

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

BULLETIN 307.

APRIL 3, 1939

1. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT LIQUOR -
PETITION TO LIFT AUTOMATIC SUSPENSION.

In the Matter of Disciplinary Proceedings against)

RALPH INGLESE,)
40 Flagler Street,)
Morristown, New Jersey,)

Holder of Plenary Retail Consumption License No. C-10, issued by the Municipal Board of Alcoholic Beverage Control of the Town of Morristown.)

.....)

In the Matter of the Application of RALPH INGLESE,)

To Lift Automatic Suspension of Plenary Retail Consumption License No. C-10, issued by the Municipal Board of Alcoholic Beverage Control of the Town of Morristown.)

.....)

CONCLUSIONS
AND
ORDER

R. Sar Mischiara, Esq., Attorney for the Licensee-Petitioner.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

A petition to lift an automatic suspension having been filed, disciplinary proceedings were thereupon instituted before this Department instead of before the local Municipal Board so that the entire case could be disposed of in one proceeding.

Charges served upon the licensee allege that, on August 9, 1938, he possessed a quantity of illicit alcoholic beverages, contrary to R.S. 33:1-50 and that, on the same day, he warehoused a quantity of alcoholic beverages at 60 Evergreen Avenue, Morristown, in violation of the terms of his license.

Licensee pleads guilty.

At the hearing it was stipulated that the evidence given on September 28, 1938, at a hearing held at this Department in a seizure proceeding, should be considered as testimony given herein.

From said testimony it appears that the licensed premises are located at 40 Flagler Street, and that licensee and his wife reside at 60 Evergreen Avenue, Morristown; that, on August 9, 1938, Investigators Ratti and Togno, of this Department, and

Lieutenant Beckwith, of the Morristown Police, pursuant to a search warrant, conducted a search at 60 Evergreen Avenue, Morristown; that, in the dining room of licensee's home, they found a bottle of coloring and four cartons of flavoring; that, in the cellar of his home, they found a five-gallon jug containing four gallons of alcohol and thirteen bottles of illicit alcoholic beverages; that they also found, in the cellar, ten cases of legitimate liquor.

The licensee testified at said hearing that the coloring and flavoring had at one time been in a grocery store which he conducted before Repeal; that, after Repeal, he brought these items to his home, where they have remained since that time; that he knows nothing about the five-gallon jug which contained alcohol and that the thirteen quart bottles of illicit beverage were manufactured by his wife for home use. He testified further that he had removed the ten cases of legitimate liquor from his licensed premises after the cellar in the licensed premises had become flooded.

Licensee's wife testified that she had purchased the five-gallon jug containing alcohol many years ago "from a man that passed, and that she had manufactured for home use the alcoholic beverages found in the thirteen quart bottles.

Chemist Battista, of this Department, testified that the contents of the thirteen quart bottles were fit for beverage purposes, but that they were not the type of liquors usually manufactured for commercial purposes. He further testified that all of said bottles contained alcohol, water, color and flavor, and were of a type made in Italian homes for home consumption.

As to the petition to lift the automatic suspension: On November 14 licensee pleaded guilty to an indictment for possession of illicit liquor. On November 18, 1938 he was sentenced to pay a fine of \$50. Said conviction automatically suspended his license for the balance of the fiscal year. R.S. 33:1-31.1. His license was picked up on January 21, 1939 and he has been closed since that time.

This is petitioner-licensee's first offense. In accordance with the rule laid down in Re Morris, Bulletin 98, Item 10, no automatic suspension of a license because of conviction for possessing illicit beverages will be lifted until a minimum suspension of thirty days has been served. There is no evidence in this case that any of the illicit liquors were sold or found on the licensed premises. The ten cases of legitimate liquor have been forfeited in the seizure hearing.

Licensee's place of business has been closed since January 21, 1939, or more than sixty days. The elapsed period is hereby fixed as constituting the penalty in the present disciplinary proceedings.

The automatic suspension is, therefore, lifted, effective immediately.

D. FREDERICK BURNETT
Commissioner

Dated: March 24, 1939.

2. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)
to remove Disqualification be-)
cause of a Conviction, Pursuant)
to the Provisions of R.S. 33:1-31.2,)
as amended by Chapter 350, P.L. 1938,)
1938 C.S.R.S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 45.)
.)

Frederic M. P. Pearse, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In 1926, the petitioner was convicted of carrying a concealed weapon (revolver), and sentenced to imprisonment for six months. In 1931, he was again convicted of carrying a concealed weapon (revolver, with mutilated serial number), and was fined \$1,000.00 and sentenced to two and one-half years' imprisonment, being paroled, however, in November 1932. At the time of both offenses (and, in fact, during the Prohibition era), the petitioner was notorious as a gang leader.

Petitioner is 48 years old and married. Since his release from prison in 1932, he has continuously resided at his present home in New Jersey and has been engaged in business as a mason contractor and as proprietor of a public garage.

To establish his good character since his release in 1932, petitioner produced six witnesses - the Acting Captain of the County Detectives in the County where he resides, who has been on the detective squad for fifteen years and has known petitioner since the trouble which resulted in his conviction in 1931; a large general contractor, who met petitioner between 1920 and 1925 on the occasion of letting out various sub-contracting jobs to him and who states that he has known petitioner well for the last "seven or eight years" as the result of "church affairs" and doing business at petitioner's garage; a clothing manufacturer, who has known him for the last fifteen years as a social friend; an insurance agent, who has known petitioner since his release in 1932; a man engaged in the wholesale and retail coal business and in road construction work, who has known him for twenty-five years; and the pastor of the church where petitioner and his family are members, who has known petitioner for seventeen years.

These witnesses testified that petitioner's reputation is now good and that he has been an upright citizen since his release from prison in 1932. The Acting Captain of Detectives and the pastor stated that petitioner has lived down his reputation of the Prohibition days and has been leading an honest and law-abiding life.

Independent investigation by the Department corroborates the testimony of these witnesses. The Deputy Chief of Police and head of the Public Morals Bureau of the city where petitioner resides, and also a Sergeant in that Bureau, advise that the petitioner has conducted himself in a law-abiding manner for the past five years. The Sheriff and also the Chief of the County Detectives in petitioner's county state that no complaints or investigations have been made concerning him.

From such information, together with the favorable testimony of petitioner's character witnesses and his clear fingerprint

record since 1932, it satisfactorily appears that petitioner has been leading an honest and law-abiding life for the last five years.

It is, therefore, on this 25th day of March, 1939, ORDERED, that petitioner's disqualification from holding a license or being employed by a licensee because of the convictions referred to herein, be and the same is hereby removed in accordance with R. S. 33:1-31.2, as amended by Chapter 350, P.L. 1938, 1938 C.S.R.S. 33:1-31.2.

D. FREDERICK BURNETT
Commissioner

3. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - GAMBLING - BAGATELLE PAY-OFF.

In the Matter of Disciplinary Proceedings against)

PAUL RABINO,)
301 Washington Street,)
Newark, New Jersey,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License No. C-124, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
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Maurice Schapira, Esq., by H. Andrew Moore, Esq., Attorney for the licensee.

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge of permitting gambling on his licensed premises on March 4, 1939, in violation of Rule 7 of State Regulations No. 20.

The evidence shows that on said date two Investigators from this Department visited the licensed premises, on which was found a "Regatta" bagatelle machine which contains a number of lights which are lighted or extinguished as the ball happens to hit certain posts. A nickel must be inserted in the machine before the play begins. While the Investigators were present, the bartender paid one prize of One Dollar and one prize of ten cents to one customer, and two prizes of ten cents to another customer.

This is the licensee's first offense. I shall suspend his license for five days.

Accordingly, it is on this 25th day of March, 1939

ORDERED that Plenary Retail Consumption License No.C-124, heretofore issued to Paul Rabino by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same hereby is suspended for a period of five (5) days, commencing on March 30, 1939 at 3:00 A. M.

D. FREDERICK BURNETT,
Commissioner

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)

PATRONS, INC.,)
301 Main Street,)
Paterson, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License No. D-16, issued by the Board of Aldermen of the City of Paterson.)

