

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

BULLETIN 286

DECEMBER 6, 1938.

1. NOTICE TO ALL MUNICIPAL GOVERNING BODIES AND LICENSE ISSUING AUTHORITIES - CONCERNING EXTENSION OF HOURS ON CHRISTMAS AND NEW YEAR'S.

Last year, Christmas and New Year's both fell on Saturday.

As in the past, many municipalities adopted new regulations or amended existing ones, extending for these special occasions the hours during which retail licensees were permitted to sell alcoholic beverages, in order, as they deemed, to afford full expression of the holiday spirit.

One such regulation came before me on appeal. Pearce v. West Orange, Bulletin 220, Item 10. I willingly went along with the Board of Commissioners of West Orange in calling all wraps off on New Year's Eve, because that holiday is a time for celebration and merrymaking coincidental with the passing of the old year, the birth of the new, and the hope of better times which springs eternal. The regulation was disapproved, however, to the extent that it permitted sales on Christmas Eve after 3:00 A.M. Christmas, as distinguished from New Year's, is a holy day, a family day, a home day. 3:00 A.M. on Christmas Eve is plenty late enough.

But this season Christmas and New Year's both fall on Sunday.

As regards Christmas Eve, as heretofore, no extensions of hours will be approved after 3:00 A.M.

Extensions on New Year's Eve will be approved, but, because the day comes on a Sunday, only until 5:00 A.M. There is no reason why revelry should continue ad nauseam and until it affirmatively interferes with those who devote to worship their morning hours on Sunday. An extension to 5:00 A.M. allows reasonable latitude for conviviality on the few occasions New Year's falls on a holy day.

If, therefore, extensions of hours are contemplated, make no provision for sales on Christmas Eve after 3:00 A.M., or on New Year's Eve after 5:00 A.M.

Carrying out this policy, I shall not issue any special permits to sell alcoholic beverages at social affairs on Christmas or New Year's Eve authorizing sales for longer hours. All such permits will be expressly conditioned according to the hours in force in the municipality but in no event beyond 3:00 A.M. and 5:00 A.M. respectively.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 29, 1938.

New Jersey State Library

2. ADVERTISING - EXAMPLES OF APPROVED COPY.

November 28, 1938

M. H. Hackett, Inc.,
New York City.

Gentlemen:

I have before me proposed copy for advertisements of Hildick Applejack Brandy, Distilled Liquors Corporation, reading:

"The New
SLIDE COCKTAIL
By
WILL OSBORNE
(Recipe)

Try this smooth, delicious drink with a brand new flavor by Will Osborne, famous orchestra leader and creator of slide music.

And when you order Applejack, call for Hildick - Applejack Brandy at its best.

H I L D I C K
Applejack Brandy

A natural flavor that never changes.

Distilled Liquors Corporation, 271 Madison Ave., New York, N.Y."

"A 'STAR' COCKTAIL BY
Radio Favorite
AL DONAHUE
(Recipe)
A natural flavor that
never changes

Just the rich, true flavor of fresh fruit Brandy. Extra checked for uniformity, Hildick Applejack Brandy makes a great highball and a 'find' as a base for mixed drinks. Try it today.

(Proofs)

H I L D I C K
Applejack Brandy

Distilled Liquors Corporation, 271 Madison Ave., New York, N.Y."

"EGG NOGG
The Old Favorite Drink
With a New Flavor
(Recipe)

At this season of the year no drink is quite so warming, quite so appropriate as Egg Nogg.

And your Egg Nogg will be so much more delicious if you make it with Hildick-Applejack brandy at its best.

H I L D I C K
Applejack Brandy

A natural flavor that never changes

Distilled Liquors Corporation, 271 Madison Ave., New York, N. Y."

The copy is approved as submitted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. RETAIL LICENSEES - SALES TO PERSONS PRONE TO INTOXICATION - THE SAFEST COURSE IS TO DISCOURAGE CUSTOMERS WHO BECOME INTOXICATED.

Dear Sir:

An elderly man aged sixty-nine comes in occasionally. We never sell him enough to become intoxicated, and never sell to him when he comes in intoxicated. We have several times hired a taxi to send him home when he has come in here intoxicated, and therefore his daughter thinks he has gotten the liquor here and has come in and forbidden us selling anything to him.

Kindly advise what we should do in this matter.

