

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

BULLETIN 388

MARCH 1, 1940.

1. SEIZURES - CONFISCATION PROCEEDINGS - ORDER MODIFIED.

In the Matter of the Seizure) Case 5044
of a Ford Sedan, and a five-)
gallon can of alcohol contained)
therein, on the public highway at) ORDER
or near the intersection of Ad-)
miral Wilson Boulevard and Starr)
Avenue, in the City of Camden,)
County of Camden and State of)
New Jersey.)

BY THE COMMISSIONER:

By Order entered on May 27, 1939, a Ford Sedan was ordered returned "to either the Metropolitan Discount Corporation or the Meisel Tire Company as such claimants shall elect, upon the payment of the costs due, paid or incurred in connection with the seizure of the vehicle. If the lien claimants cannot agree to which claimant the vehicle is to be returned, then the vehicle will be retained until the priorities between the lien claimants have been adjudicated by a Court of competent jurisdiction."

It now appears that neither claimant has paid the costs involved, nor agreed as to which claimant is to accept return of the vehicle, nor advised that suit has been instituted to determine the priorities between the claimants.

On February 7, 1940, both claimants were notified that unless they showed cause to the contrary on or before February 19th, 1940, a supplemental order would be entered rescinding so much of the previous order as directed the return to the lien claimants and, instead thereof, directing the retention of the vehicle for State use. To date, neither claimant has responded.

I therefore rescind so much of the order of May 27, 1939 as directed the return of the said motor vehicle, and instead, it is ORDERED that it be retained for the use of hospitals and State, County and municipal institutions.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 25, 1940.

2. APPELLATE DECISIONS - POTAMKIN v. CAMDEN.

VICTOR H. POTAMKIN,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF CAMDEN,)
)
 Respondent)
)
 -----)

ON APPEAL
CONCLUSIONS

Carl Kisselman, Esq., Attorney for Appellant.
 Edward V. Martino, Esq., Attorney for Municipal Board of Alcoholic Beverage Control of the City of Camden.
 Harry M. Mendell, Esq., Attorney for New Jersey Licensed Beverage Association, Div. #5, an objector.
 Meyer L. Sakin, Esq., Attorney for South Jersey Retail Liquor Dealers Association, an objector.

BY THE COMMISSIONER:

Appellant appeals from denial of transfer of a plenary retail consumption license from William W. Ewing, for premises at 1251 Mechanic Street, Camden, to Victor H. Potamkin, appellant herein, for premises at 710 Broadway, Camden.

By consent, the appeal has been submitted upon the transcript of the evidence taken below.

Of course, the transfer of an existing license in nowise increases the number outstanding.

It is contended in the answer and briefs that the action of respondent was proper because (1) appellant seeks to circumvent the effect of an ordinance of the City of Camden limiting the number of plenary retail distribution licenses, and (2) there are sufficient plenary retail consumption licenses in the section of the city to which the transfer is sought.

As to (1): Appellant frankly admits that he intends to conduct only a package goods store. In fact, under the terms of his lease he may not use or permit any part of his premises to be used for any other purpose than "as a retail liquor store - for the sale of package goods only and no liquor to be consumed on the premises."

But what of it? We are dealing with a plenary retail consumption license. The license itself gives him a double-barreled privilege. There is no requirement that he must exercise both or else none at all. What is ignoble in selling package goods which is cured by serving drinks over a bar? Would the holder of such a license be stopped from dispensing liquor for on-premises consumption unless he also sells package goods for off-premises use? It is a poor argument which does not work both ways. It is a fatally defective argument which fails to note the elemental difference between what is mandatory and what is permissive.

In Samuels Pharmacy, Inc. v. Newark, Bulletin 381, Item 6, I said:

"A plenary retail consumption license entitles the holder thereof to the permissive privileges of selling liquor in original containers for off-premises consumption and selling liquor in open receptacles for on-premises consumption. The holder may, fancy-free, choose to exercise both, neither or either of these privileges. Franklin Stores Co. v. Newark and Shapiro, Bulletin 362, Item 2."

