Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 113 April 8, 1936.

1. REVOCATION PROCEEDINGS - EFFECT OF DEATH OF LICENSEE.

LICENSES - EXTENSION - CHARGES AGAINST DECEASED LICENSEE ALTHOUGH UNDETERMINED IN HIS LIFETIME MAY BE CONSIDERED ON APPLICATION FOR EXTENSION.

March 31, 1936.

Andrew V. Brennan, Registrar,
Paterson, New Jersey.

Dear Mr. Brennan:

I have yours of the 18th re William J. Cosloy.

It appears that: on February 10th, Chief of Police Murphy filed a written complaint against him for alleged violations of Rules and Regulations; pursuant to the complaint, the Board of Aldermen set the case for hearing on March 2nd; on that day, counsel appeared and asked for a postponement, stating that his client Cosloy had died in California on February 10th; the hearing was then adjourned until March 16th; on that day, letters of administration on decedent's estate were presented and an extension of the license to the Administrator requested.

The Board of Aldermen now request ruling whether the charges made against the late Cosloy are null and void, or can the Board proceed against the Administrator.

A liquor license confers a special privilege upon the holder. If he does not live up to the Rules and Regulations, or abuses the privilege, issuing authorities have the right and should proceed to revoke or suspend the civil privileges so conferred, without waiting for the courts to administer criminal punishment. Re Weinberger, Bulletin 89, Item 10; re DuPree, Bulletin 108, Item 8; re Wolfe, Bulletin 112, Item 9. If the licensee is found to be guilty his license may be either revoked or suspended. A revocation extinguishes the license and, therefore, destroys the privilege entirely. A suspension is a partial revocation, that is, it destroys the privilege during the term of the suspension. Re Lotopeich, Bulletin 89, Item 14. The result in either case is termination of the privilege, either wholly or partially.

Death instantly terminates the privilege just as effectively as a revocation. The rights conferred by a license are intimately personal and do not survive death. The Control Act, Section 23 expressly provides that no one except the licensee himself shall exercise the rights and privileges of a license; that under no circumstances is a license or rights thereunder to be deemed property subject to inheritance.

Hence, revocation proceedings based on charges made against a licensee come to an end the moment the licensee dies, for at that moment, the privilege is terminated irrespective of whether those charges are true or not, and so there is nothing to revoke.

The Control Act, however, makes it possible to revive the license for one purpose, notwithstanding the death of the licensee, for it provides that in case of death, the issuing authority may in its discretion extend the license for a limited time, not exceeding its term, to the Executor or Administrator of the deceased licensee. The revival is thus limited to the single purpose of reissuing it to the personal representative of the deceased if the issuing authority sees fit. If it does not, the license is as dead as the licensee. The words I have italicized demonstrate that the statutory provision is not mandatory, but wholly within the sound discretion of the issuing authority. It was for that reason that a municipal ordinance providing that, in the event of the death of the licensee, the license shall inure to the benefit of the Executor or Administrator was disapproved, because it made the extension to the personal representative automatic, and therefore contrary to the statute, which contemplated such extension as merely permissive and resting solely in the sound discretion of the issuing authority. Re Loog, Bulletin 81, Item 3. The extension of a license is thus comparable to its transfer which latter right was also ruled to be permissive merely and not mandatory. Knights of St. Stephens Club, Inc. vs. Trenton, Bulletin 37, Item 16.

While criminal complaints die with the person, and while civil revocation proceedings terminate instantly upon death, the issuing authority may, nevertheless, in connection with an application to extend the license to the Administrator, proceed to consider those charges and determine their truth. This is not punishment visited upon some one else for the sins of a decedent, but simply for the purpose of protecting the public. For the reputation of premises sought to be licensed is a proper factor to be considered by the issuing authority in determining whether to issue a license. Thus, in Alexander vs. Trenton, Bulletin 37, Item 13, the refusal to issue a license for premises with a notoriously bad reputation was held reasonable. So, in Zito vs. Newark, Bulletin 69, Item 14, the appeal was from the denial of an application for a consumption license. There was nothing against the applicant himself. A previous license for the same premises had been revoked because of the conduct of a night club thereon, which became notorious because frequented by prostitutes and other persons of ill repute, for immoral purposes, and because of fights and other disorderly occurrences. In that case, I ruled that places, as well as persons may acquire a bad reputation, saying:

> "The dispositive inquiry in the instant case is whether the fact that the premises have a bad reputation, had been conducted improperly in the past and had been used as the meeting place of undesirable persons who centered their immoral activities therein, reasonably supports respondent's determination that the issuance of a license to anyone for these premises would be socially undesirable.
>
> "The reputation of the premises sought to be licensed is a proper factor to be considered by the issuing authority in determining whether to issue a license. To those seeking erotic excitement, reputation is invitation."

