Mr. MacIntosh

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

BULLETIN 449 MARCH 14, 1941.

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New Jersey State Library

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

BULLETIN 449 MARCH 14, 1941.

1. DISCRIMINATORY PRICES AND DISCOUNTS - REGULATIONS NO. 34 - AMENDED.

March 11, 1941.

On October 1, 1940 the rules concerning discriminatory prices and discounts became effective. Five months and more of experience are now available as an aid to their constructive appraisal. Numerous conferences to discuss them have been held with representatives of retail licensees and spokesmen for the jobbers and producers. A widely-advertised public hearing on the subject, which attracted over three hundred members of the industry, was held on December 6, 1940. These, as well as countless letters, conferences and private interviews, have served to inform the State Commissioner concerning the effectiveness of the rules.

Coincident with promulgation it was said of the rules: "After experience in operation shows the way, they will very likely have to be amended." Changes appear desirable as to:

(a) The Waiting Period. Notice of change in price list or discount statement is required to be given at least fifteen (15) days before the effective date thereof. This span may be reduced to five (5) days, easing its rigidness without destroying its purpose.

(b) Half and Quarter Cases. The rules require the quotation of standard case and individual bottle prices only. No sufficient reason appears why a one-half standard case and one-quarter standard case price should not also be listed at a figure in substantially direct proportion, respectively, to the standard case price.

(c) The Discount Schedules. In connection with the promulgation of Regulations No. 34 on September 5, 1940 it was said:

> "No credit rule is included. The supplement (to the Alcoholic Beverage Law) does not specifically mention credit. Nor does it employ language which causes us to believe that credit regulation was within the intent of the statute. It directs itself to discriminatory prices and discounts, rebates, free goods, allowances or other inducements."

As a tool for more effective enforcement and to provide an economic instrument tending, in some degree, to prevent abuses through pyramided vertical financial interests (the tied house), the rules permit the allowance of a discount only if payment in full is made within thirty (30) days — except as to the permissible two per cent (2%) deduction for cash payment where the purchase is under one hundred dollars ($100.00).

This thirty (30) day clause has been put to an unanticipated use as a lever to persuade retailers to liquidate outstanding indebtedness. These credit commitments were made by thousands of retailers under circumstances which by no stretch of the imagination

could be called normal. To wind up these past-due obligations too rapidly and without even-handed justice seems unduly harsh.

A comprehensive plan of amortization of possibly twenty months, available to all retail-licensee debtors alike and established by law, would appear to be a fair method of liquidating these old accounts. Such legislation has been proposed by at least one branch of the industry.

In view of the foregoing representations it is deemed prudent to drop the thirty (30) day performance clause.

(d) Gifts of Personal Effects. Inquiries have uncovered the need to regulate the dollar value, within a specified period of time, of gifts such as wallets, neckties, pencils and other gratuities by manufacturers or wholesalers to their retail customers. A limit must be established, however difficult the enforcement problem thus created, because if a wallet may be given so may a house and lot.

To effect the changes as noted, Regulations No. 34 are amended as follows:

REGULATIONS NO. 34 - RULES GOVERNING WHOLESALE PRICES AND MAXIMUM DISCOUNTS, REBATES, FREE GOODS, ALLOWANCES AND OTHER INDUCEMENTS TO RETAILERS - AMENDED.

1. No manufacturer or wholesaler shall sell to a retailer any alcoholic beverage other than malt beverages without first filing with the State Department of Alcoholic Beverage Control (a) a complete price list, duly authenticated, of all such alcoholic beverages which shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on label, the wholesale bottle and standard case price, and at the option of the manufacturer or wholesaler the one-half and one-quarter standard case price, which prices shall be individual for each item and not in "combination" with any other item; (b) a statement of discounts, duly authenticated, to be allowed for quantity purchases within the permissible limits set forth in Rule 5 hereof, which discounts shall apply uniformly to all retailers; and (c) an affidavit establishing that true copies of the price list and discount statement have been served personally or by mail upon all retailers handling the products of the manufacturer or wholesaler.

2. Such price lists and discount statements shall remain in force until new price lists and discount statements are filed with the State Department of Alcoholic Beverage Control. Such new price lists and discount statements shall take effect on a date to be specified therein, but in no event less than five (5) days from the date of filing thereof. They shall be accompanied by an affidavit establishing that a true copy of such new price list and discount statement has been served personally or by mail upon all retailers handling the products of the manufacturer or wholesaler. The State Commissioner may in an emergency suspend the operation of the five (5) day clause herein.

3. Such price lists and discount statements shall be open to public inspection. Notice of filing thereof shall be published in the official bulletins issued by the State Department of Alcoholic Beverage Control.

