Commissioner Burnett
Sent to Regular Mailing List

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 BROAD STREET, NEWARK, N. J.

BULLETIN NUMBER 123. June 12, 1936.

1. COURT DECISIONS---NEW JERSEY SUPREME COURT---STATE vs. RITZAU.

ILLICIT BEVERAGES---POSSESSION OF ILLICIT BEVERAGES IS UNLAWFUL---POSSESSION OF UNREGISTERED STILL, EITHER SET UP OR DISMANTLED, OR POSSESSION OF PARTS OF UNREGISTERED STILL IS UNLAWFUL---WHERE STATE ALLEGES THAT UNREGISTERED STILL WAS SET UP, IT MUST ESTABLISH SUCH FACT.

NEW JERSEY SUPREME COURT

STATE OF NEW JERSEY, :

Defendant-in-Error, :

-vs- :

HERMAN RITZAU, :

Plaintiff-in-Error. :

Submitted January Term, 1936; decided April , 1936.
On Writs of Error.
Before Brogan, Chief Justice, and Justices Lloyd & Donges.

For defendant-in-error, T. Raymond Bazley, Prosecutor; Edward F. Juska, Asst. Prosecutor, On the Brief.

For plaintiff-in-error, Edward W. Wise; Frederick M. P. Pearse, Of Counsel; George Such Pearse, On the Brief.

BROGAN, CHIEF JUSTICE

The plaintiff-in-error, Ritzau, and eight other defendants, were convicted upon five indictments, two of which charged that they "did manufacture and possess certain alcoholic beverages without first having obtained a license for that purpose from the Department of Alcoholic Beverage Control of the State of New Jersey, contrary to the statute," and three of which charged that "they did have in their possession or custody, or under their control, a still or distilling apparatus set up, without having registered same with the Commissioner of Alcoholic Beverage Control of the State, contrary to the form of the statute." Ritzau alone appeals.

The case comes to us for review on a strict writ of error and bill of exceptions, and the judgment is also challenged under Section 136 of the Criminal Procedure Act.

The argument in the briefs submitted for the plaintiff-in-error is directed to the general proposition that the conviction should be reversed because the state failed to make out a case against the plaintiff-in-error on either class of indictment. It is therefore argued that the verdict was against the weight of the evidence; that the trial court erred in denying motion to dismiss the indictments charging the plaintiff-in-error with manufacturing and possessing intoxicating liquor; that there was no

New Jersey State Library

evidence that the plaintiff-in-error had possession, custody or control of any still or distilling apparatus set up, and the like. The remaining assignments of error as well as the specification of causes for reversal are not argued and therefore are abandoned.

It appeared that Ritzau owned two apple farms in Shrewsbury Township, one on each side of a public road known as Riverdale Avenue, comprising over three hundred acres, one known as the Riverdale Farm and the other as the Cloverhill Farm. Upon each were erected dwelling houses and other out-buildings and barns. The barn on the Riverdale Farm housed a four thousand gallon still with eight vats of fermenting mash and over nine hundred gallons of alcohol in tins. Electric power was brought to this apparatus from a service line which supplied the dwelling house, which service line was installed on the application of Ritzau in December, 1930. In the cellar of the house a quantity of apple whiskey was found. The investigation, which resulted in these indictments, was made on May 17, 1934.

From the barn on the Riverdale Farm, where a still was found, a tunnel was constructed to the edge of the river, a distance of about two hundred feet, for a water supply obviously, and in a smaller barn on this farm was a dismantled apple whiskey still.

On the Cloverhill Farm, another still, similar to the first, was found, along with five 10,000 gallon tanks, three, 50 H.P. steam boilers, and another large quantity of alcohol in tins. All of the equipment was unquestionably used for the manufacture of liquor on a large scale on these two farms. At the time of the investigation, the columns and boilers were still hot.

Ritzau's defense was that he was in no way connected with this illegal manufacture of alcoholic beverages; that the property on which this operation was conducted had been leased out to others, and that he was not in possession or control of any still or distilling apparatus which was set up.