In Zager & Scheraga v. Passaic, Bulletin 385, Item 9, I said:

"The objection that appellants contemplate the operation of a package goods store under a plenary retail consumption license is based on a misconception of the law. Assuming they do, what of it? The holders of plenary retail consumption licenses may sell alcoholic beverages for on-premises consumption and off-premises consumption, or either. That is the privilege which R. S. 33:1-12 confers and municipalities may not diminish. Re Lee, Bulletin 232, Item 8; Re Altman, Bulletin 248, Item 8; Re Berla, Bulletin 304, Item 10; Re Whitman, Bulletin 312, Item 6; Re Hershenstein, supra." (The ruling in Re Hershenstein will be found in Bulletin 330, Item 7).

The first contention is, therefore, without merit.

As to (2): The record fails to show that any formal resolution denying the transfer and setting forth the reasons therefor was filed by respondent. However, at the conclusion of the testimony, which was heard before Vincent Canzanese, Esq. and John L. Morrissey, Esq., members of the Municipal Board (the third member being absent), the following statements were made:

"MR. CANZANESE: Due to the fact they are going to change from a C license to a D license I don't think we ought to grant the transfer.

"MR. MORRISSEY: I believe the law is clear that the place must be operated as a saloon, and for that reason the transfer is denied. In hearing the testimony it seems to me that Broadway is open from Pine Street on up. Of course, you can construe congestion down the other end, but it doesn't seem to me there is very much congestion up on north Broadway, but I don't think they are entitled to the license on the basis it is going to be operated as a package store, maybe not as a package store, you can't say a C license is operated as a package store, but he says it is going to be operated as a package store."

The evidence confirms Mr. Morrissey's statement that there is not "very much congestion up on north Broadway". This section of Broadway is devoted to business and is one of the shopping centers of Camden. On Broadway, to the south, the two nearest places licensed for consumption are respectively three hundred and thirty-five and four hundred and eighty-five feet away; to the north, there is no place licensed for consumption within a distance of ten squares, and no place licensed for distribution within a distance of four squares. While it is true that there are numerous other licensees in this section of the city, their places of business are located on other streets.

The question as to the number of licensed places which should exist in any given section of a municipality is primarily within the reasonable discretion of the issuing authority. Ciliberti v. Camden, Bulletin 379, Item 13. Where, as in the present case, the issuing authority considers the question of sufficiency, and indicates that it is not impressed by the testimony produced as to that question by the objectors, and places the denial upon an entirely different ground which turns out to be erroneous, there is no reason why the case should be remanded to the Municipal Board for further consideration.

The action of the respondent is, therefore, reversed, and respondent, Municipal Board of Alcoholic Beverage Control of the City of Camden, is directed to grant the transfer of the license as requested.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 25, 1940.

3. DISCIPLINARY PROCEEDINGS - UNDISCLOSED PARTNERSHIP - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

PEARL BERNSTEIN,
T/a Newton Tavern,
Hampton Township,
P.O. Newton, R.D. 3, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License No. C-5, issued by the Township Committee of the Township of Hampton.
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Charles T. Downing, Esq., Attorney for defendant-licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served upon the licensee allege that:

- "1. During the period from November 8, 1937 until December 24, 1937, in violation of R. S. 33:1-52, you knowingly aided and abetted Marcia Eckert to exercise the rights and privileges of your Plenary Retail Consumption License C-5 issued by the Township Committee of Hampton Township for the period 1937-38, contrary to R.S.33:1-26.
- "2. You failed to notify the Township Committee of Hampton Township within ten days after November 8, 1937 of the change in the facts as set forth in your application for the above license, contrary to R. S. 33:1-34, in that you failed to notify said issuing authority that Marcia Eckert had become a partner in your licensed business."