Matters which issuing authorities may take into consideration upon issuance of a license are also available upon appli-

cation for an extension of a license which, as we have seen, is, in substance, a reissue.

I therefore rule that issuing authorities may consider charges made against a deceased licensee for the purpose of determining, in their sound discretion, whether or not his license should be reissued and extended to the personal representative of such licensee.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SPECIAL PERMITS - NOT REQUIRED WHERE DELIVERY OF ALCOHOLIC BEVERAGES IS REALLY GRATUITOUS IN EVERY RESPECT.

March 23, 1936

Dear Sir:

I am the president of The Italian Community Club in Lambertville. Each member pays $.25 per month whether or not he attends the meetings.

Every month, we plan to serve beer by the glass or bottle free of charge to the members, in addition to serving sandwiches.

There will be no admission charge, nor tickets nor any kind of an assessment whatsoever at these social affairs except the $.25 monthly dues.

At these meetings and social affairs, only the members will be allowed to attend and be served the refreshments.

As we are desirous of complying with the rulings of your department and in order to avoid any embarrassment on our part, will you kindly inform me whether or not we will be allowed to serve refreshments, as above stated, at our social affairs without any permit from your Department and also whether or not we can purchase beer from our local tap-rooms.

Very truly yours,

NICHOLAS F. GALLICCHIO

March 26, 1936.

Nicholas F. Gallicchio, Esq.,
Lambertville, New Jersey.

My dear Mr. Gallicchio:

I have your letter of March 23d.

The Control Act, Section 2, prohibits the sale of alcoholic beverages without a license and, in Section 1,

defines 'sale' as "every delivery of an alcoholic beverage otherwise than by purely gratuitous title". So, if the alcoholic beverages which you intend to serve as refreshments at the monthly meetings of your club are to be given away really gratuitously in every respect and no admission charge, nor tickets, nor special assessments are to be made, it is not a sale of alcoholic beverages within the terms of the Act but an out and out gift.

Under such circumstances, no special permit is required.

The alcoholic beverages which you intend to dispense may be purchased from your local plenary retail consumption licensees or State beverage distributor or for that matter from any retail licensee whose license permits the holder to sell alcoholic beverages for consumption off the licensed premises.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

3. CONFISCATION PROCEEDINGS - LANDLORDS - REMOVAL OF OFFENDING TENANTS.

Dear Sir:

The 24 of March I received a letter stating that I Antonino Peri, has John Gramero living in my house. After 5 days when I was told to throw him out from my house I did so. You people still think I have him living there. I have it rented to some one else. Please let me know something on this matter. Trusting you will understand.

Yours truly,

ANTONINO PERI

March 30, 1936.

Mrs. Antonino Peri,
New York City.

Dear Mrs. Peri:

The order to which you refer adjudged the seized property forfeited, because it was illicit. It appeared, however, that you as landlord had rented the house to John Gramero for some 17 years but had no knowledge of the still or of any facts which should have aroused suspicion. The order, therefore, afforded you an opportunity to put your own house in order, reserving in the meanwhile determination whether your house should be "padlocked".

Since you have complied, an order will be entered dismissing the proceedings against you and your house as soon as the facts which you allege are verified.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. REVOCATION PROCEEDINGS - PRACTICES DESIGNED UNDULY TO INCREASE CONSUMPTION OF LIQUOR - SIREN ENTICEMENT OF MALE CUSTOMERS

April 1, 1936.

Arthur C. Malone,
City Clerk,
Hoboken, New Jersey

Dear Mr. Malone:

I have staff report of the proceedings before your Board of Commissioners on March 31st, in the matter of the charges against:

1. Benoit Van Couwenbergh,
222 Bloomfield Street,
Plenary Retail Consumption License C-207

Charge: Misstatement of material fact in application and fraud in securing license. The true owner of the licensed premises being Peter Bresseleers.

