

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

BULLETIN NUMBER 206

OCTOBER 1, 1937.

1. LICENSEES - NEW RULES - NOTICE

On August 30, 1937, a bill of complaint was filed in the New Jersey Court of Chancery by United Profit-Sharing Corporation and Acker, Merrall & Condit Company seeking to restrain the enforcement of Rule 20 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises and an order to show cause was issued thereon. Thereafter, motion was made on behalf of the State Commissioner to dismiss the bill of complaint and the order to show cause and was duly brought on for argument before Vice-Chancellor Bigelow.

Because of the pendency of the above mentioned proceeding, the effective date of Rule 20 and related Rule 19 prohibiting "combination sales" was deferred, by Notice to Licensees dated August 31, 1937, until further ruling by the Commissioner. Today an order was signed dismissing the bill of complaint and vacating the order to show cause issued thereon and counsel for complainants has advised that no further judicial proceedings will be taken on their behalf.

Accordingly, Rules 19 and 20 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises, set forth below in full, are hereby reinstated, effective October 1, 1937:

19. No retail licensee shall, directly or indirectly, sell or offer for sale any alcoholic beverage for consumption off the licensed premises except at a specified price per bottle or specified price per case thereof, or both; "combination sales" of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited.

20. No retail licensee shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, discounts or similar inducements with the sale of any alcoholic beverage for consumption off the licensed premises; provided, however, that nothing herein contained shall prohibit retail licensees from furnishing advertising novelties of nominal value.

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner

Dated: September 24, 1937

2. SPECIAL PERMITS - 200 FEET RULE - SPECIAL PERMITS, WHICH ARE IN EFFECT ONE DAY LICENSES, ARE SUBJECT TO THE RULE.

September 24, 1937

Mr. George H. Hoffmeyer,
Vineland, N. J.

My dear Mr. Hoffmeyer:

It is not clear from your letter whether you are inquiring in regard to the issuance of a regular license or

New Jersey State Library

a one day special permit, but, irrespective of which you may have in mind, the answer is the same.

According to Section 76 of the Control Act, no license may be granted for premises located within two hundred feet of a public schoolhouse or private schoolhouse not conducted for pecuniary profit unless the premises for which the license is sought comes within one of the exceptions provided in Section 76. A copy of Bulletin 21, Item 71, which quotes Section 76 is enclosed. The same applies to special permits, for they are in effect one day licenses and the premises for which they are issued are licensed premises for that day. Re Gordon, Bulletin 191, Item 4, copy also enclosed.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. SALES TO MINORS - IS A SERIOUS MISDEMEANOR BUT DOES NOT OF ITSELF INVOLVE MORAL TURPITUDE ESPECIALLY IN A CASE WHERE MINORS MISREPRESENT THEIR AGE.

September 25, 1937.

James M. Dunn, Esq.,
Paterson, N. J.

Dear Mr. Dunn:

Selling to minors is a misdemeanor and a serious offense, but does not of itself involve moral turpitude unless the facts are such and the surrounding circumstances so aggravated in a particular case that a conclusion of turpitude is the only fair inference to be drawn.

Where minors misrepresent their ages in order to induce the bartender to give them a drink, and he in good faith relies on their statements, and their appearance is such that he has fair cause to rely, no question of moral turpitude is involved.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. SOLICITORS - OTHER EMPLOYMENT - A SOLICITOR MAY BECOME A NOTARY PUBLIC

September 21, 1937.

J. & J. Distributing Company,
Newark, N. J.

Gentlemen:

Rule 8 of the Rules Governing Solicitors' Permits provides:

"No Solicitor's Permit may be issued to any member of a municipal governing body or municipal issuing authority or to any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever."

Notaries Public are appointed by the Governor. They are not charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever. Hence, there is no objection to a solicitor becoming a Notary Public.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. MINORS - PLAYING IN ORCHESTRA - PERMITS NECESSARY TO EMPLOYMENT BY LICENSEES.

