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

BULLETIN NUMBER 170 April 15,1937

1. AUTOMATIC SUSPENSION - LICENSE PROCURED BY FRAUD - PETITION TO LIFT DENIED.

IN THE MATTER OF)
ANTHONY TOMA and) ON APPLICATION FOR LIFTING OF
PAOLO FRACCACRETA) STATUTORY AUTOMATIC SUSPENSION
) RESULTING FROM CONVICTION
) CONCLUSIONS

Nathaniel J. Klein, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Application in the form of a verified petition has been made by Anthony Toma and Paolo Fraccacreta for an order lifting the automatic statutory suspension of license C-835 issued to Anthony Toma for premises located at #257 Market Street, Newark.

The petition alleges, in effect, that the business operated at #257 Market Street was actually owned by Paolo Fraccacreta, who could not qualify as a licensee under the residence requirement of the Control Act; that consequently the license therefor was applied for and obtained by his brother-in-law, Anthony Toma, who had no interest in the licensed business; that on December 21, 1936 Fraccacreta and Toma were arrested, the former being charged with having procured the license by fraud and misrepresentation in violation of Section 22 and the latter with having aided and abetted in violation of Section 50; that thereafter they were convicted and the licensed premises were closed. The petition further alleges that Paolo Fraccacreta has invested a substantial sum of money in the licensed premises and has been unable to effect a sale of the goods, chattels and fixtures therein without a transfer of the license, and prays that the automatic statutory suspension resulting from the aforementioned conviction of Anthony Toma be lifted to the immediate end that the matter be referred to the Municipal Board of Alcoholic Beverage Control of Newark for the fixing of a definite period of suspension and the ultimate end that the license be transferred to a bona fide purchaser.

It is evident that if the true facts had been disclosed in the first instance to the Municipal Board the license would not have been issued. And the fraud having been discovered it is equally evident that the licensee should not, under any circumstances, be permitted to continue operations under the license. Petitioners do not dispute the foregoing but rest their plea entirely upon the contention that they have been punished sufficiently and that a transfer of the license should ultimately be permitted in order that as much value as possible from the licensed business may be salvaged.

There are two obstacles which are fatal to the plea. In the first place, the petition admits that the license was obtained through deliberate fraud. This being so, if the automatic statutory suspension were lifted and the matter referred to the Municipal Board of Newark, that Board would have no choice in revocation proceedings but to revoke the license. The license having been revoked, there could be no transfer thereof. See Bulletin 169, Item 7. A suspension for a fixed period would obviously be inappropriate to a situation where the finding is that the license was

obtained by the deliberate fraud of the licensee. See Bulletin 112, Item 5; Bulletin 113, Item 4.

In the second place, the present application is under the express terms of Section 82 (P. L. 1935, c. 254) addressed to the discretion of the Commissioner and conditioned upon a showing of good cause. See Bulletin 84, Item 1. The power to lift an automatic statutory suspension will be sparingly exercised, and in cases of major violation of this kind will not be exerted. See Bulletin 91, Item 10. In the instant case the violation was serious. If control of the liquor industry is to mean anything, every precaution must be taken to insure that licenses are held not by "fronts" but only by the real owners of the businesses conducted under their licenses. See Bulletin 90, Item 10.

When the petitioners perpetrated their fraud they gambled with Fraccacreta's investment as well as with the criminal law of the State. On being caught they are in no position to complain that his financial loss is substantial.

The application is denied.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 4, 1937.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSEES - SALES TO NON-MEMBERS AND AFTER HOURS.

April 5, 1937.

Harvey G. Wismer, Esq.,
Town Clerk,
Phillipsburg, N. J.

Dear Mr. Wismer:

I have staff report and your certification of the proceedings before the Board of Commissioners of Phillipsburg against R-Gent Club, charged with (a) having sold alcoholic beverages to non-members in violation of the terms of its club license; and (b) having sold alcoholic beverages after closing hours.

I note the licensee pleaded guilty and that the license was suspended for one month - April 7 to May 6, 1937.

Please thank the Board for their effective and commendable action in this case. Such a substantial penalty as here inflicted should serve notice upon club licensees in Phillipsburg that the privileges granted to them at a reduced license fee are not to be abused. Club licensees are legally bound to take all the necessary precautions to see that their sales are always kept within the expressed terms of their licenses. The sooner they realize that the law is made to be obeyed the better.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

3. NIPS - PROHIBITED AFTER MAY 1st - THE RULE MEANS JUST WHAT IT SAYS.

Dear Sir:

Please advise what we are to do with nips on hand after May 1st.

Very truly yours,

HARBORSIDE RESTAURANTS, INC.

April 8, 1937.