2. Benoit Van Couwenbergh,
332 River Street,
Plenary Retail Consumption License C-206

Charge: Misstatement of material fact in application and fraud in securing license. The true owner of the licensed premises being Gysbertus Y. Van Ginkel.

3. Mrs. Augusta Norman,
328 River Street,
Plenary Retail Consumption License C-238

Charge: Permitting licensed premises to be operated under the sole control of another person without having applied for and received the proper transfer and without disclosing the change of ownership, to the Board of Commissioners of Hoboken. I understand that this licensee - a sister-in-law of the Benoit Van Couwenbergh mentioned in the two cases above-sold out her interest in the business to Van Couwenbergh for $300 on January 9, 1936 at which time he took full control.

I am informed that, on pleas of guilty, each license was revoked effective immediately.

Your Board of Commissioners were wholly right in imposing no less a penalty than revocation. Suspension in such cases would be improper because the licenses would never have been issued at all had the truth been known.

4. I also learn of charges instituted by your Board of Commissioners on their own initiative against:

Hellmuth Ellrich,
109 Hudson Street,
Plenary Retail Consumption License C-29

on a charge:

"That he did employ Elly Muller, Karla Vogel and Helen Yeakel, as hostesses, in and upon the premises 109 Hudson Street, Hoboken, N.J., and did allow, permit and suffer said three females to be and assemble in said licensed premises, for the purpose of enticing customers in said licensed saloon premises, and that he did employ said three females to assemble in said premises on March 17, 1936, and on divers days prior thereto, subsequent to the passage of said resolution on December 17, 1935, to entice customers by means of drinking with them under an arrangement of employment made with said three females whereby they were to and did receive from him a commission of twenty per cent of the money spent by the male customers with whom said three females drank."

I note that the licensee pleaded guilty and that the license was revoked effective immediately.

This is the first revocation in the State for practices designed unduly to increase consumption of liquor. Siren enticement of male customers by artful and adroit allurement, compensated by a percentage of the gate receipts, is an insidious and intolerable evil. The term "hostess" which should be a mark of distinction and honor is used too often today in a secondary and scurrilous sense. This trickery must be rooted out at once.

The foresight of your Board in prohibiting the assembling of females in licensed premises for the enticing of customers or making assignations for improper purposes was commended at the time of enactment (Bulletin 101, Item 12). It is now a great pleasure to compliment them on their courageous enforcement. Revocation is the only penalty, commensurate with the evil, which will exterminate it.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. COURT DECISIONS - ESSEX CIRCUIT COURT - GLENMORE DISTILLERIES, INC. vs. FAST TRUCKING INC.

INTERSTATE SHIPMENTS - SUCH SHIPMENTS MADE C.O.D. ARE PROHIBITED BY FEDERAL STATUTE - CONTRACT PROVIDING FOR SUCH SHIPMENTS IS ILLEGAL AND CANNOT BE ENFORCED.

The Commissioner is indebted to Hon. Joseph L. Smith, Circuit Court Judge, for his conclusions recently rendered in a case involving the validity of contracts for interstate shipments on a C.O.D. basis. It is reprinted herewith:

ESSEX COUNTY CIRCUIT COURT

GLENMORE DISTILLERIES CO. OF NEW YORK, INC., a corporation, Plaintiff,
-vs-
FAST TRUCKING, INC. a corporation, Defendant.

Action at Law,

O P I N I O N .

HERMAN C. SILVERSTEIN, Attorney of Plaintiff,
GROSS & GROSS, Attorneys of Defendant.

JOSEPH L. SMITH, CIRCUIT COURT JUDGE.

This comes on a motion to strike the plaintiff's complaint on the ground that the contract alleged therein and made the basis of the claim, is in violation of the Criminal Code of the United States, and its enforcement would be contrary to public policy.

The plaintiff's action is, in substance, based upon a contract of transportation with the defendant, a common carrier, whereby the latter agreed to transport for the plaintiff from New York City to New Jersey, a quantity of intoxicating liquor to be delivered by the defendant to the consignee, C.O.D., and that in violation of such agreement, the defendant carrier, transporting and delivering the said liquor to the consignee, accepted a post-dated check, which was subsequently dishonored.