On March 18, 1938, licensee signed a written statement, in the presence of an inspector of this Department, wherein, among other things, she said:

"On November 8, 1937, she entered into a partnership agreement with one Marcia Eckert for a full one-half (1/2) interest in these same licensed premises.

"From November 8, 1937, until just before Christmas 1937, Marcia Eckert and she operated the licensed premises as full and equal partners.

"Just prior to Christmas 1937, Marcia Eckert agreed to buy out Pearl Bernstein and pursuant thereto Marcia Eckert gave to Pearl Bernstein a check for three hundred (\$300.) dollars, upon which no payment was made because of insufficient funds.

"At the same time that the afore-mentioned check was issued, Marcia Eckert left the licensed premises and since that time has not returned to the licensed premises nor has she participated in any way in the operation of these premises."

On May 11, 1938, a synopsis of the Department's investigation was forwarded to the Township Committee of Hampton Township with a recommendation that disciplinary proceedings be instituted against the licensee. On June 24, 1938, I was advised that said Township Committee, after investigation, had concluded that the partnership was never consummated and had decided that, under the circumstances, charges and hearing in this case would result in a dismissal of the proceedings and unnecessary expense to the Township. Since the local issuing authority refused to act, these proceedings were instituted directly against the licensee.

At the hearing herein, licensee pleaded not guilty.

The evidence introduced on behalf of the Department consisted of the statement given by the licensee on March 18, 1938, a copy of an agreement entered into between Pearl Bernstein and Marcia Eckert dated November 8, 1937, and the testimony of J. Martin Couse, a member of the Township Committee of the Township of Hampton. The agreement between Pearl Bernstein and Marcia Eckert provides, among other things:

"that the said parties above named have agreed to become partners in business and by these presents do agree to be co-partners together, under and by the firm name and style of 'Newton Tavern' *** at the place formerly known as 'Blackie's Tavern' in the Township of Hampton, **"

In substance, the agreement further provides that the co-partnership shall commence on the 8th day of November, 1937 and shall continue until the expiration of a certain lease made between Wilbert J. Decker and Pearl Bernstein or any renewal or extension thereof; that for the purposes of this co-partnership the said Pearl Bernstein has contributed to the partnership her lease of said premises and her interest in the equipment thereof, including the said license for the sale of alcoholic beverages issued by the Township of Hampton and the said Marcia Eckert has

contributed to the said partnership the sum of three hundred dollars (\$300.00) in cash; that said Marcia Eckert is to receive and deposit all moneys taken in by the said co-partnership from the sale of commodities or otherwise, the same to be deposited in the name of "Pearl Bernstein and Marcia Eckert" in the Sussex and Merchants National Bank of Newton, and no moneys shall be disbursed from said bank account except upon the signature of both of the parties hereto.

Mr. Couse testified that Pearl Bernstein had never notified the Township Committee or the Township Clerk that she had taken in either Marcia Eckert or any other person as a partner in the business.

The licensee admitted the execution of the agreement dated November 8, 1937, but testified that she and Marcia Eckert had never operated the business as partners because Marcia Eckert had failed to make the payment of three hundred dollars (\$300.00) required under the terms of the agreement. The attorney for the licensee, who drew the agreement, stated that Marcia Eckert had paid no money at the time the agreement was signed but had arranged to pay the sum of three hundred dollars (\$300.00) to one Frank Black in satisfaction of a three hundred and fifty dollar (\$350.00) chattel mortgage which he held upon the licensed premises; that, thereafter, Eckert had given to Black two checks, each for three hundred dollars (\$300.00), both of which "bounced back", so that the chattel mortgage was never paid. He further stated that the licensee and Marcia Eckert called at his office on December 22, 1937, at which time the parties discussed the "proposition of Marcia either coming through as a partnership or buying Mrs. Bernstein out"; that Marcia Eckert then agreed to pay the debts and, in addition, to give Pearl Bernstein three hundred dollars (\$300.00) for her interest in the premises. This check was dated December 23, 1937 but was returned by the bank marked "no funds".

