

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

BULLETIN NUMBER 119.

May 15, 1936

1. MUNICIPAL ORDINANCES - ORDINANCES RESTRICTING PLENARY RETAIL DISTRIBUTION LICENSEES TO THE SALE OF ALCOHOLIC BEVERAGES EXCLUSIVELY SHOULD GIVE PRESENT LICENSEES A REASONABLE TIME IN WHICH TO COMPLY.

May 4, 1936.

John G. Dluhy, Esq.,
Paterson, New Jersey.

Dear Sir:

Re: City of Clifton

I have your letter of April 30th and the proposed ordinance restricting plenary retail distribution licenses to the sale of alcoholic beverages exclusively.

Section 4 declares that the ordinance shall take effect immediately. The City has that power but I think that the fair thing to do, if the ordinance is enacted, would be to make some provision giving present holders of plenary retail distribution licenses a reasonable time in which to comply or, better, make it effective commencing with the new license year on July 1st next when all distribution licensees start off with the same restriction.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SPECIAL PERMITS - "CASUAL SALES" OF ALCOHOLIC BEVERAGES MAY NOT BE EFFECTED WITHOUT LICENSE OR PERMIT - SPECIAL PERMIT MAY BE OBTAINED BY CREDITOR WHO DESIRES TO ACCEPT ALCOHOLIC BEVERAGES IN SATISFACTION OF DEBT AND THEREAFTER SELL SUCH BEVERAGES IN BULK.

LICENSES - ALCOHOLIC BEVERAGES MAY BE DELIVERED BETWEEN RETAIL STORES OPERATED BY SINGLE CORPORATION BUT NOT BETWEEN RETAIL STORES OPERATED BY SEPARATE CORPORATIONS CONTROLLED BY SINGLE INDIVIDUAL - RETAIL LICENSEES MAY NOT SELL ALCOHOLIC BEVERAGES TO OTHER RETAIL LICENSEES FOR PURPOSES OF RESALE.

April 30, 1936.

Dear Sir:

Will you please inform me whether it is permissible for an individual to whom a debt is owing to accept a stock of liquors from a licensed liquor dealer in satisfaction of his debt, and then dispose of the same by bulk sale to another licensed liquor dealer in order to convert the same into cash. It is my opinion that this would constitute a casual sale, not contemplated under the terms of the act. Please also inform me whether special permission need be served in advance for such a transaction. Of course, the creditor is unlicensed, he not being in the liquor business nor intending to engage in it.

Will you please also inform me whether there is any prohibition against the removal, sale, or gift by a person having controlling (substantially entire) interest in several corporations maintaining liquor stores in different cities of this state from one store to another within the state, assuming that the liquor is legally transported.

Yours very truly,

RUDOLPH EISNER

May 1, 1936.

Rudolph Eisner, Esq.,
Trenton, N. J.

Dear Sir:

I have your letter of April 30th.

Section 2 of the Control Act prohibits sales of alcoholic beverages except pursuant to a license or as expressly authorized in the Act. "Casual sales" are not exempt from the provisions of the Act and the Commissioner has heretofore ruled that such sales are prohibited except pursuant to a license or special permit. Where a creditor not engaged in the liquor business desires to accept alcoholic beverages in satisfaction of a debt and thereafter sell such beverages in bulk, he may apply to this Department for a special permit authorizing such transaction.

The Commissioner has ruled that where a corporation operates several licensed stores, alcoholic beverages may be delivered from one of such stores to another in a licensed vehicle. See Bulletin #24, Item #10. This ruling, however, is not applicable to transactions between stores operated by separate corporations, even though such corporations are controlled by a single individual. Cf. Bulletin #54, Item #4. In this latter situation, a delivery from one licensed store to another, either gratuitously or for a consideration, would constitute a sale of alcoholic beverages by one retail licensee to another for purposes of resale. Such sale is unlawful since retail licensees are restricted to sales to consumers and may not, under any circumstances, sell alcoholic beverages for purposes of resale.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

- 3. LICENSEES - EMPLOYEES - A SUSPENDED LICENSEE IS DISQUALIFIED FROM EMPLOYMENT BY ANY OTHER LICENSEE UNTIL THE TERM OF HIS SUSPENSION HAS EXPIRED.

Mr. William Eckert,
Paterson, New Jersey.