In support of this defense, the state of case discloses that that section of the Riverdale Farm, on which the barn which housed the still and other equipment stood, had been leased on March 1, 1934, to one Williams, and that that section of the Cloverhill Farm, where the second still and other equipment was found, had been leased on April 21, 1934, to one Macks. The leases had, at a hearing before the Commissioner in charge of the Alcoholic Beverage Control Bureau, some time before the trial, been offered in evidence and had not been returned to Ritzau. It is admitted that defense counsel called upon the state's attorney to produce them at the trial in the court below and they were not produced. Consequently, the court admitted secondary evidence of their contents, which testimony was supplied by Ritzau's attorney, Mr. Wise, who had drafted the leases in question. He said that he represented Ritzau in March, 1934, and prepared two leases, one for a section of the Riverdale Farm property and the other for a part of the Cloverhill Farm; the former tract was leased for use as a fertilizing plant; the latter was to be used as a picnic ground. It was on these leased tracts that the stills, equipment and liquor were found.

Turning to the indictments themselves, we find that they charge the defendant with manufacturing certain alcoholic beverages. There is nothing in the testimony, so far as the plaintiff-in-error, Ritzau, is concerned, that would justify sub-

mitting the case to the jury on that issue. The record discloses that the plaintiff-in-error was in and about the property constantly but at no time, according to the evidence, did he go into the structures where the stills were housed. It may be that he knew all about it, but we search the record in vain for any testimony that links him with the manufacture of alcoholic beverage. He is also charged with possessing alcoholic beverages. Granting that there was proof sufficient to justify the conclusion that he possessed alcoholic beverages, yet possession in itself is not a violation of the statute unless it be coupled with proof of intent to manufacture, sell, distribute, etc. alcoholic beverages. (Chapter 85, Laws of 1934, Sec. 48, p. 250). We find no such proof.

The second class of indictment charged that the defendant and others had in their possession or custody, or under their control, a still or distilling apparatus set up. The proofs clearly show, according to the testimony of Van Schoick, one of the State's witnesses, that the still possessed by Ritzau, was dismantled. Now while Chapter 84, P. L. 1934, provides that every person having in his possession or custody, or under his control, any still or any distilling apparatus set up, dismantled, or in the process of construction, or parts thereof, shall register same with the Commissioner of alcoholic Beverage Control (Section 1, statute, supra), and failure to do so renders an offender liable to conviction for misdemeanor (Section 9), none the less, the indictment against this plaintiff-in-error charged possession, custody or control of a still or distilling apparatus set up without having registered the same, etc.

The proofs offered do not support the charge in the indictment that Ritzau had in his possession or control a still or distilling apparatus set up and, consequently, the state's case failed.

The judgment of conviction is reversed.

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Following the announcement of the foregoing decision in State vs. Ritzau, a letter in the following form was sent to each Prosecutor in the State:

June 4, 1936.

Dear Prosecutor:-

You probably have noticed the cover page of the New Jersey Advance Reports, dated May 23, 1936, which cites State vs. Ritzau, 14 N.J.Misc. 312, for the proposition that "possession of alcoholic beverages is not in itself a violation of the New Jersey Alcoholic Beverage Control Act".

The seizure in the Ritzau case was made on May 17, 1934. Under the law in force at that time mere possession of an illicit beverage was not a violation and Chief Justice Brogan's opinion in the Ritzau case therefore properly so holds.

However, the Control Act was amended by P.L. 1935, c. 257, to provide that mere possession or custody of an illicit beverage shall constitute a misdemeanor. Consequently, today possession alone of an illicit beverage is unlawful and there is nothing in the Ritzau case in conflict with this conclusion.

You will also note the Court's holding in the Ritzau case to the effect that where an indictment alleges possession of a distilling apparatus set up, it is not sufficient to prove possession of a distilling apparatus dismantled. The Court recognizes that possession of an unregistered still, either dismantled or set up, or possession of parts of an unregistered still constitutes a misdemeanor, but merely requires that where the indictment specifies that the distilling apparatus was set up, such fact must be established by the State.

You are assured of our intense desire to cooperate in the successful prosecution of violators of the Control Act.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

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

June 5th, 1936.

RE: Application for Solicitor's Permit - Case No. 35.

In his questionnaire, duly sworn to, applicant answered "No" to the question "Have you ever been convicted of any crime?" Thereafter his fingerprints were forwarded to the Federal Bureau of Investigation, United States Department of Justice, which Bureau subsequently advised this Department that their records disclose the following:

"Subject *** , arrested P.D., Miami, Fla., March 19, 1933, charge disorderly conduct; $50.00 and costs."

Notice, therefore, was served upon the applicant to show cause why a permit should not be denied on the ground that he had been convicted of a crime involving moral turpitude, and a hearing was duly held.

From the testimony given at the hearing, it appears that, at a party held in a Miami Hotel, applicant took exception to the conduct and remarks of another man, whom he had never met before, and "smacked him", as a result of which he was arrested and fined $50. and costs.