Dear Sir:

I am writing to you upon the recommendation of the proprietor of The Old Oaken Bucket, State Route 30, near Flemington, N. J. concerning laws governing the hiring of minors for entertainment purposes in places where alcoholic beverages are sold.

I have asked several persons who I thought could give me the desired information with a certain degree of authority, but their opinions were confusing.

My reason for writing is that I am business manager of a dance band, "The Valley Buckaroos", which consists of five members, four of whom are minors.

We applied at The Old Oaken Bucket for a job, after hearing the proprietor was anxious to hire an organization such as ours. Upon finding that four of the members were minors, he recommended that we ask your advice. He mentioned that permits could be obtained thru the Control Board for a nominal fee and after finger prints and photographs of the applicants were obtained by the Board.

Hoping you can enlighten me about this matter, I am,

Very truly yours,

JAMES K. MOREAU

September 27, 1937.

Mr. James K. Moreau,
Frenchtown, New Jersey.

My dear Mr. Moreau:

The law prohibits the employment of all minors by liquor licensees except pursuant to special permit issued by this Department and even then only in work which does not involve the solicitation or sale of alcoholic beverages.

I will be glad to issue permits for the minors in your orchestra providing that they are not under fifteen years of age.

The proprietor of The Old Oaken Bucket was therefore correct in refusing to hire your orchestra until such permits were first obtained.

I have sent you under separate cover eight applications for such permits and four questionnaires. Two copies of the application and one copy of the questionnaire must be submitted for each minor. The fee for each permit is \$1.00, which, as four of your members are minors, will be \$4.00 in all, and must be submitted at the time the application is made.

Please extend my good wishes to The Valley Buckaroos - I have often wished to hear a bronco buster band.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. LICENSED PREMISES - DIFFERENT PARTS MAY BE CALLED BY VARIOUS NAMES AS FANCIED - THE SWISS PROBLEM.

September 21, 1937.

Dear Sir:

This corporation, which is operating the bar under the license number C-29, issued by the City of Union City, would like to add the name "Alpine Tavern" to the name of Swiss Hall, to distinguish the bar and restaurant from the hall.

We do not want to do anything that would be opposed by the law, but would appreciate your opinion if such would be allowed and covered with the License now held by the Swiss Hall Corporation.

The name "Alpine Tavern" would be at the Restaurant entrance and on the Bar room Windows. If this name could not be used, would it be proper to use "Swiss Tavern" along with Swiss Hall?

Your kind advice in the above matter will be greatly appreciated.

Very truly yours,

Swiss Hall Corporation
Minnie E. Reutemann, Sec'y.

September 27, 1937.

Swiss Hall Corporation,
Union City, N. J.

Gentlemen: Attention: Miss Minnie E. Reutemann, Sec'y.

I have yours of the 21st.

If your license covers the bar, the restaurant and the hall, you may designate the different units by such names as you please.

Hence, you may call the restaurant the "Alpine Tavern" if you choose. Edelweiss would also be in order. But keep the yodeling temperate - better only one at a time!

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - INEPTITUDE OF
MERE WARNINGS.

September 27, 1937.

Peter MacDonald, Esq.,
Township Clerk of Wayne,
Mountain View, New Jersey

Dear Mr. MacDonald:

I have staff report of the proceedings before the Township Committee of Wayne against James Donohue, charged with having sold and served alcoholic beverages to minors.

The report states:

"Complaint had been received that minors were being served alcoholic beverages in the above licensed premises. Accordingly, Investigators Linnenkohl and Finzel were assigned to investigate.