Dear Sir:

After a hearing, the Board of Aldermen of the City of

*Supervised by
Sells 12/22/35
Administrative
from 8
X 34752-C
published 12/22/35
May 6, 1936.*

Paterson suspended until June 30th next plenary retail consumption license No. 149 theretofore issued to you. On April 7, 1936 the action of the Board of Aldermen was affirmed. Eckert v. Paterson, Bulletin 114, item 13. Now you ask if, in view of the suspension, you may be employed in the alcoholic beverage business by another licensee.

The Control Act (Section 23) declares that no person who would fail to qualify as a licensee shall be knowingly employed by or connected in any business capacity whatsoever with a licensee. Section 28 provides that a revocation shall render the licensee ineligible to hold or receive any other license for a period of two years. Hence, in re J. R., Bulletin 71, item 9, I ruled that revocation of license disqualified the former licensee from being employed by a licensee during the two-year period of ineligibility following the revocation because during that term the former licensee was disqualified from receiving a license in his own right and, therefore, could not qualify as a licensee. No less so in the case of a suspension. A revocation extinguishes the license and destroys the license privilege entirely; a suspension, being in the nature of a partial revocation, destroys the license privilege just as effectively during the term of the suspension. Until the suspension has been lifted, the suspended licensee may not lawfully exercise any of the rights to which qualification as a licensee would entitle him. Any contrary conclusion would substantially nullify the purpose for which the punishment was intended.

I sincerely sympathize with you in your present circumstances and fully appreciate the difficulties attendant to obtaining employment in these times. But you have violated the law and in consequence thereof, your license was duly suspended. By reason of the suspension, you are disqualified from being employed by another licensee in connection with his alcoholic beverage business until the term of the suspension has expired.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. LICENSEES - RETAIL LICENSEE MAY NOT IMPORT ALCOHOLIC BEVERAGES WITHOUT SPECIAL PERMIT - SPECIAL PERMIT AUTHORIZING IMPORTATION BY RETAILER WILL NOT BE ISSUED WHERE ALCOHOLIC BEVERAGES ARE OBTAINABLE IN NEW JERSEY - APPLICATION BY RETAILER FOR AUTHORITY TO TRANSFER TO WHOLESALER ALCOHOLIC BEVERAGES IMPORTED IN VIOLATION OF REGULATIONS DENIED.

April 22, 1936.

Dear Sir:

We still have entered in bond at the Lehigh Warehouse and Transport Company the fifteen cases of Meyer's Planter's Punch Jamaica Rum referred to in our letter of March 7th.

Since that time we have corresponded with the Cordova Co. Ltd. of Kingston, Jamaica, from whom we purchased the liquor, and they are agreeable to give us credit for this merchandise provided it can be transferred in bond to their representative, R.U. Delapenha & Co., who is an importer and also holds a New Jersey wholesaler's license.

Our customs broker, Charles A. Redden, now questions whether such a transfer would be looked upon as a violation of any New Jersey State Regulation. We were of the impression that it would not be out of order, but do not want to act without your advice.

We regret that this merchandise was purchased contrary to our understanding with your department that only such wines and liquors which could not be obtained in New Jersey would be imported direct, but we assure you that this will not happen again.

Awaiting your advice in the matter, we are,

Very truly yours,

L. BAMBERGER & CO.
T. E. Braunschweiger
Assistant Controller

May 1, 1936

L. Bamberger & Co.,
Newark, N. J.

Gentlemen: Att: Mr. T. E. Braunschweiger
Assistant Controller

I have your letter of April 22d.

The regulations of this Department prohibit retailers from purchasing alcoholic beverages outside this State from dealers not licensed in New Jersey and importing such beverages into this State for resale therein. These regulations have been in force for a considerable period of time and compliance therewith has been strictly enforced. Special permits have been issued from time to time authorizing certain importations by retailers of alcoholic beverages not obtainable in New Jersey. See Bulletin #100, Item #9. However, no permit could have been obtained for the purchase and importation of the alcoholic beverages referred to in your letter since such beverages were readily obtainable in this State.

In the light of the foregoing, your purchase and importation were in violation of the regulations and the alcoholic beverages should be returned forthwith to the seller. No cause appears for the granting of your application for permission to transfer the alcoholic beverages to a New Jersey wholesaler and accordingly said application is denied.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

5. RULES CONCERNING IDENTITY OF ALCOHOLIC BEVERAGES SOLD ON LICENSED PREMISES - RULE 1 - THE OBJECT OF THIS RULE IS TO ENABLE THE PURCHASER TO SEE THAT HE GETS WHAT HE PAYS FOR.

May 6th, 1936.

Essex House,
Newark, N. J.