The licensee testified that during the period between November 8, 1937 and December 22, 1937 Marcia Eckert, while frequently on the premises, did not participate in the conduct of the business and never shared in the profits thereof; that all supplies were purchased in the name of Pearl Bernstein.

Despite this testimony, I believe that the business was conducted by the partnership between November 8, 1937 and December 22, 1937. The agreement, by its terms, was to become effective immediately; both parties were on the premises between said dates and, apparently, the final breaking up of their relationship did not come until they revisited the lawyer's office on the latter date. This conclusion is consistent with licensee's admission that, between said dates, both of them operated the licensed premises as full and equal partners. Cf. Re Roselli, Bulletin 330, Item 2. Hence I find the licensee guilty as to charges (1) and (2).

Licensees must learn that before taking in a partner the license must be properly transferred. Under all of the circumstances of the case I shall suspend the license for ten days.

Accordingly, it is, on this 25th day of February, 1940,

ORDERED that plenary retail consumption license C-5, heretofore issued to Pearl Bernstein, t/a Newton Tavern, by the

Township Committee of the Township of Hampton, be and the same is hereby suspended for a period of ten (10) days, effective March 1, 1940, at 12:01 A. M.

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS AND EMPLOYMENT OF FEMALE - 18 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

KINNEY CLUB, INC.,
36 Arlington Street,
Newark, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-970, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

-----)
Kinney Club, Inc., by Herman Pontesof, Secretary and Treasurer. Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee, by its Secretary-Treasurer, has pleaded guilty to charges of (a) sale of alcoholic beverages and (b) keeping the licensed premises open during prohibited hours, and (c) employing a female to sell and serve alcoholic beverages in violation of local ordinance.

The usual penalty for each violation is five days, or a total of fifteen days.

On July 20, 1939, this licensee having committed a similar violation as set forth in (a) and (b), for which, on confession of guilt, I suspended its license for five days (Bulletin 336, Item 9). The usual penalty will therefore be doubled. The license will be suspended for twenty days for these violations, less five days for the plea on its second confession.

For the employment of a female to sell and serve alcoholic beverages, the usual penalty is five days. This being the licensee's first violation of this nature, the license will be suspended for five days, less two days for the plea.

Accordingly, it is, on this 26th day of February, 1940,

ORDERED, that Plenary Retail Consumption License C-970, heretofore issued to Kinney Club, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of eighteen days, effective March 1, 1940, at 3:00 A. M.

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

CLIFFSIDE PARK ATHLETIC CLUB, INC., 186 Walker Street, Cliffside Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Cliffside Park.)

-----)

Cliffside Park Athletic Club, Inc., by Joseph W. Marini, Esq. Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on January 30, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 26th day of February, 1940,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Cliffside Park Athletic Club, Inc. by the Borough Council of the Borough of Cliffside Park, be and the same is hereby suspended for a period of five (5) days, effective March 1, 1940, at 3:00 A. M.

D. FREDERICK BURNETT, Commissioner.

6. TAXES - THE FEDERAL TAX ON ADMISSIONS TO CABARETS AND PLACES OF SIMILAR ENTERTAINMENT.

February 27, 1940

Mr. Michael Dvoretzky, Newark, N. J.

Dear Mr. Dvoretzky:

I have before me your letter of February 20th regarding the ten cents charged against you as tax on your bill of \$3.15 at the Alpine Village Tavern.

There is nothing in the State liquor laws or regulations providing for any such tax. However, I take it that what the

Alpine Village Tavern was charging against you was the so-called Federal "cabaret" tax, which is provided for by Federal Internal Revenue Act of February 26, 1926, c. 27, §500(a)(5), as follows:

"A tax of 1½ cents for each 10 cents or fraction thereof of the amount (shall be) paid for admission to any public performance for profit at any roof garden, cabaret, or other similar entertainment, to which the charge for admission is wholly or in part included in the price paid for refreshment, service, or merchandise; the amount paid for such admission to be deemed to be 20 per centum of the amount paid for refreshment, service, and merchandise. Where the amount paid for admission is 50 cents or less, no tax shall be imposed."