"They visited the licensed premises on May 7, 1937, at about 11:15 P. M. At about 12:05 A. M., on May 8, 1937, they observed four young men at the bar drinking beer. All appeared to be under the age of twenty-one (21) years. The investigators identified themselves and requested the young men and the bartender to accompany them to a table. It was there ascertained that three of the young men were minors, two eighteen (18) years of age and the other nineteen (19). The fourth young man was twenty-two (22) years old. All these young men stated that they had been served beer at the bar after it had been ordered by the twenty-two (22) year old young man. The waiter said that he had served the beer to the young man who was of age whom he knew; but he did not know that the other three glasses of beer were to be given to minors; that he did not see the minors at the bar when he set up the four beers.

"At the hearing, the licensee testified he was not in the barroom at the time of the alleged violation; that he had instructed his employees to question all persons who appeared to be under twenty-one (21) years of age and whenever in doubt not to serve."

I note that your Committee voted to dismiss the charges. Investigator Linnenkohl reports that the licensee was warned to exercise greater care in the future to see that no minors were served alcoholic beverages on his licensed premises.

In view of the thorough manner in which this case was heard by the Township Committee, I am convinced that the decision was well intentioned.

I hope that the warning has some effect, but, candidly, am doubtful. The waiter who served four glasses of beer to one man who passed three of them over to the minors, must have known that he was not ordering four beers for himself all at once. It simply isn't done that way. Neither am I much impressed with the statement of the licensee that he had instructed his employees not to violate the law by selling to minors. Responsibility to see to it that the law is obeyed at all times cannot be sidestepped by anyone, least of all the boss, by telling somebody else to comply with the law. Reprimands and warnings have proved of little value in the past. If the liquor business is to survive the assaults made upon it, strict control is necessary and that means suspensions, revocations and unflinching enforcement all along the line.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

8. DISCIPLINARY PROCEEDINGS - ILLICIT BEVERAGES - THE VALUE OF STATUTORY AUTOMATIC SUSPENSION CONTRASTED WITH INADEQUATE PENALTIES BY LOCAL GOVERNING BODIES - HEREIN OF THE NEW ALIBI OF TREASURE-TROVE

September 27, 1937

Walter S. Terhune, Esq.,
Township Clerk,
West Milford, New Jersey.

Dear Mr. Terhune:

I have staff report of the proceedings before the Township Committee of West Milford against William Devonmille, Jr., charged with having possessed illicit alcoholic beverages.

The report reads as follows:

"Complaint had been received that illicit alcoholic beverages were possessed and sold at the above licensed premises. Accordingly, Investigators Togno and Thievon were assigned.

"They visited the licensed premises on July 7, 1937. Investigator Togno tested the open bottles of whiskey. He found one to be off eight points in proof; another to contain a blend instead of straight whiskey as represented by its label. Investigator Thievon found two bottles labeled 'Old Overholt Whiskey' contained no strip stamps; also, in a box under a table in the kitchen, he found eighteen 4/5 quart bottles of what appeared to be illicit whiskey inasmuch as the bottles bore no labels or strip stamps.

"The investigators asked the licensee for his explanation as to the bottles which contained a blend instead of straight whiskey. He told them that he may have dumped the 'heels' of other bottles into this bottle. He could not explain the underproof of the other bottle. As to the lack of strip stamps, his only explanation was that they must have fallen off. As to the eighteen bottles of unlabeled and stripless alcoholic beverages (which test showed to contain straight whiskey of about 90 proof) Devonmille stated that about fifteen years ago, he buried two cases of either Old Taylor or Old Crow Whiskey and had forgotten where he had buried them, but that a few days ago, while digging a garden, he dug up the two cases of whiskey which had been buried so many years ago and took them inside; that in washing the bottles, the labels and strip stamps fell off; that as the corks were old and musty, he used new corks; that he gave a few bottles away and was about to rebury the remaining bottles when the investigators made their visit and discovered the bottles.

"Sentence - License suspended for three (3) days - August 23, 24, and 25, 1937"

"NOTE: The file discloses that this licensee pleaded guilty in the Passaic County Court of Special Sessions to having possessed illicit alcoholic beverages. He was fined \$100.00. This conviction worked an automatic suspension of his liquor license for the balance of its term."