Gentlemen:

Attention: Mr. Grace

Answering your telephone inquiry of today, Rule 1 Concerning Identity of Alcoholic Beverages Sold on Licensed Premises, reads:

"1. No plenary or seasonal retail consumption licensee shall possess on the licensed premises any barrel or other container from which brewed malt alcoholic beverage is drawn unless there is attached to the spigot or other dispensing apparatus thereof the name or brand of the manufacturer of the product contained therein, provided that where such alcoholic beverage is served at a bar the manufacturer's name or brand must appear in full view of the purchaser."

This Rule does not mean that the name or brand of the manufacturer of the product must appear on the bar. If the spigot or other dispensing apparatus duly identified as to name or brand is fully visible to a purchaser at the bar that is sufficient.

The whole objective is to enable the purchaser to see that he gets what he pays for.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. RULES CONCERNING LICENSEES AND THE USE OF LICENSED PREMISES - GAMBLING DEVICES - MERE DISTRIBUTION OF DONATED PRIZES BY LUCKY CHANCE IS NOT A VIOLATION.

My dear Commissioner:

The Junior Service League of Short Hills, which organization was founded for charitable purposes, and whose funds are used solely for such purposes in Millburn Township, has in contemplation a dance to be given under date of Saturday, May 16th, at the Short Hills Club.

This organization is contemplating, on that evening, the use of a home-made "wheel of chance" for the purpose of the distribution of prizes.

A specific ruling is requested as to whether the use of this device for the purpose of this particular occasion would in any way conflict with the rules of your Department and would, in any way, hazard the liquor license held by the Short Hills Club.

Very truly yours,

JOHN A. LAIRD

May 7th, 1936.

John A. Laird, Esq.,
Newark, N. J.

Dear Mr. Laird:

Gambling and allied devices on licensed premises come within my jurisdiction only so far as (1) they constitute a violation of existing criminal law, or (2) they affect order, sobriety and decency.

First: What the Legislature decides is undesirable, it declares to be wrong and implements such determination by making any departure a misdemeanor. Hence to the full extent that it has declared specified actions or devices to be unlawful such as playing roulette for money, or a slot machine, the law will be enforced by me as written. As regards its general expressions such as "any lottery", or "any unlawful game or gambling", or whether a particular game or device comes within their meaning, that is a problem of interpretation of criminal law which is the exclusive function of the courts. It is not my province to pioneer on new interpretations but rather to follow and apply the actual determinations made by the courts. There being no express prohibition of your purposed procedure and finding no court decision construing it within the Crimes Act, I shall not regard it as a violation.

Second: You tell me, in response to my inquiry, that the prizes have all been donated and that the wicked sounding "wheel of chance" is the means of determining their distribution. If this is all there is to it, I see no reason from the standpoint of alcoholic beverage control why the young women of the Junior League should be denied the intriguing flutter and innocent fun of distributing such prizes by lucky chance.

Hence, on the facts stated, the liquor license of the Short Hills Club, will not be jeopardized by the affair the young ladies purpose to conduct.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. REVOCATION PROCEEDINGS - POSSESSION OF ILLICIT BEVERAGES -
OUTRIGHT REVOCATION.

May 8, 1936.

Jacob L. Bock, Secretary,
Municipal Board of Alcoholic Beverage Control,
East Orange, New Jersey.

Dear Mr. Bock:

I have staff report of the proceedings before your Municipal Board against Carmella D'Auria for possession of illicit alcoholic beverages, and note a verdict of guilty and sentence of revocation effective May 16th.

The report states:

"In the kitchen on the second floor Investigator Beck came upon a wardrobe which was locked. He asked the licensee for the key to open same so that he could inspect it. She informed him that her daughter, who worked in New York, had the key; that there was no liquor therein. By use of a searchlight the Investigators were able to discern jugs; they also detected an odor of alcohol. A search warrant was procured and the wardrobe opened. Therein was found:

"1 - 5 gallon jug, partly full of whiskey
 1 - 1 gallon jug, 2/3 full of alcohol
 1 - 1 gallon jug, full of anisette
 2 - 1 gallon jugs, containing alcoholic beverages, one full, the other containing about one pint.

"At the hearing the licensee stated that the alcoholic beverages seized had been the property of her husband who died about six (6) years ago."

Wholly reserving consideration of the merits in case the licensee should appeal as is her right, the outright revocation of license by your Board for possession of illicit alcoholic beverages establishes a wholesome precedent in East Orange.

It is poor policy for any licensee to keep "In Memoriam Bootleg" on licensed premises. Better burn a candle. Search lights, search warrants and these painful revocations would then be quite unnecessary.