Disorderly conduct is not a common law crime. In 18 C.J. 1216, referring to disorderly conduct, it is said:

"The term is now commonly used, sometimes in statutes, but more often in municipal ordinances, to designate certain minor offenses. These offenses are sometimes made misdemeanors by the statutes, but they have also been said to be below the grade of misdemeanor and are in their nature a species of nuisance."

Whether conviction for disorderly conduct constitutes a "crime" or merely an "offense" would depend upon the wording of the statute defining disorderly conduct. Cf. People vs. Collins,

265 New York Sup. 475 (New York Sup. Ct. App. Div. 1933). It is unnecessary to determine in this case whether the conviction for disorderly conduct was a conviction for a crime because, under the circumstances, it was not a crime involving moral turpitude.

Applicant further testified that the charge upon which he had been arrested and fined was, in his opinion, of such a trivial nature that he did not consider it a crime and, therefore, had answered "No" to the question "Have you ever been convicted of any crime?" I believe that the applicant, who otherwise has a clean record, honestly believed that he had never been convicted of a crime when he prepared his questionnaire.

It is recommended that the Permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

3. NEW LEGISLATION - AMENDMENT TO THE CONTROL ACT - STATE BEVERAGE DISTRIBUTOR'S LICENSES.

Senate Bill #301 was approved by Governor Hoffman on May 30, 1936 and thereby became Chapter 125 of the Laws of 1936.

Since no effective date is stated in the Amendment, it becomes effective on July 4, 1936.

According to the Amendment, on July 4 next, Section 12 (2) c of the Act will provide:

"12 (2) c. State beverage distributor's license. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute in original containers only, in quantities of not less than one hundred forty-four fluid ounces, to retailers licensed in accordance with this act, unchilled, brewed, malt alcoholic beverages, and to maintain one warehouse and one salesroom. The holder of this license is authorized to sell unchilled, malt alcoholic beverages in original containers only in quantities of not less than one hundred forty-four fluid ounces, at retail to be delivered by such licensee to the person for consumption in his home. This license shall not be issued to any person, corporation, partnerhip, limited partnership or association holding a plenary or limited brewery license, nor shall it be issued to any person, corporation, partnership, limited partnership or association, directly or indirectly interested in any brewery within or without this State. This license shall not be issued <u>for premises in which any retail business (except the sale of malt alcoholic beverages and non-alcoholic beverages) is carried on</u>. The fee for this license shall be five hundred dollars ($500.00) per annum."

The Amendment will eliminate the restriction now imposed by the Act which prohibits the issuance of a State beverage distributor's license to anyone engaged in or interested, directly or indirectly in any retail business other than the sale of malt alcoholic beverages and non-alcoholic beverages.

It will permit the issuance of such licenses to persons who are engaged in or interested in other retail businesses provided that such other retail businesses are not conducted on the licensed premises of the State beverage distributor. As heretofore, only the sale of malt alcoholic beverages and non-alcoholic beverages may be conducted on the licensed premises.

D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - ROSANIA vs. READINGTON.

JOSEPH ROSANIA,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF READINGTON,) CONCLUSIONS
Respondent.)

Tarantola & Duff, Esqs., by Nathan Duff, Esq., Attorneys for Appellant.
Philip R. Gebhardt, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises situated on Main Street, Whitehouse Station, Township of Readington.

A previous application made by appellant for a license to conduct business at the same premises was denied because of the existence at that time of a resolution of the Towship Committee limiting the number of licenses to be issued to three, and the issuance of the allotted number. Rosania vs. Readington, Bulletin #55, item 3.

On December 16, 1935 respondent rescinded this former resolution and adopted a new resolution, the pertinent parts of which are as follows:

> "2. The total number of plenary retail consumption licenses to be issued by the Township Committee in and for the said Township of Readington, shall not exceed eight in number, and at least five of the same shall be issued covering premises located on or within 500 feet of State Highway, Route No. 28, as the same runs through the said Township of Readington.
>
> "3. The total number of Plenary Retail Consumption Licenses to be issued by the Township Committee in and for the said Township of Readington, shall not exceed eight (8) in number."

After the adoption of the latter resolution, six (6) additional applications for consumption licenses were acted upon, four of which, for premises located on Highway #28, were granted, one of which was withdrawn and the remaining application, which had been filed by appellant herein, was denied. No personal objections were raised against appellant, but his application was denied because, as appears from the minutes of the Township Committee meeting of January 15, 1936, the section of the Township in which he sought a license was already adequately serviced.