The defendant contends that the contract is in violation of Section 389 of the United States Criminal Code, Volume 18, United States Codes Annotated, page 238. This section provides for a maximum fine of $5,000.00, against any common carrier who, in connection with the transportation of any intoxicating liquor of any kind, from any State in the Union, to any other State in the Union, or from any foreign country, into any State in the Union, shall collect the purchase price or any part thereof, before, on or after delivery from the consignee, or shall in any manner act as an agent of the buyer or of the seller of such liquor, for the purpose of buying or selling or completing the sale of such liquor.

Concededly, the facts in the case before the Court come within the purview of the statute. The principal argument of plaintiff is that the statute in question is inapplicable to the present case in that the history of the enactment of the section referred to discloses an intent on the part of Congress to regulate the transportation of intoxicating liquors between so-called wet states and dry states, and that the Act was not enacted to regulate traffic between states which permit the manufacture, sale and consumption of intoxicating liquors.

The language of the Act is clear and unambiguous and does not permit such an interpretation. While it is true that in construing a statute, the courts must look to the intent rather than to the letter of the statute, it is equally true that in order to discover such legislative intent, the court must look to the statutory language alone, in its application to the subject; especially where the language of the statute is explicit and not subject to dual interpretation. In re Hudson County, 106 N.J.L. 62. In re; Freeholders of Hudson County 105 N.J.L. 57; Keyport, etc. vs. Farmers Transportation Co. 18 Eq. 13; State vs. Underground Cable Co. 18 Atl. 581; Pierson vs. Cady, 84 N.J.L. 54. Did Congress intend to give to the statute the limitation suggested by the plaintiff's attorney? It would have been a simple matter to express such limitation in the statute. The intent of Congress is clearly expressed in the Act. It is to prevent a common carrier from acting as an agent of buyers or sellers of intoxicating liquor in interstate commerce, except as carriers; to prevent their activities for and on behalf of buyers or sellers

of intoxicating liquors in interstate commerce for the purpose of selling or completing the sale of such liquors, and specifically prohibits the collection of the purchase money by the common carrier before, on or after delivery. The statute in question being clear and explicit, there is no occasion for the court to delve into the history of its passage in order to determine the intent of Congress sufficiently expressed in th Act.

It is further argued by plaintiff that the statute in question was repealed by the Eighteenth Amendment and by subsequent legislation of Congress. This argument is based entirely on implications. The plaintiff's attorney refers to Section 205 of the United States Code Annotated, Volume 27, page 160, passed August 29th, 1935, as implying such a repeal; the argument being that by prohibiting the sale of distilled spirits, on consignment, or on conditional sale, Congress meant to permit sale by C.O.D. shipment, through common carriers. It does not so follow.

That the Eighteenth Amendment did not contemplate the repeal of the statute in question, is further brought out by Section 35 of the National Prohibition Act, which provided as follows:

> "All provisions of law that are inconsistent with this act are repealed only to the extent of such inconsistency and the regulations herein provided for the manufacture or traffic in intoxicating liquor, shall be construed as in addition to existing laws."

And further, by an Act of Congress passed on November 23rd, 1921, being Chapter 134, Section 5, providing as follows:

> "All laws in regard to the manufacture and taxation of and traffic in intoxicating liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted, shall be and continue in force, as to both beverage and non-beverage liquor, except such provisions of such laws as are directly in conflict with any provision of the National Prohibition Act or of this Act."

There is no force in the argument that the statute now before the court has been repealed, expressly or by implication.

It is further argued by the plaintiff that the duty of the defendant in the present case, as alleged in the complaint, is distinct and separate from the contract entered into relative to the C.O.D. shipment. Plaintiff makes this assertion without further argument or analysis. The conclusion is not borne out by the facts in the case. The agreement to collect the purchase price upon delivery, is the very agreement which is alleged to have been violated, and which in turn, is contrary to the provisions of the statute above referred to.

The plaintiff further argues that the statute in question, if in existence today, is unconstitutional. The plaintiff cites or quotes no authority, and his contention does not go beyond the assertion of a conclusion.

The contract in question was entered into after the enactment of the statute, and therefore the statute cannot be said to be in abrogation of contractual rights; the statute is limited to common carriers engaged in interstate commerce, clearly within the province of Congress to legislate upon.

It appears therefore, that the complaint is based upon a contract in violation of the Criminal Code of the United States, and is therefore against public policy, and should not be enforced.

