a negative answer to the question: "Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises.....be permitted in this municipality?" Hence Section 42 makes it unlawful to issue any license in respect to such municipality which should permit sales for consumption on the premises, "and all licenses theretofore issued in respect to such municipality which shall have licensed such prohibited sale shall, to the extent that they permitted such prohibited sale, become void and inoperative thirty days after the date of said vote."

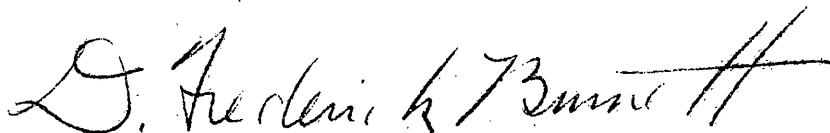
Your letter states that your license was "revoked" by the referendum and you inquire if you may now apply for a retail distribution license in the same municipality.

You may but you need not.

For you are mistaken in assuming that your consumption license was revoked by the referendum. It was not revoked. The statutory words above quoted rendered it void and inoperative to the extent that it had permitted sales for consumption on the licensed premises. That is as far as the statute goes. Otherwise your license is still in full force and effect. As the holder of a plenary retail consumption license you were entitled before the referendum (1) to sell for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle, and (2) also to sell all alcoholic beverages in original containers for consumption off the licensed premises. The first permission became void and inoperative by the referendum. The second permis-

sion still remains in full force and effect. It is exactly the same right that you would get if you now applied for and were granted a plenary distribution license. Since you now have the right to sell for off-premises consumption, there is no necessity to apply for a distribution license.

Very truly yours,

A handwritten signature in cursive script, reading "G. Frederick Burnett". The signature is written in dark ink and is positioned above the printed name of the Commissioner.

Commissioner