

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

BULLETIN 380

JANUARY 26, 1940.

1. MUNICIPAL REGULATIONS - TREATING AT THE BAR - DISAPPROVED.

January 23, 1940

Robert K. Bell, Esq.,
Attorney, Borough of Avalon,
Ocean City, N. J.

My dear Mr. Bell:

I have yours of January 4th and proposed alcoholic beverage ordinance for the Borough of Avalon. * * * * *

Section 7 provides: "That the holders of licenses shall absolutely allow no treating while standing at a bar, or standing in a room where a bar is erected or located."

Section 8 provides: "That no proprietor, owner, employee, or any other person in charge, shall be allowed to treat on the premises at any time."

These two sections constitute a big order! Man likes to run with the herd. It may make him act foolish but when he begins to drink alone, he becomes dangerous.

I believe these proposed regulations will only make a farce of the law and lead to evasion. What is to prevent some person other than the proprietor - say a whiskey salesman - treating on behalf of the boss? Or suppose the boss, to comply in form, serves an expensive drink to the anointed at nominal cost - is it a treat? And what about the customers? As the rule reads, they may not treat while standing at the bar or standing in a room where there is a bar. No doubt obliging bartenders will provide handy chairs for the convenience of generous customers who become seized with donative intent! The imprecation from the galleries to "go way back and sit down" will become a term of adulation instead of abuse.

It is poor policy to put rules on the books which can be disobeyed with practical impunity. It not only puts licensees who scrupulously abide by the law at a disadvantage but it breeds disrespect for all laws.

I recommend that both sections be dropped. * * * * *

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

New Jersey State Library

2. APPELLATE DECISIONS - ALPERT v. ASBURY PARK.

SIDNEY ALPERT,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS
-vs-)	
)	
CITY COUNCIL OF THE CITY OF)	
ASBURY PARK,)	
)	
Respondent)	
-----)	

Milton Miller, Esq., Attorney for Appellant.
Walter Taylor, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant was refused the privilege of transferring his plenary retail consumption license for premises located at the Clarendon-Brunswick Hotel, Fourth Avenue and Kingsley Street, to premises 1117 Springwood Avenue. Hence this appeal.

Respondent assigns as one of the reasons for such refusal that there are already a sufficient number of licensed establishments on Springwood Avenue.

There are presently on this street, which is about three-quarters of a mile long and comprises ten blocks, nineteen liquor stores, fourteen of which are consumption, and the remainder, distribution licenses. On the block where appellant seeks to transfer, between Sylvan Avenue and the next intersecting street, Atkins Avenue, there are now located four consumption licenses and one distribution license.

The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1. The privilege of a place to place transfer of an outstanding license is subject, among other things, to the reasonable and bona fide exercise of that discretion. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Ninety-One Jefferson St., Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Polansky v. Millburn, Bulletin 258, Item 2; Mita v. Orange, Bulletin 266, Item 10; Gomulka v. Linden, Bulletin 294, Item 8; Smith v. Winslow, *supra*.

In view of the recited facts, it is clear that respondent did not abuse that discretion. Although Springwood Avenue is one of the main business thoroughfares of the municipality, there is no cause for converting it into "liquor lane".

Appellant's claim that, because respondent has no ordinance in effect limiting the number of licenses that may be issued anywhere in the municipality, its denial of his application was discriminatory, is without merit. There is no requirement that such salutary purpose shall be embodied in a formal ordinance.

Cf. Watts v. Princeton, Bulletin 301, Item 2; Goff v. Piscataway, Bulletin 234, Item 5.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 23, 1940.

3. APPELLATE DECISIONS - BEAM v. CALDWELL.

ALBERT J. BEAM,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
THE MAYOR AND BOROUGH COUNCIL)	
OF THE BOROUGH OF CALDWELL,)	
)	
Respondent)	
-----)	

Nathan A. Whitfield, Esq., Attorney for the Appellant.
Philip D. Elliot, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

Appellant appeals from respondent's refusal to act on his application for renewal of plenary retail consumption license for premises 455 Bloomfield Avenue, Caldwell. In the absence of exceptional circumstances warranting delay, the failure of a municipal issuing authority to act on an application for license is tantamount to denial thereof. Re Salsburg, Bulletin 118, Item 11. No exceptional circumstances warranting such delay appear and hence respondent's refusal to act will be treated as a denial.