Very truly yours,

D. FREDERICK BURNETT,
 Commissioner.

8. LICENSEES - DEBTS - FAILURE OF A LICENSEE TO PAY A JUDGMENT AGAINST HER HUSBAND IS NO CAUSE FOR REFUSING HER LICENSE.

May 4th, 1936.

Dear Sir:

Sometime ago, I obtained a judgment against a Mr. A, of this City. In my investigation of his financial ability to pay, I discovered that the license under which he operates a saloon, is in the name of Mrs. A. Mrs. A, I know is without means of her own.

Mr. A. will soon apply for a renewal of that license.

I would like to know, Mr. Commissioner, whether there is a possibility of preventing the issuances of that license, in view of this unpaid judgment.

Very truly yours,

JOSEPH J. BRUMBERG AGENCY INC.
 By: Joseph J. Brumberg, Pres.

May 9, 1936

Mr. Joseph J. Brumberg,
Passaic, N. J.

Dear Sir:

I have yours of the 4th.

If Mrs. A. is not the true owner of the licensed business but only a front for Mr. A., that of itself would be good ground not only for refusing a new license but for revoking the present license.

In view of your assertion to that effect, I ask you to disclose to me at once the names of these parties so that appropriate action may be taken forthwith if your allegations are verified.

The mere fact that the husband of the licensee has not paid a judgment which you obtained against him, is no ground whatsoever for refusing to renew the license of Mrs. A. If she is the true owner and conducts her business properly, she cannot lawfully be subjected to any pressure to pay her husband's debt.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. REVOCATION PROCEEDINGS - BOOTLEGGING OPERATIONS - DISCUSSION OF APPROPRIATE PENALTIES.

LICENSES - LIMITATION OF NUMBER - UTILIZING REVOCATIONS FOLLOWED BY AUTOMATIC REDUCTION OF QUOTA TO LOWER THE NUMBER OF OUTSTANDING LICENSES WITH FAIRNESS TO PRESENT LICENSEES.

May 11, 1936.

John L. Haney,
City Clerk,
Trenton, New Jersey.

Dear Mr. Haney:

I have staff report of the proceedings before the Mayor and Council of Trenton against Abe Abrahams of 388 South Warren Street, holder of Plenary Retail Consumption License C-134 on charges:

- (1) Possession of illicit alcoholic beverages.
- (2) Possession of implements and paraphernalia for the unlawful treating, mixing and blending of alcoholic beverages.
- (3) Possession of slot machines in violation of State Rule.
- (4) Knowingly employing a person who had not resided in New Jersey for five (5) years.

The report states:

"On March 10, 1936, Inspector Murray, Investigators Lockwood, Poole and Lippitt inspected the licensed premises. In charge, tending bar, was Elias Saltman. It was ascertained that he had not been a resident of New Jersey for five (5)

years and was therefore ineligible to be employed by the licensee. A test, by Investigator Lippitt, of a pint bottle labeled 'Wurfel's Apple Brandy 92 proof' disclosed that same contained whiskey other than as represented by the label and was 7 proof short. An examination of other bottles disclosed they were refills. Detectives Raywood and Gress and Mrs. Moore were then contacted and they arrived at the licensed premises a short time later.

"Upon their arrival a search of the upper floors and attic revealed the presence of alcohol and whiskey bearing no indicia of tax payment; also implements and paraphernalia for treating, mixing and blending alcoholic beverages; four slot machines were found on the third floor. In the attic, whiskey labels, green strip stamps, several new empty bottles, corks and tin foil were discovered.

"The seizure consisted of the following:

- 4 - Slot Machines
- 1 - Pint bottle labeled 'Wurfel's Apple Brandy 92 pf.' partly full
- 1 - Pint bottle labeled 'Wurfel's Apple Brandy 92 pf.' sealed
- 1 - Qt. bottle containing Martini Cocktails
- 1 - 1 gallon glass jug of alcohol
- 1 - 1 gallon glass jug, 1/5 full of whiskey
- 1 - 1 gallon glass jug, full of whiskey
- 1 - 1 gallon glass jug, 1/3 full of wine
- 1 - 1 gallon glass jug, 1/8 full of whiskey
- 1 - 1 gallon glass jug, 1/6 full of wine
- 1 - 1 gallon glass jug, 1/8 full of wine
- 1 - 1 gallon glass jug, full of wine
- 1 - 1 gallon glass jug, 1/2 full of flavoring syrup
- 2 - Pint bottles full of whiskey
- 24 - Assorted bottles, miscellaneous sizes containing wine and whiskey
- 8 - Empty pint bottles
- Several empty quart bottles
- 2 - Empty 5-gallon cans
- 1 - Empty 3-gallon can
- 50 - Counterfeit Green Strip Stamps
- Several new empty whiskey bottles
- Tin Foil
- Labels"

I note that the licensee was found guilty and his license was suspended from May 6th to June 30th, the balance of the fiscal year.