That Act further provides that the tax shall be paid by the person paying "for such refreshment, service, or merchandise."

As to further information about this tax, I suggest that you write to the branch office of the Federal Department of Internal Revenue, Post Office Building, Federal Square, Newark, N. J.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application) to Remove Disqualification be-) cause of a Conviction, Pursuant) to R. S. 33:1-31.2 (as amended) by Chapter 350, P. L. 1938).)	CONCLUSIONS AND ORDER
Case No. 80) -----)	

Samuel L. Hirschberg, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner seeks a removal of the disqualification resulting from his conviction in November 1929 of a violation of the Internal Revenue Act (income tax evasion).

The testimony establishes that he is married and has three children. During the past five years he has held the position of sales manager with two Pennsylvania breweries, and for the past year and a half has owned a farm in Pennsylvania, where he carried on a poultry and egg business. He has now been offered a job as salesman for a New Jersey brewery and has recently moved to this State. Fingerprint returns corroborate his statement that since 1929 he has never been arrested or convicted of any crime. In fact, the conviction referred to, and a prior one, were voluntarily disclosed to the Department by petitioner, and do not appear on his returns.

To support the fact of his having led an honest and law-abiding life for the five years preceding his application, petitioner produced three witnesses, all of whom testified that his

reputation during the period of their friendship with him was good. One is employed by the Port of New York Authority as a supervisor of building alterations and has known petitioner for thirty years; another is foreman in the construction department of the New York Telephone Company and has known petitioner for eight years; the third is a retired coal dealer and has been an intimate friend of petitioner's for five years. A representative of the New Jersey brewery appeared at the hearing and testified that if petitioner's application were granted he would immediately be given a position there as a salesman.

I am satisfied from the evidence that petitioner has conducted himself in a law-abiding manner for more than five years last past, and I conclude, therefore, that his association with the alcoholic beverage industry will not be contrary to the interests of the industry.

It is, therefore, on this 25th day of February, 1940, ORDERED, that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction referred to herein, be and the same is hereby removed in accordance with R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - STILL ON MUNICIPALLY OWNED PROPERTY - PADLOCK DENIED, PROPERTY FORFEITED.

In the Matter of the Seizure on) Case 5653
December 21, 1939, of a still)
at 159 Falmouth Avenue, in the) ON HEARING
Borough of East Paterson, County) CONCLUSIONS AND ORDER
of Bergen and State of New Jersey.)
-----)

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.
No other appearances.

BY THE COMMISSIONER:

On December 21, 1939, police officers of the Borough of East Paterson discovered an unregistered still in operation in a barn at 159 Falmouth Avenue, East Paterson. They seized the still and other property set forth in Schedule "A" herein and arrested two men found on the premises. These men were charged with operation of an unregistered still, in violation of R. S. 33:2-10, to which they pleaded non vult. The seized property, all of which constitutes unlawful property (R. S. 33:2-2), was turned over to this Department.

No one appeared to contest the forfeiture of the unlawful property.

The premises are owned by the Borough of East Paterson. On May 1, 1939 it sold the premises, upon which there is located only the aforesaid barn, to a purchaser upon an installment contract. Upon default in payment of one of the installments, the Borough thereupon instituted foreclosure proceedings and reacquired

title. The barn had been rented out by the purchaser during the period of his occupancy, without the knowledge or consent of the municipality.

The Borough has advised that the Mayor and Council have since ordered the barn to be demolished. Under the circumstances there will be no padlock order.

Accordingly, it is ORDERED that the seized property 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.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 25, 1940

SCHEDULE "A"

- 1 - galvanized cooler with copper coils
- 1 - copper cooker
- 1 - Little Giant steam boiler
- 1 - copper column
- 1 - bag of coke
- 12 - 50-gallon vats with mash
- 12 - 5-gallon empty cans
- 1 - bag of salt
- miscellaneous pipe, fittings, hose, etc.