We have had all sorts of excuses offered by licensees when caught red-handed with illicit liquor, but this is the first time I have encountered a claim of treasure-trove. I have heard of pirates burying their gold and of dogs their bones, but never of "Old Crow" being aged in the sod. What a thrill of discovery it must have been after fifteen winters of pernicious amnesia!

The meager three-day penalty which your Township Committee imposed for this major offence has fortunately been cured, by the conviction of Devonmille in the County Court which automatically suspended his license for the balance of the term.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. REFUNDS - NOT PAYABLE FOR TIME LICENSED PREMISES WERE CLOSED DUE TO REVOCATION.

Dear Sir: Re Henry A. Muhlenbrink License C-35

This licensee was granted a license for the year commencing July 1, 1937. You will recall that on or about July 10, 1937 this license was repossessed because of a technical error in proceedings before the Board of Commissioners of the City of Long Branch. The license was later returned to the licensee, I am informed, on August 13th.

Mr. Muhlenbrink is now requesting a rebate or return of part of the license fee paid for the period of thirty-four days from July 10th to August 13th, at \$1.37 per day, making a total of \$46.58.

I have found no authority in your Regulations for such action on the part of the City Commissioners, and would appreciate your views as to what course the licensing authority should pursue with respect to this claim.

Very truly yours,

LEO J. WARWICK
CITY SOLICITOR

September 27, 1937.

Leo J. Warwick, Esq.,
City Solicitor,
Long Branch, N. J.

Dear Mr. Warwick: In Re: Henry A. Muhlenbrink

The history of the proceedings with reference to the license held by the above named individual is set forth in Bulletin #202, Item 3, except the information contained in your letter that the license was returned on August 13th.

Section 28 of the Control Act provides that "No refund, except as expressly permitted by section twenty-three, shall be made of any portion of a license fee after issuance of a license;" provided, however, that a refund may be made under certain circumstances upon surrender of any license except

a seasonal retail consumption license. The demand for refund in the present case is not made under the provisions of Section 23 of the Control Act. Thus, aside from any equitable considerations, the Control Act prohibits a refund in this case. Cf. In Re Lario, Bulletin #194, Item 9.

I have considered the question from an equitable standpoint because it may be contended that, under the broad powers granted by Section 36 of the Control Act, I am empowered to make such special rulings as may become necessary in the fair, impartial, stringent and comprehensive administration of this Act. Even if the latter Section permitted me to make a special ruling in this case, which may be doubtful in view of the express language of the Act itself, I would decline to make any such special ruling under the circumstances of this case. Muhlenbrink's license was revoked on April 20th, 1937. Thereupon he became ineligible to hold a license for a period of two years thereafter. The action of the Board, taken on June 22nd, in granting him a license for the present fiscal year was, therefore, improper and for that reason his licensed premises were closed down on July 10th. On that date he was ineligible to hold a license and continued ineligible until at least July 20th, when the Board, in effect, mitigated his punishment from revocation to suspension. After this action of the Board was brought to my attention, I ruled that the power existed in the Board to mitigate the penalty of revocation after the term of his license had expired, and ruled that the license for the current fiscal year granted to Muhlenbrink might be restored to him effective immediately. The fact that Muhlenbrink was prevented from doing business from July 10th to August 13th resulted from the revocation of his license on April 20th. There would be no more reason for granting him a refund covering the period from July 10th to August 13th than there would be for granting him a refund of his old license fee for the period from April 20th to June 30th. The revocation for violation of the rules and regulations was eminently proper. The mitigation of the penalty permitting Muhlenbrink to resume business was a mere act of grace and not of right.

Hence, Muhlenbrink is not entitled to a refund for the period during which his premises were closed.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. LIMITED WINERY LICENSES - A MANUFACTURER OR WHOLESALER MAY WITHIN THE INTENDMENT OF SEC. 40 HOLD A LIMITED WINERY LICENSE AT THE SAME TIME NOTWITHSTANDING THAT THE LATTER LICENSE CONFERS THE INCIDENTAL PRIVILEGE OF SELLING TO CONSUMERS.