Wholly reserving consideration of the merits in case he should appeal, as is his right, the suspension of this license for the balance of its term is more than justified; in fact, outright revocation would seem to have been indicated for such several and serious offenses which I shall promptly call to the attention also of the state and federal prosecutors. Suspension, it is true, stops short the concocting of bootleg liquor and palming it off with counterfeit stamps on the trusting public, but it leaves the license alive and outstanding.

If your Council wish to reduce the number of licenses with fairness to those who obey the law, the simplest way is to revoke the licenses of those found guilty of serious offenses, and then, permanently reduce the number outstanding by the number so revoked.

You still have it in your power to accomplish this happy result if you will not only refuse to renew his license next July or to transfer it or to award it to any one else, but also reduce the quota by one because of his conviction. This is what I had in mind in re Keansburg, Bulletin 116, Item 7, in saying:

"If charges have been preferred and the licensee has been convicted and it has been necessary to suspend him or reprimand him, then the omission of such licensee from the reduced list would give him no just cause for complaint for it has been his own fault..... Those licensees who have given the municipal authorities trouble are the ones who may well be eliminated when the number is to be reduced. When it comes to adjudicated fault, I am heartily in favor of the survival of those who have obeyed the law."

After a few outright revocations, followed by automatic reduction of the permissible number of licenses, the quota, to be sure, will not be diminished so rapidly, but you will have much less trouble with cheating licensees! Honest licensees may well be encouraged to prize their licenses.

Please extend my appreciation to your Council for their cooperation, and also present to them the foregoing suggestion made in the effort to effect a reduction of the number of liquor licenses with fairness to those licensees who do scrupulously comply with the law. Thanks also to Detectives Gress and Raywood, and to Mrs. Moore for their assistance.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

May 11th, 1936.

Re: Application for Solicitor's Permit - Case No. 32.

In his questionnaire, duly sworn to, applicant answered "No" to the question "Have you ever been convicted of any crime?" Our investigation disclosed three convictions against him for violation of the National Prohibition Act. Notice, therefore, was served upon him to show cause why his application should not be denied on the ground that he had been convicted of crimes involving moral turpitude, and a hearing was duly held.

At the hearing applicant admitted that in 1919 he had pleaded guilty to a charge of violating the National Prohibition Act and had been fined \$250.; that in 1926 he had pleaded guilty to a violation of the same Act and had been fined \$250.; that in 1930 he had pleaded guilty to a violation of the same Act and had been fined \$75.00. Accepting as true his testimony that all of these charges arose merely from the possession of illicit alcoholic beverages, it may be that none of these convictions involved moral turpitude.

It appears, however, that in his questionnaire applicant swore falsely that he had never been convicted of a crime. He attempts to explain that he "thought a man had to be sentenced to jail or prison to be convicted of a crime." He sought no advice before answering the question. He insists, however, that he had no intention of "trying to get away with anything."

At the hearing he was asked as to the manner in which he had answered a similar question in an application which he filed last year with one of the local issuing authorities. In answer he said that he had disclosed therein his violations of the National Prohibition Act. Examination of said application shows not only that the applicant denied therein that he had ever been convicted of a crime, but also that he answered "No" to each of the following questions:

"Have you ever been convicted of any violation of the Federal or State law concerning the manufacture, sale, possession or distribution of alcoholic beverages?"

"Have you ever paid a fine or penalty in settlement of any prosecution against you for any violation of any Federal or State law concerning the manufacture, sale, possession or distribution of alcoholic beverages?"

Conceding that applicant might possibly misunderstand the meaning of the word "crime", he certainly could not have misunderstood the meaning of the two questions set forth immediately above. His false statements in his previous application destroy his credibility here and lead to the conclusion that here, as there, he deemed it best to conceal his violations of the National Prohibition Act. If our investigation had not disclosed these convictions, the falsity of his answers might never have been discovered.

Applicants who don't tell the truth won't get licenses. Lynch vs. Paterson, Bulletin #107, item 1; Eckert vs. Paterson, Bulletin #114, item 13.

