

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

BULLETIN NUMBER 124

June 16, 1936.

1. SPECIAL RULING - WORLD WAR VETERANS - CONSUMPTION LICENSEES FORBIDDEN TO EXTEND CREDIT TO VETERANS OR CASH ADJUSTED SERVICE BONDS OR PERMIT VETERANS TO "SET-UP" THE HOUSE EXCEPT FOR CASH.

June 11th, 1936.

Dear Commissioner:

As service officer of the above named Post I feel it is my duty to try and see that the veterans will be able to do the most with their bonus money that they will be receiving on Monday or Tuesday of the coming week.

It has come to my attention that a number of the saloons of the City of Summit have been extending the veterans unlimited credit and oftentimes they are so drunk that they buy drinks for the house and it is put on their bills.

Is there something you can do to help stop this condition or can you have a piece placed in the Summit Herald that will bring some of these people to their senses.

Thanking you for your consideration,

Yours truly,

OTTO J. OSWALD
Service Officer of Summit Post 138
American Legion

June 13th, 1936.

Otto J. Oswald, Service Officer,
American Legion Post No. 138,
Summit, New Jersey.

Dear Mr. Oswald:

I have yours of the 11th.

I understand the Adjusted Service Bonds for World War Veterans will be delivered in registered letters to the veterans in person on Monday, the 15th. Veterans must, therefore, be at their homes to receive the bonds. All my veterans have been granted leave of absence for that purpose.

While the veterans may dispose as they choose, I do not believe, for a minute, they will squander their bonds or the proceeds, precious little it is, on drinks and carousal. Since, with vision, the bonds are delivered at home, the women-folk will be better brakes than columns of newspaper warnings. The exceptional cases you mention usually occur to the few weaklings in any large organization. The few discredit the many.

However, we must protect the weak ones against themselves, even as they protected us when we needed it. Hence, special ruling

is hereby made, effective immediately, viz.:

No licensee for on-premises consumption of liquor shall extend credit to any person who is a veteran of the World War or whom he has reason to believe is such veteran, or cash any Adjusted Service Bond for such person or permit such person to "set-up" or buy drinks "for the house" except for cash then and there paid.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. APPELLATE DECISIONS - BUONANNO v. WESTFIELD

ANIELLO BUONANNO,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
THE MAYOR AND COUNCIL OF THE)	
TOWN OF WESTFIELD (UNION COUNTY),)	
)	
Respondent.)	
-----)	

Frank J. Burns, Esq., Attorney for Appellant.
Paul Q. Oliver, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant complied with the formal requisites pertaining to his application for transfer of a plenary retail consumption license from premises at 233-235 North Avenue to 800 Central Avenue, in Westfield, N. J.

Respondent denied the application for two reasons: (1) the premises failed to meet the requirements of an ordinance which provided that licensed premises shall afford an unobstructed view from the street to the farthest corner therein; (2) the transfer was contrary to a policy of the Town Council to insure close police supervision by granting retail consumption licenses for such premises only as are within or near the business center of the town.

The premises to which transfer is sought are on a corner property fronting both on Central Avenue and Grove Street. The windows on the Grove Street side afford a full view of the interior, with the exception of a small portion where the vision is obstructed by an L-shaped partition. Visibility requirements are essentially and peculiarly a local problem. Premises which cannot be viewed from the street may properly be licensed. Re Marritz, Bulletin #97, Item #8. On the other hand, it is not an unreasonable exercise of discretion to determine that the public interest in a particular municipality requires that places where liquor is sold be open to public view. In Re Woodstown Lodge, Bulletin #107, Item #4. So, in Barone v. Paterson, Bulletin #86, Item #5, a refusal to license a place containing private dining rooms whose occupants were disturbed only upon an express request for service was upheld on appeal, the Commissioner saying:

"This uninterrupted privacy was deemed to afford opportunity and immunity difficult for those seeking neurotic excitement to overlook. It is an exercise of reasonable discretion to determine that the public interest requires that places where liquor is sold be open to public view, and the denial of the license because of the towers is far from improper."

The evidence in the present case indicates, however, that the premises in question meet the local requirement. Appellant offered to remove the partition and, were this respondent's only objection, the issuance of a license conditioned upon such removal would have been ordered. Retail Liquor Distributors Ass'n v. Atlantic City, Bulletin #99, Item #11.