Harborside Restaurants, Inc.,
Jersey City, N. J.

Gentlemen:

It will be unhealthy for any retail licensee to have nips on hand on or after May 1st. A full month's time was given in order that business adjust itself to the rules. During April, you may return them to the wholesaler from whom you purchased them, or you can use them up this month, or you can destroy them, but they must not be in your possession on or after May 1st.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. NIPS - PROHIBITED AFTER MAY 1st - HENCE NO SPECIAL PERMITS FOR DISPOSITION AFTER MAY 1st WILL BE GRANTED.

Dear Sir:

Pursuant to your regulation referring to the prohibition of Nips after May 1st we would appreciate your advising us whether or not it will be permissible for any licensee to obtain a special permit to dispose of this type of merchandise subsequent to May 1st.

Very truly yours,

J. & J. DISTRIBUTING CO.

April 8, 1937.

J. & J. Distributing Co.,
Newark, N. J.

Gentlemen:

Licensees will not be given Special Permits to do what the Rule forbids. A whole month was afforded retail licensees to dispose of nips on hand. No permission, therefore, is necessary to dispose of nips this month. On and after May 1st, their mere possession becomes unlawful. Hence, no special permits will be granted to dispose of such contraband. Now is the time to dispose of them.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

April 9, 1937

In re: Case No. 158.

In his application solicitor denied that he had ever been convicted of a crime, but fingerprint records disclosed that in 1928 he had been convicted for non-support and sentenced to serve six months.

At the hearing solicitor testified that in December, 1927 he married his present wife, with whom he still lives, and that they established their home in Louisiana shortly thereafter. About September, 1928, he was extradited from Louisiana on a charge of non-support and bigamy, made by another woman. He states that at the trial the other woman produced a marriage certificate showing that he had married her at Elkton, Maryland. The Judge before whom the case was tried found him guilty on the charge of non-support and directed the Prosecutor to file a charge of bigamy against him. He went to jail. Some time thereafter his legal wife appealed to the Judge to investigate the case. The Judge caused an investigation to be made in Elkton, Maryland, and it was discovered that there was no record of the alleged marriage. Finally the other woman admitted that the so-called marriage certificate was a fraud and that it was in her own handwriting.

These facts are corroborated by a letter written by the Judge who convicted solicitor.

As to the false affidavit, solicitor testified that he felt that since he was exonerated it should not be classed as a conviction. While, technically, the conviction still stands because it has never been set aside, solicitor's viewpoint is understandable and, to the layman, reasonable. I believe he did not make a deliberate misstatement.

It is recommended that no further action be taken.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

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

April 9, 1937

In re: Case No. 122.

Solicitor is the holder of a special permit authorizing him to solicit orders for the purchase or sale of alcoholic beverages in the State of New Jersey, until an adjudication shall have been made as to whether he is entitled to a solicitor's permit. A special permit was issued because of the doubt existing at the time of the application for solicitor's permit as to whether or not a crime for which solicitor had been convicted involved moral turpitude.

On August 21st, 1935 solicitor was arrested on a charge of defrauding a bank, and on September 23, 1935 solicitor and a young woman, who was a co-defendant in the criminal proceedings, pleaded guilty to an indictment charging them with converting certain moneys, bonds and credits of the ___National Bank to the benefit

and advantage of solicitor. Both defendants received a suspended sentence, and solicitor was placed on probation for five years to make restitution of $9,701.79, which was the amount lost to the bank through the operations of the defendants.

Two hearings have been held, at which solicitor gave his version of the transactions which led up to his arrest and conviction, and independent investigation has been made by this Department. I find the facts to be as follows: Solicitor had an account at said National Bank; his co-defendant was employed at the Bank as a bookkeeper. Beginning October 20th, 1932 and continuing until February 28th, 1933, solicitor drew a series of checks on the bank, many of which checks were for large amounts, in favor of various brokerage concerns which were demanding additional margin. Solicitor did not have a sufficient balance at the Bank to take care of these checks, but all of these checks were honored because the bookkeeper, unknown to the officials of the Bank, was manipulating other ledger sheets to cover solicitor's overdrafts. The Bank was closed by the Federal authorities in March, 1933, and the manipulation was discovered.

Solicitor admits practically all of these facts except that he contends that the transactions covered a period of one or two months instead of five months as set forth above. He does not deny that he knew he was overdrawing his account. In fact, he admits such knowledge, but claims that he had hoped the stock market would rise and thus enable him to close out his brokerage accounts and make good the overdrafts. He contends further that neither he nor the bookkeeper received any pecuniary advantage, but that the entire amount overdrawn was paid to the various brokerage firms. He contends further that the Bank has not suffered because a surety company paid the loss and solicitor is making restitution to the surety company. It seems to be clear, however, that the entire amount overdrawn from the Bank was used to reduce solicitor's indebtedness on his stock brokerage accounts, and that he benefited to that extent.