Appellant sets forth various reasons why the action of respondent was improper, namely, (1) because the new resolution was not properly adopted; (2) because the new resolution itself is unreasonable; (3) because, since that resolution provides that not more than eight consumption licenses shall be issued, and respondent has issued only seven, there is a vacancy and appellant is, therefore, entitled to a license; (4) because the denial was based upon political motives; (5) because there is need of an additional licensed place at Whitehouse Station.

It is not necessary on this appeal to decide whether or not there is any merit to the first contention. If the new resolution has not been properly adopted, then the old resolution limiting the number of licenses to three (3) remains in effect and appellant is not entitled to a license for the reason given in the prior appeal. Cf. Retail Liquor Distributors vs. Blatt, Bulletin #99, item 4.

The second and third contentions will be considered together. The wording of Paragraph 2 of the new resolution is such as to raise grave doubts as to its reasonableness. Why Highway #28? Why 500 feet from said Highway? Was the resolution so drawn as to favor a certain few and shut out the others? Despite the testimony of the Township Committeemen that they did not intend to discriminate against appellant and that the resolution was drawn in its present form to take care of the transient trade upon Highway #28 and to exclude places so far removed from said Highway as to be concealed from public view, I would feel constrained to determine that this section of the resolution is unreasonable as applied to appellant if in fact his license had been denied solely because his premises are not located on Highway #28 or within 500 feet thereof. Foxwell vs. Atlantic City, Bulletin #41, item 3; Brighton vs. Loder, Bulletin #41, item 6.

It appears, however, that this license was denied on the ground that the premises sought to be licensed are located in a section of the Township already adequately serviced. The evidence shows that appellant's premises are about two hundred fifty (250) feet from a hotel which holds and has held since Repeal a consumption license. The number of residents in the settlement known as Whitehouse Station is between five hundred (500) and seven hundred (700). If Section 2 of the ordinance is considered as exscinded because unreasonable, we have the same situation in this case as existed in the case of Young vs. Pensauken, Bulletin #114, item 2. In that case the action of the Township in denying a license, despite existing vacancies, was upheld where it was shown that respondent's determination that there was a sufficient number of licensed premises in the immediate neighborhood, was reasonable. In the Young case I said:

> "Here the respondent municipality is not sniping at its own regulations or seeking to make them inoperative by indirection but, admitting the vacancies to exist, its point is that there are sufficient licenses in the immediate vicinity of the place for which the license is sought. Such an opinion or decision, if backed by facts, is consonant with the limitation and not repugnant to it - pursuant to it and not in nullification of it."

The fourth and fifth contentions may likewise be considered together. Much of the testimony taken at the hearing of the appeal was addressed to the fourth contention. All of the new licensees were subpoenaed and testified that there were no political considerations involved in the issuance of the licenses to them. Two Township Committeemen, who testified, denied that there had been any politics involved in their decision. The great weight of the evidence shows that the license was denied solely because of the location of appellant's premises. In fact, appellant himself testified that the Committeemen had told him that as long as he lived where he was at the present time no license would be granted, but that if he was willing to move to Highway #28 they would grant him a license the following day. I am satisfied that the sole reason for the denial was that the members of the Township Committee honestly believed that there was no need for an additional licensed place at Whitehouse Station.

The appellant, attempting to show the need for an additional place, has testified that there is a large amount of transient trade; that there were two licensed places at Whitehouse Station prior to Prohibition, and that a large number of people signed a petition requesting the granting of a license. The number of transients is one, but only one, of the factors to be considered by an issuing authority in reaching a decision. Henry vs. Way, Bulletin #90, item 9. The situation as to licenses which existed prior to Prohibition does not control the issuance of licenses at the present time. Palmer vs. Englishtown, Bulletin #116, item 4. The petition contained about four hundred (400) names, but the evidence shows that it was prepared long ago and was not presented to the Township Committee at its hearing. It was admitted in evidence at the hearing of the appeal because of the claim that the Township Committee knew of its existence and had arbitrarily refused to consider it. An examination of the petition, however, showed that more than half of the signers are not residents of Whitehouse Station and, in any event, the petition itself is not sufficient to show that the action of respondent in denying the license was unreasonable.