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Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge served upon the licensee alleges that, on December 31, 1938, it sold a fifth bottle of Sanderson Special Reserve Scotch (Special Reserve Scotch Whisky) below the minimum retail price, in violation of State Regulations No. 30.

Licensee pleads guilty with an explanation.

On December 31, 1938 Inspector Joret purchased the item in question at the licensed premises for \$2.25. The Fair Trade price, as set forth in Bulletin #275, is \$2.79. Immediately thereafter, Senior Inspector Lurie, of this Department, entered the licensed premises and spoke to William Reifell, Treasurer of the licensee, who admitted the violation and stated that it was due to an oversight on his part. Senior Inspector Lurie testified that the price tag on the item as displayed on the shelf showed that the price of the item was \$2.79.

Mr. Reifell testified that he had caused an ad. to be inserted in the "Paterson Morning Call" on December 31st, wherein the item in question was advertised at \$2.29; that, at the time he inserted the ad., there had been a doubt in his mind as to whether or not Sanderson Special Reserve was on Fair Trade because the salesman for Park & Tilford had told him before Fair Trade went into effect that his Company was not going to put the item on Fair Trade, and, further, because, in checking Bulletin 275, he had looked at Sheet 19, on which Sanderson Scotch Whiskies are listed under Park & Tilford Import Corporation, and failed to find listed thereunder Sanderson Special Reserve Scotch. Examining Bulletin 275, I find that Mr. Reifell's testimony is correct, although the item is listed under the same heading on Sheet 21 of said bulletin under the subheading "Beaulieu Vineyard California Wines." Mr. Reifell testified that he had not changed the price tag on the shelf because he wished to show the customer the benefit he gets. Under the circumstances, I am convinced that the violation was not due to a deliberate attempt to chisel prices, especially in view of the further evidence that this was a slow moving item. The rules, however, were violated and carelessness confers no immunity.

I shall, therefore, suspend the license for five days instead of the usual ten days.

Accordingly, it is on this 25th day of March, 1939

ORDERED that Plenary Retail Distribution License No. D-16, heretofore issued to Patrons, Inc. by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT
Commissioner

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
SCHWARZ DRUG CO.,)
565 Bloomfield Avenue,)
Bloomfield, New Jersey,)
Holder of Plenary Retail Distribution License No. D-7, issued by the)
Town Council of the Town of)
Bloomfield.)
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CONCLUSIONS
AND
ORDER

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Samuel S. Ferster, Esq., Attorney for the Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 23, 1938, it sold a quart bottle of Old "Mr. Boston" Straight (Maryland) rye whiskey below the minimum retail price, contrary to State Regulations No. 30.

Licensee pleads non vult with an explanation.

On December 23, 1938, Investigators Kane and DiPietro, of this Department, purchased the item in question at the licensed premises for \$2.32. The Fair Trade price is \$2.50.

In fixing a penalty, I shall consider the evidence produced by the licensee for the purpose of showing that the violation was not intentional. Ira Schwarz, President of Schwarz Drug Co. testified that he is in direct charge of the pricing of liquor sold at the licensed premises; that, on December 3, 1938, after he had received Bulletin 285, which fixed the price of the item in question, he sent the usual daily letter to Mr. Katz, the manager of the store, containing instructions on price changes, and policies of the organization. A copy of this letter has been introduced into evidence and shows that, among many other items, the price of Old "Mr. Boston" whiskey is quoted at \$1.30 a pint, \$2.50 a quart, which prices agreed with the Fair Trade prices set forth in Bulletin 285. Mr. Katz, the manager, testified that, upon receipt of the letter dated December 3, 1938, he instructed Jack Sandler, a clerk to change the price tag on this and the other items on the shelves and to make notation of said changes on the index card kept on th

licensed premises. Sandler initialed the copy of the letter in evidence, which indicated that he had made the change, but he apparently failed to change the price tag on the item in question. The good faith of the licensee is further shown by the fact that, in its advertisement printed in "The Independent Press", Bloomfield, on December 23, 1938, it advertised the price of the item in question at \$2.50 a quart. I am satisfied that the violation was due to carelessness, and that it was not due to any intent to chisel prices. The licensee, however, is responsible for the acts of its employees.