9. MILITARY RESERVATIONS - POST EXCHANGES - THE UNITED STATES NAVAL AIR STATION AT LAKEHURST, NEW JERSEY, NOT HAVING BEEN CEDED TO THE UNITED STATES BY THE STATE, IS TO BE TREATED AS NEW JERSEY TERRITORY - CONSEQUENTLY ALCOHOLIC BEVERAGES MAY NOT BE DELIVERED TO THE POST EXCHANGE FROM OUTSIDE OF NEW JERSEY BY MANUFACTURERS OR WHOLESALERS NOT LICENSED TO SELL ALCOHOLIC BEVERAGES IN NEW JERSEY.

February 26, 1940

National Association of Alcoholic
Beverage Importers, Inc.,
Washington, D. C.

Gentlemen:

Manufacturers and wholesalers licensed in the State of New Jersey may sell alcoholic beverages to any camp, post or regimental exchange duly organized under the laws of the United States army or navy or marine corps and located within the boundaries of this State. Re Galsworthy, Bulletin 67, Item 14; Re Schultz, Bulletin 232, Item 11; Re Browne, Bulletin 322, Item 9. These rulings are based upon the interpretation of the phrase "without this State" as used in the Alcoholic Beverage Law, which phrase, as so used, was intended, in the Commissioner's opinion, to apply only to sales in which the merchandise sold crosses the borders of this state into another state or country.

It is interesting to note that, for tax purposes, the State Tax Commissioner apparently considers such sales as out-of-State sales.

The question as to whether deliveries of alcoholic beverages may be made to military reservations located within the boundaries of this state by foreign dealers not licensed in New Jersey raises other considerations. Alcoholic beverages may be transported through New Jersey without license or permit. Shipments into New Jersey, however, may be made only where the alcoholic beverages are owned by licensed New Jersey manufacturers or wholesalers and then only through licensed New Jersey transporters or in the licensee's own vehicle. Hence, if any specified Federal reservation is, in legal contemplation, a territory located without this state, a delivery of alcoholic beverages can be made through New Jersey to said reservation by a non-licensee; otherwise not.

Military or naval reservations located on land owned by the United States government and ceded by state legislation are within the exclusive jurisdiction of the United States government. Surplus Trading Co. v. Cook, 281 U. S. 647; Fort Leavenworth R.R. Co. v. Lowe, 114 U. S. 525, and are not places in the state within the meaning of the Twenty-First Amendment relating to transportation of intoxicating liquors into the respective states. See Collins v. Yosemite Park and Curry Co., 304 U. S. 518.

It is our understanding, however, that jurisdiction over the land occupied by the United States Naval Air Station at Lakehurst, New Jersey, has never been ceded to the United States by the Legislature of the State of New Jersey. Assuming this to be so, there is no basis for considering the reservation to be a territory located outside of New Jersey, and hence shipments from out of the state to the Naval Air Station at Lakehurst would be considered as shipments into the State of New Jersey.

The case of Collins v. Yosemite Park and Curry Co., 304 U. S. 518, to which you refer in your letter, in no way changes the general principles laid down in the earlier United States Supreme Court cases cited hereinabove. That case involved, among other things, the right of California to license and regulate, under the powers afforded by the Twenty-First Amendment, the importation of alcoholic beverages from without the state into a United States national park located within the state. The court's determination that the regulatory provisions of the California Alcoholic Beverage Control Act had no application to such importation was based upon the fact that exclusive jurisdiction (excepting certain minor reservations of power immaterial to the point being considered) over the park had been ceded to the United States by the California legislature. The reasoning of that case would not permit the contemplated deliveries to the Naval Air Station at Lakehurst because New Jersey, apparently, has not ceded jurisdiction over said reservation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Edward J. Dorton,
Deputy Commissioner
and Counsel.