September 27, 1937

Stuhr & Vogt,
Hoboken, N. J.

Gentlemen: Re: Adam Audeno Capone

I note that Mr. Capone is employed as a solicitor by the Wm. Peter Brewing Corp., the holder of a brewery license,

by Gambarelli & Davitto, the holder of a plenary winery license, and by the National Wine & Liquor Co., a plenary wholesale licensee.

I have carefully considered the question of whether or not Mr. Capone may, while keeping these employments, obtain a limited winery license.

A limited winery license gives the holder, among other things, the incidental privilege of selling to consumers. Such licensees are, therefore, interested in the retailing of alcoholic beverages. Section 40 of the Control Act makes it unlawful for any person interested in any way whatsoever in any brewery, winery, or wholesaler of alcoholic beverages to be directly or indirectly interested in the retailing of alcoholic beverages except as provided in the Act. Limited winery licenses, however, are among the exceptions expressly provided. There is nothing in the Act which would prevent a licensee from holding a brewery or a plenary winery or a wholesale license and a limited winery license at the same time.

I conclude that Mr. Capone, upon compliance with the requirements, may obtain a limited winery license and at the same time keep his present employments.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

September 23rd, 1937.

IN RE: Case No. 178

In his application, solicitor denied he had ever been convicted of a crime. Fingerprint records disclosed that, in 1926, he had been convicted for embezzlement.

At a hearing duly held, solicitor admitted that in 1926, he had pleaded non vult to two charges of embezzlement. He introduced in evidence, however, a certified copy of an order entered in a Court of Quarter Sessions in a proceeding instituted under Chapter 174, P.L. 1936. Said order referred to the two convictions hereinabove set forth, recited proceedings under said Act and ordered that the Clerk of the Court expunge from the records all evidence of the convictions "so that forthwith thereafter the said ----- shall be released from such disabilities as may hereafter exist by reason of the said convictions, by virtue of the statute in such cases made and provided." The Court order is dated prior to the date of solicitor's application.

In view of said order, the disability of solicitor under Section 23 of the Control Act has been removed.

Solicitor testified that he answered that he had never been convicted of a crime on advice of counsel. When a person has received a full pardon, he may thereafter honestly declare that he has never been convicted of the crime of which he has been pardoned. Bulletin #160, Item 8. The same reasoning should apply where the record of his crime has been expunged and his disqualification removed by an order of a Court of competent jurisdiction in a proceeding instituted for said purpose.

It is recommended that no further action be taken.

Edward J. Dorton
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

12. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS

Re: Case #179

This is to determine applicant's eligibility for employment by a liquor licensee in this State. Applicant is a freight handler, employed by a trucking concern which has recently secured a transportation license.

In November, 1930, when applicant was nineteen years of age, he and two other youths broke into a tailor shop at night and stole the coin-box of a public telephone located therein; this box contained approximately \$16.00. At about the same date, the trio, during the evening hours, approached a gasoline-station keeper or attendant for the purpose of committing a robbery. Applicant states that the man whom they confronted showed resistance; that the trio unarmed, frightened him away; and that they themselves retreated and pursued their criminal enterprise no further.

As a result of the above criminal behavior, applicant was arrested, charged, and (pursuant to a plea of non vult) convicted in this State of "breaking and entry," larceny, and robbery or attempted robbery. He was thereupon sentenced to an indefinite term at the reformatory, where he remained for nine and a half months, being then released on probation extending to 1948.

The Control Act is mandatory to the effect that any person convicted of a crime involving moral turpitude shall not be eligible for employment by any liquor licensee in this State. It needs little citation of authority to demonstrate that the crimes of which applicant was convicted involve moral turpitude. In Re: Hearing #101, Bulletin 147, item 11 ("breaking and entry," and larceny); Re: Case #42, Bulletin 156, item 4 (larceny); Re: Blank, Bulletin 78, item 13, and Re: Kennedy, Bulletin 118, item 10 (robbery); Re: Employees, etc., Bulletin 148, item 3 (aiding and abetting a robbery).