Yours truly,
The Wheel Inn,
Louise E. Scudder, Sec.

November 28, 1938

The Wheel Inn,
Mountain View, N. J.

Gentlemen:

I note with interest and sympathy the problem that confronts you.

There is nothing in the law which obliges a licensee to refuse to sell to a customer, if sober, merely because some member of the family has requested it. That is up to the individual licensee himself. Of course, if he is conscious of what is in his own best interest, he will weigh the request carefully, and, if warranted, will comply. It means that he will be more highly regarded by his fellow men, and respect for the business he engages in will increase, all of which will help to insure the continuance of his privilege to hold a license. You will find a comprehensive discussion of your rights and responsibilities in this regard in Re Culligan, Bulletin 135, Item 8.

You tell me that you have hired a taxi, on several occasions, to send home this stormy petrel when he has entered your place in an intoxicated state. Wouldn't you rid yourself of a nuisance as well as solve whether to serve or not to serve, by simply refusing to sell to him at any time? The loss that you would suffer by his elimination from your clientele would be more than counter balanced by the trouble it would save you.

I doubt that you'll ever be able to convince the gentleman's daughter that he has not been getting intoxicated in your place. By the same token, you might have difficulty in satisfactorily explaining were my men or the local police to happen along while he was being bundled off in a taxi.

Better play safe and discourage customers of this type. Your licensed existence will be both happier and longer.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - POPPOLARDO ET AL. v. MASSIMINO and NEWARK.

FRANK POPPOLARDO and JOHN)
DSURNEY,)

Appellants,)

-vs-

ON APPEAL
CONCLUSIONS

ROSARIO MASSIMINO and MUNICIPAL)
BOARD OF ALCOHOLIC BEVERAGE CONTROL)
OF THE CITY OF NEWARK,)

Respondents)

-----)
Harry Kay, Esq., Attorney for Appellants.
Joseph B. Sugrue, Esq., Assistant Corporation Counsel, Attorney for
Respondent Newark Municipal Board of Alcoholic
Beverage Control.
Philip Insabella, Esq., Attorney for Respondent Rosario Massimino.

BY THE COMMISSIONER:

This is an appeal from the granting of a transfer of plenary retail consumption license of Rosario Massimino from premises 406-406½ South Orange Avenue, to 91 Telford Street. Appellants hold a plenary retail consumption license for premises 88 Halsted Street, distant 260 feet from the Telford Street premises.

In the petition of appeal, there are summarized ten alleged grounds for reversal; more might be gleaned from the body of the petition. By abandonment of some and failure to press others, appellants' contentions resolve themselves into the following:

1. Respondent Massimino misstated a material fact in his application for transfer by failure to disclose the true owners of the premises sought to be licensed.
2. The Federal Stamp or photostatic copy thereof was not attached to the application.

3. Appellants were not given due notice of hearing on objections filed with respondent Board.
4. At the time the application for transfer was pending, there was also pending an application for renewal of license for the premises from which the transfer was sought.
5. The granting of the transfer was contrary to the provisions of Newark ordinance adopted May 4, 1938, which inter alia prohibits transfers of licenses to premises within 750 feet of an existing licensed premises.

It appears that during the year 1937-38, Massimino held a plenary retail consumption license for the South Orange Avenue premises. Desiring to move his business to the Telford Street premises, he filed on June 15th an application for renewal of license for the old premises, and on June 18th, an application for transfer of license from the old to the new, publication as to the latter being made on June 19th and 26th. Objections to the transfer were filed by Poppolaro at 3:00 P.M. on June 22nd. By telegram received at 6:00 P.M. the same day, he was advised that hearing would be held on June 23rd. Represented by counsel, he appeared and without request for adjournment, voiced his objections to the transfer. At least one more hearing was held at which Poppolaro was present. Finally, on June 29th, the application for transfer was granted.