4. No manufacturer or wholesaler shall sell to a retailer any alcoholic beverage other than malt beverages except at the wholesale price established in accordance with Rules 1 and 2 hereof, less

the discount allowed pursuant to Rule 5 hereof. No manufacturer or wholesaler shall furnish to a retailer any rebate, allowance, grant of money or any thing of value (whether by sale, loan, gift or otherwise), or other discount or inducement, including "free goods", "deals", "combination sales", and similar transactions, whether furnished directly by the licensee or indirectly by an employee, except as provided in Rules 7 and 8 hereof and by Regulations No. 21.

5. No manufacturer or wholesaler shall grant to a retailer any discount in excess of those hereinafter set forth, but a discount, if granted, must be computed and allowed on the total purchase of a single, complete delivery of an entire purchase order:

On a sale of alcoholic beverages other than malt beverages or wines:

(a) Up to and including $199.99 - 2%
(b) $200.00 to and including $499.99 - 3%
(c) $500.00 to and including $699.99 - 5%
(d) $700.00 and over - 7%.

On a sale of wines - 2%.

No manufacturer or wholesaler shall sell to a retailer any alcoholic beverage other than malt beverages without clearly, fully and immediately entering in writing on the invoice of said retailer the discount allowed the retailer, a copy of which invoice shall be kept on the licensed premises of the retailer and of the manufacturer or wholesaler and shall be available at all reasonable times for a period of one year from the date of the invoice for inspection by duly accredited representatives of this Department.

No retailer shall make returns of alcoholic beverages or other things of value to a manufacturer or wholesaler and no manufacturer or wholesaler shall accept such returns when designed to circumvent the discount schedules established pursuant hereto.

6. No manufacturer or wholesaler shall discriminate in price, directly or indirectly, between different retailers purchasing alcoholic beverages other than malt beverages bearing the same brand or trade name and of like age and quality.

7. A manufacturer or wholesaler may furnish or give to a retailer, either directly, or indirectly through an employee or salesman, and whether paid for by the manufacturer or wholesaler or by the employee or salesman, gifts of personal effects such as keyholders, wallets, neckties and pencils, and may purchase from the retailer tickets, subscriptions or admissions for dances, outings, picnics, dinners and advertisements in the publications or periodicals of retailers or retailers' associations, to the extent of ten dollars ($10.00) in aggregate cost or reasonable value for each retail premises in any one license year.

Each manufacturer and wholesaler of alcoholic beverages other than malt beverages shall prepare and execute, not later than the tenth of each month and covering the previous calendar month, a complete itemized affidavit of all salaries, commissions, expenses, allowances, gifts and all other things of value allowed or given by the licensee, directly or indirectly, to each of its stockholders, officers, directors, solicitors, missionary men, or other employees or representatives of the licensee who contact, directly or indirectly, the retailers to whom the licensee is privileged to sell such beverages. Such affidavits shall be kept on the licensed premises

and shall be available at all reasonable times for a period of one year from the date of the affidavit for inspection by duly accredited representatives of this Department.

Upon demand, any retailer may be required to submit affidavit to this Department relative to any of the details of any purchase of alcoholic beverages made by such retailer from any manufacturer or wholesaler.

8. A manufacturer or wholesaler may furnish or give to a retailer, who has not previously purchased the particular product, as a sample, not more than one pint of any brand of any type of alcoholic beverage, or if the brand is not packaged in containers of less than one quart, not more than one quart of such brand of such type of alcoholic beverage; provided, however, that any alcoholic beverage furnished as a sample shall have printed or stamped in ink on its brand label the words "SAMPLE - NOT FOR SALE" in letters not less than one-half inch high and of proportionate width. Nothing hereinabove contained shall apply to malt beverages.

9. No manufacturer or wholesaler shall allow, permit or suffer the delivery of any alcoholic beverage other than malt beverages to any retailer, unless said retailer at or prior to said delivery has been served personally, or by mail, with the price list and discount statement of said manufacturer or wholesaler existing and effective at the time of the sale.

10. Violation of any of the foregoing rules by any manufacturer, wholesaler or retailer, directly or indirectly, shall constitute ground for suspension or revocation of license.

The foregoing rules are hereby promulgated, effective April 1, 1941.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES TO MINORS - SECOND OFFENSE - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA - DEFENDANT DISQUALIFIED FROM RECEIVING ANY FURTHER LICENSE BY COMMISSION OF SECOND VIOLATION OF THE ALCOHOLIC BEVERAGE LAW.

In the Matter of Disciplinary Proceedings against)
JULIUS DeGEETER,)
Route 2 at Midland Ave.,)
Paramus,)
P.O. Ridgewood, R.D. 2, N.J.,)
Holder of Plenary Retail Consumption License C-39 issued by the Acting State Commissioner of Alcoholic Beverage Control.)