It is recommended that applicant be declared ineligible for employment by a liquor licensee in this State.

Nathan Davis,
Attorney

Approved:

D. Frederick Burnett
Commissioner

13. LICENSEES - CASHING OF CHECKS IN TAVERNS IS NOT GOOD PRACTICE -
PAY CHECKS, ESPECIALLY, SHOULD REACH HOME OR A BANK.

Dear Sir:

Will you please advise us if it is permissible for wholesalers to provide funds enabling retailers to cash checks for employees of industrial plants.

Very truly yours,

J. H. Blackwell & Sons

September 28, 1937.

J. H. Blackwell & Sons,
Trenton, N. J.

Gentlemen:

The plan is disapproved.

Cashing of checks in taverns is not good practice.
In Re The Avenue Realty Co. Inc., Bulletin #177, Item 5
(Copy enclosed).

It is not an act of true friendship for a tavern keeper to cash a pay check even though he does not "shave" it. He naturally expects and usually gets usurious discount taken out in trade. Pay checks are not safe until they reach home or a bank.

Better stick to your own last.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

14. LICENSES - ISSUED IN VIOLATION OF LOCAL LIMITATION - PROCEEDINGS TO CANCEL.

In the Matter of Proceedings)
to Declare Void License C-245)
issued to)

RHEA R. LOEB,)

for premises located at)
181-183 South Kentucky)
Avenue, Atlantic City, N.J.)

CONCLUSIONS

Jerome B. McKenna, Esq., Attorney for Department of Alcoholic Beverage Control

William Charlton, Esq., Attorney for Rhea R. Loeb

BY THE COMMISSIONER:

Notice was duly served upon Rhea R. Loeb to show cause why license C-245 issued to her by the Board of Commissioners of Atlantic City should not be declared void and all operations thereunder terminated on the ground that the license was granted in violation of Section 5 of Ordinance #3 adopted by the Board of Commissioners of Atlantic City on June 16, 1936, and providing as follows:

"Retail consumption licenses shall be limited in number to 240; provided, however, that such limitation shall not affect the licenses presently issued or renewals of the same in subsequent years; no new retail consumption licenses shall be issued until, by relinquishment, revocation or otherwise, the number of retail consumption licenses shall be reduced below the number of 240, and then new licenses may only be issued until the limitation of 240 is reached."

On June 14, 1937, Mrs. Rhea R. Loeb filed application for a plenary retail consumption license for premises located at 181-183 South Kentucky Avenue, Atlantic City. At that time there were 254 consumption licenses outstanding in Atlantic City, 248 of which have been renewed for the current license period.

When Mrs. Loeb's application was filed, she was not the holder of a license nor had she ever held a license prior thereto. Clearly, therefore, her application was originally for a new license which could not be issued under the terms of the ordinance. In a belated attempt to meet this obstacle, an application was filed on June 29, 1937, seeking to transfer to Rhea R. Loeb the license issued to James Boyd for premises located

at 2707 Boardwalk, Atlantic City, for the period expiring June 30, 1937. Although publication of notice of intention was not commenced until June 30, 1937, the Board of Commissioners on that date adopted a resolution granting a transfer of the Boyd license "subject to the completion of advertising of notice of intention on June 30, 1937, and July 7, 1937." On the same date a resolution was adopted granting a license to Rhea R. Loeb for the period expiring June 30, 1938 pursuant to the application dated June 14, 1937.