It is recommended that the application for the permit be denied.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

11. RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - ELECTION DAY - APPLICATION OF RULE TO WHOLESALERS.

May 6, 1936

Dear Sir:

Will you please inform us if we will be permitted to keep our place of business open on Tuesday, May 12th, which is a Commissioner Election Day, in the City of Atlantic City.

We serve licensees throughout Atlantic and Cape May Counties, and according to our check-up, we find that the election is held only in Atlantic City.

Are we permitted to deliver merchandise into neighboring territory where there is no Commissioner Election being held, or must we be closed?

Your prompt reply will be greatly appreciated, as I will instruct the other Wholesalers in this city, who are also anxiously awaiting this word.

Yours very truly,

PENN BEVERAGE CO.

May 9, 1936

Penn Beverage Company,
Atlantic City, N. J.

Gentlemen:

I have yours of the 6th.

Rule #2 of Rules Concerning the Conduct of Licensees and Use of Licensed Premises provides:

"No licensees shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a General, Municipal, Primary or Special Election is being held, while the polls are open for voting at such election."

You will note that the above rule refers only to the sale of alcoholic beverages at retail or the delivery of such beverages to the consumer.

Therefore, there is no reason why you may not remain open on Tuesday, May 12th and make deliveries in Atlantic City provided they are made only to licensees.

You may also sell and deliver in any municipality where no election is being conducted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Erwin B. Hock,
Deputy Commissioner.

12. LICENSEES - EMPLOYEES - AUTHORITY OF SALOON KEEPER'S WIFE TO SELL ALCOHOLIC BEVERAGES.

April 28, 1936

Dear Sir:

Would you kindly inform me whether the saloon keeper's wife has the authority to sell alcoholic beverages in the absence of the husband.

Yours truly,
JOHN D. HANN,
Township Clerk.

May 11, 1936

John D. Hann,
Township Clerk,
Allamuchy, New Jersey.

Dear Sir:

I have before me your letter of April 28th.

There is nothing in the Alcoholic Beverage Control Act or in the rules and regulations of this Department which would

prohibit a licensee's wife from selling alcoholic beverages whether in the absence of her husband, the licensee, or not, provided that under the Alcoholic Beverage Control Act she could qualify to be so employed by being fully qualified to receive a license in her own right. This means that, among other things, she must be a citizen of the United States, over the age of twenty-one years, a resident of this State for at least five years preceding the employment, must not have been convicted of a crime involving moral turpitude, nor have committed two or more violations of the Act. Should there be any doubt as to whether or not the wife would qualify as an employee, the question should be submitted to the Township Committee in accordance with the procedure laid down in re Blank, Bulletin 82, item 4, for the Township Committee's determination.

Outside of the State statute and the State rules and regulations, there may be some local municipal resolution or ordinance which would control the employment of women. Whether or not such is the case, your own municipal records will show.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. SALES ON CREDIT - NOT PROHIBITED BY THE STATUTE OR THE STATE RULES AND REGULATIONS - HEREIN OF PRIOR STATUTE PROHIBITING SALES ON CREDIT SINCE REPEALED.

May 12, 1936.

William Prout, Esq.,
Bernardsville, N. J.

Dear Sir:

I have before me your letter of May 5th.

There is nothing in the Alcoholic Beverage Control Act or in the rules and regulations of this Department which would prohibit sales of alcoholic beverages on credit. There may, however, be some resolution or ordinance of the local municipal governing body which would control. As to this, make inquiry directly of the Municipal Clerk of the municipality in which the sales will be made. Re Megill, Bulletin 109, item 9, copy enclosed.

There was, at one time, a statute which prevented the collection of a liquor debt. It is "An Act Concerning Inns and Taverns", adopted in 1846. Compiled Statutes Vol. 3, page 2896. In Section 27, it provided that if any innholder or tavern-keeper shall trust or give credit he shall lose the debt and be forever disabled from suing for or recovering the same, or any part thereof, and that if such suit be brought the Act could be pleaded in bar. In Section 28, it declared that notes, etc. given in payment for liquor to evade the Act shall be void.

These sections gave point, if not pith, to the old story of the barkeep who inquired up the dumb-waiter of his boss whether Hennessy was "good" for a drink.

"Has he had it?"

"He has!"

"He is!!"

Both of these sections were, however, repealed on March 14, 1934 by "An Act to Repeal Certain Statutes and Parts of Statutes Relating to Alcoholic Beverages" (Chapter 32, P. L. 1934).