CONCLUSIONS AND ORDER

Meehan Brothers, by John J. Meehan, Esq., Attorneys for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of selling alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The Department files disclose that the licensed premises is conducted as a roller skating rink, and as such necessarily caters to minors. In connection with his guilty plea, the licensee points out that "beer is the only alcoholic beverage sold at the rink.... that there was no direct sale by the licensee to a person under the age of twenty-one years....." and that "Everything possible has been done......to comply with the law, even to the extent of placing a local policeman on the premises during the skating season." It appears from the Department file that a bartender in the licensed premises sold alcoholic beverages to three minors on January 18, 1941. The fact that the sale was made by a bartender rather than by the licensee himself or that the beverages served consisted of beer and not "hard liquor" is immaterial. Re Morganstern and Oliner, Bulletin 292, Item 9. The licensee is strictly accountable for the acts of his employees.

The usual penalty for sale of an alcoholic beverage to minors, in the absence of aggravating circumstances, is ten days. However, the Department files disclose that on January 27, 1938 the subject's license was suspended for seven days for sale of an alcoholic beverage to a minor. Since this is the subject's second similar offense, the penalty will be doubled and the license suspended for a period of twenty days.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case, for which five days of the penalty will be remitted.

It must be noted that the defendant, in addition to the suspension now being imposed upon him, is also, as a result of this proceeding, necessarily disqualified under the Alcoholic Beverage Law (R. S. 33:1-25, 26), from hereafter obtaining any further liquor license, renewal or otherwise, or from hereafter working at or in connection with any liquor premises in New Jersey other than under his present license, since he has been now twice found guilty of violating the Alcoholic Beverage Law (the first being the occasion in 1938 and the second being the instant case). Re Lotcpeich, Bulletin 443, Item 11.

Accordingly, it is, on this 26th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-39, heretofore issued to Julius DeGeeter by the Acting State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of fifteen (15) days, effective March 3, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

3. LICENSED PREMISES - THE DEGREE OF SEPARATION NECESSARY TO RENDER LICENSED PREMISES AND OTHER PREMISES SEPARATE AND DISTINCT - A RESTAURANT IS NOT A MERCANTILE BUSINESS IN THE CONTEMPLATION OF THE STATUTE - ACCESS IS PERMISSIBLE BETWEEN RESTAURANT AND LICENSED PREMISES EVEN THOUGH THE RESTAURANT IS NOT COVERED BY THE LICENSE.

MUNICIPAL REGULATIONS - CLOSING OF PREMISES - THE REQUISITES FOR COMPLIANCE WITH REGULATIONS REQUIRING LICENSED PREMISES TO BE CLOSED.

March 4, 1941

Mark Marritz, Esq.,
Solicitor, Township of Haddon,
Camden, N. J.

My dear Mr. Marritz:

As I understand it, the licensee proposes to add to his present premises a lunch wagon which will not be covered by the liquor license and which, therefore, he will be able to operate twenty-four hours a day.

So far, so good. If the lunch wagon is not covered by the liquor license, then it is not governed by the liquor regulations and the 2:30 A.M. closing time established in Section 21 of the alcoholic beverage ordinance of July 5, 1934, as amended April 27, 1937, will not apply.

There are two further matters to be considered: (1) the separation of the licensed premises and the lunch wagon necessary to render them sufficiently separate and distinct, and (2) the use of the kitchens on the licensed premises for the preparation of food to be sold in the lunch wagon during the hours the licensed premises are required by the alcoholic beverage ordinance to be closed.

(1) It is provided, in R. S. 33:1-12, that plenary retail consumption licenses shall not be issued for premises on which any other mercantile business is carried on. There have been numerous rulings respecting the degree of separation necessary to accomplish this and to render licensed premises and other mercantile premises separate and distinct. Zager v. Passaic, Bulletin 385, Item 9; Re Berla, Bulletin 304, Item 10; Hudson etc. v. Gold's, Bulletin 253, Item 3; Quality House v. New Brunswick, Bulletin 249, Item 4; Re Johnson, Bulletin 212, Item 10; Retail Liquor Distributors v. Atlantic City, Bulletin 88, Item 11; and the rulings therein cited. The conduct of a restaurant, however, is not another mercantile business in the sense of the statutory proscription. It is expressly provided, in R. S. 33:1-12, that plenary retail consumption licenses may be issued for restaurant premises. Such being the case, the rulings aforesaid, which are concerned with prohibited mercantile businesses, are not applicable, for we are here concerned with what the statute expressly allows on licensed premises as distinguished from what it expressly prohibits. If a restaurant may be conducted on licensed premises there would seem to be no reason why it could not be conducted adjacent and contiguous to licensed premises, and even with free and public access directly from one to the other. What may be done on licensed premises may surely be done adjoining them. If, therefore, there is to be no mercantile business conducted in the lunch wagon, but solely the restaurant business, there may be access directly between the licensed premises and the lunch wagon, for both public and service, provided the connection between the two premises

is so arranged that it preserves the structural boundaries of the licensed premises. The licensed premises must be clearly defined and limited. For ruling as to that, the licensee may submit a sketch of the proposed alteration.