The alleged misstatement of material fact involves the true ownership of the premises sought to be licensed. Appellants sought to show that Giuseppe and Giuseppa Poppolaro (uncle and aunt to appellant Poppolaro) had conveyed the property in fraud of creditors to James and Florence DeAngelo, retaining a beneficial interest; that Massimino, aware of the true situation, nevertheless represented in his application that the DeAngelos were the owners. Regardless of the rights of the Poppolaros, the DeAngelos and their creditors inter sese, the uncontroverted fact is that a deed from the Poppolaros to the DeAngelos, dated May 17, 1937, is of record in the Essex County Register's Office. Issuing authorities cannot be expected to assume the functions of the Court of Chancery. The legal title was in the DeAngelos. Until set aside by a court of competent jurisdiction, the conveyance is dispositive of the question of ownership. Assuming that the conveyance might in the future be set aside, it is not a misstatement of material fact to say that the legal owner is he who appears of record to be so.

That the Federal Stamp or photostatic copy thereof was not attached to the application is conceded by the respondent Municipal Board. That it was not physically attached is immaterial. State Regulations 3, Rule 15, require only that applications for transfers of licenses to the other premises shall be accompanied by a photostatic copy of the Federal Stamp.

The claim that appellants were not given due notice of hearing upon their objections is founded on the brief time that intervened between the filing of the objections and the hearing thereon, less than a day. It affirmatively appears, however, that appellants had ample time within which to engage counsel; that no request for an adjournment was made; and that the objections were made and heard. It is no concern of appellants' that hearing was held between the first and second publication dates instead of after the second publication date. The fact is that hearing was afforded. State Regulations 3, Rule 9, requiring that the hearing date be fixed at not less

than two nor more than seven days after the second publication of the notice of application, may not be invoked by those who have waived their rights. Fanel Realty Co. v. Newark, Bulletin 284, Item 10.

Appellants' fourth ground of appeal has no merit. The mere fact that two applications are made by the licensee, one for renewal of his license and the other for transfer of the license when granted, is not only not objectionable, but on the contrary, is vitally necessary if he wishes to preserve his license from lapsing. If application were made merely for the issuance of a license for the new premises for the ensuing fiscal year, it would not be an application for a renewal but for a new license. The term "renewal" connotes continuity of person, premises and type of license. Where the issuance of new licenses is prohibited by reason of an existing limitation, the transfer of a license at the end of the licensing year necessitates either the transfer of the old license during its term to new premises and its renewal for those premises, or the renewal of the license for the old premises and its transfer to the new premises.

Appellants' fifth ground of appeal, that the granting of the transfer violated the provisions of Newark Ordinance #2419 adopted May 4, 1938, which, inter alia, prohibits the granting of a transfer to premises within 750 feet of an existing licensed premises, was premature with respect to this particular transfer. The ordinance requiring the minimum separation became effective July 1, 1938. Transfers made before that time were not interdicted. It appears that the application for the transfer was made on June 18th. The license for the new premises was issued on June 29th. This point was set at rest in Fanel Realty Co. v. Newark, supra.

The action of the respondent Municipal Board is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 29, 1938.

5. GAMBLING - CARDS AND DICE - BUCK AND INDIAN DICE ARE APT TO GET EVEN AN OLD TIMER INTO TROUBLE - HEREIN OF BETTER WAYS TO KILL TIME.

Dear Mr. Burnett:

Would you be kind enough to let me know if I could play Indian or buck dice or Rummy in cards.

I am an old timer in this business and would like to play the above just to kill time.

Very truly yours,
Anton Ruskovic.

P. S. I don't want to play the above for drinks but just to kill time.

November 29, 1938

Mr. Anton Ruskovic,
West New York, N. J.

My dear Mr. Ruskovic:

Card games, in themselves, are not prohibited. But playing them for money or drinks or other stakes is gambling, and gambling is prohibited. It is not only a misdemeanor under the Crimes Act but also in violation of Rules 6, 7 and 8 of State Regulations No. 20 (Pamphlet Rules, page 62), and cause for the suspension or revocation of the license.

The same applies to dice and games in which dice are used. Dice are not gambling devices per se, and hence their mere presence is not a violation. Re Pease, Bulletin 226, Item 5. Of course, they may be used for gambling. Any game can be made into a gamble. It is a question of fact. So long as the dice are not used for gambling, there will be no violation of the rules. As you are fully responsible for any such violations which may occur upon your premises, whether committed with your knowledge or not, the safest and wisest thing for you to do would be to keep all of the dice and dice games out. I never heard of anyone playing Indian or buck dice just to kill time. If you allow or participate in such games, you will be taking long chances with the law. If time hangs so heavy, get a book or try checkers or chess.