I do not know of any other statutes dealing with this matter.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

14. REVOCATION PROCEEDINGS - KINGSTON BAR AND GRILL - CONCLUSIONS

In the Matter of Revocation)
Proceedings against Karl Bluschke,)
the holder of Plenary Retail Con-)
sumption License #C-11, issued by)
the Township Committee of Franklin)
Township (Somerset County) for)
premises known as Kingston Bar and)
Grill, located on Lincoln Highway #1,)
Kingston, Franklin Township.)

CONCLUSIONS

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

Edmund A. Hayes, Esq., for the Licensee, Karl Bluschke.

Abe D. Levenson, Esq., for the Kingston Holding Company and J. & G. Holding Company.

The following were the Conclusions of Chief Deputy Commissioner Nathan L. Jacobs, rendered orally at the close of the hearing:

I am satisfied beyond any question or doubt as to the truth of the charges, and the licensee is found guilty on each of the charges.

Under the law, any sale to a minor - and by "minor" I mean any person under the age of 21 years - is a misdemeanor, and that applies to the sale of beer as well as other alcoholic beverages. It may be that justification exists for changing the law. That, however, is not the Commissioner's function. As long as the law remains in its present form it has to be enforced. I do not look upon this case as a situation where there is an individual violation. I think it is apparent from the evidence that the licensee caters to Princeton students, the majority of whom are minors, and that the seven students who testified here have, not only on this occasion, but on previous occasions, been sold alcoholic beverages of various types, without any substantial question as to their ages. Harrington, whose appearance indicates quite clearly that he is approximately 18 years of age - possibly you might differ within a year - testified that he was never questioned as to his age and he purchased beer, not only on this single occasion, but on previous occasions.

It must be borne in mind that there was a previous revocation, not to charge this licensee with it, but to indicate that this licensee knew there was danger of his clientele being under age. He knew from a previous revocation that it was likely that a good many of these students would be under age, and that if there was a violation, there would be revocation. Despite that, he took precautions completely inadequate - if you can call them precautions at all. I am not convinced that the cards were distributed in good faith. And we have evidence that none of these students was asked his age, which seem to lead unavoidably to the conclusion that the licensee did not care whether the law was being violated. I think that in the light of the testimony as to indiscriminate sale to Princeton minors, the penalty should be revocation. I will see that an Order of Revocation is entered today, effective Friday night.

In addition, I am going to disqualify the premises for two years. There is no evidence to indicate innocence on behalf of the owner. At the previous hearing the same issue came up and there was no appearance for the owner. While there is no substantial evidence to indicate that the old and the new licensee are connected, yet there are suspicious circumstances; and since the determination is within the discretion of the Commissioner, in the absence of any testimony on behalf of the owner to indicate its position and because of the difficulty presented in keeping these premises within the law, the premises should be disqualified. The Order will contain a provision that no license shall be issued for the premises in question for two years.

15. REVOCATION PROCEEDINGS - KINGSTON BAR AND GRILL - ORDER OF REVOCATION AND DISQUALIFICATION OF PREMISES

In the Matter of Revocation)
 Proceedings against Karl Bluschke,)
 the holder of Plenary Retail Con-)
 sumption License #C-11, issued by)
 the Township Committee of Franklin)
 Township (Somerset County) for)
 premises known as Kingston Bar and)
 Grill, located on Lincoln Highway)
 #1, Kingston, Franklin Township.)

ORDER

This matter coming on to be heard in the presence of Jerome B. McKenna, Esq., Attorney for the Department, and Edmund A. Hayes, Esq., Attorney for the licensee, Karl Bluschke, and Abe D. Levenson, Esq., Attorney for Kingston Holding Company and J. & G. Holding Company, owner and mortgagee respectively of the licensed premises, pursuant to notice duly served; and it appearing that charges were preferred against the licensee that he sold and permitted the sale of alcoholic beverages to certain minors specifically described in the notice of charges, in violation of the Control Act and the rules of the Commissioner, and testimony having been introduced on behalf of the Department and the licensee, and it appearing from the evidence that on May 3, 1936 the licensee sold and permitted the sale of alcoholic beverages to J. S. Studdiford, W. G. Cormany, C.H. Detwiler, G. S. Harrington, L. D. Watrous, M. T. Robbins, and J. J. Daniels, persons under the age of twenty-one (21) years, in violation of the Control Act and the rules of the Commissioner; and no evidence on behalf of the owner and mortgagee having been introduced, despite testimony that a previous license for the same premises had been revoked on the ground that the licensee had sold alcoholic beverages to minors in violation of law and the Commissioner's rules; and good cause therefor appearing,