(a) The ordinance provides that no licensee shall "keep lighted up, operate, or open for business" between the hours of 2:30 A.M. and 8:00 A.M. weekdays and 2:30 A.M. and 4:00 P.M. Sundays. Presumably, the regulation would be complied with if all sale and service of alcoholic beverages and other commodities were stopped, all customers were out, the doors providing public access were locked, and no business of any kind was being conducted. If all this were done, I would see no objection to keeping the kitch open for the exclusive purpose of preparing food to be taken from the licensed premises, and served on other premises, to which some service access had been provided. Whether or not the facilities for closing the licensed premises, or for the service connection, are adequate will again depend upon the nature of the proposed alterations, on which ruling will be given if the scheme is submitted.

By way of caution, I may add that, if the lunch wagon is not part of the licensed premises, no alcoholic beverages may be sold or served or carried into the lunch wagon, or consumed therein at any time, whether it is operated by the proprietor of the licensed place or by another.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

By: Maurice E. Ash,
Senior Inspector.

4. LICENSED PREMISES - THE LICENSEE MUST HAVE EXCLUSIVE POSSESSION AND CONTROL - THE QUANTUM OF INTEREST REQUIRED FOR SUCH POSSESSION AND CONTROL - TENANTS AND CONCESSIONAIRES DISTINGUISHED.

January 16, 1941

Samuel Backer, Esq.,
City Solicitor,
Atlantic City, N. J.

My dear Mr. Backer:

You raised in your letter of December 30, 1940 two matters, viz., the licensing of new premises in Richards Baths at South Carolina Avenue and the Boardwalk and the licensing of premises for the Turner Hall Restaurant Co., Inc. in the Hotel Senator, also on South Carolina Avenue.

I wrote you on January 7, 1941 regarding the licensing of premises in Richards Baths. I now write about the Turner Hall Restaurant Co., Inc.

You tell me that the Hotel Senator itself does not have a liquor license, but that Turner Hall Restaurant Co., Inc. holds a plenary retail consumption license for premises comprising the entire hotel. That is confirmed by Question 7 of the application for license, in which it is stated that the entire building is to constitute the licensed premises.

It is permissible, as a general rule, for one person to hold a liquor license and conduct a liquor business and for another person to operate an hotel or restaurant on the same premises, provided the holder of the liquor license has such possession of the licensed part of the premises that he has exclusive control. See Re Sebold, Bulletin 326, Item 7; Re Fedner, Bulletin 329, Item 5; Re Handler, Bulletin 334, Item 14 and Bulletin 366, Item 6; and the rulings therein cited. To illustrate: A restaurant man may have a concession to sell and serve food in the premises of a liquor licensee, or a hotel man may be given the management of the hotel business conducted on the premises of a liquor licensee; but a liquor licensee may not have a concession to sell or serve alcoholic beverages in someone else's restaurant or hotel. That is the substance of the ruling in Re Kashner, Bulletin 199, Item 12. The point is that a concession agreement gives the concessionaire nothing more than a mere license to come on the premises and do certain things, subject to and at the will of the owner or lessee. But, as aforesaid, a liquor license cannot be issued unless the applicant has such possession of the premises to be licensed that it gives him exclusive control.

Hence, if the liquor licensee is not the proprietor of the hotel, he can't get a license for the entire hotel, for he could not have the entire hotel under his exclusive control.

Will you, therefore, submit the matter to the Board of Commissioners for adjustment and correction, if necessary, in conformity with the aforementioned rulings, and give me report of the outcome. If, to accomplish the proper leasing arrangements, it is necessary to confine the licensed premises to the room known as the "Bar and Grill", the reduction may be brought about by following the procedure in Re Daly, Bulletin 171, Item 3. In such case, package goods may be sold to take out, the same as by any other plenary retail consumption or distribution licensee, but drinks in open containers may be served only on the licensed premises, and if the private rooms of the guests and the other hotel rooms are not on the licensed premises, no such drinks may be served in those rooms.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

February 11, 1941.

Hon. E. W. Garrett, Acting Commissioner,
Newark, N. J.

Dear Sir:

In connection with your letter of January 16, 1941 addressed to Samuel Backer, City Solicitor of Atlantic City, New Jersey, concerning the plenary retail consumption license issued by the City of Atlantic City to Turner Hall Restaurant Company, Inc., in the Senator Hotel, Atlantic City, New Jersey, may I respectfully submit the following:

I understand that the objection to the service of alcoholic beverages throughout the hotel proper is predicated upon the fact that the licensee is not the proprietor of the hotel and that the entire hotel is therefore not under his exclusive control. May I call your attention to the fact that there exists no other license for any part of the hotel and that Turner Hall Restaurant Company, Inc., under its lease with the owner and manager of the hotel, has the right to serve alcoholic beverages throughout the entire hotel.