The second ground upon which the respondent based its refusal to transfer is sound. The record discloses a fixed policy of the Town Council to restrict retail consumption licenses to the downtown business district in order to insure proper policing. The premises to which a transfer is sought are approximately three-quarters of a mile from the business center and the location does not lend itself to adequate police supervision. The only surveillance would be the occasional passing of a police radio car. In Re Woodstown Lodge, supra, I held: "Policing and the problem of enforcement vary according to the particular community." Local sentiment in Westfield favors the policy of geographical concentration. It has been rigidly adhered to since repeal, and its validity is not affected by the fact that the premises in question were at one time licensed for the sale of 3.2 beer. Talbot v. Mendham, Bulletin #117, Item #1. It is now being enforced as to the holders of the four plenary retail consumption licenses issued by the Town. The appellant has failed to show that it is unreasonable. I find it is a reasonable policy and is uniformly applied in good faith.

It is, therefore, unnecessary to discuss the remaining contentions.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 11, 1936.

3. REVOCATION PROCEEDINGS -- ANNA WILKALIS (MALAKAUSKAS) - PETITION FOR MODIFICATION DENIED AS TO PERSONAL INELIGIBILITY AND AMELIORATED AS TO PROPERTY DISQUALIFICATION.

In the Matter of Revocation Proceedings against Stanley Malakauskas, 234 Broadway, Bayonne, the holder of Plenary Retail Consumption License C-114, issued by the Board of Commissioners of Bayonne.)	
-----))	On Petition of Mawilk Realty Co. and Anna Malakauskas for Modification of Orders
In the Matter of Revocation Proceedings against Anna Wilkalis, 107 Hobart Avenue, Bayonne, the holder of Plenary Retail Consumption License C-115, issued by the Board of Commissioners of Bayonne.)	
-----))	CONCLUSIONS

Minturn & Weinberger, Esqs., Attorneys for Petitioners.

BY THE COMMISSIONER:

This matter comes before me on a petition to modify two orders entered by me on May 29th, 1935 in the above matters, one disqualifying the premises located at 234 Broadway, Bayonne, for a period of two years from becoming the subject of any license of any kind or class under the Control Act, and the other revoking the license held by Anna Malakauskas for premises located at 107 Hobart Avenue, Bayonne and disqualifying said premises for two years. Petitioners pray that the disqualification of the premises at 234 Broadway be lifted and that Anna Malakauskas be permitted and enabled to

apply for a license in her own name. Anna Malakauskas is also known as Anna Wilkalis, and the prior proceedings against her were so entitled. She is the wife of Stanley Malakauskas.

Petitioner Mawilk Realty Co., a corporation organized on June 27, 1935, presumably is now the owner of the premises in question. It is not alleged that the corporation is a bona fide purchaser of the property. On the contrary, Anna Malakauskas is the Secretary of the company and at one time, at least, her husband was the President. Re Wilkalis, Bulletin #90, Item #6. Petitioner corporation therefore can be in no better position than Anna Malakauskas, the former owner of the disqualified premises.

The reasons for modification, as stated in the petition, are:

"(a) An undue hardship was created thereby resulting in tremendous losses.

"(b) Because of the petitioners' inability to occupy said premises as and for a retail consumption establishment, the premises have remained vacant and no income of any kind or character has been realized by said petitioners since the date of the said order rendering the premises ineligible to become the subject of any further license of any kind or class under the Control Act. No tenants were available for any other class of business, despite every effort to rent said premises, and the said petitioners were unsuccessful in realizing one penny of revenue, particularly because no tenants were available for said premises because of the nature and character of the location and because of the fact that the said premises are only adapted for alcoholic purposes.

"(c) That the petitioners are desirous of occupying said premises at #234 Broadway, Bayonne, New Jersey, for the alcoholic beverage business. That said Anna Malakauskas has become penniless and has no means of income. That her husband, Stanley Malakauskas has been incarcerated at Lewisburg, Pennsylvania. That since his confinement, he has undergone a serious operation. That the said premises will positively be lost unless a modification is made of the order heretofore made by this Honorable Court, permitting the use of the said premises by the said petitioners herein as and for a retail consumption establishment. That the said premises have been used for the dispensing of liquors for beverage purposes for forty years."

The petition further alleges that Anna Malakauskas has been punished sufficiently; that there is but one week remaining for the making of applications for retail licenses in Bayonne; that an ordinance has been adopted limiting the number of licenses in said city; and that unless a modification is made permitting said premises to be used for the sale of liquor, irreparable injury will be sustained by the petitioners, resulting in the confiscation of the property.

The facts which led to the revocation of the license formerly held by Anna Malakauskas and the disqualification of the premises at 234 Broadway, which were owned by her at the time but licensed to her husband Stanley Malakauskas, are fully set forth in the original conclusions and orders, dated May 29, 1935. Re Wilkalis, Bulletin #76, Item #10; Re Malakauskas, Bulletin #76, Item #11. Briefly, both husband and wife, each holding a retail consumption license, were found guilty of having engaged for a long time in an extensive scheme to "palm off" bootleg liquor on the public under the protection of retail liquor licenses. In addition, Anna Malakauskas was found guilty of failing to pay penalties assessed for delinquency in filing tax reports.