Appellant's license was once revoked by the respondent for permitting gambling on shuffleboard games, but on appeal the penalty was reduced to a suspension of ninety days. Beam v. Caldwell, Bulletin 309, Item 7. Thereafter, the ninety-day suspension was reduced to the time already served (seventeen days), for the reason that it appeared that respondent had, in fact, penalized appellant not only for the gambling but also because, in its opinion, his licensed place of business was conducted as a nuisance, on which latter charge appellant was never afforded a hearing. Beam v. Caldwell, Bulletin 327, Item 1.

While the latter case was pending, appellant's application for renewal came before respondent. It refused to act on appellant's application, without the assignment of any reason.

In its answer and amended answers, respondent seeks to justify its refusal to act on the grounds (1) that the issuance of the license would contravene the provisions of its ordinance limiting the number of plenary retail consumption licenses; (2) that appellant's petition for mitigation of the ninety-day suspension was pending and undetermined; (3) that appellant failed to request

action on his application at the meeting at which renewal of licenses was considered; (4) that respondent desired to make investigation into the effect of R. S. 2:135-1 (which prohibits gambling) upon the pending application; (5) that appellant had been found guilty of two violations of the Alcoholic Beverage Law, and (6) that appellant had permitted disturbances, brawls and unnecessary noises on the licensed premises and permitted the licensed place of business to be conducted in such manner as to become a nuisance.

(1) The ordinance limiting the number of plenary retail consumption licenses to be issued was adopted May 1, 1939. It provides:

"The number of Plenary Retail Consumption Licenses issued and outstanding in the Borough of Caldwell, shall not exceed five (5) in number. The fee for such Plenary Retail Consumption License shall be One Thousand (\$1,000.00) Dollars."

It is worthy of note that the ordinance was adopted after the entry of the conclusions in Beam v. Caldwell, Bulletin 309, Item 7, on April 5, 1939, reducing Beam's penalty from revocation to a ninety-day suspension; that at the time the ordinance was adopted there were six licenses, including Beam's, outstanding, and that no provision excepting renewals appears in the limiting ordinance. It may fairly be inferred that the adoption of the ordinance was motivated by respondent's persistence in its design to eliminate Beam as a licensee. If that be so, the ordinance, in its failure to exempt renewals from its provisions, may be treated as unreasonable as to appellant, and hence no obstacle to renewal of his license. I should not hesitate to do so if it were not for the fact that I found Beam guilty of a violation. See Beam v. Caldwell, supra.

(2) That appellant's petition further to reduce the period of suspension was pending and undetermined at the time his application came before the Borough Council is not sufficient justification for respondent's refusal to act. Whether the ninety-day suspension were further reduced or affirmed without reduction was a matter that had no bearing whatever on Beam's eligibility for renewal license. The period of suspension was in punishment of a violation that had occurred. The violation was an accomplished fact - the period of suspension could neither aggravate nor minimize it. The action or non-action of another official as to a non-essential aspect of the matter was immaterial. In general, municipal issuing authorities are vested with power to grant or deny applications for retail liquor licenses, subject, of course, to appeal. That power may not be abdicated in favor of anyone.

(3) The alleged reason that respondent took no action on appellant's application because he failed to request action at the meeting at which all other applications for renewal were considered is, as appears from its mere statement, so absurd as to require no refutation. The application for license, from its very nature, is a request that a license be granted. No valid reason appears why an applicant should be compelled to request that his request be considered.

(4) I confess I am unable to understand the purpose of delaying consideration on the application until the Council had

an opportunity to consider the effect of R. S. 2:135-1 upon the application. That is not a new provision of the criminal law. It prohibits gambling at cards, dice, billiards, pool, tennis, bowls, shuffleboard, A.B.C. or E.O. tables, or faro bank, and the playing of slot machines, and further declares that such gambling is a misdemeanor. Nor was any explanation made at the appeal hearing as to what conceivable connection the anti-gaming law had with the pending application. It is true that gambling on shuffleboard games had been discovered in Beam's licensed premises and that disciplinary proceedings were instituted as a result thereof. It is also true that conceivably Beam might be arrested, indicted and convicted for violation of the provisions of R. S. 2:135-1, but that remote possibility would justify neither respondent's refusal to act on the application nor its denial of the application. In the event of conviction, Beam might be ineligible to hold a license if the crime involved moral turpitude but the Council cannot justify its non-action by mounting a possibility upon a possibility.