I believe also and I think with considerable merit that your general objection to circumstances of this type arises from the fact that there is no individual who could be held liable for a violation of any part of the hotel premises other than that portion known as the "bar and grill." You can well realize that the owner and manager of the hotel is desirous of furnishing room service to its guests but that on the other hand it will not relinquish actual control of the entire premises for this purpose.

I feel that your desired objective could be accomplished by an agreement from the licensee to accept full responsibility for any violation of the law or the rules and regulations of the Alcoholic Beverage Control Department on every and any portion of the hotel premises, including the agreement to obtain such permits for such service throughout the hotel proper as may be necessary.

In this connection, I am taking the liberty of enclosing herewith a letter addressed to you by the licensee assuming such responsibility. If, under the above circumstances, there does arise a violation, it impresses me that the licensee can be personally held and that your immediate problem is therefore solved.

May I also say that I am impressed with the fact that although not in this particular case, in other cases a ruling that under no circumstances could such a licensee serve throughout the hotel proper without the exclusive control of the entire premises would lead to the licensee and the manager of the hotel entering into an agreement which on its face might vest the control of the premises in such licensee but which would actually be nothing more than a subterfuge.

I feel that such a result would be comparable to the result obtained during prohibition in that we might force individuals to have a disregard for a law for which they feel there is no sound basis in fact. As it happens, I think that we breed too much disregard for law and for the above reasons my suggestion would accomplish your desired result. May I request that you advise me as to your reaction to the above.

Sincerely yours,
Vincent S. Haneman

February 11, 1941

Hon. E. W. Garrett,
Acting Commissioner,
Newark, N. J.

Dear Sir:

In connection with the recent conference held in your office concerning the plenary retail consumption license C-91 issued by the City of Atlantic City to Turner Hall Restaurant Company, Inc. in the premises of the Senator Hotel, I desire to advise as follows:

Turner Hall Restaurant Company, Inc. will and does assume full responsibility for any violation of the law or the rules and regulations of the Alcoholic Beverage Control Department on every portion of the Senator Hotel premises and will continue as heretofore to obtain such permits as may be necessary for the serving of alcoholic beverages in any part of the Senator Hotel premises.

Very truly yours,
Turner Hall Rest. Co., Inc.

March 8, 1941

Hon. Vincent S. Haneman,
Atlantic City, N. J.

My dear Mr. Haneman:

I have carefully considered yours of February 11th and enclosure, regarding the licensing of premises for the Turner Hall Restaurant Co., Inc. in the Senator Hotel.

It appears that the hotel is in the possession of and operated by either the Saratoga Land & Building Co., or the Baltimore Mortgage Company, but that the liquor business is conducted by the Turner Hall Restaurant Co., Inc., in the bar and grill, leased or subleased from the Saratoga or Baltimore company, with some further permission to sell and serve alcoholic beverages throughout the entire hotel. The licensed premises of the Turner Hall Restaurant Co., Inc. is presently described in the application for the license as the entire hotel building.

The question is: May the Turner Hall Restaurant Co., Inc. hold the license for the entire hotel premises, or must the license be confined to the portion of the premises formally leased to them, presently the bar and grill.

I am sympathetic with the desire of the owner and manager of the hotel to furnish room service to the guests of the hotel. It is a natural and reasonable desire and certainly an advantageous, if not necessary, adjunct of hotel service. The problem is to reconcile, if possible, this natural desire with the exigencies of the law and its administration.

A separate license is required for each specific place of business, and the operation and effect of every license is confined to the licensed premises. That is what the statute provides (R. S. 33:1-26) and that is the premise from which we must start.

If every license must be confined to a licensed premises, then the license must be issued for specific premises and, for the reasons which will later appear, the applicant must have some possession or right to possession of, and interest in, those premises. If the applicant does not have possession or right to possession of, or interest in, the premises, no license may be granted. The principle was first enunciated in the very early days of the Department, on May 14, 1934, in Procoli v. Trenton, Bulletin 28, Item 6. It has been followed to this date. Caplan v. Trenton, Bulletin 29, Item 11; Re Pennsauken, Bulletin 48, Item 8; Re Sakin, Bulletin 67, Item 13; White Castle, Inc. v. Clifton, Bulletin 97, Item 13; D'Annibale v. Fredon, Bulletin 139, Item 7; Agzigian v. Pequannock, Bulletin 216, Item 1; Eavenson v. South Orange, Bulletin 285, Item 8; Vasapoli v. Plainfield, Bulletin 301, Item 7; Licata v. Camden, Bulletin 342, Item 1; Hindin v. Egg Harbor, Bulletin 399, Item 1; Gimber v. Galloway, Bulletin 427, Item 9; Bodrato v. Northvale, Bulletin 433, Item 1; Berry v. Newark, Bulletin 433, Item 8; Alberts v. Roselle, Bulletin 444, Item 1. Similarly, if the interest in the premises is lost, the licensee may not operate thereat, although he may apply to the municipality for the transfer of his license to other premises when possession thereof is obtained, and the municipality may issue another license for the original premises to one who has sufficient interest therein if all other requisites are met. Re Boettiger,