It is, on this 13th day of May, 1936, ADJUDGED and DETERMINED that the licensee, Karl Bluschke, is guilty of each of the charges contained in the notice dated May 5th, 1936, and duly served upon him; and it is

ORDERED that license #C-11, issued by the Township Committee of Franklin Township, Somerset County, to Karl Bluschke for premises known as Kingston Bar and Grill, located on Lincoln Highway #1, Kingston, Franklin Township, be and the same hereby is revoked, effective at the close of business, Friday, May 15, 1936, namely, 2:00 A. M. Saturday, May 16, 1936; and it is further

ORDERED that the licensed premises known as Kingston Bar and Grill, located on Lincoln Highway #1, Kingston, Franklin Township, be and hereby are declared ineligible to become the subject of any further license of any kind or class under the Control Act during a period of two (2) years from May 15, 1936.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

16. SPECIAL PERMIT - RETAILERS MAY NOT PURCHASE ALCOHOLIC BEVERAGES OUTSIDE THIS STATE AND IMPORT SUCH BEVERAGES WITHOUT SPECIAL PERMIT - "WASH" TRANSACTION RESULTING IN IMPORTATION BY RETAILER THROUGH WHOLESALER PROHIBITED - WHERE IT APPEARS THAT RETAILER'S IMPORTATION WAS CLEARLY INNOCENT, OPPORTUNITY WILL BE AFFORDED TO HIM TO MAKE APPLICATION FOR SPECIAL PERMIT

May 13th, 1936

Novelty Bar & Grill,
Newark, N. J.

Gentlemen:

Report of investigation indicates that on April 23d, 1936, you purchased certain alcoholic beverages from the United States Customs Service at New York City; that such beverages were thereafter delivered to your licensed premises; and that although the purchased beverages were billed to J & J Distributing Company, a licensed New Jersey wholesaler, which, in turn, billed you, there was, in fact, no bona fide purchase and sale by J & J Distributing Company, as amply evidenced by your payment of the purchase price directly to the Customs Service with your own money and J & J Distributing Company's failure to receive any usual trade profit.

Retailers may not, in the absence of special permit, purchase alcoholic beverages outside New Jersey from dealers not licensed in this State and import such beverages into this State for resale therein. See Bulletin #119, Item #4. Authority has been afforded to wholesalers to import alcoholic beverages purchased by them outside this State; such authority, however, is confined to bona fide purchases and does not extend to situations where the wholesaler merely lends the use of his name, for a consideration, to a retailer desirous of circumventing the Commissioner's regulations. Such "wash" transactions will not be tolerated and will result in revocation proceedings, not only against the retailer but also against the participating wholesaler.

You assert that the violation was unintentional and have indicated a desire to obtain a permit sanctioning the transaction

heretofore completed. A general determination as to whether retailers will hereafter be granted special permits to purchase alcoholic beverages outside this State at Government sales must await the filing of a future application therefor and open hearing thereon. Cf. Bulletin #108, Item #9. In the instant case, however, it appears that all of the pertinent facts surrounding the transaction were disclosed to the State Tax Department, Beverage Tax Division, prior to the consummation thereof, and arrangements made for payment of taxes. It is, therefore, evident that there was no conscious disregard of the Commissioner's regulations. Under similar circumstances the Commissioner has heretofore authorized the issuance of permits sanctioning completed purchases and importations by retailers. Opportunity will be afforded to you to apply forthwith for such permit.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

17. LICENSEES - DEBTS - FAILURE TO PAY THE ICE-MAN IS NOT CAUSE FOR
SUSPENSION

May 11, 1936

Dear Mr. Burnett:

I am an iceman and I have a claim for ice against the operators of a liquor tavern. Can their license be suspended if they do not pay my claim.

Yours very truly,

DOMENIC LUZZI.

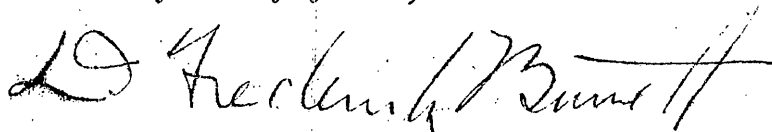
May 13, 1936

Mr. Domenic Luzzi,
Nutley, N. J.

Dear Mr. Luzzi:

Liquor licenses are suspended only in the public interest and because the licensee has violated the law or broken some rule. While licensees ought to pay the ice-man, your remedy, if they don't, is to sue them just as you would anyone else.

Very truly yours,



Commissioner.