A few months later, viz., in September, 1935, the Mawilk Realty Co. filed a petition to remove the disqualification of the premises located at 107 Hobart Avenue, Bayonne. This petition was denied because the application for clemency was quite premature, i. e., "having but briefly tasted the penalty which she so well deserved, she now seeks mercy." Re Wilkalis, Bulletin, #90, Item #6. I there said:

"The flagrant violation of the Control Act which led to the entry of that order had been carefully planned by the licensee [Anna Malakauskas]. It was not an occasional, or accidental, or incidental violation, but rather a well conceived scheme on a broad scale to 'palm off' bootleg liquor on the public under the protection of a retail liquor license. The licensee knew the significance of her acts and the chances she was taking, but believed she could 'get away with it.' Having but briefly tasted the penalty which she so well deserved she now seeks mercy.

"For a long time and in total disregard of the vigorous campaign being waged to eliminate the bootlegger and illicit liquor, the former licensee wilfully and on a wide commercial basis, persisted in cheating both the Federal and State Governments out of the taxes rightly due them, and did all in her power to thwart the efforts of this Department to control the liquor industry. People who wilfully, persistently, and for the benefit of their own pockets break the law, cannot be heard to complain when the penalty imposed strikes them in the same pockets. The rectification and sale of illicit beverages by a retail licensee upon the licensed premises undermines law-enforcement and hurts, if not shatters the confidence of the public in the good faith of all honest licensees. In the instant case the severest punishment provided by law was merited and imposed. I am sorry for the resulting economic distress of the former licensee but it affords no basis for mitigation now. Wilful violators must be prepared to pay the full penalty."

The present petition raises two questions: (1) Whether the order revoking the license of Anna Malakauskas should be modified so as to render her eligible to apply for a license, i. e., a question of personal eligibility; and (2) Whether the order disqualifying the premises at 234 Broadway should be modified so as to render them eligible to become the subject of a further license, i. e., a question of property eligibility.

1. The personal ineligibility of Anna Malakauskas ensued upon revocation because of Section 28 of the Control Act, which provides:

"A revocation shall render the licensee ineligible to hold or receive any other license, of any kind or class under this act, for a period of two years from the effective date thereof***".

Her personal ineligibility therefore arose without any order of mine, directly and automatically because the statute so provided. Hence there is nothing on that score which I can lawfully do.

2. The property ineligibility is something different. That arose because of an order and not by statute. The premises, in view of their location and nature, are suitable primarily for the sale of alcoholic beverages. They have been disqualified and vacant for more than one year. The ends of justice have been served. She has suffered enough. The property ineligibility is hereby cancelled.

Enter order accordingly.

D. FREDERICK BURNETT,
Commissioner

4. REVOCATION PROCEEDINGS - IGNORANCE OF TECHNICAL PROVISIONS OF THE LAW - LICENSEES SHOULD NOT BE REQUIRED TO GUESS - HEREIN OF "PHILADELPHIA LAWYERS".

RULES CONCERNING LICENSEES AND THE USE OF LICENSED PREMISES - NEW RULE - NO RETAIL LICENSEE SHALL PURCHASE ALCOHOLIC BEVERAGES EXCEPT FROM THE HOLDER OF NEW JERSEY MANUFACTURER'S OR WHOLESALER'S LICENSE, OR PURSUANT TO SPECIAL PERMIT; PURCHASES AND SALES BY ONE RETAILER TO ANOTHER ARE PROHIBITED.

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL

In the Matter of the Revocation)
Proceedings against)
FRANK BOSCO,)
20 Green Street, Newark, N.J.,)
holder of Plenary Retail Consump-)
tion License C-186, issued by the)
Municipal Board of Alcoholic)
Beverage Control of Newark.)

CONCLUSIONS AND ORDER.

.

Jerome B. McKenna, Esq., Attorney for Department.
Frank Bosco, Pro Se.

BY THE COMMISSIONER:

This is another case of going out of bounds brought on by the suction of the current price war.

This licensee was charged with having purchased

- 2 - 1/5 Bottles of Sandy Grow Blended Scotch Whiskey
- 1 Bottle of Fleischman's Gin
- 1 Bottle of Burnett's Gin

from another retailer for the purpose of resale and thereupon displaying and offering same for such sale.

He pleaded guilty. He claimed he did not know it was unlawful for a retail licensee to sell alcoholic beverages to another retail licensee for resale, or for him to buy from a fellow retailer or to induce such fellow retailer, who did not in fact know that the purchaser was also a retailer, to sell to him.