Bulletin 98, Item 11; Gimbel v. Pennsauken, Bulletin 116, Item 6; Re Argenti, Bulletin 200, Item 9; Re Kappelmann, Bulletin 211, Item 1; Re Morrissey, Bulletin 228, Item 7; Re Strotbeck, Bulletin 236, Item 2; Re Dator, Bulletin 238, Item 8; Re Potanski, Bulletin 239, Item 9; Re Clayton, Bulletin 250, Item 11. And upon loss of part of the premises, operations must be discontinued on such part. Re Roberts, Bulletin 129, Item 5; Schuler v. Middletown, Bulletin 234, Item 4.

While an interest in the premises has always been required, the necessary quantum thereof has not been precisely specified, although it has been aptly illustrated on numerous occasions that it must amount to possession and control. A lease on a monthly basis has been considered sufficient (Yanuzis v. Camden, Bulletin 37, Item 1). Also possession under a tenancy at will (Re Pierson, Bulletin 38, Item 12). Every applicant must have an interest in the premises to be licensed, even though no more than a lease (Re Fisher, Bulletin 107, Item 8). It must be a legal interest and is satisfied by a lease (Beekwilder v. Wayne, Bulletin 122, Item 3). Legal possession is sufficient (Re Schmidt, Bulletin 137, Item 1). Legal interest is necessary (Yacula v. Jersey City, Bulletin 144, Item 7). A lease is sufficient, even though the landlord's title may be bad, until a court so determines (Gruner v. Washington, Bulletin 149, Item 6). Legal possession is necessary (Re Ingalsbe, Bulletin 250, Item 10).

The logical conclusion is that this legal interest in the premises which a licensee must have, must be a possessory estate. It may be of freehold or not of freehold, but it must be an estate. If not of freehold, it must be a lease, a demise of the premises for a term such as a tenancy for years or from month to month, or a tenancy at will. But it must be at least a tenancy. The licensee, during his possession of the premises, must hold against all the world, including the owner.

It is only with such an interest in the premises that the licensee can exercise adequate control. Without it he can do nothing to stop a trespasser, or even the lessor, from coming on the premises and doing as he pleases. In such circumstances, how can he fairly be held responsible for what goes on in his place? I fear the result would be the inability to carry out our theory of full responsibility, a disposition on the part of municipal governing bodies and excise boards to excuse and dismiss in disciplinary matters, and the concomitant breakdown of enforcement. Mere acceptance of responsibility, such as the commitment of February 11th by the Turner Hall Restaurant Co., Inc., is not enough. Without power and authority, no obedience can be enforced and it is without influence or efficacy. It is necessary that the licensee be able to exercise sufficient control to prevent violations, to put a stop to improper conduct, and to govern his people and his place. After all, the important thing is to prevent undesirable conduct from occurring. Thus, a concession agreement, or some similar arrangement, for the reasons herein and in my letter to Mr. Backer of January 16, 1941, does not give sufficient possession or control of the premises to support the issuance of a liquor license. The concession agreement gives the concessionaire nothing more than a mere license to come on the premises and do certain things, subject to and at the will of the owner or lessee. This has been ruled on before. As was said in Re Sebold, Bulletin 326, Item 7:

"The applicant has described the entire hotel as constituting the licensed premises.......

"As regards the bar and the restaurant: There is no objection to regarding those rooms as part of the licensed premises for they are in the possession and subject to the control of the lessee.

"As to the rest of the hotel: The licensee has a mere oral permission to sell or serve. To be sure, it would not be a trespasser, but that is about the most that can be said for such an arrangement. Even if the invitation or the privilege were in writing, the concessionaire would only have a mere right of temporary access. It would not have any possession or control. Control over licensed premises, however, is essential for the licensee is bound to see to it that the law and the rules are obeyed. What about drinks served to minors behind closed doors? Again licensees may not allow lewdness, immoral activities, brawls, or unnecessary noises, or lotteries, slot machines or gambling, or gangsters, prostitutes, female impersonators or other persons of ill repute, upon the licensed premises. Lacking the power to control the other parts of the hotel, the licensee could not be held accountable for what goes on in those other places. Although seeking the privilege of selling throughout the whole hotel, the licensee would be responsible only for what occurred on that part of the premises within its exclusive possession. Hence, the licensed privilege should be confined to just that part.

"Consequently, I suggest that you recommend to the local Excise Board that, if the license is granted, the licensed premises should include only the bar and the restaurant."