Granting solicitor the benefit of all inferences which might be drawn in his favor, the fact remains that he deliberately took part in these transactions which ultimately resulted in a loss of $9,700.00 to the Bank or the bonding company, and that solicitor benefited to the same extent. A crime was committed; he has pleaded guilty to the crime. If conviction under such circumstances does not bring a sense of shame, it ought to. Re "X," Bulletin 17, Item 1.

It is recommended that the temporary permit granted to solicitor be cancelled.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

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

April 10, 1937

In re: Case No. 133.

In his questionnaire solicitor swore he had never been convicted of a crime. His fingerprint records disclose that he was arrested in June, 1932 on charges of atrocious assault and battery (auto), driving while drunk and motor vehicle violations. Subsequent

investigation showed that he was tried in a traffic court on four charges: 1- driving while drunk; 2-reckless driving; 3- leaving the scene of an accident; 4- atrocious assault and battery. He was found guilty on the first three charges and held to await the action of the Grand Jury on the fourth charge. For driving while drunk he was fined $200.00, and his driver's license suspended for two years; for reckless driving sentence was suspended; for leaving the scene of an accident he was fined $50.00.

At the hearing held to determine whether he had been convicted of a crime involving moral turpitude, solicitor testified that on the evening in question he had become intoxicated at a road house and had been placed in a car owned by the proprietor of the road house and driven by a young lady whom he did not know; that he had been taken to a club house and left there by the young woman who immediately departed; that shortly thereafter three men identified him as the driver of the car in question and claimed that solicitor's car, while traveling from the road house to the club, had collided with the car in which they were riding and had not stopped; that one of the three men had been cut slightly on the arm as a result of the collision.

The solicitor was then placed under arrest and later found guilty in a traffic court on the charges set forth above. Solicitor says that he did not appeal his conviction because he did not have sufficient money to perfect an appeal.

The important point to be decided in this case is whether in fact solicitor has been convicted of a crime within the meaning of that word as used in Section 22 of the Control Act. The statute in effect at the time of the conviction was the Motor Vehicle Act as amended by Ch. 171, Laws of 1931. The courts of this State have decided that a proceeding for violation of Section 14(3) of the Motor Vehicle Act, as so amended, is not a criminal prosecution. State v. Rowe, 116 N. J. L. 48 (Sup. Ct. 1935) and cases therein cited. It has likewise been decided that a conviction in a summary proceeding for the offense of reckless driving in violation of the Motor Vehicle Act is not a conviction of a crime. Huff v. Goddard, 106 N. J. L., p. 19 (Sup. Ct. 1930). Our investigation shows no indictment or conviction on the atrocious assault and battery charge.

It appears, therefore, that solicitor has never been convicted of a crime and hence his answer is not false.

It is recommended that no further proceedings be taken.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

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

April 10, 1937

In re: Case No. 152.

In his application solicitor swore that he had never been convicted of any crime. Fingerprint records disclosed that he had been convicted in the State of Pennsylvania in January, 1934 for operating an automobile while intoxicated.

At a hearing held to determine whether he had been convicted of a crime involving moral turpitude, solicitor testified that he

had been arrested for operating his automobile while intoxicated, after the car which he was driving struck another car parked without lights on a dark narrow street. He further testified that no person was injured by reason of the collision; that he was tried by a jury which found him guilty, with a recommendation of mercy, and was thereafter fined $200.00 and sentenced to serve from forty-five days to three years in a County Jail; that he actually served twenty-five days in jail and paid his fine.

Since the offense of driving an automobile while under the influence of intoxicating liquor is not a crime within the meaning of that term as set forth in Section 22 of the Control Act, Hearing No. 133, Bulletin 170, Item 7, solicitor did not swear falsely that he had never been convicted of a crime.

It is recommended that no further proceeding be taken.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

9. CLUB LICENSES - THE DUTY OF CLUBS TO OBSERVE THE LAW IS ACCENTUATED BY THE SPECIAL PRIVILEGES CONFERRED UPON THEM - MOBILIZATION OF AMERICAN LEGION SOUGHT IN LAW ENFORCEMENT.

April 12, 1937

Raymond H. Whitford, Judge Advocate,
Hawthorne Post No. 199, American Legion,
Hawthorne, New Jersey.

