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

BULLETIN 231. FEBRUARY 24, 1938.

1. LICENSEES - DISCRIMINATION ON ACCOUNT OF RACE, CREED OR COLOR - HEREIN OF JIM CROW GLASSES, PRICES AND ADVERTISING.

Sir:

I have been requested by one Miss Nellie Alexander, holder of Retail Plenary Consumption License in the City of Beverly, to ascertain of you information as regards the legality of selling alcoholic beverages as follows:

> "In dispensing beer she has two sets of glasses, one a thin glass and the other a thick glass (mug) both holding twelve ounces, the first mentioned is served to whites while she reserves the right to keep the heavy glasses separated and used for colored folks only."
>
> "Also is she permitted to charge colored folks more per glass than to white people. At the present time she sells at the rate of ten cents per glass but wishes to discourage colored patronage."

There are no prices posted anywhere in the licensed place located at Third and Broad Streets and she has been informed that in order to keep her patronage white she may charge any amount for beer to colored folks.

Another question asked is can she display the following sign which is at the present time in a licensed place in another part of the County, to wit: COLORED PATRONAGE NOT SOLICITED.

Awaiting your reply and assuring you that this person is a law abiding citizen in all respects, I remain

Very truly yours,

E. LeRoy Grant,
City Clerk.

February 21, 1938

E. LeRoy Grant,
City Clerk,
Beverly, N. J.

Dear Mr. Grant:

The Civil Rights Act, R. S. 10:1-1 et seq. forbids discrimination in accommodations and privileges when based on race, creed or color. It includes, among other places of public resort, inns, taverns, hotels, restaurants and any place where beverages of any kind are retailed for consumption on the premises. Violation not only subjects the offender to a money penalty, but also constitutes a misdemeanor punishable by a fine of not more than $500. or imprisonment of not more than 90 days, or both.

This means that it is unlawful in this State to refuse the service of liquor to a man merely because of his color. It means that it is unlawful to discriminate by serving beer in thin glasses to the white and in mugs to the colored folk. It means that a licensee cannot lawfully charge more to colored patrons than to those who happened to have been born white.

The fact that no prices are posted is immaterial. Discrimination is demonstrated by what is done in the effort to keep the patronage white.

Nor may a licensee display any sign to the effect that colored patronage is not solicited. The Civil Rights Act (R. S. 10:1-3) expressly provides that no owner, lessee, proprietor, manager, superintendent, agent or employee, shall "directly or indirectly publish, circulate, issue, display, post, or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from, or denied to, any person on account of race, creed or color, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed or color is unwelcome, objectionable or not acceptable, desired or solicited."

This ruling is complementary to Re Tait Paul, Bulletin 188, Item 9, where I said:

> "When a licensee has reasonable grounds to believe that service of alcoholic beverages to any particular person will eventually result in 'arguments', brawls or an ugly drunk, or even disturbances reasonably offensive to other patrons, he is wholly justified in refusing to serve such a customer.
>
> "I am assuming the good faith of the licensee. He could not, of course, justify refusal on this ostensible ground if his real reason was because of race, creed or color. The Civil Rights Act is to be honored to the full extent to which it goes."

It would be a kindness if you would notify the proprietor of the other licensed place in your County who is apparently violating the law.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. MUNICIPAL REGULATIONS - REGULATIONS ADOPTED BY MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL PRIOR TO JUNE 8, 1935, WHILE HAVING CONTINUING EFFECT, CANNOT BE AMENDED, NOR MAY NEW REGULATIONS BE ADOPTED, EXCEPT BY THE MUNICIPAL GOVERNING BODY.

DISCIPLINARY PROCEEDINGS - DISCONTINUANCE NOT WARRANTED BY SUBSEQUENT CHANGE IN REGULATION.

February 19, 1938

Walter Beisch, Secretary,
Municipal Board of Alcoholic Bev. Control,
North Bergen, N. J.

My dear Mr. Beisch:

I have before me your letter of the 11th regarding the disciplinary proceedings pending against the Red Robin Grill, Inc., 3755-59 Hudson Boulevard; also, the resolution adopted by the Municipal Board of Alcoholic Beverage Control on the same date, amending Rule 6 of the regulations adopted by the Board on December 19, 1933, extending the hours during which licensees may conduct their liquor businesses from 2:00 to 3:00 A. M.