He testified that he had a license since "Repeal"; that he has been in business in Newark for nine years; endeavored to carry on a high-class, law abiding establishment; that he had never knowingly violated the law and since securing a license to dispense alcoholic beverages had always tried to conduct himself in accord with the terms of his license and the rules promulgated by the State Commissioner and the Newark authorities; that the reason he had made the instant purchases was solely because he had run low on his stock that day and desired to replenish it until he could contact his wholesaler the next day.

While the sight of the bargain was probably more persuasive than any burning desire to keep his stock up, nevertheless he swears

to me that he did not know that he had no right to buy from a fellow retailer. I believe the latter statement. So finding the fact multiplies my own difficulty as to what to do about it. It is easy to say that he should have known it; that ignorance of the law excuses no one. But that declaration standing alone is smugly unfair. Everything depends on the facts.

There is nothing inherently wrong in one retailer buying from another. The prohibition arises only by implication from the terms of the Control Act which defines a wholesaler as any person who sells for the purpose of resale, whereas a retailer has no right to sell to anyone except a consumer. Hence it follows that the very moment a retailer sells for resale, he is no longer a retailer but a wholesaler. The statute does expressly forbid that the retailer may hold a wholesaler's license or be interested directly or indirectly in any wholesale project. Hence it follows that a retailer has no right to buy from another retailer. That was the ruling made January 31, 1934. In Re: Grimm, Bulletin 13, item 2. It has been in force ever since and is undoubtedly correct and most of the retailers well know it. But, obviously, it is not something that is self-proving. A retailer cannot be expected to have a Philadelphia lawyer at his elbow every minute. It fooled me, too, the first time I tried it for when Deputy Commissioner Grimm, of the State Tax Department, telephoned me to inquire as to the right of a licensee who, on running short of a bottle of rye, went to the next tavern to buy a bottle to supply his trade, I thought it all right, but, as frankly set forth in Bulletin 13, item 2, supra, my first impression was wrong for, on reflection, I found that while there was no express prohibition it was implied. I mention this only to show how unfair it is to tell a licensee smugly and complacently that he is bound to know the law. Technical provisions of the law filter in slowly even to licensees unless especially interested or an event like this occurs to focus attention.

The only fair way to handle these matters is to make a rule in black and white in terms of "thou shalt not". Thereafter a plea of ignorance by a licensee would be something quite different from the present, for, if he doesn't know what the rules are, he is bound as a licensee to find out.

Finding as I do that Frank Bosco acted in good faith and was honestly mistaken as to the law, he is hereby exonerated and the charges against him are dismissed.

Rule 15 concerning conduct of licensees and use of licensed premises is hereby promulgated, effective immediately, viz.:

"No retail licensee shall purchase alcoholic beverages except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to special permit; purchases by one retailer from another are prohibited."

D. FREDERICK BURNETT,
Commissioner.

Dated: June 14, 1936.

5. PROPOSED LEGISLATION - COMMENTARY.

RESOLUTION OF EXECUTIVE COUNCIL
OF
NEW JERSEY LICENSED BEVERAGE ASSOCIATION

WHEREAS the New Jersey Licensed Beverage Association was founded to promote the public welfare and to foster the best interests of the alcoholic beverage trade, and

WHEREAS these purposes can best be attained by the elimination of the racketeer, the bootlegger, the speakeasy operator and the cheating licensee, and

WHEREAS such elimination can best be accomplished by wiping out illicit liquor outlets, and

WHEREAS such outlets cannot be wiped out except by strict enforcement, and

WHEREAS strict enforcement can never be achieved without men or without proper equipment for said men, and

WHEREAS said men must devote their entire time to the inspection of retail establishments and the detection of speakeasies in order to bring about effective results, and

WHEREAS less than 15% of the retail licensees of New Jersey have had alcoholic beverages in their possession subjected to a chemical analysis in the course of an inspection, and

WHEREAS this condition is caused by lack of men and necessary equipment,

THEREFORE BE IT RESOLVED THAT the Executive Council of the New Jersey Licensed Beverage Association demands that the Legislature of the State of New Jersey appropriate at least \$100,000 from taxes collected upon alcoholic beverages and place said fund at the disposal of the Commissioner of the Department of Alcoholic Beverage Control. That said appropriation be over and above all other appropriations heretofore made or contemplated. That said appropriation be used exclusively for the following purposes

- a - The employment of inspectors and investigators who shall be assigned to inspect retail and wholesale establishments and to detect and eliminate speakeasies. Said employees to be assigned exclusively to this type of enforcement.
- b - The purchase of necessary equipment for testing alcoholic beverages at the licensed premises.