I shall, therefore, suspend the license for five days instead of the usual ten.

Accordingly, it is on this 25th day of March, 1939

ORDERED that Plenary Retail Distribution License No. D-7, heretofore issued to Schwarz Drug Co. by the Town Council of the Town of Bloomfield, be and same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against SAUL BELL, 1561 Irving Street, Rahway, New Jersey, Holder of Plenary Retail Distribution License No. D-3, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway.

CONCLUSIONS AND ORDER

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Sarah G. Vogel Needell, Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that, on November 25, 1938, he sold a fifth-gallon of Renault's "Black Label" sherry wine and a half-gallon of Renault's "Black Label" port wine below the minimum price, in violation of State Regulations No. 30.

On November 25, 1938 Investigators Arts and Thievon visited the licensed premises. Investigator Arts purchased a fifth-gallon of Renault's "Black Label" sherry wine from Aaron Jaffe, who was in charge of the licensed premises, for forty-four cents. The minimum retail price of said item is forty-nine cents. At about the same time, Investigator Thievon purchased a half-gallon of Renault's "Black Label" port wine from Jaffe at eighty-nine cents. The minimum retail price of said item is ninety-eight cents.

The fact that the sales were made below the minimum retail prices is not disputed. Licensee contends, however, that he did not know that said items were subject to Fair Trade prices. In support of his contention he testified that, at some time prior to November 25, 1938, he obtained from City Commissioner Schmidt, of the City of Rahway, a copy of Bulletin 270, which was issued September 26, 1938, and marked his prices accordingly; that Renault's wines are not mentioned in said bulletin; that he had no knowledge of the existence of any subsequent bulletins or of any changes in the price lists set forth in Bulletin 270 and that he purchased Renault's wine for the first time about two or three weeks before the violation occurred and that the salesman did not tell him that Renault's wine was subject to Fair Trade prices; that, on November 18, 1938, he advertised in a newspaper that he was selling Renault's wine at eighty-nine cents per half-gallon and forty-four cents per fifth-gallon, in ignorance of the fact that the advertised prices were below the minimum retail prices as fixed in Bulletin 275 which was issued on October 26, 1938.

Even if it be admitted that licensee never obtained a copy of Bulletin 275 or a copy of the pamphlet containing minimum retail prices as fixed in said bulletin, it does not follow that said evidence excuses the violation which occurred. The evidence is sufficient to show that a copy of the price list was mailed to the licensee, and, moreover, Rule 4 of State Regulations No. 30 provides that all licensees shall be chargeable with notice of the price lists and alterations thereof when published in the official bulletins. The fact, therefore, that a licensee fails to obtain a bulletin is no excuse.

I find the licensee guilty as charged.

In fixing a penalty I am taking into consideration the testimony of the Investigators that nearly all the liquor in the licensed premises bore price tags and that no liquor was marked below the Fair Trade prices and also the evidence that the licensee openly advertised the prices prior to the violation. It is apparent that the licensee does a large liquor business and, from all the facts, I conclude that the violation was not due to a deliberate intent to "chisel" prices but was due, rather, to the carelessness of the licensee. I shall suspend the license for five days instead of the usual ten.

Accordingly, it is on this 25th day of March, 1939

ORDERED that Plenary Retail Distribution License No. D-3, heretofore issued to Saul Bell by the Municipal Board of Alcoholic Beverage Control of the City of Rahway, be and same is hereby suspended for a period of five (5) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)

JOSEPH MINKOFF, 189 Spruce Street, Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License No. D-87, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq., Attorneys for the Licensee. Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge served upon the licensee alleges that, on November 7, 1938, he sold a pint bottle of Wilson "That's All" Whiskey below the minimum retail price, in violation of State Regulations No. 30.

The evidence shows that, on November 7, 1938, at some time between 11:35 A.M. and 12:50 P.M., Investigator Anderson, of this Department, visited the licensed premises and purchased from the licensee a pint bottle of Wilson "That's All" Whiskey for \$1.05. The minimum retail price of said item is \$1.16.

Licensee, who admits the sale of the item to the investigator at \$1.05, (1) contends that State Regulations No. 30 are unconstitutional and (2) sets up the defense of entrapment.