The resolution is of no force or effect. On June 8, 1935, when Chapter 257, P. L. 1935 became effective, the authority to limit hours of sale, originally conferred by the Act upon each municipal license issuing authority, was transferred to and vested exclusively in the municipal governing body. R. S. 33:1-40 (Control Act, Sec. 37). While regulations theretofore duly and properly adopted by the Municipal Board of Alcoholic Beverage Control carry over in full force and effect, nevertheless since June 8, 1935, all amendments to previously adopted regulations and all new regulations must be enacted by the Board of Commissioners. See Bulletin 83, Item 1, paragraph 14; Re Schroeder, Bulletin 84, Item 12; Re Lario, Bulletin 96, Item 15; Re Wieser, Bulletin 98, Item 14; Re Reichenstein, Bulletin 105, Item 10; Re Bocca, Bulletin 109, Item 2.

It follows that until amended, repealed or otherwise superseded by resolution or ordinance of the Board of Commissioners, the old regulations control. The 2:00 A. M. closing hour fixed in Rule 6 is, therefore, still in effect.

Even if the resolution of the 11th had been properly enacted and consequently, competent to change the hours, I do not see how it could be rightfully said to warrant the discontinuance of the disciplinary proceedings. Synopsis of investigation of the Red Robin Grill, which I sent you with my letter of the 7th, discloses that the place was running wide open until 4:00 A. M., an hour later than the closing time you propose to fix and two hours later than the official closing hour.

Your Board will never impress upon the retail licensees in North Bergen the urgent necessity of compliance with the law and strict obedience of its rules until it faces these matters squarely and, after fair hearing, metes out appropriate punishment without fear or favor.

I therefore request that proceedings be instituted at earliest moment.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. MUNICIPAL ORDINANCES - REGULATION BARRING BAGATELLE, PIN GAMES AND SIMILAR GAMES ON LICENSED PREMISES APPROVED - HEREIN OF OMNIBUS CLAUSES IN ORDINANCES.

February 19, 1938

Reynier J. Wortendyke, Jr., Esq.,
Attorney for Millburn Township,
Newark, N. J.

My dear Mr. Wortendyke:

I have before me your letter of the 10th setting forth the proposed supplement to the Millburn alcoholic beverage ordinance, reading:

> "No licensee shall possess, allow, permit or suffer on or about the licensed premises any device or instrumentality for the playing of bagatelle, pin games or similar games, or other mechanical game or device of skill or chance."

The regulation, upon final adoption, will be approved as submitted, provided you eliminate the last ten words, for they confuse, rather than clarify, the proposed rule.

Everybody knows what bagatelle or pin games are. The term "or similar games", which you have well chosen as a general or omnibus catch all, is sufficiently broad to bar any game in the nature of bagatelle or pin games. After all, they are the only standards that the proposed supplement sets up and hence, it is but fair to confine the rule to those things which are readily determinable by each licensee and do not depend on the interpretation of a second generality.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. SPECIAL PERMITS - NOT ISSUED AS SUBSTITUTES FOR REGULAR LICENSES - A REGULAR LICENSE MUST BE OBTAINED FOR PRIVATE COMMERCIAL ENTERPRISES.

Gentlemen:

Kindly advise the procedure to obtain a permit to serve or sell beer at a series of dances.

I am planning to run a series of dances (weekly) starting Feb. 19th to end on April 30, 1938, in the Roselle Fire Headquarters Auditorium, Chestnut Street and 8th Ave., Roselle, N. J.

Very truly yours,
Ernest W. Michaels.

February 19, 1938

Mr. Ernest W. Michaels,
Roselle, New Jersey.

My dear Mr. Michaels:

In order to sell beer at the series of dances you plan to run, you would first have to take out the regular plenary retail consumption license, application for which, the premises being the Roselle Fire Headquarters Auditorium, must be made directly to the Roselle Borough Council. The annual fee for such license in Roselle has been fixed by the Council at $500.00. The license fee would be prorated from the date of issuance of the license to the following June 30th, the end of the fiscal year.

There is no special permit, taking the place of the regular license, that could be obtained for this purpose.