I do not approve of licensees or bartenders participating in card or dice games, nor do I want either played on the bar.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. ADVERTISING - "SOME MEN SHOULD NOT DRINK" - DIGNIFIED APPEAL
ADVOCATING MODERATION, APPROVED.

November 29, 1938

Seagram-Distillers Corporation,
New York City.

Gentlemen:

I have before me yours of November 16th and advertisement entitled "Some Men Should Not Drink."

Your appeals for moderation, and the dignified and reserved manner in which they are put before the public, are both farsighted and commendable.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PETITION TO LIFT SUSPENSION - DENIED.

In the Matter of Disciplinary)
Proceedings against)

WINTERGARDEN CASINO, INC.,)
467 Springfield Avenue,)
Newark, New Jersey,)

ON PETITION
ORDER

Holder of Plenary Retail Consump-)
tion License No. C-865, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

Otto A. Stiefel, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

The matter comes before me on a petition filed herein by the licensee requesting reduction of the suspension heretofore imposed from fifteen days to six days. In Re Wintergarden Casino, Inc., Bulletin 283, Item 9.

It appears from said petition that, a few days prior to August 14, 1938, the date upon which the violations which caused the suspension occurred, Geiselman, Rothhaupt and Scheele had entered into negotiations with the then stockholders of Wintergarden Casino, Inc. to purchase all of the capital stock of this incorporated licensee and had paid a deposit on account of the proposed purchase price; that thereafter the contract in respect to such proposed purchase was entered into on or about September 17, 1938 and that said contract contained the following clause relating to these disciplinary proceedings which had been instituted on August 22nd and were returnable on September 8th:

"15. At the present time there is pending before the Commissioner of Alcoholic Beverage Control a proceeding founded upon a charge that Schlenker sold an alcoholic beverage contrary to law on Aug. 14, 1938; Schlenker hereby represents that said proceeding is the first and only proceeding brought or commenced against Winter Garden Casino during the course of its existence. If, as a result of such proceeding any fine of money penalty is imposed upon said corporation, then the amount thereof shall be deducted from the amount of the balance of the purchase price of the stock aforesaid. Also, if by reason of the judgment or determination of said Commissioner said Winter Garden Casino shall be compelled to close its place of business or suspend the conduct of its business, then there shall be deducted from the balance of said purchase price a sum equal to \$15.00 multiplied by the number of days during which said Winter Garden Casino is obliged to close its place of business or suspend the conduct of its business."

It is thus apparent that the new stockholders are entitled, because of the suspension aforesaid, to deduct from the purchase price \$15.00 a day for each of the fifteen days during which the license is suspended, or a total of \$225.00. The petition avers, however, that this credit of \$225.00 "is largely insufficient to meet

the direct and indirect loss that will be suffered during those fifteen (15) days and the fixed charges that will continue even while the place is closed;" that "theoretically the excess in loss will fall on the corporation, Winter Garden Casino, Inc. Actually the loss will fall on Geiselmann, Rothhaupt and Scheele as prospective purchasers of the stock of the corporation within the purview of the contract aforesaid."

It is true that the present stockholders of Wintergarden Casino are in no way responsible for the offenses for which the license was suspended, for, at the time of occurrence, they were not members of the Corporation. They knew, however, of the pending disciplinary proceedings before they entered into their contract of September 17th. They incorporated into that contract, as above set forth, a carefully drawn clause which afforded them a rebate from the purchase price at a definite rate for each day of suspension. They knew that the very thing which has happened, might happen, and they arranged for their own indemnity. They made their own bargain with the people who should be punished. They dealt with their eyes wide open. The most that can be said is that they now have some afterthoughts. But that is a matter of private concern. There is no reason why the State should soften the blow which they knew was coming, but apparently underestimated. They are in no position to complain if their own agreement of September 17th failed fully to compensate them for the loss sustained during the period of suspension.

The petition is, therefore, dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 30, 1938.

8. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - AN EASY PROBLEM TO HANDLE WHEN WARNINGS ARE SUPPORTED BY ACTIONS.

November 30, 1938

G. Theodore Swenson,
Borough Clerk,
Carlstadt, N.J.

My dear Mr. Swenson:

I have before me staff report and your letter of November 14th enclosing copy of resolution and order, and notice of suspension in disciplinary proceedings conducted by the Mayor and Council on November 14th against Charles Poalillo, t/a White House, 643 Paterson Avenue, the holder of plenary retail consumption license C-14.