My dear Mr. Whitford:

I have yours of the 9th enclosing resolution of Hawthorne Post, American Legion, reading:

> "WHEREAS, the American Legion Posts in various communities of this State have been given a concession in the form of a 'Club Liquor License' at a reduced cost, which concession has helped to maintain the Posts' quarters, and also helped to build good fellowship in a lawful manner; and
>
> "WHEREAS, it has been brought to our attention that certain tavernkeepers have started a movement to abolish concessions to clubs for licenses, wherein they point out in negative tone the holding of Club Licenses by 'one-man clubs' and mentioned 'locked door' conditions, making it impossible to investigate by A.B.C. agents or other authorities; and
>
> "WHEREAS, The American Legion is composed of good, law-abiding citizens serving their communities in peace as they did their Country in time of war, and are in no way to be classed as 'saloonkeepers' or 'one-man clubs'; and
>
> "WHEREAS, The American Legion is not a secret organization and does not encourage a closed door to any law-enforcement agency; and
>
> "WHEREAS, if these Posts were forced to pay the regular license fee, it would be necessary to close their bars and force their membership to fraternize in saloons

rather than among men of their own choosing; and, further, whereas such additional expense would greatly hamper the good work of the several Posts throughout the State;

"NOW, THEREFORE, BE IT RESOLVED that Hawthorne Post American Legion No. 199 requests that the Honorable D. Frederick Burnett, Commissioner of Alcoholic Beverage Control of the State of New Jersey, be made cognizant of the importance of having said Club License privilege continue to Service-men's Clubs and such other bona fide Clubs as are lawful, and such Agencies for the good of the community; and, further, that all Assemblymen and State Senators likewise be made cognizant of the importance of the continuance of such Club License privilege, in order that legislation being proposed to eliminate Club Licenses be voted in the negative.

"BE IT FURTHER RESOLVED that the State Department of The American Legion notify all American Legion Posts in the State of New Jersey to have contacts made to stop the forcing of legislation by Liquor Dealers Associations (saloonkeepers) to the end that only saloonkeepers will be allowed to sell alcoholic beverages.

"BE IT FURTHER RESOLVED that proper resolutions be prepared by the State Department of The American Legion, Department of New Jersey, covering the situation as hereinabove set forth, and that such resolutions be forwarded to the Governor of the State of New Jersey."

There is no legislation pending or contemplated so far as I know which looks to the abolition of club licenses, nor would I sponsor any, for I am heartily in favor of them -- in fact, recommended the creation of such licenses originally.

The only thing that I am against is the abuse of the special privilege when granted.

Club licensees receive their licenses at a greatly reduced fee from that charged plenary licensees for consumption on premises. The latter may sell generally. The privilege of a club is to sell only to its members and bona fide guests. No complaint of locked doors has been made to me by anyone, but charges have been made of what has gone on in some clubs behind closed doors. The complaint of the taverns is justifiable when any club sells to the public generally, or does not observe closing hours, or possesses slot machines in defiance of the law, or otherwise does not live up to the rules in apparent reliance upon the reluctance of some municipal officials to penalize social organizations in the same way that they enforce the law against tavern owners.

It seems to me that club licensees should, as you, appreciate the special privilege that has been conferred upon them and be in the forefront in demanding strict enforcement by all licensees, irrespective of class, all along the line.

I will welcome the constructive work of the American Legion in strict law enforcement, not only in its own Posts but as examples to all licensees, confident that if this is accomplished in fact there will be no call or occasion for the abolition of club licenses - or the return of Prohibition.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. APPELLATE DECISIONS - GRANT LUNCH CORPORATION v. NEWARK.

GRANT LUNCH CORPORATION, a corporation of New Jersey,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS

Kanter & Kanter, Esqs., by Elias A. Kanter, Esq., Attorneys for Appellant.
Frank A. Boettner, Esq., by Raymond A. Schroeder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from an Order of the Municipal Board of Alcoholic Beverage Control of Newark suspending license No. C-471 issued to Grant Lunch Corporation for premises located at 50 Market Street, Newark.

On September 21, 1936, investigators of the Department seized three open bottles of liquor from the rear bar of the licensed premises, together with three sealed bottles of the same brands for comparative analyses. Following receipt of the chemist's report indicating that the contents of the open bottles were illicit beverages (Cf. Bulletin 91, Item 11), revocation proceedings were instituted by the Municipal Board of Alcoholic Beverage Control of Newark. Upon the basis of testimony introduced at the hearing in those proceedings, the Board found that illicit beverages were possessed at the licensed premises and suspended the license for a period of thirty (30) days.

Notwithstanding that the Rules Governing Appeals provide that the burden of establishing error in the action appealed from rests with the appellant, no testimony was introduced to controvert the report of the chemist or the finding that illicit beverages were possessed on the licensed premises, nor was any evidence introduced to explain such possession.