BE IT FURTHER RESOLVED THAT in all cases where allegedly illicit beverages are found upon a licensed premises the person or persons making the inspection shall put a sample of said beverages into two separate receptacles which containers shall thereupon be sealed and one of which shall be delivered to the licensee or the person in charge of said licensed

premises and the other shall be retained by the person or persons making said inspection for transmission to the Commissioner for further analysis.

BE IT FURTHER RESOLVED THAT in all cases where chemical tests shall determine that alcoholic beverages found on a licensed premises are illicit the issuing authority shall commence revocation proceedings within ten days from the date of filing a complaint against the licensee and shall conduct a hearing on same, announce its findings and impose a penalty within ten days thereafter. The minimum penalty which may be imposed in said proceeding shall be "revocation of license". Issuing authorities failing to commence revocation proceedings, conduct a hearing, announce a finding or impose a penalty within the periods hereinbefore set forth shall be divested of jurisdiction and the entire matter shall be heard by the Commissioner of the Department of Alcoholic Beverage Control. All revocation proceedings wherein charges have been dismissed by the issuing authority shall be reviewed by the Commissioner who shall reverse the findings of the issuing authority in each case wherein he shall find the evidence sufficient to sustain the allegations of the complaint.

BE IT FURTHER RESOLVED THAT all criminal proceedings against any persons charged with possession of illicit beverages shall be conducted in a summary manner without a jury. The procedure should be similar to that followed in drunken driver cases, except that the minimum bail should be at least \$2,500 for a first offender and \$5,000 for a second offender. Persons charged with more than two offenses should not be admitted to bail. Persons found guilty should be imprisoned for a minimum term of three months for the first offense and one year for the second offense. Persons so convicted should not be fined or placed on probation and should be denied the privilege of holding a license in the state for a period of two years.

BE IT FURTHER RESOLVED THAT if the offender is owner of the property and the licensee, no license should be given on said premises for a period of two years.

BE IT FURTHER RESOLVED THAT all additional tax monies collected over and above the amount of those collected during 1935 should be diverted to emergency relief purposes.

NEW JERSEY LICENSED BEVERAGE ASS'N,
(Signed) Neil F. Deighan,
President.

June 6, 1936

To: Commissioner Burnett
From: N. L. Jacobs

I have carefully reviewed the resolution adopted by the New Jersey Licensed Beverage Association and the accompanying statement. The efforts of the Association to render more effective the enforcement of the Control Act are laudable and should be highly commended. Its specific recommendations, however, present many difficulties which should receive study before any attempt is made to embody them in the form of a bill. They are listed herewith seriatim:

1. The Association recommends that whenever beverages which are allegedly illicit are seized from licensed premises a sample thereof shall be left with the licensee. It may be questioned whether the resulting advantages would be commensurate with the dangers and difficulties incurred. The present methods employed by the Department leave little room for misconduct by an investigator insofar as the chemical analysis is concerned and the suggested procedure may permit numerous guilty persons to escape punishment. Thus the licensee might effect a substitution of legitimate beverages for the actual sample and thereafter employ a reputable chemist whose testimony will be of tremendous weight with a jury. To meet this it may be said that the sample should be sealed by the Department's investigator. At some time, however, the licensee must be afforded an opportunity of submitting the sample for analysis if the purpose of the suggested procedure is to be effected. The incidental supervision and checking would involve substantial administrative difficulties.

2. The Association suggests that whenever the chemical analysis indicates that the beverages are illicit there shall invariably be a revocation of the license. Actual administration has furnished us with ample evidence that such a hard and fast rule is neither workable nor desirable. In general, revocation should be the penalty for possession of illicit beverages, but numerous cases arise involving special facts which justify the imposition of a lesser sentence. If this discretionary power is removed, there will be more findings of not guilty and the interests of control will be harmed rather than aided. Similarly, the suggested requirement that revocation proceedings be commenced within ten days of the filing of a complaint and decision announced within ten days thereafter does not appear desirable. The pressure of other work, the necessity of transcribing testimony, and ever so many unpredictable facts, will justify deferring action for a period in excess of ten days.

It must be borne in mind that the Department has developed an adequate system of transmission of revocation proceedings to municipal issuing authorities. The results have been gratifying, and daily there is evidence of increased cooperation by municipal issuing authorities. Under the Act as it presently exists the Department may withdraw revocation proceedings from the jurisdiction of municipal issuing authorities and conduct its own hearings, and in certain instances this power has been exercised. The Department's approach gives due consideration to Home Rule and the necessity for continued cooperation by municipal authorities and at the same time retains an adequate check to insure ultimate effective action.