As to (1): It is unnecessary to consider this defense because the constitutionality of State Regulations No. 30 has been upheld by the New Jersey Supreme Court. Gaine v. Burnett, 122 N. J. L. 39 (Sup. Ct. 1939); Bulletin 299, Item 2.

As to (2): Licensee testified that Anderson entered his store and asked for a pint of Wilson "That's All" Whiskey; that he told Anderson that the price of the item was \$1.16, whereupon Anderson shook his head and said, "That's too much." Anderson's version of the transaction agrees with that of the licensee up to that point. Licensee further testifies that thereafter Anderson offered \$1.05 for the item and twice said to the licensee that he could get it on the corner for \$1.05; that, when the licensee refused to sell at that price, Anderson walked towards the door and, after he had gone a short distance, turned and said to the licensee, "What do you say; will you let me have it?" The licensee testified that he thereupon said to his clerk, "All right, let the gentleman have the bottle of Wilson for the price he mentioned", whereupon the sale was made for \$1.05. Anderson's version is that, after he told the licensee the price of \$1.16 was too much, he started to walk towards the door, whereupon the licensee said to him, "Give me \$1.05 and you can have it", whereupon Anderson returned to the counter and purchased the item for \$1.05. Anderson's report, written shortly after the violation was discovered, states:

"I started to walk out when he said, 'What price did you pay last time?' I answered '\$1.05.' He said, 'All right; I will let you have it at that.' I paid him \$1.05 and he wrapped the whiskey up and gave it to me."

While Anderson's testimony given at the hearing varies somewhat from his written report, his testimony was not shaken by a very vigorous cross-examination. It is immaterial whether the licensee or the investigator first suggested the price of \$1.05. From the testimony, I find as a fact that the offer to sell below the Fair Trade price originated with the licensee. There is no evidence of any misrepresentation, trickery, fraud or undue persuasion by the investigator and, in the absence thereof, I find no evidence of entrapment. Zimmerman v. Bernards, Bulletin 228, Item 10 and cases therein cited.

I find the licensee guilty as charged. His license will be suspended for ten days.

Accordingly, it is, on this 25th day of March, 1939, ORDERED, that Plenary Retail Distribution License No. D-87, heretofore issued to Joseph Minkoff by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

8. LICENSEES - ENTERTAINMENT - MUSICAL QUIZ - HEREIN OF INAPPROPRIATE PRIZES.

Dear Sir:

I intend running a weekly Musical Quiz at the Melody Club, Union City, and I wish to make certain if it would be O.K. to offer a five dollar due bill to the winner each week.

Five or six people are asked to come to the stage. Then I ask each one three questions relative to music:

- 1st. Who composed this?
- 2nd. What is the title?
- 3rd. Sing lyrics for at least four bars.

Each question answered properly receives so many points, the winner to receive a five dollar due bill.

Very truly yours,
Leon Van Gelder

March 27, 1939

Mr. Leon Van Gelder,
Jersey City, N. J.

Dear Mr. Van Gelder:

There is no objection to a musical quiz or giving a prize based on knowledge and skill provided the objective is not the undue sales promotion of liquor. Re Brown, Bulletin 224, Item 1; Re Tartar, Bulletin 233, Item 3; Re Pontifex, Bulletin 278, Item 4.

The proposed prize of a due bill, however, is disapproved. It means that the winner will have to take it out in trade so that the real inducement is the sale of drinks. You may give, if you wish, five dollars in cash and no strings attached, or a book of Bach Etudes for the budding Spaeth to take home, or, if beverages are uppermost in mind, a copy of "Drink to Me Only with Thine Eyes."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

P. S. Your third test is apt to produce varying reactions from those who are not versed in music appreciation as well as from those who have been exposed to it. So, better keep a hook handy and use it at the first discord. Remember we are a peace loving people.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLING BOTTLES -
30 DAYS' SUSPENSION.

March 27, 1939

John Schuster, Jr., Clerk,
Egg Harbor City, N. J.