Instead, appellant rested its case upon the sole contention that it could not be held responsible for the violation because of the following stipulated facts, viz.: During 1935 the United States District Court had appointed a Trustee for the corporate licensee in reorganization proceedings pursuant to Section 77B of the Bankruptcy Act; that said Trustee continued in legal possession and control of the licensed premises until discharged by court order on September 29, 1936, which was eight days after the seizure above mentioned had occurred; that the Trustee is a reputable attorney who had no personal knowledge of the presence of illicit alcoholic beverages on the licensed premises.

On the premise of this stipulation, appellant contends that since it is free from personal fault, it is not responsible for the illicit liquor because, on the day the liquor was seized, the possession and control of the licensed premises was vested in the Trustee and not in itself.

It is not disputed that possession of illicit beverages at licensed premises constitutes ground for revocation. And this is true notwithstanding the personal innocence of the managing officers and directors of the corporate licensee. See Great Notch Villa v. Clifton, Bulletin 91, Item 11. Any other view would enable all licensees to hide behind the cloaks of their employees with

consequent nullification for practical purposes of the power, essential in the public behalf, to revoke or suspend a liquor license for violation of the Alcoholic Beverage Control Act. See In re Kneller, Bulletin 49, Item 4; Virgilio v. Orange, Bulletin 127, Item 8; Cassie v. East Orange, Bulletin 128, Item 3.

Now, when the corporate licensee filed its petition for reorganization and a Trustee was appointed pursuant thereto and continued in possession, it is true that control over the licensed premises was transferred from the corporation to the Trustee. The license itself did not pass to the Trustee by the federal court order. Liquor licenses are personal privileges and are not transferable except to the extent expressly permitted by the State Control Act and only then subject to its terms. Thus, it was requisite that the license issued to the Grant Lunch Corporation be extended, pursuant to the Control Act, in favor of the Trustee, or otherwise the Trustee could not lawfully operate under the license despite his appointment by federal court order and the investiture in him thereby of possession and control of all the assets, property, rights and franchises of the corporate debtor. This extension, in fact, was never made although it should have been done as required by Section 23 of the Alcoholic Beverage Control Act. This default by the Trustee, coupled with subsequent sales of alcoholic beverages under the license, was of itself an independent cause for revocation of the license. No request was ever made to the local Board to extend the license and no action was taken by the local Board in respect to the previous license, undoubtedly because they did not know that the operation of the business covered by the license had, in fact, devolved by operation of law upon a person other than the licensee. When the license was renewed for the current licensing period which began on July 1st, 1936, while it was renewed in the name of the Grant Lunch Corporation, the application therefor was made by the Trustee and the fee paid for by him and notation duly made of the fact that he as such Trustee was interested in the license and in the business to be conducted thereunder.

The point is that without such extension and without such renewal the Trustee had no right to operate under the liquor license at all. It follows that the license, although operated under the management of a federal court officer, was subject at all times to the exclusive control of the duly constituted State authorities. The license itself, therefore, became subject to revocation or suspension for violation of the State law upon the licensed premises, either by the Trustee personally or by others engaged in conducting the business subject to his legal control. While no personal fault is attributed to the Trustee in this case or even question thereof so far as he personally is concerned, there is also no question but that if revocation proceedings had been instituted immediately following the seizure on September 21, 1936 and had been completed prior to the discharge of the Trustee, neither the Trustee nor the corporate licensee would have been heard to assert that the license was immune to revocation proceedings, either because the premises were being operated under federal court order or because the actual fault of or cause for the violation rested upon employees. The master is responsible for the acts of his servants irrespective of the presence or absence of personal fault on his part. Cf. In re Kneller, supra; Virgilio v. Orange, supra; and Cassie v. East Orange, supra.

The cause for revocation (which, of course, includes suspension in substance, a partial revocation) accrued on September 21, 1936, or eight days before the appellant reacquired legal control of the license and the business conducted thereunder. Consequently, the issue presented is whether a corporate licensee, upon its reacquisition of legal control of the licensed business following the discharge of a Trustee, is entitled to continue the exercise of the

privileges under the license free from any liability for violations which occurred during the legal control of the Trustee in Bankruptcy.

The violation of the State law which occurred or was discovered on September 21, 1936, rendered the current license subject to disciplinary proceedings. That vulnerability inhered and subsisted despite the official exit of the Trustee. It is not a matter of private personal fault by the licensee but rather one of public interest whether a license shall abate in whole or in part because of violation of the State law. Civil responsibility, as stated above, may be incurred irrespective of the presence or absence of personal fault. The mere fact that revocation proceedings were not instituted during the remaining eight days of the control regime of the Trustee is not significant, since the license, at the time of the revesting of title or rather control in the corporation, was subject to revocation and so remained. As the appellant would have it - no one is liable and the State is impotent to punish admitted infraction of its laws - an immunity bath dipped by the accident of a trustee being placed in control under reorganization proceedings instead of continuing the debtor in possession coupled with subsequent reinvestiture of the license in the original licensee. The fallacy of this supposed cleansing process is that, in its shifts, sight has been lost of the fact that no immunity pertained to the Trustee; that the license and licensed premises while reacquired, free from the control of the Trustee, were vulnerable to attack of the State for violation of its laws; that the violation was not purged by the reshifting of legal control from the Trustee to the corporate debtor.