It is the contention of counsel for Mrs. Loeb that "Boyd's license was, by transfer, renewed by Mrs. Loeb" within the exemption contained in the ordinance in favor of "renewals". Passing other serious questions which may be raised with respect to the procedure outlined above, it is evident that if the transfer was void there could be no "renewal" by Mrs. Loeb. Section 23 of the Control Act authorizes a municipal issuing authority to transfer a license upon due application and after publication of notice of intention "in the same manner as is required in case of an original application for license." This means that there must be publication "once a week for two weeks successively." See Section 22. The second publication of the notice of intention did not appear until July 7, 1937. Under the statute, no transfer could take effect prior thereto. The term of Boyd's license had, however, expired a week previous and there was consequently nothing then left to transfer. Cf. Bulletin #198, Item #1. Since the purported transfer was void, the license issued to Mrs. Loeb was clearly a new license within the contemplation of the ordinance.

Counsel for Mrs. Loeb further contends that the intent of the ordinance was merely to prevent an increase in the number of licensed places of business and that since there was no increase (James Boyd not having renewed), it has not been violated. This overlooks the primary purpose of the ordinance which was to limit the number of licensed places to 240. The proviso in favor of renewals was intended solely to avoid a hardship on persons already operating under licenses. To accept the contention advanced would nullify the limitation of 240 and postpone indefinitely, if not perpetually, the reduction of licenses to that number.

In the light of the foregoing, it is evident that the license now held by Mrs. Loeb was issued in violation of the ordinance.

The remaining question to be considered is whether the Commissioner has authority to make formal declaration that it is void. Counsel for Mrs. Loeb contends that Section 28, which sets forth the grounds upon which a license may be revoked, including among others "any violation of any ordinance", furnishes no authority to the Commissioner to revoke the license issued to Rhea R. Loeb. Whether this contention is sound need not be determined since the instant proceedings are not technically "revocation" proceedings. The notice served upon Rhea R. Loeb did not refer to revocation but rather advised her that she would be afforded an opportunity to show cause why the license should not be declared void and operations thereunder terminated. In view of the terms of the ordinance, the Board of Commissioners had no jurisdiction to grant the application filed by Mrs. Loeb on June 14, 1937 (see Backman vs. Phillipsburg, 68 N.J.L. 552,

554 (Sup.Ct. 1902)), and the license issued pursuant thereto was void (see Gundrun vs. South Amboy, 86 N.J.L. 450 (Sup.Ct. 1914)). The license was obtained with full knowledge by the licensee of the controlling limitation in the ordinance and in disregard thereof. Presumably, it would not furnish protection to Mrs. Loeb in the event of criminal prosecution. See People vs. Davis, 36 N. Y. 77 (1867); Commonwealth vs. Hayes, 149 Mass. 32 (1889); State vs. Moore, 67 W. Va. 559 (1910); State vs. Laborde, 119 La. 410 (1907). Cf. Flaucher vs. Camden, 56 N.J.L. 244 (Sup. Ct. 1893). Considerations of fairness dictated that before any criminal proceedings were instituted a formal determination be made as to whether the license was void and that such determination be made after opportunity to be heard had been afforded to the licensee.

Furthermore, the provision in Section 36 authorizing the Commissioner to make "such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act" furnishes express authority for the instant proceeding and the finding pursuant thereto that license C-245 issued to Rhea R. Loeb for premises 181-183 South Kentucky Avenue, Atlantic City, is void.

All operations under the aforementioned license must cease forthwith, and the license certificate itself must be surrendered to the Board of Commissioners of Atlantic City.

D. FREDERICK BURNETT
Commissioner

Dated: September 28, 1937.

5. LICENSED PREMISES - WHERE MUNICIPAL REGULATION REQUIRES DISTANCE BETWEEN LICENSED PREMISES, THE MANNER OF MEASUREMENT SET UP BY SECTION 76 OF THE CONTROL ACT IS TO BE USED.