3. The Association recommends that all criminal proceedings be conducted in a summary manner without a jury; that minimum bail be at least \$2500.00 for a first offender and \$5,000.00 for a second offender; that persons charged with more than two offenses shall not be admitted to bail; that first violators be imprisoned for a minimum term of three months for the first offense and one year for the second offense; and that persons convicted shall not be fined or placed on probation and shall be denied the privilege of holding a license in the State for a period of two years. The necessity that courts step up the amount of punishment has been stated time and time again, but I firmly believe that if the suggestions of the Association, which go to the other extreme, were carried out, the interests of control would be substantially retarded. In Bulletin #108, Item #4, there is a discussion of the desirability of trial by jury, and the following excerpt is particularly pertinent:

"It is quite true, as you point out, that trial by jury necessitates delay and expense which would be avoided by summary proceedings. There are other considerations, however. The formal steps incident to indictment and trial by jury, insofar as they impress the defendant with the severity of his offense, act as a deterrent in themselves. And courts are more likely to impose severe sentences commensurate with the nature of the offense, where the defendant has been afforded trial by jury than in instances where has has been summarily tried. But even more important is the following thought.

"There is a growing realization that the liquor violator is a grave, social menace; that the bootlegger is particularly dangerous not only because he evades legitimate taxes and places upon the market an inferior type of liquor resulting in the injury of a legally established industry of major proportions, but also because the habit of law evasion tends to create a class which does not confine its activities to that particular field but which seeks similar illegitimate outlets for profit in other fields; and that until we have successfully stamped out the bootlegger we cannot expect fully to control the racket problem in its other manifestations. As a result the public attitude towards enforcement of the Control Act is in nowise similar to the public attitude on enforcement of the Prohibition laws. We no longer are faced with general sympathetic tolerance, and instead observe militant indignation towards those who act in disregard of a law accepted as being for the common good. Service upon grand and petit juries affords the public an opportunity to share in the enforcement of a law embodying their own conceptions. The elimination of juries would result, rightly or wrongly, in public resentment and consequent indifference to enforcement. This must be avoided at all costs."

There are manifold objections to the proposed sentences set forth in the Association's resolution. Many situations arise where the interests of society are better served by not sending the defendant to jail. Consideration must be given to the particular facts in the actual case presented. The existence of a mandatory jail sentence will create a tremendous reluctance on the part of grand juries to indict and on the part of petit juries to convict, and few, if any, pleas of guilty will be entered. Why should violations of the Control Act be treated more severely than crimes such as robbery, manslaughter, bribery, rape, arson, breaking and entering, larceny, etc., where the sentencing judge has the power to fine, imprison or place a first offender on probation? The experience of the Federal authorities operating under the Jones Act during Prohibition is ample evidence that statutory provisions imposing excessive punishment defeat their own ends.

4. The Association recommends that where the licensee owns the licensed building and is convicted of having possessed illicit beverages, no further license shall be issued for the premises for a period of two years. A statutory provision to this effect would probably result in the placing of title to the real estate in the name of a person or corporation other than the licensee. The present statutory provision affording discretionary power to disqualify premises for two years regardless of whether or not the licensee is owner seems preferable.

June 14, 1936

N. J. Licensed Beverage Association,
R. F. D., Palmyra, N. J.

Attention: Neil F. Deighan, President.

Gentlemen:

Upon receipt of yours of the 20th ult. and, later, of the resolution of your Executive Council, I transmitted it to my Chief Counsel to embody in an appropriate draft of a bill as you requested. He has returned the enclosed memorandum of June 6th which has given me much cause for thought.

Herewith my own reactions as far as I have had opportunity, in the midst of time pressure, to think them out:

1. I see no insuperable objection to your Association's recommendation that samples of seizures shall be left with the licensee. Of course, it takes time and money, but if there is any real demand for it I am willing to go along if the expense will justify it.

2. I am, as you know, wholeheartedly in favor of man-sized penalties for possession by a licensee of any illicit liquor. I have disapproved municipal penalties of five or seven days and insisted on a minimum of thirty days with recommendation that the punishment be stepped up if this did not prove a sufficient deterrent. In a case which I decided myself I meted out sixty days. On every occasion I have urged municipal issuing authorities to inflict drastic penalties and have taken the pains to applaud them publicly when they have revoked a license outright for that cause. But to make the penalty of revocation mandatory may defeat its own ends. Experience shows that only too often the stiffer the penalty the less the chance of conviction. My present thought is that in order to not overplay the hand and to learn surely, albeit more slowly, from actual experience, it might be well to amend the law to give the State Commissioner power, either on appeal or on his own motion, to fix the penalty, so far as licenses are concerned, to be meted out for any violation either of law or of rule or regulation by any licensee. That would have the merit of establishing uniform penalties throughout the State under similar conditions. It would tend to stiffen enforcement generally and also act as a reasonable curb where over-severe penalties were inflicted.

As regards the ten day clause, your effort is well meant but there is no necessity for it. The municipal issuing authorities in general throughout the State are cooperating nicely. In the one case in which there was unreasonable delay, I took it out of their hands and handled it myself.