10. DISCIPLINARY PROCEEDINGS - BRAWLS - HEREIN OF RETORTS COURTEOUS AND OTHERWISE AND A MINIATURE WAR - TWENTY-FIVE DAYS FOR THE DISTURBANCE INCLUDING SOME GAMBLING.

In the Matter of Disciplinary Proceedings against

BERTHA POLSTER
406 Broadway
Newark, N. J.

CONCLUSIONS
AND
ORDER

Holder of plenary retail consumption license C-723 issued by the Newark Municipal Board of Alcoholic Beverage Control

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Richard E. Silberman, Esq., for the State Department of Alcoholic Beverage Control
Sidney Simandl, Esq., for the Licensee.

BY THE COMMISSIONER:

The licensee was charged with

- (1) Permitting a brawl on the licensed premises in violation of State Regulations 20, Rule 5
- (2) Permitting gambling on the licensed premises in violation of State Regulations 20, Rule 7
- (3) Sale of alcoholic beverages to a minor in violation of R.S. 33:1-77 and State Regulations 20, Rule 1.

1. Testimony establishes that on July 1, 1939, one Logan visited the licensed premises and spent several hours drinking beer and playing shuffleboard. As he stood at the bar there entered an unidentified stranger variously described as an undesirable, a pickpocket, a gyp artist, a bar fly and a bum. Whatever he was, he became a casus belli. The bartender ordered him out -- Logan followed and brought him back and ordered a drink for him but the bartender refused to serve it. Thereupon Logan handed the stranger a full glass of beer that had been served to Logan's companion, who was temporarily absent from the bar. The bartender seized the beer and Logan's as well, and dumped both glasses. Logan seemed to be insulted. He animadverted to the bartender's race and religion, expressing the hope that Hitler would get him. In further reprisal, he impugned his legitimacy and declared without semblance of understatement that the bartender's sex life was wholly abnormal. The bartender appeared to resent this for he grabbed a baseball bat and Logan two bar stools, more or less in the order named. The bartender swung the bat. Asked whether Logan was hit, a spectator testified that he thought so because he "saw the bat come down and come very close to the head and stop." At one point the bartender was on the floor. At another he scurried out the side door and came in the front, flanking Logan, whereupon the latter, upon the dawning realization that his presence was not welcome, left with the bartender in hot pursuit. At the hospital they put eight stitches in his scalp, leaving the bartender winner and still champion.

I conclude that a brawl or disturbance occurred on the licensed premises.

It is true that the bartender's acts brought words and the words begat blows. Undoubtedly the bartender was provoked. Who wouldn't be! Names, however, break no bones, and do not excuse a violation of the State Regulation which prohibits brawls and disturbances on licensed premises. If customers become unruly, obstreperous or abusive, the proper procedure is to call the Police, instead of indulging in a punitive expedition to vindicate personal prowess and purge the record of naughty names.

I find the licensee guilty of permitting a brawl as charged.

On this count the license will be suspended for fifteen days which gives full weight to the mitigating provocation.

2. The charge of permitting gambling was clearly established. Logan testified that he had played shuffleboard for drinks and rummy for money on numerous occasions. Other patrons testified that they had played shuffleboard and buck dice for drinks, on some occasions with the bartender. The playing of card or other games for money is gambling. It is likewise gambling when the stakes are drinks.

I find the licensee guilty of permitting gambling as charged.

On this count, the license would ordinarily be suspended for five days if the licensee's record were otherwise clear. The license, however, was previously suspended for thirty days on a charge of possessing illicit liquor. Polster vs. Newark, Bulletin 173, item 3. The penalty will therefore be doubled.

3. The charge of sale of alcoholic beverages to a minor finds its support in testimony of Logan that on December 31, 1938, at which time he was then under twenty-one, he was served one glass of beer by Willie Polster, the licensee's son, who was tending bar. Willie Polster swears that on December 31, 1938 he was not in the premises after 6:30 for the reason that he always goes out on New Year's Eve. The charge is serious but the testimony of the sale is scanty and uncorroborated. As to the charge of selling alcoholic beverages to a minor, the State has not sustained the burden of proof and consequently the charge must be dismissed.