I note that the licensee was charged with sale of alcoholic beverages on Sunday before the opening hour fixed by local ordinance; that he pleaded guilty and his license was suspended for three days.

Please express to the Mayor and Council my appreciation for their prompt handling of these proceedings and for the suspension imposed. While not in accordance with my recommended minimum penalty of five days for first offenses of this kind, I note that Poalillo was warned that a second offense would mean a ten-day suspension. That is in accordance with my recommendation for second offenses.

I am also pleased to note that the Mayor instructed the Chief of Police that it was the desire of the Council to have all licensed places comply strictly with the hours of sale regulations. When word like that gets around and licensees know that it is meant, your municipality will have no further difficulty on that score.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary)
Proceedings against)
LUCY ROCCO,)
537 Grand Street,)
Hoboken, New Jersey,)
Holder of Plenary Retail Consump-)
tion License No. C-84, issued by)
the Board of Commissioners of the)
City of Hoboken.)
-----)

CONCLUSIONS
AND ORDER

Lucy Rocco, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

It is charged that, on November 10, 1938, licensee sold liquor at her licensed premises at a price below the minimum retail price, in violation of State Regulations No. 30.

On November 10, 1938, Investigators Best and Miskovsky purchased a pint bottle of Schenley's "Golden Wedding" whiskey at the licensed premises for \$1.35. The Fair Trade price is \$1.39.

The individual who made the sale testified that he sold this item at a reduction of four cents because "Golden Wedding" came out with an entirely new label and new bottle about a month ago and he believed the old package could be sold a little cheaper. He admitted he had not been so advised by the manufacturer or distributor and, clearly, Bulletin 275 does not differentiate between the old and new bottle of the product in question.

Licensee is guilty as charged.

Accordingly, it is on this 1st day of December, 1938,

ORDERED that Plenary Retail Consumption License No. C-84, heretofore issued to Lucy Rocco by the Board of Commissioners of the City of Hoboken, be and same is hereby suspended for a period of ten (10) days, commencing December 5, 1938 at 2:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
 JOSEPH KRAUS,)
 202 Harrison Avenue,)
 Harrison, New Jersey,)
)
 Holder of Plenary Retail Distribution License No. D-5, issued by)
 the Town Council of the Town of)
 Harrison.)
 -----)

CONCLUSIONS AND ORDER

Joseph Kraus, Esq., Pro Se.
 Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

It is charged that, on November 7, 1938, licensee sold liquor at his licensed premises at a price below the minimum retail price, in violation of State Regulations No. 30.

Investigators King and Flynn, of this Department, purchased from licensee one gallon of Renault's "White Label" American Sherry wine for \$2.25, the Fair Trade price being \$2.29.

Licensee testified that the reason he quoted \$2.25 as the price was because a few days before he received Bulletin 275 he was told by a salesman that the price of that item was \$2.25 per gallon; that when the bulletin was received he changed his prices on nationally advertised liquor but that, when he came to Renault wines, he thought he had the right price anyway. It is admitted that, prior to making the sale in question, licensee quoted to the Investigators the correct price on another Renault item and licensee contends that this shows his good faith. That, however, does not excuse cutting the price on the item in question. Licensee contends also that high priced wine is a slow seller; that he was innocent of any intent to violate the regulations and says:

"I naturally would not make a mistake of four cents to get myself in trouble."

Plausible! But it may be equally true that, having failed to make a sale at the standard price, he may have thought to make a sale by throwing a few cents off. I am not interested in determining the plausibility of such excuses. It is the few cents here and the few cents there that make all the trouble. The rules are plain and easy of application and, if violated, a mere disclaimer of intent to do so is no defense. Otherwise the regulations which the licensees themselves asked for would be rendered inert.

The licensee is guilty as charged.

Accordingly, it is on this 1st day of December, 1938,

ORDERED that Plenary Retail Distribution License No. D-5, heretofore issued to Joseph Kraus by the Town Council of the Town of Harrison, be and same is hereby suspended for a period of ten (10) days, commencing December 5, 1938 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
 GRAND UNION STORES, INC.,)
 47 E. Ridgewood Avenue,)
 Ridgewood, New Jersey,)
)
 Holder of plenary Retail Distribution License No. D-12, issued by)
 the Board of Commissioners of the)
 Village of Ridgewood.)
 -----)

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee is charged with selling liquor at its premises, on October 28, 1938, at a price below the minimum retail price, in violation of State Regulations No. 30.