3. I sympathize with the high-class motive of your Association in recommending that all criminal proceedings be conducted without jury and fixing progressively heavy bail for first and second offence, with proviso of no bail for those charged with more than two offences, and with requirement of minimum terms of three months for the first, and a year for the second offence, and that persons convicted shall not be fined or placed on probation. Nevertheless, I must disapprove each of these recommendations. I believe in the jury. They have been tried in the balance and not found wanting. We are no longer faced with kangaroo juries as in Prohibition times - "with general sympathetic tolerance" but rather I "observe militant indignation toward those who act in disregard of a law accepted as being for the common good". My personal contacts with grand juries and constant daily reports as to trial

juries have caused my respect and a feeling of assured backstopping. I strongly advise against dispensing with the jury. Judgment by one's peers was earned by bloodshed. Our proudest heritage is to pass it on intact to our own children. Nor am I in favor of excessive bail, and am dead set against any provision refusing bail for a third violation. Deplorable as habitual offence may be, it is not murder. So, with mandatory minimum terms of imprisonment for first and second offences and denial of probation. Over-severity usually breeds under-enforcement. As Mr. Jacobs well says: "The experience of the Federal authorities operating under the Jones Act during Prohibition is ample evidence that statutory provisions imposing excessive punishment defeat their own ends". Yet, having said all this, I still believe that jail sentences are the only language which the racketeer understands and respects. I have written every judge in the State who imposes criminal penalties requesting him to imprison and not merely to fine. Several of them have responded by cutting out fines and inflicting jail sentences. The leaven is at work. Let's not spoil it by too much heat.

4. I see nothing gained, except dissembling, by inflicting more severe penalties upon landlords than tenants. Your recommendation would put a premium on a licensee having as little interest in the licensed premises as possible so that he would have just so much less at stake to forfeit. I think this is the wrong policy. I would rather encourage licensees to own their own buildings - the more they have at stake the better enforcement will become.

5. If the State is able to appropriate an extra \$100,000 I pledge myself to spend it to best advantage. Last year's increase of \$50,000 for extra men on my staff was reflected by an increase of revenue of \$1,600,000. I therefore believe reasonable expenditure for enforcement to be far-sighted economy. While I would welcome the additional appropriation under such trust, I am conscious of the delicate and difficult problem of balancing the budget with which Governor Hoffman and Senator Loizeaux and each of the members of his Joint Appropriations Committee have been wrestling. I shall therefore not embarrass them with any request but leave it entirely to their and the Legislature's sound discretion. I won't "guarantee" any increase in revenue, although I believe it, but have no hesitancy in warranting that the money, if appropriated, will be spent to the best advantage I know.

Thanks very much for your steady cooperation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. ALIENS - TREATY PROVISIONS - ALIENS FROM THE KINGDOM OF THE NETHERLANDS ARE NOT PROTECTED BY TREATY PROVISIONS AND MAY THEREFORE NOT HOLD RETAIL LICENSES OR BE EMPLOYED BY RETAIL LICENSEES.

April 7, 1936

Mr. Nathaniel Blank,
Newark, N. J.

Dear Sir:

A Trade Agreement between the United States and The Kingdom of The Netherlands was signed on December 20, 1935. This agreement, however, contained no provisions affording reciprocal rights to aliens of The Kingdom of The Netherlands and citizens of the United

States. Accordingly, the previous ruling to the effect that such aliens may not hold retail licenses or be employed in the sale of alcoholic beverages by retail licensees remains in effect.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

7. PROHIBITED INTEREST - COUNCILMAN IS NOT DISQUALIFIED FROM VOTING ON APPLICATIONS SOLELY BECAUSE HE ACTED AS A REAL ESTATE AGENT IN THE LETTING OF THE PREMISES SOUGHT TO BE LICENSED WHERE THE LETTING WAS NOT CONTINGENT UPON THE ISSUANCE OF THE LICENSE - COUNCILMAN NOT DISQUALIFIED MERELY BECAUSE HE PLACED INSURANCE ON PREMISES OF A LICENSEE.

May 7, 1936.

Dear Sir:

For my information as a Councilman of the Borough of Neptune City, New Jersey, I would like to ask you a few questions and get your opinion on the same if possible.

(1) We have an application for a retail license pending before our Mayor and Councilmen, which has been laid over for two weeks.

(2) The man who made the application rented the property thru a Real Estate Agent, who is a Councilman sitting on our Council. Would the Councilman have the legal right to vote on the same?

(3) We have another licensee in town who carries his insurance with the same Councilman, is that legal?

Your answers to the above will be very much appreciated by me.