Special permits are issuable to bona fide mutual associations for the purpose of allowing them to sell alcoholic beverages for a limited time, as an incident to their general social activities, but not to individual promoters or business enterprises to exploit liquor for commercial advantage or private gain. If anyone wishes to do the latter, he must first take out a regular license and pay the full license fee. Regular licensees are entitled to protection from competitors who would pay only a fraction of the regular fee but pick the choice days. If I allowed the issuance of permits as substitutes for regular licenses in situations such as yours, every similar situation would be commercially exploited at the expense of the regular licensees.

The policy has been uniformly followed and no exceptions have been made. Re Perth Amboy Calabrese Social Club, Bulletin 213, Item 4; Re Bey, Bulletin 205, Item 1; Re Frankenstein, Bulletin 201, Item 5; Re Kashner, Bulletin 199, Item 12; Re Brucoli, Bulletin 197, Item 3; Re Riedel, Bulletin 190, Item 1; Re Lehigh Valley Railroad, Bulletin 168, Item 13; Re Zoellner, Bulletin 146, Item 10; Bulletin 92, Item 1; Re Wallenstein, Bulletin 90, Item 1; Bulletin 45, Item 8.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. MUNICIPAL REGULATIONS - HOURS - A REGULATION WHICH IS INCONSISTENT WITH A FORMER REGULATION AND NEITHER AMENDS NOR REPEALS IT, AND WHICH IS INCOMPLETE ON ITS FACE, IMPOSES NO RULE THAT IS LEGALLY ENFORCEABLE.

February 19, 1938

Michael D. Franco,
Borough Clerk,
Emerson, N. J.

My dear Mr. Franco:

I have before me your letter of the 10th quoting resolution adopted by the Council, providing:

> ".....that all establishments operating under Plenary Retail Consumption Licenses be permitted to remain open until 3 A. M. on week-days, and 4 A. M. on Sundays."

I note that the Council has previously adopted a resolution, on April 23, 1935, dealing with the same subject matter.

The resolution above quoted does not, however, refer or advert to the earlier resolution in any way. It is neither amendment nor repealer. On its face, it is an independent enactment. I have grave doubts whether the latter supersedes the former in whole or in part, or for that matter, affects it at all.

Treating the latter resolution as an independent enactment, as presently worded, it merely gives licensees permission to stay open until 3:00 A. M. on weekdays and 4:00 A. M. on Sundays. It does not say when sales of alcoholic beverages are prohibited. Nor does it require that during any particular hours the licensed premises shall be closed. In fact, closing at 3:00 A. M. or 4:00 A. M., as the case may be, and opening again ten minutes later, would satisfy the rule. Nor does it follow, from permitting licensees to be open during certain hours, that during the other hours they must be closed, because regulations for violation of which the license could be suspended or revoked, are always strictly construed. It follows that it imposes no regulation which could be said to be legally enforceable.

The thing to do, so that there may be a proper and effective regulation in regard to closing hours in your Borough, is for the Council to repeal the resolution last adopted and in its place enact a new one setting forth the hours during which sales of alcoholic beverages are prohibited and licensed premises must be closed. I offer for your consideration the following:

"No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage between the hours of 3 A. M. and 6 A. M. weekdays and the hours of 4 A. M. and 12 Noon Sundays."

If the Council wishes to close licensed premises, except restaurants and hotels, during these hours, add an additional clause reading:

"During the hours when sales are prohibited, the entire licensed premises, except bona fide hotels and restaurants, shall also be closed."

To prevent hotels and restaurants evading the regulation by permitting consumption, during closed hours, of alcoholic beverages purchased earlier, add the further provision:

"No alcoholic beverages shall be consumed on licensed premises during the hours sales are prohibited."

And if the hours are to be changed from Standard to Daylight Saving Time during the period the latter is effective, also include:

"The hours herein fixed shall be deemed to be Eastern Standard Time or Daylight Saving Time, whichever is the official time for the Borough."

See Re Stevens, Bulletin 197, Item 5.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. RETAIL LICENSES - RETAIL LICENSEES MAY SELL ONLY TO CONSUMERS AND NOT FOR RESALE EXCEPT PURSUANT TO SPECIAL PERMIT.

February 19, 1938

Edwin Slurzberg and Co.,
Jersey City, N. J.