Licensee pleads guilty.

The clerk who made the sale asked for \$1.16 (the correct Fair Trade price) for one pint of Calvert's Special. When the Investigators displayed a 5% discount card distributed by licensee, the price actually charged was \$1.11. The Secretary of licensee admits making up the discount cards which offered to customers on three stated days a discount of 5% on purchases including liquors. He testified that the liquor business is only a small percentage of total business and that the violation was unintentional. But that is not an excuse. Re Kraus, Bulletin 286, Item 10.

Accordingly, it is on this 1st day of December, 1938,

ORDERED that Plenary Retail Distribution License No. D-12, heretofore issued to Grand Union Stores, Inc. by the Board of Commissioners of the Village of Ridgewood, be and same is hereby suspended for a period of ten (10) days, commencing December 5, 1938 at 12:00 Midnight.

D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
 SOLOMON TAUBE, INC.,)
 250 Jackson Avenue,)
 Jersey City, New Jersey,)
)
 Holder of Plenary Retail Distribution License No. D-106, issued by)
 the Board of Commissioners of the)
 City of Jersey City.)
 -----)

CONCLUSIONS AND ORDER

Ellis Taube, Esq., Attorney for Licensee.
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant is charged with selling liquor at its store on November 12, 1938 at a price below the minimum retail price, in violation of State Regulations No. 30.

Licensee pleads guilty with an explanation.

The sale of a pint of "Old Crow Straight Rye Whiskey" for \$1.25, instead of the listed price of \$1.50, was made to Investigators Best and Miskovsky by the President of licensee Corporation. At the hearing the President testified that examination of Bulletin 275 failed to disclose that the product in question was included among those listed by National Distillers Products Corporation, manufacturers of said product; that the violation was due purely to an oversight in the examination of said bulletin. It is true that "Old Crow Straight Rye Whiskey" is not listed under the name of National Distillers Products Corporation, but it is listed on the very same page of the bulletin under McKesson Liquor Co., a wholesaler of that product.

There is evidence, however, which raises grave doubt as to whether the officers of licensee made an honest mistake. At the time of the sale the President told the Investigators that this particular brand had been left over from "Old Crow" stock; that he was making a special of it on that Saturday, and that on Monday the price would be \$1.50 because it was to go on Fair Trade on that day. These statements are not denied, but the President stated that he was advising customers that the price would be increased on Monday because the day before the sale was made a salesman from Greenspan Brothers advised him that "Old Crow" was going under Fair Trade commencing the following Monday. The statements made to the Investigators would tend to show that the officers of the Corporation at least had knowledge of the Fair Trade price which had been in effect sixteen days prior to the violation.

Accordingly, it is on this 1st day of December, 1938,

ORDERED that plenary Retail Distribution License No. D-106, heretofore issued to Solomon Taube, Inc. by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing December 5, 1938 at 2:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

13. REFERENDUM - SALES OF ALL ALCOHOLIC BEVERAGES AT RETAIL - A QUESTION CONFORMING SUBSTANTIALLY ALTHOUGH NOT LITERALLY WITH THE ENABLING ACT WILL BE ACCEPTED.

December 1, 1938

Charles P. Corey,
City Clerk,
Bridgeton, N. J.

My dear Mr. Corey:

I have yours of November 23rd, certifying that at the general election held in Bridgeton on November 8, 1938, there was submitted the question "Shall the sale of alcoholic beverages at retail, except for consumption on railroads, airplanes and boats, and the issuance of any retail licenses, except as aforesaid, pursuant to Chapter 2 of the title Intoxicating Liquors of the Revised Statutes (33:1-1 et seq.) be permitted in this municipality?" and that the vote on the question was "Yes" 3905, "No" 2690.

The question submitted is not identical with that prescribed in R. S. 33:1-46 (Control Act, Sec. 43). It should have

read ".....all alcoholic beverages at retail" and ".....railroad trains, airplanes and boats". It furthermore adverts to Chapter 2 of Title 33, instead of Chapter 1, and there are no licenses issued pursuant to Chapter 2. But the purpose of the voters is apparent, and the question submitted conforms substantially, although not literally, with the Act. I shall, therefore, accept it as submitted unless and until its invalidity shall be adjudicated in a court of competent jurisdiction.