The most that has been shown in this case is a difference of opinion as to necessity, a question upon which reasonable men can differ. The proof adduced fails to show that respondent's determination that another licensed place was not needed in that locality, was unreasonable. Hence, the Commissioner will not reverse respondent's exercise of an honest and reasonable discretion. Henry vs. Way, supra, and cases therein cited.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 9, 1936.

5. SALES - ALLEGED "GIFTS" OF BEER WITH MEALS BY RESTAURANT PROPRIETOR REQUIRE A LIQUOR LICENSE - HEREIN OF THE GIFT HORSE STARTING FROM SCRATCH.

Gentlemen:

I wrote to you on May 11, 1936, requesting certain information, to wit:

Whether or not a proprietor of a restaurant can give away free of charge beer without the necessity of a license to do so.

I received a reply from Mr. J. Shapiro, Senior Inspector, who enclosed Bulletin #19, Item 8, and advised me that beer could not be given away with food because that would not be furnishing the beer gratuitously, but that the price of such beer would be included in the price paid for the food.

Will you please advise me if, in the event it could be shown that there was no increase in the price of food, and that the beer in fact would be given gratuitously, if this would change the opinion of your Department?

Very truly yours,

BEN S. SHIPMAN

June 8th, 1936.

Andrew C. Frommelt, Esq.,
Paterson, N. J.

Dear Sir: Attention: Ben S. Shipman, Esq.

The Control Act defines a sale as every delivery of an alcoholic beverage "otherwise than by purely gratuitous title". It is idle to pretend that beer, served with meals that are charged for, is furnished "purely gratuitously". The cost of the drink is necessarily included in the price of the food. Such "gift" is, of course, accompanied by the expectation of developing trade and resulting financial gain. Licensed taverns sometimes give free lunch. Your unlicensed friend would compete by giving free beer. Some other might give both lunch and a beer and contend he was selling neither because "given" away with a hat check issued at par. No objection so long as they all start from scratch, which means, in the case of the drinks, that they all carry the same weight of a license.

If a restaurant proprietor wants to go into the business of "giving" alcoholic beverages away with the food that he sells, he will have to get a liquor license to do so. After paying the license fee, he can juggle the prices of food to his heart's content, though I doubt then that his generous impulse persists.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. FINGERPRINTING - PROCEDURE - FIGURES AND POLICY.

June 9, 1936.

M. L. Templeton,
Chief Liquor Administrator,
District No. 1,
Los Angeles, California.

Dear Mr. Templeton:

This supplements my letter of May 4th re your inquiry of April 24th in reference to fingerprinting of licensees in New Jersey.

The New Jersey Alcoholic Beverage Control Act does not require that licensees or their employees must be fingerprinted. However, in Rules Governing Identification of State Licensees and Their Employees, promulgated by me May 20, 1935, I included the provision that fingerprints of all persons connected in any business capacity whatsoever with State licensees, shall be taken by this Department at such times and places as shall be designated from time to time by the Commissioner. This provision was not utilized immediately, except for special investigations in particular cases.

Since August 1, 1935, it has been the requirement of this Department that all solicitors of licensed manufacturers and wholesalers must obtain a Solicitor's Permit. More than 3,000 such permits have been issued to date. In February, 1936, it was believed that a closer check should be made upon the holders of these Solicitor's Permits and as a result it was decided that all solicitors in the State of New Jersey should submit to fingerprinting by this Department. To date about 2,500 solicitors have been fingerprinted.

As you see our experience in this field also is limited, but I will gladly give you what information is available. The answers to your inquiries are as follows:

1. The capital outlay for fingerprinting thus far has been $87.53 for a fingerprint cabinet, sufficient in size to hold approximately 20,000 fingerprint cards, $27.50 each for two table type fingerprint kits, and $15.00 for a portable fingerprint kit. Addressed envelopes and fingerprint cards have been supplied by J. Edgar Hoover, Director of the Federal Bureau of Investigation, Washington, D. C., as well as addressed envelopes by the State Bureau of Investigation, State of New Jersey. Three sets of prints are taken in each case, one to be retained by the Department, one sent to Federal authorities, and one sent to the State Bureau of Investigation. The addressed envelopes referred to are for the purpose of forwarding the prints to the proper authorities.

2. In order to accomplish the fingerprinting of the solicitors in a short period, the work was assigned to an Inspector in charge of three Investigators. The full time of these men was required for a period of about two months, representing a salary cost of ap-

proximately $1200.00. In addition, the services of a stenographer is essential, the salary cost approximating $180.00. However, it is expected that the fingerprints of future applicants for Solicitor's Permits will be taken in the regular course of the Department's work without the necessity of assigning anyone full time. The only additional expense constitutes that for stationery.