My dear Mr. Schuster:

I have before me staff report and your letter of March 20th re disciplinary proceedings conducted by the Egg Harbor Common Council against Harry Bennett Rust, 49-51 Philadelphia Avenue, charged with refilling liquor bottles, and note that his license was suspended for thirty days.

Please express my grateful thanks to the Common Council for their conduct of these proceedings and the satisfactory penalty imposed. As I said in Re Colford, Bulletin 304, Item 14, in connection with a similar charge: "Refilling of liquor bottles is a problem of first magnitude. The salutary action of your Board will go far to stamp it out." This applies equally to your Common Council.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. WHOLESALERS - A WHOLESALER, SELLING A BREWERY'S BEER EXCLUSIVELY, MAY LICENSE PREMISES IN THE BREWERY, PROVIDED THEY ARE SEPARATE FROM THE PREMISES LICENSED BY THE BREWERY AND UNDER THE WHOLESALER'S EXCLUSIVE POSSESSION AND CONTROL.

STATE BEVERAGE DISTRIBUTORS - A STATE BEVERAGE DISTRIBUTOR MAY NOT BE INTERESTED IN A BREWERY - AN AGREEMENT BETWEEN A BREWERY AND STATE BEVERAGE DISTRIBUTOR FOR THE EXCLUSIVE SALE OF THE BREWERY'S PRODUCT IS INVALID - LEASE TO STATE BEVERAGE DISTRIBUTOR BY BREWERY OF PREMISES NOT OWNED BY THE BREWERY ON DECEMBER 6, 1933, CONSTITUTES AN INTEREST BY THE BREWERY IN THE STATE BEVERAGE DISTRIBUTOR IN VIOLATION OF R.S. 33:1-43 (CONTROL ACT, SEC. 40).

WHOLESALERS - INTERLOCKING OFFICERS PERMISSIBLE.

STATE BEVERAGE DISTRIBUTORS - INTERLOCKING OFFICERS PERMISSIBLE.

STATE BEVERAGE DISTRIBUTORS - MAY SELL TO OTHER STATE BEVERAGE DISTRIBUTORS AND TO WHOLESALERS - MAY NOT SELL OUT OF THE STATE.

Dear Sir:

An old brewery plans to reopen for business and wishes to place the sale of its entire output in the hands of one distributor, said distributor to occupy brewery quarters in conducting its affairs. This distributor, however, finds that its present organization is geared to handle only the one product which it now sells and that great difficulty would be met if the firm were to expand and take on another product. It plans, therefore, to organize another separate company as the sales agency for this product.

Several factors have arisen during preliminary discussions and we should like to have your advice in the matter.

1. Would it be permissible for a sales company to occupy brewery premises in their exclusive handling of the product? These premises would consist of a separate office within the brewery itself.
2. Would corporate officers of one distribution company be permitted to occupy similar offices in another distributing company?
3. Would an SBD license cover sales to distributors and retailers both within and without the State? If not, what form of license would be required?

Respectfully yours,
Famous Brands, Inc.

March 27, 1939

Famous Brands, Inc.,
Jersey City, N. J.

Gentlemen:

(1) There is nothing in the law which would prohibit a wholesale licensee (except a State beverage distributor) from occupying a separate office within the brewery whose product the wholesaler is handling, provided the quarters licensed by the wholesaler are in his exclusive possession and control and are expressly excluded from the premises licensed by the brewery. Separate warehouses, of course, would also be required.

With State beverage distributors, however, it is different. R. S. 33:1-11 (Control Act, Sec. 12(2)c) specifically provides that such licenses shall not be issued to any person, corporation, partnership, limited partnership, or association either holding a plenary or limited brewery license or directly or indirectly interested in any brewery within or without this State. Moreover, agreements between manufacturers and retailers, whereby the latter are granted exclusive rights to sell a certain product are invalid. See Re Greenspan, Bulletin 208, Item 1. A State beverage distributor is partly a retailer, and hence is governed by this ruling. Further, unless the premises to be licensed by the State beverage distributor were owned by the brewery on December 6, 1933, the arrangement would be bad for another reason. The State beverage distributor being engaged in retailing, the ownership of the premises by the brewery now, but not on December 6, 1933, would constitute an interest in the State beverage distributor on the part of the brewery in violation of R. S. 33:1-43 (Control Act, Sec. 40). See, for example, Goldstein v. Trenton, Bulletin 54, Item 1.