The underlying principle involved is the same as declared in re Brennan, Bulletin 113, Item 1, where I held that charges against a deceased licensee, although not determined in his lifetime, may be considered on application for extension of his license. This was declared not for the sake of visiting punishment upon someone else for the sins of a decedent but simply for the purpose of protecting the public. The executor or administrator of the decedent, while personally innocent, takes the license as is - i.e., subject to whatever charges or defaults may have been incurred by the licensee in his lifetime. So here the Grant Lunch Corporation reacquired control of the license subject to whatever was chargeable against it while under the dominion of the Trustee. The present case is no different than if the Trustee had failed during his incumbency to pay State liquor taxes that had accrued. The fact that the default had occurred before the appellant resumed control would in nowise relieve it from the burden of paying the tax under penalty of revocation. And this without knowledge or personal fault. The argument of appellant, therefore, fails. There is no hiatus in the law. Rather there is a continuing duty imposed upon whomsoever operates the license to see to it that the law is obeyed at all times. For infraction thereof, the license may be suspended or revoked. The plea of immunity falls.

The facts in the instant case illustrate the soundness of the foregoing conclusions from the businessman's angle. There is no suggestion that the Trustee effected any material change in personnel or that there was any factual change in management following either the seizure or the legal transfer of the corporate property eight (8) days later. Presumably, the same interests continued and for aught that appears in the record, the guilty employees have been continued in employment. In a substantial sense the corporate licensee has at all times participated in the operation of the licensed premises. Legal sophistries cannot be permitted to fritter away statutory penalties, salutary in the public interest, ensuant upon the discovery of illicit beverages at the licensed premises. The law is capable of being enforced whether the licensee is bankrupt or solvent. His personal status is immaterial.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 12, 1937.

11. LICENSEES - SUNDAY SALES - SERVICE OF LIQUOR "WITH FULL COURSE MEALS" DISAPPROVED - HEREIN OF THE INHERENT DIFFICULTIES IN DETERMINING PAR FOR GUSTATORY ACHIEVEMENT AND THE ARDUOUS OBSTACLES WHICH BESET THE PARCHED.

April 13, 1937

Clark C. Bowers, Esq.,
Washington, New Jersey.

Dear Mr. Bowers: Re: Borough of Washington.

I have before me the proposed alcoholic beverage ordinance.

Section 4 provides:

> "No bars or tap rooms shall be opened and no alcoholic beverage shall be sold or disposed of on the first day of the week, commonly known as "Sunday," except with full course meals in the restaurant or dining room of the building where the license is granted."

I have held, as a general rule, that all those within the same license class must be treated alike and afforded equal privileges. I ruled in re Wenzel, Bulletin 19, item 7 that a municipal regulation prohibiting certain retailers from doing business on Sunday and allowing other retailers of the same license class to do so was invalid. The principle expressed in this ruling has been carried down through later cases. Re Sierszputowski, Bulletin 52, Item 4; re Holz, Bulletin 117, item 8; re Harrington, Bulletin 118, Item 13.

As pointed out, however, in re Wenzel, supra, and the cases cited therein, I have felt that exceptions discriminating against some and favoring others may be valid if they affect alike all those similarly situated and can be said to carry out a public purpose. Consequently, I have tentatively approved as carrying out a public purpose, subject to review on appeal, municipal regulations prohibiting all sales of alcoholic beverages on Sundays except in hotels or restaurants with meals (Bulletin 43, Item 11). In re Hauck & Felter, Bulletin 130, item 3, I stated that all such approvals had, however, been made ex parte and hence were not final. No case on this point has ever been fought out before me on appeal. I mention this because I have grave doubt as to whether an exception allowing hotels and restaurants to sell on Sundays does carry out a public purpose. To allow some members of the license class to sell when others are prohibited from doing so is certainly a discrimination and is justifiable, if at all, only on the ground of serving a public purpose. Hence in the case last cited, while I declared my willingness to continue to approve ex parte such regulations until the serious question in my own mind was settled by an appeal, I declared in no uncertain terms that I should not extend the tentative ruling beyond bona fide hotels and restaurants or approve even tentatively any regulations which might turn out to be an opening wedge to making a mockery of Sunday selling or be so couched as to invite all kinds of hypocritical subterfuge or be so loose as not to create a definite regulatory standard capable of enforcement, saying:

> "In any event, I shall look with disfavor on any loose device such as serving liquor with 'meals.' For what is a meal? And how much does it cost or is it given away? And how much of it, if any, has to be actually eaten before

the drink passport is validated? Or is 'the meal' a hard cube of crust to be bandied from hand to hand as an exhibit for the thirstily curious, so impenetrable, so durable that it might well outlast a generation of seasoned Sunday soaks. I don't want any recurrence of 'Raines Law sandwiches' or 'Bride's Biscuits' or any other jokes which make a farce or hollow mockery of the law. Whether or not I give your draft even 'ex parte' approval depends entirely on its text. 'Meals' just won't go. A bona fide restaurant may. I am on to the plausible tricks and there is not going to be any 'inching.'"

Applying the same principle of strict construction to your proposed section 4, the exception of "full course" meals defies definition. Must it be table d'hote or will a number of a la carte selections suffice? How many? If the former, how many courses are requisite? And how much must be partaken of each course? Must the thirsty one eat his way from aperitif through savories to nuts before he slakes his thirst, or may he have a cocktail to bolster him for the gustatory ordeal in advance of performance of the condition precedent, and sip it as he watches the kaleidoscopic procession of viands set before him?

Suppose he takes a walk? Or quits in disgust or indigestion? Suppose his eyes were bigger than his stomach? Would not Fabian tactics be at a premium? Would not cunctators be unduly exalted? Just what is par?

Could not the same meal with all its glorified courses be set up as a quasi-permanent exhibit and do double, yea multitudinous, duty as a passport to all comers when visaed by the cash register at a fee contingent upon the price and number of drinks that the parched one might desire while sitting in as mere spectator of the Lucullan feast?

Again, opinions and requirements of a meal vary so widely, especially in these calorie conscious days. Any requirement of minimum tonnage would automatically count out the dainty, the diabetic and the dyspeptic, not to speak of those on reducing diets. If the requirement of eating a full course meal has to be performed for each libation, even the hardiest perennial drinkers are apt to become discouraged! The bull market on pepsin would loom as cause for a Congressional inquiry. Odes would be composed to those who only sit and sip.

Again, the proposed section permits Sunday sales in the dining room of any licensed premises whether it is a hotel or restaurant, or not.

The section, as submitted, is therefore disapproved. It will be approved, if the Borough wishes, providing that the exception reads: "except in bona fide hotels or restaurants with meals."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. MUNICIPAL ORDINANCES - AMENDMENT - POWER TO AMEND AN ORDINANCE BY RESOLUTION MAY BE EXPRESSLY RESERVED, IF RESERVED WITH RESPECT TO PROVISIONS WHICH MAY LEGALLY BE ENACTED BY RESOLUTION IN THE FIRST PLACE.

April 13, 1937

Harry A. Shuback, Esq.,
Morristown, N. J.

My dear Mr. Shuback:

I have before me the proposed supplement to the "Ordinance

regulating the sale of alcoholic beverages in the Borough of Wharton", adopted June 17, 1935, as to which you ask my approval, reading:

> "BE IT ORDAINED by the Mayor and Council of the Borough of Wharton, Morris County, New Jersey, that an Ordinance entitled as above, adopted June 17, 1935 as amended or supplemented, be supplemented as follows:
>
> "'1. Said Ordinance may subsequently be amended, repealed or otherwise superseded by resolution of the Borough Council.'"

According to Section 37 of the Control Act, my approval is required only of municipal regulations which deal with the conduct of licensed businesses or the nature and condition of licensed premises. While the supplement, for this reason, is not subject to my approval, I thought that as a matter of courtesy I should give you my thoughts as to its validity and so I suggest that before introduction it be revised in accordance with the comments hereinafter made.

It purports to authorize the Borough Council to amend, repeal or otherwise supersede by resolution the entire ordinance or any section or parts of sections thereof. I have ruled that the power to amend an ordinance by resolution may be expressly reserved, if reserved with respect to a provision which could legally have been enacted by resolution in the first place. That is merely the reservation of an existing power and not the creation of a new one. Re Somerville, Bulletin 110, Item 5. It does not permit, however, subsequent amendment by resolution of a provision required by law to be enacted by ordinance. That would be the creation of a new power for which there is no authority in the statutes. To illustrate: As to Sections 3, 4 and 5 of the original ordinance which respectively fix plenary retail consumption, plenary retail distribution and club license fees and Section 11 which limits hours of sale, the power to amend, subsequently, by resolution may be expressly reserved, while with respect to Section 12 which provides penalties of fine or imprisonment or both for violations of the ordinance, it may not. License fees and hours of sale may be fixed in the first instance by resolution. Penalties of fine or imprisonment may, however, be imposed only by ordinance.