(5) The alleged reason that appellant is ineligible for license by reason of having committed two violations of the Alcoholic Beverage Law would be dispositive of the matter if appellant had committed two violations of the Alcoholic Beverage Law. But the claim rests on a misconception of both the facts and the law. The provision of R. S. 33:1-25, which prohibits the issuance of a license to any person who has committed two violations of the Alcoholic Beverage Law, is strictly construed. Before ineligibility results, there must have been two adjudications, separate in time, by a competent tribunal, that a violation of the Alcoholic Beverage Law has been committed. Re Wizner, Bulletin 251, Item 1. In the instant case there has been but one adjudication and that adjudication has been that Beam has committed a violation, not of the Alcoholic Beverage Law, which nowhere prohibits gambling on licensed premises, but of the State Rules and Regulations, which do. The distinction between violations of the Alcoholic Beverage Law and the State or local regulations, insofar as they impose mandatory disqualification, was heretofore considered in Re Wismer, Bulletin 298, Item 5, where it was ruled that violations of State or local regulations not involving violation of the Alcoholic Beverage Law do not cause the statutory provision to become operative.

(6) In support of its contention that Beam has permitted brawls, disturbances and unnecessary noise on the licensed premises and has permitted the licensed place of business to be conducted as a nuisance, respondent, by a number of witnesses, established that on July 9, 1938 a man, apparently intoxicated, was ushered from the licensed premises and seated outside; that on August 7th a patron suffered a torn scrotum as the consequence of horseplay of another patron; that on December 30th, at about 1:00 P.M., a parked car near the licensed premises was damaged by a driverless car which rolled downgrade, the operator subsequently coming out of the licensed premises apparently intoxicated; that in the latter part of 1938 two men and women, apparently intoxicated, were observed leaving the tavern having some difficulty in recognizing their car; that on May 4, 1939 a patron was struck by another patron in the licensed premises; that in the afternoon of May 6th two men "practically carried" another into a car from the side door of the licensed premises; that some time after May 16th a fist fight and profane argument occurred outside the licensed premises at 9:30 in the evening; that on May 27th and 29th at about 9:00 P.M., men leaving the licensed premises were observed urinating in the alley at the rear of the licensed premises; that on a

Saturday afternoon in May two men engaged in a noisy profane argument outside the licensed premises as to whether the one picked the other's change off the bar; that shortly before June 19th a man was observed urinating in the alley behind the licensed premises in the middle of the afternoon; that shortly after June 19th a man, apparently intoxicated, emerged from the licensed premises and engaged a passerby, with whom he had previously had words, in altercation; that on June 21st two men, apparently under the influence of liquor, engaged in a scuffle on the sidewalk outside the licensed premises; that on June 24th a patron was beaten by two men in the licensed premises while he was attempting to separate two other persons who were fighting; that on July 1st a fracas involving three or four men occurred in an alley in back of the tavern at about 10:00 P.M., two of the men going into the tavern after the affair ended; that on July 8th two men, apparently intoxicated, engaged in a profane and vociferous argument about 75 feet away from the licensed premises at about 1:00 A.M.; that in early July three men emerged staggering from the tavern in the late afternoon; that on two or three occasions during the last license year men were observed to come out of the tavern and vomit on the sidewalk; that the banging of shuffleboard irons and yelling of the players is continuous from 7 or 8 o'clock until closing each night and can be heard through the closed windows of a house 75 feet away.

Of most of these occurrences appellant disclaims any knowledge. He admits only knowledge of the fight on June 24, 1939, his attention being directed to the occurrence by the arrival of a police car. Appellant claims that his renewal license was withheld because of bias and prejudice, in pursuance of a plan to put him out of business on the part of the issuing authority. He also urges that he was never warned to conduct his place in a proper manner, and that he has never been afforded the hearing on the charge of conducting his place as a nuisance, the lack of which hearing was the reason for the mitigation of the ninety-day suspension in Beam v. Caldwell, Bulletin 327, Item 1.