(2) It is permissible for the officers of one corporation holding a wholesale license to be officers of another corporation holding a wholesale license. It is also permissible for the officers of one corporation holding a State beverage distributor license to be officers of another corporation holding a State beverage distributor license.

(3) The law provides that a State beverage distributor may sell unchilled brewed malt alcoholic beverages in original containers and in quantities of not less than 144 ounces to licensed retailers and to consumers. I have ruled, however, that a State beverage distributor license, being in the nature of a wholesale license, also authorizes sales to other State beverage distributors. Re Rosenberg, Bulletin 36, Item 6. Since sales to other State beverage distributors are permissible, without qualification, there appears no reason why sales to the holders of wholesaler's licenses should not also be permitted.

All sales under a State beverage distributor license must, however, be made within the State. The license does not authorize out-of-State sales. Re Congress Beverage Co., Inc., Bulletin 290, Item 15.

In order to sell brewed malt alcoholic beverages to licensed wholesalers and retailers within the State, and also to persons without the State, a limited export wholesale license would be required. The holder of this license is entitled to sell brewed malt alcoholic beverages and naturally fermented wines to licensed New Jersey retailers and wholesalers, and also without this State to any persons pursuant to the laws of the places of such sale and distribution. The fee for this license is \$1,250.00. R.S. 33:1-11 (Control Act, Sec. 12(4)). Sales under such license, without the State, need not be confined to holders of New Jersey licenses, provided the beverages are actually withdrawn from the State for sale and use elsewhere. See Re Continental, Bulletin 181, Item 4; Re Booth, Bulletin 182, Item 9; Re MacGregor, Bulletin 183, Item 1.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. STILLS - PADLOCK PROCEEDINGS AGAINST CHINESE LAUNDRY - PETITION FOR CLEMENCY

IN THE MATTER OF THE SEIZURE)

OF A STILL AT 70 BANK STREET,))

ON PETITION TO LIFT PADLOCK

NEWARK.)

CONCLUSIONS.

For the Petitioner: Eng Dep, Pro Se, by interpreter.

BY THE COMMISSIONER:

My men seized a small still in the laundry of Eng Dep. He pleaded guilty to the criminal charge of illegal possession, and was fined \$150, which he has paid to the Probation Officer. On March 1st, the equipment was ordered confiscated and the laundry padlocked for six months commencing March 20th.

On March 20th, Inspectors went to the premises to put the padlock on. Eng didn't understand. He said his Attorney had advised him that everything would be taken care of all right. He worried about customers' laundry - shirts and collars, socks and pajamas, bath-robos and uniforms, some finished, others in process. Eng became excited and resisted with a claw hammer. So he was again arrested and held for the action of the Grand Jury for attempted assault and resisting an officer. Nobody was hurt, however, except Eng. His place has been padlocked now for a week. He has been homeless and living with friends since he was released on bail. The customers have their tickets, but the Department has the wash.

Eng says that he is 50 years old; born in San Francisco; married in China in 1917; that his wife has never left China but that he has visited her on various occasions; that they have three children - all boys - presently in China but who attended the Newark Central High School; that he has run the laundry at 70 Bank Street for the last eight years, and, in the vicinity, for the last fifteen; that he resides alone in the rear; never had any still until two months before it was seized; acquired it on suggestion of a friend who told him it would be handy to make some rice wine to add comfort and consolation to being alone; that he did not know that it was against the law to make rice wine for personal consumption; that he had never before been arrested and has lived frugally, worked hard, and his savings represent self-denial; that unless he can reopen his beloved laundry in a short time and deliver the shirts et al to his irate customers, he will lose his home and the good will which he has built up by hard work and sacrifice during the last fifteen years.

He knows now that he has violated the law and aggravated his offense by hindering the inspectors in the performance of their duty. He is very very sorry. He has learned his lesson. Hereafter he will scrupulously obey the law. He will brew only tea.