In the interest of improving the supplement, I commend this thought to your attention. It is my suggestion that the supplement be revised so that it refers only to the sections as to which the power to amend is expressly reserved and that this reservation be made only with respect to sections the subject matter of which may lawfully be enacted by resolution.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. MINORS - EMPLOYMENT ON LICENSED PREMISES - SPECIFIC FACTS RATHER THAN MERE GENERALITIES ARE NEEDED TO REMEDY WHATEVER BAD CONDITIONS MAY EXIST.

Dear Sir:

The New Jersey State Conference, American Federation of Musicians in convention, assembled at Vineland, N. J. February 21-22, 1937, deplore the laxity of enforcement of the law prohibiting child labor in many cafes and road houses in our State.

Most cases involve the employment of boys as musicians, who not only are in competition with professional musicians, but who

are being subjected to a most undesirable atmosphere and working as late as three or four o'clock in the morning.

We know local governing bodies should control such conditions, but realizing your attitude for a strict observance of law and order in all places where liquor is dispensed, our convention raises its voice unanimously to appeal to Commissioner Burnett to assist in clearing up a most deplorable condition.

Very truly yours,
Julius F. Young, President,
New Jersey State Conference,
American Federation of Musicians.

April 12, 1937

Julius F. Young, President,
New Jersey State Conference,
American Federation of Musicians,
Cranford, New Jersey.

Dear Mr. Young:

I note with keen pleasure the commendable stand your organization has taken for strict observance of the law. I see that you have a definite interest in the improvement of conditions under which minors are employed. It is indeed heartening.

Minors may lawfully be employed on licensed premises provided my approval has first been obtained. They may not, however, be employed to sell or solicit the sale of any alcoholic beverages. See the Rules governing the employment of minors, a copy of which I am sending you herewith. In order that children may be protected in such employment to the same extent as by our other statutes, I have fixed the minimum age at fifteen years. Under that age, no minors may be employed in licensed taverns in any capacity whatsoever. Re DeVita, Bulletin 96, Item 9, copy also enclosed.

My duty, of course, is not concerned with the competition made by these boys with professional musicians but with the employment of minors in any situation exposing them to vicious or injurious influences.

Instead of merely referring generally to deplorable conditions, I wish you would give me definite information as to what these conditions are and where they exist. I will then be able to go after them and clean them up. Give me the names of the licensees, the addresses of the licensed premises and the full facts and circumstances in each case. To make an investigation, I need specific information. Unless you wish actively to participate, you need not become involved in any way. Your name, if you so desire, will be kept in strict confidence. You tell me where these bad conditions exist; my men will make the investigation, get the supporting evidence and then when the case comes to trial, testify as to what has been found.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. LICENSED PREMISES - ENLARGEMENT - PROCEDURE.

April 12, 1937

Mr. J. Cory Johnson,
Town Clerk,
Bloomfield, New Jersey.

My dear Mr. Johnson:

I have before me the resolution adopted by the Town Council on March 15th which provides:

> "RESOLVED, that the licensed premises covered by License #27, issued to Thomas F. Moore, 600 Bloomfield Avenue be deemed to include the room on the second floor of said premises directly above the tavern with the proviso that an employee of the licensee shall be in attendance on said second floor during the time the room may be opened for business, pursuant to the license."

I understand that no formal transfer was made nor any transfer fee paid.

Each application for a license contains a description of the premises where the alcoholic beverages may be sold. See in the application, Question 4. The premises so described will constitute the licensed premises. It is only on the licensed premises that sales may be made. I learn from your office by telephone that Mr. Moore's licensed premises are described in his application as one room on the first floor and the storage of beer in the cellar. It follows that the room on the second floor is not a part of the licensed premises.

Before the license may be extended to cover premises not expressly included in the licensed premises, it is necessary that formal transfer to premises including both the original licensed premises and the addition be made. Re Cohen, Bulletin 89, Item 7. The manner of making the transfer must follow that prescribed in the Act (Section 23) and the rules and regulations (Rules Governing Transfers, compiled Rules, Regulations and Instructions, Page 31).

The resolution of March 15th hereinabove set out should be rescinded as not being within the Council's authority to enact. At the same time, it will be necessary to notify Mr. Moore that all sales under his license must be confined to the original licensed premises. Before he may sell in the room on the second floor, he must first make formal application for transfer, pay the required fee, advertise, and the Council must officially authorize and execute it.

Very truly yours,

Commissioner.