3. The question in reference to personnel is answered in question 2.

4. The total number of prints on file as a result of this plan is about 2,500. I am unable at the present time to give you the average monthly addition thereto because we are just about to complete the initial task of printing the present 3,000 solicitors. However, as a result of arrests made throughout the State for violation of our Control Act, there are in addition to the above, about a thousand fingerprints in this file which have been submitted through police agencies as arrests are made during the past two years.

5. Indications from the prints taken thus far are that the percentage of holders of Solicitor's Permits having prior criminal records will amount to about 15%.

6. The percentage of denials on revocations as a result of this fingerprinting is not available at the present time. However, proceedings to revoke the permits will be instituted immediately against all permittees, whose fingerprints disclose either a prior conviction for a crime involving moral turpitude or in cases where the permittee failed to disclose any conviction in the filing of his application and thus filed a false affidavit.

7. Our policy in respect to those already holding permits is set forth in 6. However, it is now required that all applicants for Solicitor's Permits must appear to be fingerprinted prior to the issuance of the permit. If a criminal record is revealed as a result, the applications are denied, if the crime involved moral turpitude or a false affidavit was filed.

8. Although at present only the solicitors in New Jersey have been fingerprinted as a group, it is planned in the near future to fingerprint other groups of employees connected in the alcoholic beverage industry in the State. Our brief experience in New Jersey has been that fingerprinting is the only method available to keep out persons disqualified because of criminal records. Prior to the taking of these prints, we attempted to weed out the undesirable persons by individual investigation. As you can see this was not entirely satisfactory since in spite of our investigation some 15% escaped and were able to obtain permits.

I have not been able to give you as much information as I would like because we are also new in this field. I

hope that I have been able to give you some idea of what has been done in New Jersey. I feel very sure that fingerprinting will prove both essential and practical in the control of the alcoholic beverage industry.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. LICENSES - DEBTS OF LICENSEE - THE MERE EXISTENCE OF HONEST DEBTS IS NO REASON FOR REFUSING A LICENSE - ISSUING AUTHORITIES ARE NOT TO BE UTILIZED AS COLLECTION AGENCIES OR TO PATCH UP MISTAKES OF CREDIT MEN.

June 10th, 1936.

Hommell & Hommell, Esqs.,
Sussex, N. J.

Gentlemen:

I have yours of the 6th re C. Cueman, trading as Marty's Tavern, and see you have secured a judgment against him for beer purchased from the Standard Brewing Co., and will also institute suit against him for beer furnished by another licensee.

You say:

"We understand that shortly he will have to renew his license with your department and we ask if the license can be withheld until these creditors have been paid off through this office?

"He is now purchasing beer from another company we are informed and we feel that he should not be permitted to go on doing business under a license from your office so that he may continue to 'hang dealers up' for money which is justly do and owing to them for merchandise which he has received and sold over this counter."

Of course, if this man owes money to your clients, he ought to pay it, but this has no bearing whether he should get a license or not. That depends on his personal character and the suitability of his premises. Neither the Department nor any one of the license issuing authorities is a Collection Agency. So far as you say, there is nothing but a mere civil claim for monies alleged to be due, the collection of which is your job as lawyers.

Many a man who is wholly worthy has become financially embarrassed, especially in these hard days. The mere fact that he has debts, like the rest of us, is no reason for withholding his license and thereby depriving him of his main opportunity to make a come-back financially. It is not my duty to patch up mistakes of credit men.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. LABELING - BOTTLED IN BOND - RELAXATION OF PRESENT FEDERAL REQUIREMENTS PERTAINING TO THE USE OF THE PHRASE "BOTTLED IN BOND" SEEMS UNDESIRABLE.

May 15, 1936.

Hon. W. S. Alexander,
Administrator, Federal Alcohol Administration,
Washington, D. C.

Dear Sir:-

I regret that I was unble to attend the hearing held with respect to the proposed amendment to Regulations #5. I am taking this opportunity of expressing briefly our reactions towards the suggestion that authority to use the phrase "bottled in bond" be extended to certain imported products.

We are inclined to oppose the use of the phrase "bottled in bond" except as applied to products bottled in bond in the United States. In general, whiskey bottled in bond in the United States is straight whiskey, aged in the wood at least four (4) years and bottled from the original container at 100 proof in bonded premises under Government supervision. Replacement to take care of evaporation is not permitted. The foregoing restrictions are not invariably present in products bottled in bond in foreign countries.