See also Re Tilton, Bulletin 157, Item 6; Re Kasiner, Bulletin 199, Item 12; Re DeStefano, Bulletin 227, Item 4; Re Epstein, Bulletin 240, Item 9; Re Farrell, Bulletin 310, Item 14; Re Fedner, Bulletin 329, Item 5; Re Handler, Bulletin 334, Item 14; Re Finkel, Bulletin 338, Item 7; Re Handler, Bulletin 366, Item 6; Bennett v. Eatontown, Bulletin 409, Item 10. The licensee must be lord and master, the absolute boss, and that is not possible unless he has an interest in the premises which gives him exclusive possession and control, for control shared with another, or divided, is no control at all.

The commitment of February 11th by the Turner Hall Restaurant Co., Inc. will not suffice for the issuance of the license for the entire hotel premises, in lieu of an adequate interest in those premises. The ruling in letter of January 16th to Mr. Backer will stand. The Turner Hall Restaurant Co., Inc. may have its license only for premises in which it has an adequate interest, as illustrated by the foregoing, and if such premises comprises only the bar and grill, the licensed premises must be reduced accordingly. If the hotel desires the privilege of selling and serving alcoholic beverages in open containers for on-premises consumption in the guest rooms, or in another part of the hotel not leased to the restaurant company, the hotel itself should procure the license and accept the full responsibility.

I am sending a copy of this letter to Mr. Backer.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - UNSATISFACTORY ADMINISTRATION IN TRENTON - BOARD OF COMMISSIONERS SUPERSEDED AS DISCIPLINARY BODY IN FUTURE SIMILAR CASES.

March 8, 1941

Thaddeus J. Burns,
City Clerk,
Trenton, N. J.

My dear Mr. Burns:

I have before me staff report and your letter of February 28th re disciplinary proceedings conducted by the Board of Commissioners against Antoni Ludanski, 102 Houghton Avenue, charged with refilling a whiskey bottle, and note that the charges were dismissed.

As I get the facts, my men found an open bottle labeled "Wilson 'That's All' Blended Whiskey" which, upon analysis, proved to contain straight whiskey instead of the blended whiskey called for by the label. As usual the licensee had no explanation for the refill, yet at the hearing the defense was that the bottle had been refilled by the cleaning woman who had poured the contents of a Canadian Club bottle and a Wilken Family bottle into the Wilson bottle. A very pretty story indeed — but a palpable falsehood on its face! Both Canadian Club and Wilken Family are blended whiskies. Blended whiskies contain artificial color. But the contents of the refilled Wilson bottle showed not a tra e of artificial color!!

Even if the licensee's story were true, he in effect admitted that he possessed a refilled bottle. The Alcoholic Beverage Law prohibits the possession of any illicit alcoholic beverage. An illicit alcoholic beverage is one, even though lawful in origin, in a container bearing a label that does not truly describe its contents. P.L. 1939, Chapter 177. This was long ago pointed out to the Trenton issuing authority in our letter of March 13, 1939. Re Haney, Bulletin 304, Item 13, wherein it was said in part:

> "Where liquor has been rectified, blended or bottled by a retail licensee, it is illicit within the statutory definition contained in Section 1 of the Control Act (now R. S. 33:1-1) and the licensee's mere possession of such illicit beverage constitutes a misdemeanor (see Section 48 - now R. S. 33:1-50) and subjects his license to disciplinary proceedings (see Section 28 - now R. S. 33:1-31).
>
> "The comprehensive legislative restrictions against rectification, blending and bottling by retail licensees are salutary in purpose and effect. They are aimed not only against the use of 'bootleg' liquor on which tax has not been paid, but also against 'refills' of all kinds. Customers are entitled to receive the liquor which they order (see Re Lane, Bulletin 231, Item 13; Re Turner, Bulletin 230, Item 3), and licensees cannot be heard to say that the liquor which they substituted was 'just as good'. If a decent measure of control is ever to be attained, retail licensees must be brought to the realization that their tampering with liquor will not go unpunished."

Were this the first occasion on which the Board of Commissioners erroneously dismissed charges in an illicit liquor case I would content myself with pointing out wherein the error lay, trusting that it would not be repeated. But in view of the past record of the Board in its handling of illicit liquor cases I cannot believe that the instant dismissal was merely due to ignorance of the provisions of the law. The attention of the Board has been called to the seriousness of the refilling problem and the fact that refilling is contrary to the Alcoholic Beverage Law on two occasions in the past, viz.:

(1) Harry J. Leahey (Rev. 1705), Wilson, Calvert and Three Feathers bottles refilled with what appeared to be Schenley's Red Label. Charges dismissed for the stated reason that no sample of the seized beverages was left with the licensee. (As to the validity of that reason for dismissal see our letter of May 28, 1940 re Anthony Muccie (Rev. 1641), commending the Board for paying no attention to this very same plea in previous cases). In our letter of May 29, 1940 we said:

> "Dismissals without cause raise grave doubts. This Department will watch with keen interest the Board's handling of the disciplinary proceedings that are transmitted to it, especially those involving possession of illicit liquor."