Very truly yours,
ARTHUR B. GRANT

May 19, 1936

Mr. Arthur B. Grant,
Sergeant-at-Arms,
First Judicial District Court,
Asbury Park, N.J.

Dear Sir:

The Commissioner has heretofore ruled on numerous occasions that where a councilman has a financial interest in a licensed retail establishment he may not vote or participate in the Council's deliberations on matters pertaining to alcoholic beverage control. Principles of fairness and impartiality dictate this conclusion. A person who, as real estate agent, arranges for the letting of premises to another person, who thereafter applies for a license, does not have, in legal contemplation, any financial interest in the application or the business to be conducted thereunder. In the light of modern business relationships any other result would be highly impracticable.

Accordingly, it is the Commissioner's ruling that a councilman who has no interest in an application or the business to be conducted by the applicant is not disqualified from voting on the application solely because he acted as a real estate agent in the letting of the premises sought to be licensed, provided such letting was not, in anywise, contingent upon the issuance of the license.

The mere fact that a councilman acting as an insurance agent has placed insurance on the premises of a licensee will not constitute a disqualification. Here again, the councilman has, in legal contemplation, no interest in the licensee or his business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

8. STATE BEVERAGE DISTRIBUTORS - RETAIL SALES - EFFECT OF LOCAL REGULATIONS AND OF STATE RULE GOVERNING SALES ON ELECTION DAYS - WHOLESALE SALES - EFFECT OF REFERENDUM.

May 23, 1936

Dear Sir:

I am a holder of New Jersey State S. B. D. License #148 and have held this license since repeal.

In Cape May County where I conduct my business, Judge Palmer Way has ruled that consumption licensees remain closed Sunday till noon. In some municipalities all day Sunday.

Now, what I would like to know is whether or not I a State Licensee can deliver on Sunday morning or am I compelled to abide by Judge Way's ruling, compelling consumption licensees to remain closed until noon.

I feel that in this matter it should come under the same category as your election day ruling that even though the licensee is closed I am allowed to deliver. This particular section of the State being noted for fishing numerous private parties stop at my place in the early hours on Sunday morning. They have planned boat trips and would like to take a case of beer along. Is it permissible for me to make this sale or must I turn it down as I previously was instructed by Edgar Wood of the County Judge's office.

I would very much appreciate a ruling on these matters as quickly as possible as people are coming down from Philadelphia on week-end trips now.

Very truly yours,
WILLIAM F. HICKEY

June 11, 1936

Wm. F. Hickey,
Wildwood, New Jersey.

Dear Mr. Hickey:

I have before me your letter of May 23d.

Your State Beverage Distributor's license permits you to sell at wholesale to licensed retailers and also at retail to consumers for delivery to the consumer's home.

Section 37 of the Control Act authorizes the governing board or body of each municipality, as regards said municipality, to limit by ordinance or resolution the hours between which the sale of alcoholic beverages at retail may be made and to prohibit the retail sale of alcoholic beverages on Sunday. Section 6 of the Act confers upon the Judge of the Court of Common Pleas in sixth class Counties all of the powers conferred and all of the duties imposed otherwise by the Act upon municipal officials. Section 6 also provides that the Judge of the Court of Common Pleas in sixth class Counties may, as regards each respective municipality, limit the hours between which sales of alcoholic beverages at retail may be made and prohibit the retail sale of alcoholic beverages on Sunday. Such regulations apply to retail sales by State Beverage Distributors as well as to all others. See Re Spencer, Bulletin #82, Item #12 and Re Woodruff, Bulletin #82, Item #15, copies enclosed.

If Judge Way has ordered that no retail sales be made in certain municipalities in Cape May County before noon on Sundays, then you cannot make retail sales or deliveries to consumers in those municipalities before that time. If Judge Way has prohibited in certain municipalities all retail sales at any time on Sundays, then you cannot make retail sales or deliveries to consumers in those municipalities at any time on Sundays. You cannot make retail sales or deliveries to consumers on Sundays in any municipality or at any time when retail sales have been prohibited. In each case, the rule governing the particular municipality in which the sale and delivery is made, governs.

Where pursuant to Section 44 of the Act Sunday sales have been prohibited by referendum, then in those municipalities on Sunday neither wholesale nor retail sales nor any deliveries whatsoever may be made. To do so would be in violation of the Act and constitute a misdemeanor.

The operation of the State Rule governing sales on election days is substantially the same. The State Rule prohibits all sales at retail and all deliveries of alcoholic beverages to consumers on any election day while the polls are open for voting. It applies to retail sales by State Beverage Distributors as well as to sales made pursuant to municipal retail licenses. Under the rule, neither State Beverage Distributors nor any other licensees may sell at retail or deliver to consumers during the prohibited time.

Very truly yours,



Commissioner.