Gentlemen:

Special permits to sell alcoholic beverages at social affairs, by their terms, authorize the permittee to purchase alcoholic beverages for use thereunder from any licensed New Jersey manufacturer, wholesaler or retailer.

The holder of a plenary retail consumption or distribution license may, therefore, make such sales, even though the alcoholic beverages so purchased will be resold.

Of course, otherwise than as above, such licensees may sell only to consumers, and not for resale, for to do so would violate the terms of the license and constitute a misdemeanor.

Federal tax stamps govern only the type and quantity of alcoholic beverages which may be sold to the same customer at the same time. They do not authorize New Jersey retail licensees to sell for purposes of resale. See Re Federal Wine & Liquor Company, Bulletin 198, Item 7.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. PROPOSED LEGISLATION - IMPORTATION OF LIQUOR BY CRUISE TOURISTS - NOTICE OF CHANGE OF STOCKHOLDINGS OF CORPORATE LICENSEES - REASONS FOR THE PROPOSED AMENDMENTS.

February 20, 1938

Hon. S. Emlen Stokes, Chairman,
Alcoholic Beverage Control Committee.

My dear Dr. Stokes:

Tomorrow, I understand, is the last day for introducing Bills.

Herewith two which I submit, believing each to be solely in the public interest.

1. An amendment to Section 2 of the old Control Act (now R. S. Sec. 33:1-2) which will allow persons to import distilled liquors to the extent of one gallon (instead of 2 qts. as now) without permit, thereby conforming our State law to the Federal law, which exempts importations to the extent of one gallon from Federal duty and Internal Revenue Tax.

Most everyone knows the Federal exemption - Pursers, Stewards and ship officials as well as liquor purveyors in the West Indies and other foreign places. At Bermuda and Nassau, for instance, the merchants there have made up a "case" of 4 quarts to attract our tourists. Usually, a case means 12 quarts. This new form of "case" was designed to comply with the Federal law. Tourists, on learning that, jump to the erroneous conclusion that there is no other tax, forgetting entirely the New Jersey State Tax and other State requirements.

In order to bring anything into this country purchased abroad, it must, of course, be declared on the Federal Customs Declaration, which every tourist must sign before being allowed to land. On that declaration must appear, of course, the gallon "case", which the returning tourist has purchased for family or friend -- or with an eye to economy for himself -- at home. So declared, it passes the Federal Customs scot-free, but later, usually many months later, the Federal officials make up a list of all liquor importations by New Jersey residents and certify it to the New Jersey State Tax Department, whose duty it thereupon becomes to collect whatever State Tax is due. The information, in turn, is transmitted from the Tax Department to me because the New Jersey Control Act requires a Special Permit costing $5.00, in order to transport into the State any liquor in excess of 2 quarts. It is a misdemeanor to do so without such a Permit.

Realizing full well that, save in rare and exceptional instances, the violation of the State law has been done in sheer ignorance and without any actual intention to evade it, I give these people an opportunity to procure a special permit nunc pro tunc, that is, relating back to the time when the excess 2 quarts was brought into the State, instead of rushing into court and charging them with a technical misdemeanor. For my thanks, the sorrows of Satan are visited on the Department. Highly respectable citizens, confronted with the disagreeable necessity of paying for "dead horses", write me protesting that the steamship line didn't tell them about it, or

that the storekeeper at San Juan or Curacao or elsewhere in the wilds of the Spanish Main told them that they could bring into the country 4 quarts free, so what right has New Jersey or this horrid Department to "soak" them extra - that this must be a trick, a fraud and a racket. When the matter is explained, a few pay, usually accompanied, however, by acrimonious outburst. Most of them, however, resist until at least there has been long tedious correspondence to explain why it makes no difference that the liquor has long since been consumed or given away or was brought into the State in their own or some other automobile or in a suitcase by hand, or any other thought by which it is sought to escape the fee. Time and again they write in to tell me that, in spite of the customs manifest, the liquor was never brought into the State, but given to admiring friends in New York or thirsty ones at the Pier, or that the liquor was consumed on the boat the night before landing, or anywhere else than New Jersey. Of the making of alibis there is no end! Some few pointblank refuse to pay or answer the correspondence. The only recourse then is to move to indict them. Grand Juries, confronted with work of real magnitude, naturally do not take kindly to such cases. The fact is that a few of the law-abiding pay. Most of the travelers escape.