The public have, in a general sense, become aware of the restrictions contained in the Bottled in Bond Act of the United States and have come to rely thereon. Free use of the phrase "bottled in bond" for foreign products is likely to mislead them into the belief that such products have been manufactured under restrictions similar to those applicable to domestic products bottled in bond. In view of the great quantities of bonded domestic liquor soon to reach the market, relaxation of the present requirements pertaining to the use of the phrase "bottled in bond" would seem particularly inappropriate.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

9. GIFTS - A GIFT OF ANY ALCOHOLIC BEVERAGE BY ANY LICENSEE CONSTITUTES A SALE - LIMITED WHOLESALE LICENSEES MAY NOT MAKE GIFTS OF BEER TO ORGANIZATIONS NOT HOLDING LICENSES - LIMITED WHOLESALE LICENSEES MAY MAKE GIFTS OF BEER TO HOSPITALS FOR MEDICINAL PURPOSES WITHIN LIMITATIONS OF SECTION 26.

Gentlemen:

For a great many years we have donated beer to the following:

Fritz Reuter Altenhbim, Union City, N. J.
Saint Mary's Hospital, 4th St. & Clinton Ave.,
Hoboken, N. J.
Saint Francis Hospital, 9th & Erie Sts.,
Jersey City, N. J.

Notbeing absolutely satisfied as to whether or not we are complying with the rules of the Alcoholic Board of New Jersey in this we are desirous of procuring through you a decision in this matter.

The above are worthy institutions and we would like to continue this practice of making donations to them, if at all possible.

Very truly yours,

JACOB RUPPERT BREWERY

May 27, 1936.

Jacob Ruppert Brewery,
New York City.

Gentlemen:

Limited wholesale licensees are, in general, confined to the sale of malt alcoholic beverages to licensed wholesalers and retailers. Section 1 of the Control Act provides that every gift by a licensee shall constitute a sale. Consequently, you are prohibited, under the terms of your limited wholesale license, from making gifts of malt alcoholic beverages to organizations not holding New Jersey licenses, even though such organizations are operated for highly laudable purposes. See Bulletin #118, Item #1 enclosed.

The foregoing ruling is subject to the following qualification: Section 26 of the Control Act permits hospitals to "purchase and use alcoholic beverages for the compounding of physicians' prescriptions and for the preparation of mixtures and medicines, unfit for use as beverages, and for dispensing to patients in accordance with physicians' orders and prescriptions, without license therefor, subject to rules and regulations". The same section permits wholesale licensees to sell alcoholic beverages to hospitals for such use. Consequently, you may properly make gifts of malt beverages to hospitals within the limitations of the aforesaid section.

It is the ruling of the Commissioner that under the terms of your limited wholesale license you may not give beer to organizations not holding New Jersey licenses, except to hospitals for the purposes and within the limitations set forth in section 26 of the Act.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

10. LICENSEES - OTHER MERCANTILE BUSINESS - CONSUMPTION LICENSEES MAY NOT ISSUE WITH EACH PURCHASE OF ALCOHOLIC BEVERAGES COUPONS REDEEMABLE AT THE LICENSED PREMISES IN MERCHANDISE OTHER THAN ALCOHOLIC BEVERAGES.

Dear Commissioner:

I represent a holder of plenary retail consumption license in the City of Newark, who is desirous of issuing trade coupons with each purchase of a bottle of liquor for off-premises consumption, redeemable after a certain amount has been accumulated by the customer, who then becomes entitled to a fishing rod or other valuable article other than alcoholic beverages.

Does his proposal, in your opinion, violate any of the rules you have promulgated?

Very truly yours,

SIDNEY SIMANDL

May 22, 1936.

Sidney Simandl, Esq.,
Newark, N. J.

Dear Sir:

The distribution of premium coupons by retail licensees seems to be a practice designed to increase unduly consumption of alcoholic beverages and is looked upon with disfavor by the Commissioner. The entire subject is receiving careful thought and pertinent regulations may be issued in the near future.

Articles distributed as premiums are, in legal contemplation, sold and not given away since the consideration therefor is included in the purchase price paid. Cf. Bulletin #14, Item #2. Consequently, the distribution of articles other than alcoholic beverages at the licensed premises by consumption licensees would be in violation of section 13(1) of the Control Act. This section prohibits consumption licensees from conducting any other mercantile business at the licensed premises and, in view of the undesirability of the practice inquired about, should be strictly construed in accordance with its letter.