Accordingly it is ORDERED that plenary retail consumption license C-723, heretofore issued by the Newark Municipal Board of Alcoholic Beverage Control to Bertha Polster for premises 406 Broadway, Newark, N. J., be and it hereby is suspended for twenty-five (25) days commencing at 3:00 a.m. on March 4, 1940.

D. FREDERICK BURNETT,
Commissioner

Dated: February 28, 1940

II. LICENSEES - EMPLOYEES - CITIZENSHIP - CIRCUMSTANCES UNDER WHICH NATURALIZATION OF PARENT CONFERS UNITED STATES CITIZENSHIP UPON A MINOR CHILD.

February 26, 1940

Mr. Gason Leclercq,
Ridgefield, N. J.

My dear Mr. Leclercq:

I have yours re the employment of Samuel Travers.

As I understand it, Tavers was born in Milan, Italy, on September 8, 1917, came to the United States in 1932 and has lived in this country ever since. His mother became a naturalized citizen of the United States on March 3, 1931.

The Act of March 2, 1907, § 5 (8 U.S.C.A. § 8), as it stood prior to its amendment in 1934, provided:

"A child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent, where such naturalization or resumption takes place during the minority of such child. The citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States."

When Travers arrived in this country in 1932, he was only fifteen years of age. I assume, from the fact that he has remained here since that time, that it was his intention, upon admission, to take up permanent residence in the United States. The naturalization of his mother in 1931 was sufficient under the above cited act to confer United States citizenship upon him at the time he began to reside permanently in the United States. See United States v. Perkins, 17 F. Supp. 177 (D.C.D.C. 1936); In re Bishop, 26 F (2d) 148, (D.C.Wash. 1927).

In 1934, the Act of March 2, 1907 was amended by adding a provision that the citizenship of such minor children shall commence five years after the time they begin to reside permanently in the United States. Although it appears to be clear that the instant case is governed by the Act as it stood prior to the 1934 amendment, even under the terms of the latter it would seem that Travers acquired citizenship five years after taking up permanent residence in the United States.

Aside from citizenship, in which respect Travers appears to be qualified, a person is eligible for employment by a licensee, under the Alcoholic Beverage Law, if he is over twenty-one years of age, has been a resident of New Jersey for the last past five years, and has not committed two or more violations of the Alcoholic Beverage Law or been convicted of a crime involving moral turpitude.

If Travers fulfills these qualifications he may be employed by you on your licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF FEMALE CONTRARY TO LOCAL ORDINANCE - SECOND OFFENSE - 15 DAYS.

In the Matter of Disciplinary Proceedings against

ALEX CHVAT,
T/a International Tavern,
66 South Orange Avenue,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-173 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.

Alex Chvat, Pro Se.

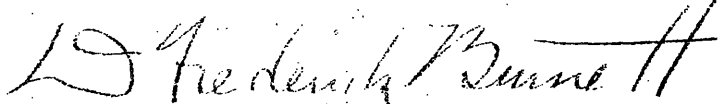
BY THE COMMISSIONER:

The licensee has pleaded non vult to a charge of employing, on June 16, 1939, one Victoria Tronnocz, a female who was not his wife, to serve and sell alcoholic beverages in his licensed premises where the principal business is the sale of alcoholic beverages, contrary to Section (a) of Newark Resolution 4889, adopted May 24, 1939.

This is the licensee's second offense of the same kind. The previous penalty was 10 days (Bulletin 266, Item 8). As this is the second offense, the penalty will now be doubled less five days for the guilty plea.

Accordingly, it is, on this 26th day of February, 1940,

ORDERED, that Plenary Retail Consumption License No. C-173 issued to Alex Chvat by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same hereby is suspended for a period of fifteen (15) days, effective March 1, 1940 at 3:00 A. M.



Commissioner.