The few dollars brought in do not pay for the cost of collection or the bitterness engendered or the disrespect for law encouraged by the fabrication of devious "outs." To be fair, everybody should be made to pay whatever the law requires. To be practical and command public support, the limit of importations should be raised to correspond with the amount allowed by the Federal regulations. That makes for uniformity. After the allowance of the suggested liberal exception, we would have the backing of every fair-minded citizen instead of a procedure which many think is officious, or unfair, or unjust. After all, the real objective is to catch and tax commercial importations, not the casual purchases in small amount for personal consumption of himself or friends as made by the average tourist.

2. The other amendment affects Section 51 of the old Control Act (now R. S. Sec. 33:1-34). It now provides that whenever any change occurs in the facts set forth in a license application, the licensee shall file a written notice of the change within ten days after it occurs, but that no notice need be given by corporate licensees of "changes in stockholdings therein unless and until the aggregate of such changes, if made before the time of said application, would have prevented the issuance of the license."

Experience has shown, particularly in municipal retail licenses where there are no facilities to check up continually on licensees, that applications come in from corporations which seek a consumption or a package goods license. The municipality checks up on the persons named in the application and finds them satisfactory and a license is issued. It has happened that, time and again, immediately thereafter the stock is transferred to other people - presumably the real parties in interest - whom the municipality has not checked or passed upon at all and the matter doesn't come to light until a year afterwards when a renewal is asked for. It is true that notice should, in such case, be given. But the wording above quoted is too indefinite and calls for a conclusion as to whether the changes would have prevented the issuance of a license - a conclusion against self interest which the licensee could hardly, in the nature of things, be depended upon to report.

There is no need of going to the other extreme and requiring notice of every change in stockholdings to be certified. If the Statute went that far, then, every time a share of stock in

the Pennsylvania Railroad was sold (and daily thousands are sold) a certification would have to be made each day because the Railroad holds a license for its dining cars.

I suggest, to make it practical, and to make it symmetrical with the requirements of R. S. Sec. 33:1-12.1, and to afford the full measure of information that license issuing authorities need, that the words last above quoted be stricken out and substituted by the following phrase, viz.:

> "any transfer of stock except where the transferee thereby becomes the holder of ten percentum (10%) or more of the corporate stock."

The amendment makes it definite, mechanical and precise. The licensing authority can then determine the effect of the stock transfer upon the license itself.

I will appreciate it if you will introduce both the bills into the Assembly.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. ILLEGAL SALES - USING UNLICENSED PREMISES AS A PLACE TO ADVERTISE AND TRANSMIT ORDERS FOR THE SALE OF LIQUOR - THE TRANSPARENT SUBTERFUGE WILL NOT BE TOLERATED.

February 21, 1938

Gold's Drug Stores Corporation,
Jersey City, N. J.

Gentlemen:

I have report from Deputy Commissioner Garrett, in charge of enforcement, reading:

> "Gold's have three licensed premises in Jersey City. They also have a store at 790 Bergenline Avenue, Union City, which is unlicensed. On December 31, 1937, it was found that three liquor ads were affixed to the show windows of Gold's Union City store. A photograph which portrays the exact set-up is attached hereto.
>
> "These signs set forth that the nearest store handling liquor is located at 310 Central Avenue, Jersey City. The telephone number of this store is also given.
>
> "Customers who pass the Union City store are attracted by the signs and enter to inquire about liquor purchases. They are advised by the clerk that the Union City store does not carry liquor. Upon further inquiry, the clerk cleverly refuses to accept any money or the order itself. He then directs the customer to a private telephone and tells him that he may telephone the Jersey City store without charge, although there is a pay station in the store, and order liquor C. O. D.
>
> "Stationed at the telephone is another clerk who has a copy of the advertisement as well as a long-hand list of all other liquor prices in effect at the time. The clerk will assist the customer in his selection but will not make the phone call.

"The investigation reports of Inspector Lurie and Investigator Silberman, which set forth in detail the entire procedure, are attached hereto.

"There is no doubt that this is an ingenious subterfuge to use an unlicensed store in Union City to the same extent as its three licensed premises in Jersey City."