An order will be signed dismissing the complaint.

March 27th, 1936. (Signed) Joseph L. Smith
Circuit Court Judge

6. REVOCATION PROCEEDINGS - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES
THE PROBLEM AND THE ANSWER

April 5th, 1936.

Ronald C. Alford, Secretary,
Municipal Board of Alcoholic Beverage Control,
West Orange, N. J.

Dear Mr. Alford:

I have report of the proceedings yesterday before your Board against John Gannella, 98 Ashland Avenue, holder of Plenary Retail Consumption License C-8, on a charge of possession of illicit alcoholic beverages.

The report states:

"A test by Investigator Wierenga of a bottle labeled 'Air Way Straight Whiskey' disclosed that it was a blend. In the rear room on a table 4 - 1 gallon jugs labeled Wine were discovered and found to contain whiskey. At first the licensee stated he had purchased this whiskey from a legitimate source in a five gallon bottle but later changed his story and admitted that he had purchased it from a man whose name he did not know for $4 a gallon. He also admitted having refilled the bottle labeled 'Air Way Straight Whiskey' and stated he was selling same over the bar for 10¢ a drink. Subsequent analysis of the contents of this bottle disclosed that it contained alcohol, water and artificial coloring 77.1 proof. The label showed 90 proof.

"An analysis of the contents of the jugs disclosed it to be alcohol, water and coloring 87.5 proof."

I note that after hearing the licensee was adjudged guilty and his license revoked effective immediately.

No opinion is expressed as to whether or not this licensee was properly adjudicated guilty because that question, perchance, may come up by way of appeal, and my mind, therefore, is entirely open on that score.

If the adjudication of guilt was properly made, the penalty of revocation for possession of bootleg liquor

while severe, is a man's stride in the right direction.

When licensees fall for bootleg, so to sell larger quantities of the stuff at cheaper prices than their competitors who sell good legitimate liquor, trade is naturally diverted by the credulous public from the honest licensees. Bootleg liquor thus backs up against them and makes it just so much harder to eke out a livelihood. The effect of bootleg sales is thus felt all along the line. If not ruthlessly checked, it will spread like wild fire. Then everybody suffers. Every sale of bootleg deprives the State of just so much revenue. The greater the revenue from liquor, the less the tax on our homes!

Moreover, the cheating licensee is unfair to his customers who rely and have a right to rely that he is dispensing legitimate liquor without worry as to its purity or lest it be "cracked" from poisoned denaturants.

The possession of illicit liquor, with intent to sell it, is therefore, a hit below the belt, not only to the legitimate traffic, but also to every citizen who rents or owns a home.

I have been credibly informed that the Oranges are flooded with bootleg liquor, particularly apple. The West Orange precedent of revoking licenses for this cause will go far to break up the practice so far as licensees are concerned. The next step is for the police ruthlessly to root out the outlaw speakeasies. Their extermination will divert the demand for liquor into the open, and therefore bring it under control and into charted tax channels. It is not only that liquor licenses should be made worth while having, but it is in the common interests of all citizens that this should be speedily accomplished for the greater the revenue from the liquor tax, the less burdensome our own taxes.

Please extend my deep respect and appreciation to the members of your Board.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

7. MUNICIPAL OFFICIALS - POLITICAL ACTIVITIES OF OFFICIALS CHARGED WITH CONTROL OF ALCOHOLIC BEVERAGES SHOULD BE DISSOCIATED FROM TAVERNS.

April 6, 1936.

Thomas A. Ford,
Councilman,
Elizabeth, N. J.

Dear Mr. Ford:

I have yours of the 1st, informing that the Secretary of the local Municipal Board of Alcoholic Beverage Control is also serving as campaign manager to a candidate for the City Council, and inquiring:

"(1) What are the duties of a secretary of a Municipal Board of Alcoholic Beverage Control?

"(2) Does not that Board sit in judgment upon licensees?

"(3) Has a secretary of such a board the right or is it proper for him, while holding such official position to also conduct political meetings in a licensed tavern on behalf of his candidate."

The duties of a Secretary of a Local Excise Board are to conduct its correspondence, write its minutes, keep custody of its records and execute its orders--in short, serve in the same relative capacity as a Municipal Clerk would to a governing body.

The Excise Board decides who shall obtain licenses and what punishments shall be imposed upon licensees who disobey the law or the rules and regulations. In that sense, they do sit in judgment.