It is unnecessary to determine whether the Borough Council may have been motivated by considerations of personal animus toward Beam. Animus of the issuing authority does not condone misconduct for which the licensee is responsible. No matter what the motivation, it clearly appears that his licensed place of business has not been conducted in such a manner as the community has a right to expect. A liquor license is a privilege and not a vested right. A licensee who expects renewal cannot evade responsibility for objectionable conditions by taking refuge behind the claim that he has never been warned to prevent their happening. The fact that I found him guilty of misconduct as aforesaid is dispositive of the case. Issuing authorities will not be compelled to grant renewals to those who violate the Rules. Kaplan v. Newark, Bulletin 269, Item 6; Orsi v. Newark, Bulletin 352, Item 2.

The action of the Caldwell Borough Council in refusing to act on (which, as heretofore indicated, is tantamount to denial of) appellant's application is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 22, 1940.

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - CORPORATE SUSPENSION
REDUCED UPON PROOF OF SEPARATE ENTITY.

In the Matter of Disciplinary Proceedings against
 SCHWARZ DRUGGISTS, INC.,
 58-60 Broadway,
 Newark, New Jersey,
 Holder of Plenary Retail Distribution License No. D-160, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

SUPPLEMENTAL CONCLUSIONS
AND ORDER

Schwarz Druggists, Inc., by Ira I. Schwarz, Treasurer.

BY THE COMMISSIONER:

The licensee heretofore pleaded guilty to charge of selling liquor below Fair Trade price and order of suspension of its license was thereupon entered on January 15, 1940. Re Schwarz Druggists, Inc., Bulletin 377, Item 10.

Such suspension was fixed at 10 days since, from the information and facts then before me, it appeared that this licensee was also the same defendant in Re Schwarz Drug Co., Bulletin 307, Item 5, and hence a second Fair Trade offender.

Upon request for reconsideration, I caused the corporate books of Schwarz Drug Co. to be examined. It appears that Schwarz Druggists, Inc. was organized in 1919, Samuel, Ira and Tessie Schwarz being the original stockholders; that the Schwarz Drug Co. was organized in 1922, Samuel, Ira and Sylvan Schwarz being the original stockholders; that various transfers in stock have occurred since the organization of said companies; that the stock holdings of those companies at the present time are as follows:

Schwarz Druggists, Inc. (250 shares):

Samuel Schwarz.	80	shares
Ira Schwarz	30	"
Sylvan Schwarz.	30	"
Joel Schwarz.	70	"
Selma Schechner	40	"

Schwarz Drug Co. (160 shares):

Samuel Schwarz.	4	"
Ira Schwarz	35	"
Sylvan Schwarz.	35	"
Joel Schwarz.	10	"
Esther Schwarz.	9	"
Sarah Schwarz	9	"
Eve Schwarz	9	"
Selma Schechner	9	"
Etta Katz	36	"
Oscar Katz.	4	"

I conclude that Schwarz Druggists, Inc. and Schwarz Drug Co. are, so far as appears, separate and bona fide legal entities. There is no sign that these corporations are merely fraudulent devices to cover up liquor violations or for any other purpose.

I see no reason for piercing the corporate veil in this matter and treating the Schwarz Druggists, Inc. as a second offender.

Hence, in view that the Schwarz Druggists, Inc. is thus a first and not a second offender, its penalty will, as in the usual case where a defendant has pleaded guilty to a Fair Trade charge in advance of hearing, be five days.

Accordingly, it is, on this 22nd day of January, 1940,

ORDERED, that the order previously entered herein, suspending the license of Schwarz Druggists, Inc. for a period of ten (10) days, effective January 19, 1940 at 3:00 A.M., shall be and the same is hereby reduced to a period of five (5) days, commencing at the same time.