You are hereby directed to cease and desist from using your unlicensed store in Union City, directly or indirectly, or in any manner whatsoever for the sale of liquor. The subterfuge is transparent. Unless I receive your prompt and unequivocal pledge that neither this store in Union City or any other place whatsoever will be used as an accessory for the illegal sale of liquor, disciplinary proceedings will be instituted against you forthwith in respect to your Jersey City stores.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS IN VIOLATION OF REFERENDUM - 30 DAYS' SUSPENSION MEANS BUSINESS.

February 21, 1938

Mr. Roland C. Baer,
Township Clerk of Gloucester,
Blackwood R. D., New Jersey.

Dear Mr. Baer:

I have staff report and your certification of the proceedings before the Township Committee of Gloucester Township against Edward F. Wright, t/a Wright's, charged with (a) having sold alcoholic beverages on Sunday during prohibited hours in violation of referendum and (b) having permitted the licensed premises to remain open after 1:00 A. M. contrary to the Township resolution.

I note the licensee pleaded guilty to the charges and that his license was suspended for a period of thirty days.

Please extend to the members of the Township Committee my sincere appreciation for their splendid cooperation in the interest of proper law enforcement. Coupled with the thirty days' suspension handed out for a similar offense to another one of your licensees some time ago, the penalty in this case should bring home forcibly to Gloucester Township licensees that your Committee means grim business. That is as it should be. Thanks for the good work.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

10. UNLICENSED RESTAURANTS - THE PRACTICE OF FURNISHING SET-UPS AND ACCESSORIES AND PERMITTING PATRONS TO CONSUME OWN LIQUOR CONDEMNED - HEREIN OF ITS DANGERS.

RETAIL LICENSES - NO LICENSE ISSUABLE TO SELL ONLY BEER AND WINE WITH MEALS.

Dear Mr. Burnett:

Will you please clear up a point in regard to your press announcement that tomato pie establishments cannot have beer, wine,

etc., brought into their establishments for consumption (on the premises) by tomato pie customers.

A very ethical owner of a small restaurant has interpreted this ruling to the extent that it prohibits him from furnishing ginger ale, a glass, corkscrew, bottle opener, and ice to a regular meal patron, if the restaurant owner believes that the meal customer has a bottle of liquor in his pocket and wishes to mix a drink for himself.

Please advise us if your ruling is as broad as interpreted by this restaurant owner, and if he must deny such items as mentioned in the foregoing paragraph if he suspects that a meal patron intends to use same for alcoholic beverage purposes.

Also please advise us of the requirements and the license fee for a restaurant owner to sell beer and wine only with meals.

Respectfully yours,
W. O. Lochner, Secretary,
Trenton Chamber of Commerce.

February 21, 1938

Trenton Chamber of Commerce,
Trenton, N. J.

Att: W. O. Lochner, Secretary.

Gentlemen:

I take it that the press announcement to which you refer is the item in the Trenton Evening Times of December 30, 1937, entitled "'Growler' Can't Be Rushed To Unlicensed Tomato Pie Places." The announcement was not mine, but that of Clarence A. White, license inspector for the City of Trenton. It was, however, apparently based on two of my rulings, Re Bashover, Bulletin 184, Item 2 and Re Bascom, Bulletin 203, Item 12.

Strictly speaking, there is nothing in the liquor law which would prevent restaurant patrons consuming, on the premises of an unlicensed restaurant, alcoholic beverages purchased by them from duly licensed retailers. Technically, no liquor license is needed for that. Nor is any liquor license required for the sale of accessories, such as ginger ale and ice. Re McFadden, Bulletin 70, Item 10 and Bulletin 73, Item 2; Re Berry, Bulletin 87, Item 13.

But neither the restaurant proprietor nor his employees may serve the liquor. Non-licensees are prohibited from servicing alcoholic beverages, e. g., mixing, serving, preparing, obtaining, carrying or otherwise handling them. Ruling made in Re Walsh, Bulletin 187, Item 9 and the items cited therein will give you the reasons. The mere furnishing of a glass, a corkscrew or a bottle opener is not prohibited.

However, if the restaurateur allows his patrons to bring liquor on the premises, there is a great risk that he takes of running foul of the law. The proprietor is fully responsible for what occurs on his premises. If a patron brings illicit liquor into the restaurant (as, for instance, in Re Meyers, Bulletin 155, Item 2), or the police, on finding liquor being served, prefer a charge of unlawful sale, it will require a lot of explaining to exonerate the proprietor. See, for example, Re Davidow, Bulletin 159, Item 11, which deals with a similar situation.