It is the ruling of the Commissioner that consumption licensees may not issue with each purchase of alcoholic beverages coupons redeemable at the licensed premises in merchandise other than alcoholic beverages.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

11. PROHIBITED INTEREST - CONSIGNMENTS - WHOLESALERS MAY NOT SELL ALCOHOLIC BEVERAGES TO RETAILERS ON CONSIGNMENT BASIS

Dear Sir:

Will you please advise me if the Control Act permits a brewery to sell merchandise to a wholesaler or retailer on a consignment basis.

This question has been asked by several of our members and I am writing you for this information.

Yours very truly,

A. LOUIS SCHLESINGER
Secretary

May 18th, 1936.

N. J. Wholesale Beverage Distributor's Ass'n.,
Atlantic City, N. J.

Gentlemen: Att: A. Louis Schlesinger, Secretary

The Legislature contemplated that the wholesaling and manufacturing of alcoholic beverages be completely divorced from the retailing of alcoholic beverages. Section 40 of the Act is calculated to achieve this end. The Commissioner has heretofore ruled that under this section a wholesaler may not hold a chattel mortgage or conditional bill of sale on the goods and fixtures in a licensed retail establishment.

Where goods are sold on consignment basis, the wholesaler retains a substantial property interest therein at all times while they are in the possession of the retailer. Consequently, the principles underlying the rulings pertaining to chattel mortgages and conditional bills of sale compel the conclusion that wholesalers may not sell alcoholic beverages to retailers on consignment basis.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel.

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

June 9th, 1936.

Re: Application for Solicitor's Permit - Case No. 34

Application was filed for Solicitor's Permit pursuant to the provisions of P. L. 1935, c. 256. In his questionnaire applicant answered "No" to the question "Have you ever been convicted of any crime?" After his fingerprints had been forwarded to the Federal Bureau of Investigation, this Department

was advised that applicant in May, 1932, had been convicted on a charge of violating the National Prohibition Act and sentenced to ten (10) days in jail.

At a hearing duly held, applicant explained that he had been in the restaurant business during 1932; that in May of that year he had been arrested, convicted and served ten (10) days in jail because another person in his restaurant had served two glasses of beer to Federal agents. No question of moral turpitude is involved in this conviction. Application for Solicitor's Permit Case No. 27, Bulletin #110, Item 7.

There remains the question of the false affidavit. In explanation thereof, applicant testified that he was "under the belief that when the Repeal come in that everything was all right", and further that, because Prohibition was repealed, he believed everything was wiped out so far as convictions under that Act were concerned.

The applicant is a man more than sixty (60) years of age and, apparently, of excellent character. He was engaged in the restaurant business for many years and has never been arrested or convicted of any other crime or been in any difficulty with Federal or State authorities except as outlined herein.

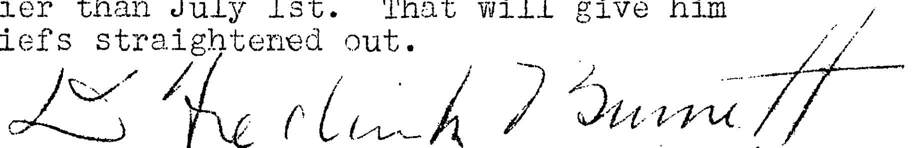
The situation in this case differs from that set forth in re Application for Solicitor's Permit Case No. 32, Bulletin #119, Item 10, wherein the applicant stated that he misunderstood the meaning of the word "crime". In that case it appeared that he testified falsely as to the answers he had made previously to questions referring to violations of Federal or State laws concerning alcoholic beverages and thus his credibility at the hearing was destroyed. In this case applicant has not answered any specific question in reference to violations of Federal or State laws concerning alcoholic beverages. It is possible that he may have been misled into thinking that Repeal wiped out his conviction because of the widespread publicity given to the action of the United States Supreme Court in dismissing, after Repeal, all indictments pending for violation of the National Prohibition Act. I conclude that the applicant, in denying he had ever been convicted of a crime, did not deliberately lie, but that he was honestly mistaken.

It is recommended that the Permit be granted.

EDWARD J. DORTON
Attorney-in-Chief.

DISAPPROVED:

Maybe he was---and maybe not. Why didn't he state the facts truly and leave it to us to determine the legal effect? Deny his present application with leave to file a true one not earlier than July 1st. That will give him time to get his beliefs straightened out.



D. Frederick Burnett
Commissioner

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