D. FREDERICK BURNETT,
Commissioner.

5. APPELLATE DECISIONS - KATZ v. BOROUGH OF MIDDLESEX.

Case #1

ISADORE KATZ, t/a CENTRAL)
LIQUOR & BEVERAGE STORES,)
Appellant,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH)
OF MIDDLESEX,)
Respondent)

ON APPEAL

Case #2

CONCLUSIONS

ISADORE KATZ, t/a CENTRAL)
LIQUOR & BEVERAGE STORES,)
Appellant,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH)
OF MIDDLESEX,)
Respondent)

Edward J. Santoro, Esq., Attorney for Appellant.
Joseph J. Mutnick, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

These two appeals are, respectively, from the denial of a plenary retail distribution license to appellant for last term, and

from a similar denial for this term, for premises on Bound Brook Road (Route 28) opposite Coleman Street, Middlesex Borough.

The Borough (population 4,500) has nine plenary consumption and no distribution licenses. On February 15, 1939 respondent, although having no objection to appellant or his premises, denied his application for distribution license for the last term on the ground that, in its opinion, the nine consumption establishments were sufficient liquor places for the Borough.

Although the Borough then had no formal quota on liquor licenses, the denial will nevertheless be sustained as valid if respondent was reasonable and in good faith in its determination that the nine taverns are adequate liquor places for Middlesex. Widlansky v. Highland Park, Bulletin 209, Item 7; Goff v. Piscataway, Bulletin 234, Item 5; Brost v. East Amwell, Bulletin 304, Item 1.

On this issue, it appears that respondent on March 1, two weeks after the denial, introduced an ordinance setting municipal quotas which, in effect, not only recognized and permitted the continuance of the nine existing consumption places in the Borough but, in addition, also permitted the issuance of two plenary retail distribution licenses.

This contradictory action, hard on the heels of the denial, is unexplained. The fact that the ordinance was not finally adopted until April 5 (1½ months after the denial) and was not, by its terms, effective until July 1 (4½ months after the denial) offers no adequate explanation. It fails to overcome the fact that respondent began its formal action for adopting the ordinance but two weeks after the denial and the further fact that, so far as appears, the situation as to how many liquor places should be permitted in the Borough was the same on February 15 (time of the denial) as on March 1 or April 5 or July 1.

While it is possible that respondent, after the denial, suddenly and honestly changed its mind, there is neither offer nor proof of such an explanation.

Hence, I cannot conclude that respondent was reasonable and in good faith in denying the application on the ground of sufficient liquor places in the Borough. The application for the distribution license for last term was therefore erroneously denied.

Of course, an order for issuance of such license would now be futile since that term has already expired. However, pending decision on his appeal from the denial, appellant on June 3 re-applied to respondent for the current term.

On June 28 respondent, although again having no objection to appellant or his premises, denied such application, reiterating (1) that the nine taverns were sufficient liquor places for Middlesex Borough and further stating (2) that appellant is not a 3-years' resident of the Borough. (An additional ground for the denial - viz., that the application was not in good form - was withdrawn).

As to (1): This ground is without merit. The formal quota of two plenary retail distribution licenses in the Borough took full, legal effect on July 1. Such quota became decisive of

the fact that thereafter two distribution licenses were permissible in Middlesex irrespective of all other types of licenses in the Borough. Hence, since that quota was (and remains) unfilled, respondent was without legal right to deny a distribution license for the current term merely on the declared ground that there are enough liquor places in Middlesex. If such a sub rosa opinion is the correct one, it should be manifested by formal change of the quota. Any other rule would make a quota so flexible as to be merely a political catspaw. Eisen v. Plainfield, Bulletin 68, Item 12; Sosnow v. Freehold, Bulletin 68, Item 13; DeLucca v. Fairview, Bulletin 279, Item 12.

As to (2): This ground is likewise without merit. It is based upon the fact that appellant does not comply with a requirement in the above ordinance that no license shall be issued to anyone not a 3-years' resident of the Borough.

A municipal residence requirement is valid, if at all, only for the purpose of giving the local issuing authority an expedient aid in its task of judging the personal fitness of applicants for license. Ianello v. Rumson, Bulletin 77, Item 9; McHugh v. West Deptford, Bulletin 106, Item 1; South Plainfield Liquor and Beverage Stores v. South Plainfield, Bulletin 216, Item 7.