LICENSED PREMISES - MUNICIPAL REGULATION PROHIBITING THE ISSUANCE OF NEW LICENSES FOR PREMISES WITHIN A CERTAIN DISTANCE OF EXISTING LICENSED PREMISES WILL NOT PREVENT THE TRANSFER OF EXISTING LICENSES TO PREMISES WITHIN THE PROSCRIBED DISTANCE UNLESS THE REGULATION EXPRESSLY SO PROVIDES.

LICENSES - LIMITATION OF NUMBER - EXEMPTION OF RENEWALS.

September 28, 1937.

Charles M. Guenther
Clerk of Galloway Township
Pomona, New Jersey.

My dear Mr. Guenther:

The ordinance adopted by the Township Committee on June 19, 1937 provides:

"1. No more than 27 Plenary Retail Consumption licenses, nor more than 1 Club license shall be issued during any licensing year in Galloway Township, Atlantic County, New Jersey.

"2. Provided however that present licenses may be

transferred or new licenses issued for present licensed premises within the total limit of 27.

"Be it further resolved that no new licenses shall be granted to any premises not now licensed within 500 ft. of an existing licensed premises."

There are before the Township Committee, I understand, two questions: (1) How shall the five hundred foot distance required by the regulation between new licensed premises be measured and (2) does the restriction apply to transfers.

(1) No method of measurement being specified in the ordinance, the distance should be measured in the method provided by Section 76 of the Act in an analogous situation; to wit, in the normal way that pedestrian would properly walk from the nearest entrance of the church or school to the nearest entrance of the premises sought to be licensed. It is eminently desirable that all measurements under the Act or under ordinances enacted pursuant to it be made uniformly. Hence, you will measure the five hundred feet in the manner prescribed by Section 76. See for practical illustrations Aldarelli v. Asbury Park, Bulletin 186, Item 12, St. Mary's Greek Catholic Church v. Manville and Buczkowski, Bulletin 187, Item 1 and Memorial Presbyterian Church v. Newark, Vicari and Scavone, Bulletin 191, Item 8.

(2) The ordinance does not, in express terms, forbid the transfer of existing licenses to premises within five hundred feet of premises already licensed. It declares merely that no new license shall be granted to any premises not licensed at the time of its enactment which is within five hundred feet of an existing licensed premises. The emphasis placed on new licenses in the last paragraph of Section 2 is accentuated by the failure to mention transfers at all as was done in the first paragraph of the same section. It may well be that the actual intent of the Township Committee was that the ordinance should apply to both but if so they have not said so. If their purpose was to distribute licensed premises in the Township and protect existing places against encroachments of new places in the immediate neighborhood, they should say so in plain language. The language presently employed fails to accomplish that purpose except as concerns new licenses. It falls down utterly as regards transfers of existing licenses. In construing ordinances, I cannot indulge in conjecture as to what the Township meant to have said but didn't say, but can only construe the meaning of what they did say.

I therefore cordially suggest that the Township Committee revise the ordinance so as to declare in plain language just what they mean.

I will be glad to go over such a redraft in advance of its introduction if you will submit it. In revamping the ordinance, I would not speak of granting licenses to premises. Licenses are granted to persons in respect to certain premises.

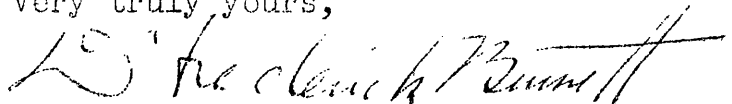
While on the subject of the ordinance, I note that Section 2 provides that present licenses may be transferred or new licenses issued for present licensed premises within the total limit of twenty-seven.

I take it that what the Township Committee actually intended in Section 2 was to exempt the renewal of licenses then outstanding, from the limitation. In such case, it would have been better to have said so simply, with a paragraph reading, for example, as follows:

"Provided, however, that the foregoing limitation shall not prevent the renewals of plenary retail consumption licenses to persons holding such licenses at the time this ordinance was adopted."

Cf. re Meyerson, Bulletin 200, item 2. I suggest that Section 2 be amended accordingly.

Very truly yours,



Commissioner