Legally, there is nothing in the Control Act or in the Election Law which prohibits such secretary from acting as campaign manager, or conducting political meetings, on behalf of a candidate. As a citizen, he may vote for whom he chooses and urge others to vote the same way. He should, however, be conscious at all times that it is most difficult to dissociate himself in popular mind from the official position he holds and the influence he thereby wields. He should therefore most scrupulously avoid any appearance of dispensing favors to or developing fear in liquor dealers. It is not so much what an official might actually do as what others think he would do. Conduct of political meetings in a tavern so far from dispelling the impression, deepens it. While an official charged with control of alcoholic beverages has the right to do so, I am clear it is improper.

I shall write the Secretary accordingly, believing that, if the allegations made by you are true, he will, on reflection, concur in the conclusion reached.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. SOLICITORS' PERMITS - DISQUALIFICATION - AN OFFICER OF A BONA FIDE CLUB HOLDING A LIQUOR LICENSE IS NOT DISQUALIFIED TO BE A SOLICITOR

PLENARY RETAIL CONSUMPTION LICENSE - MAY BE HELD BY A CLUB EVEN IF ONE OF ITS DIRECTORS IS A DIRECTOR OF A BREWERY - PREVIOUS RULING REVERSED.

BULLETIN ITEMS SUPERSEDED - RULING PREVIOUSLY MADE RE SHORT HILLS COUNTRY CLUB REVERSED.

MEMORANDUM TO: D. Frederick Burnett, Commissioner

FROM: Erwin B. Hock

IN RE: Nat Frank

Application for a Solicitor's Permit was filed with this Department by Nat Frank, 33 North Maple Ave., Ridgewood, N. J.

Mr. Frank is secretary of the Ridgewood Lodge #1455, B.P.O.E., holder of a Plenary Retail Consumption License. The question immediately arises whether Mr. Frank's capacity, as secretary of the lodge, constitutes interest in the retailing of alcoholic beverages and, therefore, would disqualify him from obtaining a Solicitor's Permit.

In this particular case, the Ridgewood Lodge of Elks is being operated by a receiver who is reorganizing the finances of the lodge and thereby has full control of its finances. Under these circumstances Mr. Frank contends that he is eligible for a Solicitor's Permit because, even though secretary of the lodge, he has no control or direction over the affairs of the lodge so long as the receiver continues. He declared immediately upon the discontinuance of the receiver he intends to quit the alcoholic beverage business and confine his activities to his duties as secretary.

Several days ago I spoke to you about the case and you indicated that officers of clubs holding either a club license or a plenary retail consumption license should not be disqualified from obtaining a Solicitor's Permit on the ground that it would constitute conflicting interests under Section 40 of the Act. In Bulletin #82, item #14, you ruled:

> ". . a bona fide club incorporated and operating as an association not for pecuniary profit is not disqualified from obtaining a retail consumption license by the fact that one of its members is a director of a brewery."

In Bulletin #84, item #14, you ruled:

> ". . a plenary retail consumption license may not be held by a club where one of its directors is a director of a brewery."

In the case of John J. Duggan, 34 Mendham Ave., Morristown, N. J., applicant for a Solicitor's Permit and Exalted Ruler of Morristown Lodge of Elks, you agreed with my recommendation that he should be granted a Solicitor's Permit. In my memo to you in the Duggan case, I said:

> "However, the fact that the Morristown Lodge of Elks is a bona fide club, incorporated and operated as an association not for pecuniary profit and only serves and sells alcoholic beverages to its members and bona fide guests gives rise to the question as to whether holding office in the lodge, constitutes an interest in the retailing of alcoholic beverages. It seems to me that a club officer's interest in its retail liquor sales is exceedingly remote and does not come within the scope of the purpose of Section 40."

In the instant case, however, the Ridgewood Lodge of Elks holds a Plenary Retail Consumption License and as such may sell alcoholic beverages to the public in general. In fact, a public restaurant is conducted on the premises. In this case the club definitely operates for profit, whereas in the case of the Morristown Elks, the sale and serving of alcoholic beverages is merely for the accommodation and convenience of its members.