In the present case, when appellant's first application was denied, he was nevertheless deemed personally fit and the residence requirement had not as yet been introduced. His current application, filed during pendency of his first appeal, is really in the nature of a renewal. It would be unreasonable to apply the requirement against him as such renewal applicant. The task for which the requirement was intended to serve merely as an aid (viz., determining personal fitness) was actually accomplished on consideration of the first application. The basic purpose for the requirement failing, so too does its applicability in the given case. Cf. VanSchoick v. Howell, Bulletin 120, Item 6; Re Haney, Bulletin 207, Item 7.

I see no reason for denial of the current application.

The action of respondent in denying both the applications in these cases is hereby reversed. Respondent is directed to issue a license to appellant for the current term as applied for. Appellant is entitled to a full return of the license fee posted with his first application except to the extent that the same may have been applied on the license fee posted with his current application.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 23, 1940.

6. DISCIPLINARY PROCEEDINGS - CLUB LICENSES - INADEQUATE PENALTY FOR SALE TO NON-MEMBERS.

December 16, 1939

Oliver T. Somerville,
Borough Attorney,
Rutherford, N. J.

My dear Mr. Somerville:

I have before me staff report and your letters of July 11th re disciplinary proceedings conducted by the Borough Council against

1. Henry Jansen & Willard Davie
294 Park Avenue
2. Reynolds-Everett-Schneider Post V.F.W.
474 Park Avenue

I note that Jansen and Davie, charged with sale of a bottle of gin on Sunday, had their license suspended for ten days, but that the Reynolds-Everett-Schneider Post, charged with sale of alcoholic beverages to non-members in violation of the restrictions of its club license, had its license suspended for only one day.

Please express to the members of the Borough Council my appreciation for their conduct of these proceedings and the penalty imposed in the Jansen and Davie case.

The one-day suspension for sale by a club to non-members is inadequate. According to the staff report, my investigators had no difficulty whatever in obtaining service of drinks at the bar of the Post and no question whatsoever was made as to their right to be served.

Club licensees know that their licenses permit only sale to members of the club and their bona fide guests. My investigators were neither. Respect for the law is created when the law is enforced without fear or favor against all licensees, however high their station may be. Clubs enjoy a special privilege for which they pay less than anyone else. The way to make the privilege last is to treat all offenders on a parity.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF FEMALES - SECOND OFFENDER.

In the Matter of Disciplinary Proceedings against)

M. I. REALTY CO.,)
252 So. Orange Ave.,)
Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-367, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

Mariano Insabella, President, for M. I. Realty Co.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge that on or about October 23, 1939 it allowed and employed a female to tend bar and sell and serve alcoholic beverages to patrons on its licensed premises in violation of Section (a) of Newark Resolution No. 4889 adopted May 24, 1939.

The usual penalty for this violation is five days. However, the licensee entered its plea in ample time prior to hearing and thereby saved the Department time and expense.

It appears that the previous record of this licensee is not clear. This licensee was involved in disciplinary proceedings on a former occasion on charges of being open and selling during prohibited hours on Sunday morning as a result of which I suspended the license for five days in September, 1939.

The suspension, therefore, in the instant case will be eight (8) days less two (2) for the plea.

Accordingly, it is, on this 5th day of January, 1940,

ORDERED, that Plenary Retail Consumption License C-367, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for six (6) days, effective January 9, 1940 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - PADLOCK ISSUED.

In the Matter of the Seizure on)	Case 5561
September 5, 1939, of a number of)	
still parts and a quantity of)	ON HEARING
alcohol on the Levoch Farm, loca-)	CONCLUSIONS AND ORDER
ted at the intersection of Raritan)	
Avenue and Tremont Street, Atco,	
in Waterford Township, County of)	
Camden and State of New Jersey.	
-----)	

Carl Kisselman, Esq., Attorney for Michael Levoch.
 Harry Castelbaum, Esq., Attorney for the Department
 of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On September 5, 1939, investigators of this Department seized unregistered still parts, consisting of a copper cooker, and a cooler with a copper coil, together with a one-gallon glass bottle of alleged illicit alcohol and a thirty-gallon barrel filled with huckleberry and barley mash, on the farm of Michael Levoch, located at Raritan Avenue and Tremont Street, Atco, Waterford Township. The still parts were not set up for operation and, in fact, the cooler and copper coil were found in weeds some distance from the shed where the other items were discovered.

At the hearing duly held to determine whether the still parts, alcohol and mash should be confiscated, and the premises padlocked, no one appeared to contest the proceedings.