I have always discouraged the consumption of liquor on unlicensed public or quasi-public premises. You can readily see

that the mere presence of liquor on the table gives every appearance of a violation of the law. My earnest advice to unlicensed restaurant-keepers is - don't do it! They have no moral right to allow any drinking on their premises, which is a privilege for which licensees have to pay heavily into the City Treasury.

The whole practice is against the interest of sound liquor enforcement. If sanctioned, what is there to prevent any speakeasy from claiming when raided: "These fellows brought their own. All poor little innocent I did was to furnish the ginger ale and the corkscrew."

There is no provision in the Control Act for the issuance of a license to sell beer and wine only either with or without meals. The only license for the sale of alcoholic beverages to the general public for on-premises consumption is the regular plenary retail consumption license. The fee for such license has been fixed by the Trenton City Council at $450.00 per annum. R. S. Sec. 33:1-12 (Control Act, Sec. 13-1) defines the privileges of this license, and R. S. Secs. 33:1-25 and 33:1-12.1 (Control Act, Secs. 22 and *22A) prescribe qualifications of licensees. Application should be made to the City Council, concerning which the City Clerk will give full information.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. GAMBLING - BINGO - THE RULE PROHIBITING BINGO OR SIMILAR GAMES OF CHANCE IN BAR ROOMS IS NOT TO BE FRITTERED AWAY BY EVASIVE CONTRIVANCES.

February 16, 1938

Dear Sir:

Enclosed find sketch of our lay-out.

What I am interested in is for you to permit us to hang a curtain which is 7-ft., 6-in. in height between our bar room and grill at the time when we desire to play "Bingo".

You will note that there are two sets of steps leading from the bar room into the grill as the grill floor is about sixteen inches lower than our bar room floor.

It would be rather hard, of course, should it be necessary for us to build a solid wall as only about fifteen months ago we went through a very large expense in taking the solid wall out between these rooms.

Respectfully yours,
Monmouth Wine & Liquor Co., Inc.
Emanuel Einziger, Pres.

February 22, 1938

Emanuel Einziger, President,
Monmouth Wine & Liquor Co., Inc.,
Keyport, N. J.

Dear Sir:

I have before me yours of the 16th.

You are aware, of course, of Regulations 20, Rule 16, which forbid Bingo or similar games of chance to be conducted

either (1) in any room in which a bar for the service, delivery or sale of alcoholic beverages is located, or (2) in any other room or place while alcoholic beverages are being sold, served, delivered or consumed therein.

Your so-called grill room is not separate and distinct from your bar room, even if you have to ascend a step or two to reach the bar in the same open room.

The rule means just what it says.

I do not purpose to let down the bars on Bingo or to suffer the salutary rule now in force to be frittered away by the mere hanging of curtains or cheesecloth or any other evasive contrivance.

Your scheme is therefore disapproved. Bingo games on your premises as now constituted shall cease forthwith.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

February 10, 1938

In Re: Case No. 211.

In his application solicitor denied that he had ever been convicted of a crime. Fingerprint records disclose that in 1929 he had been arrested for illegal transportation of liquor.

At a hearing duly held, solicitor admitted that, prior to his arrest, he had been driving a truck for a bootlegger and that, after his arrest and indictment for illegal transportation of liquor, he pleaded guilty thereto in a Court of Special Sessions and received a suspended sentence. Since no aggravating circumstances appear, the crime for which he was convicted does not involve moral turpitude. Re Hearing No. 177, Bulletin No. 205, Item 6.

As to his false affidavit, solicitor testified that, at the time the application was filled out, a fellow employee who prepared the application asked him if he had ever been arrested and that solicitor told the person who was filling out the application that he had been arrested during bootlegging times but never since. Affidavit has since been obtained from the person who filled out the application wherein, among other things, he says:

> "That if any statements made on the applications are incorrect it is due to a misunderstanding between (solicitor) and myself and his inability to understand and speak the English language intelligently."