The purpose of Section 40 of the Act is to divorce entirely the manufacture or wholesaling of alcoholic beverages from the retailing of same. Where clubs operate with no thought of profit but merely for accommodation and convenience, it may easily be said that the interest is remote. The question in the instant case, where the club holds a Plenary Retail Consumption License, is whether the officer's interest constitutes an interest so remote that Section 40 does not apply.

I do not believe that an officer of a club, whether the club holds a club license or a plenary retail consumption license, can be said to be interested in the retailing of alcoholic beverages as provided in Section 40. Both club licenses and plenary retail consumption licenses are retail licenses, even though sales of the former are restricted to members and bona fide guests. Certainly, just as the interest of an officer of a club licensee is remote in its retailing of alcoholic beverages, so in the case where a club holds a retail consumption license is the officer's interest just as remote.

Therefore, I see no reason why officers or directors of a club holding either a club license or a plenary retail consumption license should be disqualified from obtaining a Solicitor's Permit on the basis of the restriction contained in Section 40.

Respectfully submitted,

(Signed) ERWIN B. HOCK

BY THE COMMISSIONER: April 7th, 1936

On reflection, I deem my ruling re Short Hills Country Club, Bulletin 84, Item 14 unnecessarily severe. Assuming the club is bona fide, the danger of brewery control, because a brewery director or officer happens also to be a member or director or officer of a Club, is a far cry. Men belong to clubs, lodges and orders because they are natural joiners--they like to run with the pack. While business reasons are sometimes incidental, the main urge is their inborn gregarious instinct. There is no reason why a person interested in the liquor industry should be barred from healthy, high class club activities. Conversely, the Club itself should not be precluded from a license because of such coincidence. If brewers shall ever stoop to organize nominal clubs to act as retail outlets, or it otherwise appears that the Club itself is not bona fide, effective action can readily be taken, once the disguise is penetrated.

Issue the permit. A solicitor who happens to be a member or officer of a bona fide club, which holds a liquor license, whatever the kind, is not disqualified. The ruling in Bulletin 84, Item 14 is superseded.

D. FREDERICK BURNETT
Commissioner

9. LICENSEES - DISQUALIFICATION - A LICENSEE MAY NOT ALSO BE A JUSTICE OF THE PEACE

April 6, 1936.

Mr. Leon Bruers,
Paterson, N. J.

Dear Sir:

A Justice of the Peace is a magistrate and [illegible]

of the Control Act and as such is charged with the enforcement of the Control Act. Honeyman, in his book on the "Justice of the Peace" (Fifth Edition) points out, at page 37, that such an officer may not exercise any vocation incompatible with his office. The author declares that the conduct of a licensed liquor business is such an incompatible vocation. Clearly this is so. It would be anomalous for a magistrate to be called upon, in his official capacity, to pass judgment upon other licensees who are his direct competitors. Upon acceptance of the office of Justice of the Peace, the licensee should immediately surrender his license. This conclusion is supported by Section 9 of "An Act Relative to Justices of the Peace", (Revision of 1902), 3 C. S., p. 3018, which provides:

> "It shall not be lawful for any court or municipal authority to grant to any person a license to keep an inn or tavern or to sell spirituous, vinous, malt or brewed liquors, who shall be at the same time a justice of the peace, or in virtue of his office exercising the powers of a justice of the peace, and if any person shall be elected or appointed a justice of the peace or an officer with the power of a justice of the peace, in any of the counties or municipalities within this state, during the time that he holds such a license, and shall accept of said office, such license shall thenceforth be absolutely void."

This ruling is in line with Re Scott, Bulletin 109, Item 5, that a licensee may not also be a policeman, and with Re Franco, Bulletin 109, item 6, which holds that a bartender may not also be a policeman. The principle is the same in all these cases of conflict of duty with self-interest.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

April 6th, 1936.

RE: Application for Solicitor's Permit - Case No. 28.

Application was filed for solicitor's permit pursuant to the provisions of P.L. 1935, c. 256. In his questionnaire applicant admitted that he had been convicted for possession of lottery slips. Notice was served upon him to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude, and a hearing was duly held.

At the hearing applicant admitted that in June 1930 he had been convicted for possession of lottery slips and had been placed on probation for three (3) years. He testified that he had been arrested while purchasing these slips from a man who resided in another apartment in the house where applicant lived. At the time of his arrest, and for five (5) years thereafter, applicant was engaged in business as a grocer. Applicant denied that he had been connected in business with the man from whom he bought the slips, and denied further that he had sold lottery slips at any time. Aside from the purchase of the slips, there is no evidence that he was connected with the operation of a lottery. It has been determined that gambling other than

commercialized gambling may or may not be a crime involving moral turpitude. Bulletin #70, item 2.