Under the statute, unregistered still parts and illicit alcohol are subject to confiscation and, in addition, a padlocking penalty may be imposed upon the premises in or upon which such still parts are found.

Subsequently Michael Levoch's attorney advised that his client had been unable to attend the hearing because of lack of funds and leave was given to file an affidavit in lieu of other proof. In his affidavit Michael Levoch sets forth that, for twenty-nine years, he has owned the twenty acre farm on which there is erected a dwelling house, a barn and a shed; that he occupies the dwelling with his wife, five children and a grandchild, all of whom depend upon him for support; that he and his children operate the farm as a truck farm, from which he derives his livelihood; that he is in straitened financial circumstances; that the mash which was seized was not intended for the manufacture of any alcohol but was, in fact, the remainder of a crop of huckleberries which had been condemned by the Federal Government; that the still parts were found by his sons in the dumps and were lying about the premises; that the liquor which was seized was given to him by a neighbor and was intended for rubbing purposes, vinegar and various herbs having been added thereto; and that he did not appear at the hearing because of lack of funds.

However, samples of the seized mash and alcohol were submitted to the Department chemist. His report discloses that the alcohol is fit for beverage purposes, being alcohol, water and coloring. The glass bottle contained no indicia of tax payment and hence the alcohol is illicit. The chemist's report shows also

Thereafter, two cans of alcohol were turned over to the U. S. Treasury Department, Alcohol Tax Unit, for evidential purposes, and the Ford Coach and fifty-six cans of alcohol were turned over to this Department. A sample of the alcohol was analyzed by the Department's chemist and found to be fit for beverage purposes when diluted, having an alcoholic content of 89.95% by volume.

At a hearing duly held to determine whether the motor vehicle and the alcohol should be confiscated, no one appeared to contest the proceedings.

The alcohol is presumably "bootleg" because, although fit for beverage purposes, it bore no tax stamps. P. L. 1939, c. 177. Under the Statute, illicit alcohol and the vehicle used in its transportation are subject to confiscation. R. S. 33:1-66(c). It is determined that the seized property constitutes unlawful property.

Accordingly, it is ordered that the seized property (set forth in Schedule "A", annexed hereto) be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 16, 1939.

SCHEDULE "A"

- 56 - 5 gallon cans containing approximately 260 gallons of alcohol
- 1 - Ford Coach, Serial #181621122, Pennsylvania 1939 Registration #3-LZ-12.

10. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on)	Case 5606
October 26, 1939, of a still in)	
woodland in the vicinity of New)	ON HEARING
Road and California Avenue, in)	CONCLUSIONS AND ORDER
the City of Pleasantville, County)	
of Atlantic and State of New)	
Jersey.)	
-----)	

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On October 26, 1939, investigators of this Department discovered a still in full operation in the woods in the vicinity of New Road and California Avenue, City of Pleasantville. The investigators thereupon seized, as unlawful property, pursuant to R. S. Title 33, Chapter 2, the still, equipment and alcoholic beverages listed in Schedule "A", annexed hereto.

The records of this Department show no still registration certificate issued with respect to the seized still.

At a hearing held to determine whether the seized articles should be confiscated, no one appeared to contest their forfeiture.

Under the statute, an unregistered still and articles used or adaptable for use in connection therewith are subject to confiscation. It is determined that the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the same be and hereby is forfeited, in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

Frederic H. Burnett

Commissioner.

Dated: December 16, 1939.

SCHEDULE "A"

- 7 - 5 gallon cans of alcoholic beverages
- 1 - 5 gallon wooden barrel of alcoholic beverages
- 6 - 10 gallon wooden barrels of alcoholic beverages
- 2 - 50 gallon wooden cookers
- 1 - 50 gallon steel drum type preheater
- 1 - 50 gallon galvanized cooling tank with copper coil
- 1 - hand force pump
- 1 - 50 gallon receiving tank
- 32 - 50 gallon barrels with mash
- 9 - 50 gallon empty barrels
- 15 - 18 pound bags of coke
- 1 - 10 gallon galvanized receiving tank
- 1 - 5 gallon measuring can
- 3 - funnels
- miscellaneous pipes, fittings and hose