I am satisfied that Eng Dep is sincere in stating that all that has occurred was the result of his ignorance and excitement, natural to one who understands so very little of our language. He is an unfortunate victim to whom clemency may well be extended.

The order of March 1st so far as it padlocks the laundry is hereby cancelled, effective immediately.

D. FREDERICK BURNETT,
Commissioner

March 28, 1939.

12. AGE, RESIDENCE OR CITIZENSHIP PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 28, 1939

Re: Case No. 265

Applicant, a non-resident, admits in his application that, on April 6, 1923, he was placed on probation and fined \$100.00 and costs on a charge of "carrying concealed weapon."

Fingerprint records disclose no criminal record against applicant.

The Probation Officer of the County in which applicant was convicted advises that his records show that applicant was placed on probation on April 6, 1923, after pleading non vult to Carrying Concealed Weapons; that, on the date of his arrest, applicant and his brother had come from their home in Pennsylvania to a city in New Jersey in search of an employee whom they suspected of robbing their home; that they found the employee, who began to run, and then fired a shot at applicant; that this attracted the attention of the police who apprehended the applicant in possession of a .25 calibre revolver which happened to be empty.

At the hearing applicant admitted that he had fired at the employee without hitting him after the employee had fired the first shot. This, perhaps, explains why the applicant's revolver was empty at the time of the arrest. Applicant's bare admission made at the hearing herein should not, however, be construed to increase the gravity of the crime of which he has been convicted. It may well be that, if he had been charged with assault and battery or some more serious crime, he might have defended himself against such charge on the ground that he fired in self-defense. Such possible defense cannot be inquired into in a proceeding of this nature. The case, therefore, differs from in Re Kafes, Bulletin 128, Item 6, wherein the person referred to pleaded non vult to indictments for carrying concealed weapons and assault and battery.

Restricting the inquiry herein to the crime of carrying a concealed weapon, I believe that it should be held that such crime alone does not involve moral turpitude.

It is recommended that the permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - GAMBLING - HEREIN OF THE DIFFERENCE BETWEEN CASH PAY-OFFS IN RESPECT TO ORDINARY BAGATELLE MACHINES AS DISTINGUISHED FROM A SLOT MACHINE WHICH ITSELF PAYS OFF CASH OR ITS EQUIVALENT.

March 28, 1939

August J. Perry,
Borough Clerk,
Carteret, N. J.

My dear Mr. Perry:

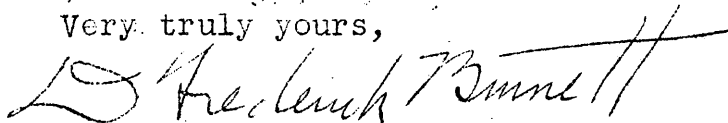
I have before me staff report and your letter of March 14th re disciplinary proceedings conducted by the Mayor and Council

against First Slovak Citizens Club, 665 Roosevelt Avenue, charged with possession of a "De Luxe Preakness" machine with ticket pay-off, a device in the nature of a slot machine, and note that the charge was dismissed for insufficient evidence.

According to the staff report, my investigators discovered the machine on the licensed premises, observed that it had a ticket pay-off, played it, did not succeed in winning, whereupon they asked the manager of the licensed premises what would happen if they won, and he replied that a ticket would be ejected which would be redeemed in cash. It is true that at the hearing he denied that he had said that the tickets were redeemed in cash. Nevertheless, the Mayor and Council must bear in mind that the charge was not permitting gambling which is usually brought when cash pay-offs are made on ordinary bagatelle machines, but instead the charge was possession of a device in the nature of a slot machine, which this machine clearly was. The usual slot machine pays off cash - this paid off tickets which were the equivalent of cash. The mere possession of such a machine on licensed premises is in violation of State Regulations No. 20, Rule 8, and cause for the suspension of the license. Cf. Re Twin Brooks Country Club, Bulletin 282, Item 12, where it was held that the mere possession of a "Paces Races" machine equipped for cash pay-off was in violation of the rule and in which the license was suspended for five days.

I cordially recommend to the Mayor and Council that they be not so ready to dismiss proceedings without proper cause. Such action gives a black eye to enforcement.

Very truly yours,



Commissioner.