Conviction for the crime of possession of lottery slips, under the circumstances set forth above, does not involve turpitude.

It is recommended that the permit be granted.

Edward J. Dorton
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

11. LICENSES - SPECIAL CONDITIONS - POWER TO PRESCRIBE CANNOT BE DELEGATED - HEREIN OF PLUMBING.

April 8, 1936.

William W. Friberger, Clerk,
Union Township (Union County),
Union, N. J.

Dear Sir:

I have before me the resolution adopted by your Township Committee on January 28, 1936 authorizing the issuance of a plenary retail consumption license to Union Avenue Tavern, Inc. "subject, however, to written certification of the Plumbing Inspector that the said applicant has installed to his entire satisfaction, the sanitary equipment deemed necessary and proper for the conduct of a tavern at the said above mentioned premises."

When imposing special conditions upon the issuance of licenses, the issuing authority should word them to indicate as closely as possible the specific requirements upon compliance with which the issuance of the license depends. The applicant should know exactly what is required of him. When no standards are set, there is no way he may know what to do. The only question that should be left in abeyance is whether reasonably satisfactory compliance shall have been made with the conditions imposed by the Board. Re Haney, Bulletin 66, item 7. Special conditions must be prescribed as definitely as the nature of the case will permit. Re Bailey, Bulletin 92, item 2.

While I realize that this cannot be carried to an impracticable extent such as specifying T-joints, elbows, or nozzles, nevertheless it is entirely too indefinite to require the applicant to install equipment "deemed necessary and proper" to a plumbing inspector's "satisfaction". No one, except the inspector, knows what it means - not even a plumber. Nothing is determined by the Township Committee. Everything is deputized to the plumbing inspector. The power to impose conditions and decide just what they shall be cannot be delegated to any inspector.

I must, therefore, disapprove the condition as writte:

A happy medium, it seems to me, would be for the Board to decide and name what equipment it deems necessary, for example, two toilets, four wash basins, or as the case may be, and

then leave it to the plumbing inspector merely to check up whether such equipment has, in fact, been installed in a workmanlike manner according to the local building code and the regulations of the Board of Health--in short, whether the condition imposed has been properly fulfilled.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

12. REVOCATION PROCEEDINGS - COMMENT BY THE COMMISSIONER ON THE PENALTY IMPOSED IN A GIVEN CASE IS ENTIRELY WITHOUT PREJUDICE TO ITS MERITS ON APPEAL.

April 6, 1936.

Edward Du Pree, City Clerk,
Paterson, N. J.

Dear Mr. Du Pree:

I have yours of the 24th ult.

The second paragraph of my letter reading:

> "No opinion is expressed as to whether or not these licensees were properly adjudicated guilty because that question, perchance, may come before me by way of appeal and my mind, therefore, is entirely open on that score",

signifies that so far as the merits of the case are concerned, my mind is entirely open so that if the case is appealed I have no preconceived ideas as to whether the licensee is guilty or not, or whether the action of the municipality should be affirmed or reversed.

For example, the Town Council of Harrison certified that one Schauchulis had been found guilty of misrepresenting his age and his license had been revoked. I then wrote commending the Board for the action taken stating that it commanded respect and added:

> "Mr. McKenna has since told me that an appeal has been filed in this matter. That, of course, will be considered strictly on its merits and heard with an entirely open mind, as the case is presented. If it should appear that your action in revoking his license was wrong, I shall so decide, stating my reasons as usual in black and white and entirely impersonally. It will in no way affect the appreciation I feel for the courageous action of your Town Council based on my present assumption that he was properly adjudicated guilty. If he was, the punishment you have meted out is the only thing commensurate with the offence."

Thereafter Schauchulis appealed. I found that the weight of the evidence did not support the finding of fact that the licensee was a minor at the time he made his application, and therefore reversed the action of the Town Council.

So, in all cases except where the licensee pleads guilty, I always take pains expressly to reserve the merits of the case from any comment I may make about the penalty meted out by the governing board.

Very truly yours,

D. Frederick Burnett

Commissioner