(2) Edward A. Sailliez (Rev. 1929), two bottles labeled Calvert Reserve and Calvert Special refilled with Schenley's Black Label. Licensee gave voluntary signed statement admitting refilling and also admitted refilling at the hearing. Licensee was found not guilty. In our letter of June 1, 1940 we said:

> "The Alcoholic Beverage Law by R. S. 33:1-78 provides:
>
> "'Any person, except a person holding a brewery, distillery, winery or rectifier's license under this chapter, who shall bottle alcoholic beverages for sale or resale shall be guilty of a misdemeanor.'
>
> "The licensee admitted that he had refilled bottles of one brand with whiskey of another brand.
>
> "How does the Board of Commissioners justify such a finding?"

It is clear that the Board of Commissioners has no intention of enforcing the plain provisions of the Alcoholic Beverage Law prohibiting the possession of illicit alcoholic beverages and the refilling of liquor bottles, but merely because the Board of Commissioners shows a disinclination to do its duty is no reason why I should do likewise. Consequently, all future cases involving possession of illicit liquor by Trenton licensees will be conducted directly at this Department rather than being referred to the Board of Commissioners.

You are hereby directed to return forthwith all papers heretofore transmitted to you in connection with the pending disciplinary proceedings against Gypsy Camp, Inc. (Rev. 2107) and Julia Kish (Rev. 2114), both of which involve possession of illicit alcoholic beverages and neither of which has yet been heard by the Board of Commissioners.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

6. MORAL TURPITUDE - LARCENY AND RECEIVING STOLEN GOODS INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2. Case 135.	CONCLUSIONS AND ORDER

In 1933 petitioner stole $40.00 from a cash register, for which, in October 1933, he was convicted of larceny and receiving and was released from the County Penitentiary on November 22, 1933. Larceny and receiving stolen goods are crimes which ordinarily involve moral turpitude. Re Case No. 297, Bulletin 354, Item 7; Re Case 345, Bulletin 427, Item 4. Nothing appears which would lead to any other result in the instant case.

Petitioner was also convicted in 1925, in Police Court, of disorderly conduct; in 1928, in Police Court, of disorderly conduct; and in 1932, in Special Sessions Court, of assault and battery. The petitioner stated that these were youthful missteps, the result of his association with evil companions.

Since his 1933 conviction, petitioner has been in a sea food business, in an ice business, in a trucking business, and worked most recently as a bartender until the question of his eligibility was raised.

Petitioner produced three character witnesses who have known him since 1935, during which time they have come in frequent contact with him through the various business enterprises in which he was engaged. They testified as to his good character and reputation, and law-abiding conduct during that period.

Fingerprint records disclose no other convictions since 1933. The Chief of Police of the municipality where he now resides reports that there are no complaints or investigations pending against him.

The evidence establishes that he has been industrious and engaged in legitimate ventures since 1933, and I am therefore satisfied that the petitioner, despite his record, has conducted himself in a law-abiding manner for the past five years, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 10th day of March, 1941,

ORDERED, that his statutory disqualification because of the convictions herein described be and the same is hereby lifted, in accordance with R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - DEVICE IN THE NATURE OF A SLOT MACHINE - "PREAKNESS" ONE BALL - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
)
MASONIC CLUB OF WOOD-RIDGE, INC.,)
175 Madison Street,)
Wood-Ridge, New Jersey,)
)
Holder of Club License CB-99, issued by the State Commissioner of Alcoholic Beverage Control.)

CONCLUSIONS AND ORDER

Masonic Club of Wood-Ridge, Inc., Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that on February 3, 1941 it possessed a "Preakness" one-ball machine, a device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing, and a device or apparatus designed for the purpose of gambling, in violation of Rules 7 and 8 of State Regulations No. 20.

According to staff report, investigators discovered the machine on the licensed premises while making a routine inspection and observed that it had a ticket pay-off and also was equipped with a cash pay-off box. One of the investigators played the machine several times but did not succeed in winning. The mere possession of this type of machine has been previously ruled to be a violation; hence it was not necessary for a pay-off to occur.

By entering a plea of guilty, the licensee has saved the Department the time and expense of proving its case. Five days of the usual penalty of ten days will therefore be remitted.

Accordingly, it is, on this 10th day of March, 1941,

ORDERED, that Club License CB-99, heretofore issued to Masonic Club of Wood-Ridge, Inc. by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for five (5) days, effective March 17, 1941, at 2:00 A. M.

E. W. Garrett

Acting Commissioner.

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