From the testimony given by solicitor at the hearing, I believe that solicitor understands the English language very well, although he talks it imperfectly. The explanation as to the misunderstanding might be accepted were it not for the fact that solicitor filed a questionnaire on June 7th, 1935 wherein he likewise denied that he had been convicted of any crime. This leads to the conclusion that the false answer is not due to a misunderstanding but to a deliberate misstatement by solicitor.

It is recommended that solicitor's permit be suspended for ten (10) days because of a false affidavit.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - CHEATING LICENSEES HAVE NO PLACE IN THE PRESENT ORDER - UNLESS A MINIMUM OF 30 DAYS' SUSPENSION IS IMPOSED FOR POSSESSION OF ILLICIT LIQUOR, THE COMMISSIONER WILL HANDLE SUCH CASES HIMSELF.

February 23, 1938

Daniel J. Lane, Esq.,
City Clerk,
Gloucester City, N. J.

Dear Mr. Lane:

I have staff report and your certification of the proceedings before the Common Council of Gloucester City against Richard C. McKenna, charged with having possessed illicit alcoholic beverages.

I note the licensee was adjudicated guilty and that his license was suspended for a period of five days.

Expressing no opinion on the merits of the case because it may come before me by way of an appeal, and while appreciating the fine cooperation always received from your Council in disciplinary matters, I am frankly of opinion that the punishment imposed in this case is not adequate for this type of violation. Customers are entitled to be served the liquor they order and for which they pay their money; not from a bottle that has been "refilled" or "cut." Cheating licensees have no place in the present order of things.

I must therefore insist that a minimum of thirty days' suspension of the license be imposed in such cases in the future or else I shall have to handle them myself.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. LICENSES - VOLUNTARY SURRENDER - REFUND - METHOD OF COMPUTATION.

Gentlemen:

I would appreciate your informing me whether or not a person having a licensed premises for retail consumption is entitled to a refund, who has conducted the licensed premises for a period of seven months.

Very truly yours,
Myldred Lipman.

February 23, 1938

Miss Myldred Lipman,
Vineland, N. J.

Dear Miss Lipman:

R. S. Sec. 33:1-31 (Control Act, Sec. 28) provides that if any licensee, except a Seasonal Retail Consumption licensee, shall voluntarily surrender his license, there shall be returned to him, after deducting a surrender fee of 50% of the license fee paid by him, the prorated fee for the unexpired term.

Hence, if a licensee conducted business under the license for seven months, which is more than half of the licensing period for which the license was issued, the prorated unearned fee would be less than half of the license fee paid. In such case, the surrender fee would be greater than the prorated unearned fee from which it is to be deducted and, hence, there would be no balance to refund.

For example, if the annual fee for the license was $500.00, the surrender fee would be $250.00 and the prorated unearned fee as of January 31st, the end of the seventh month, $206.85. Because the surrender fee is greater than the unearned fee, there is nothing left to refund.

It follows, therefore, that whenever a license has been effective for more than half its term, the surrender thereof does not entitle the licensee to any refund whatsoever.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.
By: Erwin B. Hock
Deputy Commissioner

15. TIED HOUSES - THE PRACTICE CREEPING - BREWERY'S PAINTING OF WHOLESALER'S TRUCK DISAPPROVED.

Dear Mr. Burnett:

Will you kindly let the writer know if there is a ruling against breweries painting a truck of mine for which I distribute their beer?

Yours very truly,
S. Klein.

February 23, 1938

Samuel Klein,
Belmar, N. J.

Dear Sir:

Replying to yours of the 3rd, our records show that you are the holder of plenary wholesale license No. W-11.

R. S. 33:1-43 (Control Act, Sec. 40) prohibits a manufacturer or wholesaler from being directly or indirectly interested

in the retailing of alcoholic beverages. Rules governing equipment, signs and other advertising matter forbid manufacturers or wholesalers from directly or indirectly furnishing, delivering, servicing or repairing any fixtures, equipment, signs or other advertising matter for any retail licensee or in any retail licensed premises, with certain exceptions therein set forth.

At the present time there is nothing in the law or the State rules or regulations which would prohibit a brewery from painting your truck because you are not a retailer.

I do not approve of this practice, however.

Why not be independent and do the job at your own expense?

Let me know by return mail what brewery it is that offered to paint your truck. All breweries will shortly be called upon by me to account for all such practices.

Very truly yours,

Frederick F Bennett

Commissioner.