According to the referendum, the issuance of retail licenses and the sale of alcoholic beverages pursuant thereto is permitted in your municipality.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. DISCIPLINARY PROCEEDINGS - FEMALE EMPLOYEES - A WIFE WHO ACTS AS A BARTENDER COMES WITHIN A REGULATION FORBIDDING SUCH EMPLOYEES - IF WIVES OF LICENSEES ARE TO BE EXCEPTED, THE REGULATION SHOULD SO STATE.

December 1, 1938

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

My dear Mr. Du pree:

I have before me staff report and your certification of November 22nd re disciplinary proceedings conducted by the Board of Aldermen against John Kuhta, 28 Bridge Street, charged with (1) permitting gambling in violation of State Regulations 20, Rule 7; (2) employing a female bartender and (3) permitting the service of beverages to a female employee, both in violation of local resolution.

I note that as to the first charge, the licensee pleaded guilty and his license was suspended for three days; that as to the second and third charges, the charges were dismissed because it appeared that the female was his wife.

Please express to the members of the Board of Aldermen my appreciation for their prompt handling of these proceedings.

Your regulation provides that no licensee "shall have in his.....employ any female bartender) and that "no hostesses, waitresses, female entertainers or other female employees shall be served with any beverage, alcoholic or otherwise, in any licensed premises....." Nowhere is there any exception in favor of the wife of a licensee.

According to the testimony in the instant case, the wife acted as bartender on several occasions and served herself and others with drinks.

If it is the thought of the Aldermen that wives may be utilized as bartenders and be otherwise employed on licensed premises and be served drinks notwithstanding such employment, it would be well to amend your regulations so that we all know just what is their wish.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. DISCIPLINARY PROCEEDINGS - GAMBLING - SLOT MACHINES - COUNTRY CLUB.

In the Matter of Disciplinary Proceedings against
 BRAIDBURN COUNTRY CLUB, INC.,
 Brookdale Road,
 Florham Park,
 Madison, N. J.,
 Holder of Club License No. CB-63,
 issued by the State Commissioner
 of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Lindabury, Depue & Faulks, Esqs., by Walter F. Waldau, Esq.,
 Attorneys for Licensee.
 Charles Basile, Esq., Attorney for the Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee, alleging that:

1. On August 4, 1938, you possessed, allowed, permitted and suffered certain slot machines, to wit: one 25¢ Mill's Jack Pot Slot Machine, on or about your licensed premises, contrary to Rule 8 of State Regulations No. 20.
2. On October 22, 1938, you possessed, allowed, permitted and suffered certain slot machines, to wit: one 25¢ Pace Slot Machine and one 5¢ Pace Slot Machine, on or about your licensed premises, contrary to Rule 8 of State Regulations No. 20.

As to (1): Investigators Lippitt and Wierenga inspected the club house of the Braidburn Country Club on August 4, 1938. They entered the main floor and went downstairs where they saw two men attempting to carry a Pace's Racing Machine through a doorway which separated the locker room from an adjoining room. This adjoining room had a telephone on a table and a few chairs, but was otherwise vacant except for the presence of a 25¢ Mills pull-handle machine with a jack pot front. They instructed the steward to remove both the Pace and Mills machines, and he promised to do so immediately.

As to (2): On October 22, 1938 Chief of Police Slate and Officer Frazier, of the Florham Park Police Department, entered the lobby of a separate building which is situated on the club grounds about two hundred feet from the main club house. In one set of lockers facing on the lobby they found a 25¢ slot machine, and in another set of lockers facing the lobby they found a 5¢ slot machine. The President and a member of the Board of Directors of the licensee later admitted to the Chief that the club owned these two machines.

Licensee does not dispute any of the aforesaid testimony. It contends that the rooms in which the machines were found on both dates are not part of the licensed premises, and hence, that the charge should be dismissed.

In the application the licensed premises are described as "locker room, grill and dining room of club house." As to the

machines which were found on August 4, 1938, it appears that the room in which they were found was a vacant room and not part of the locker room, grill or dining room. I shall, therefore, dismiss the first charge.

As to the machines which were found on October 22nd: It is admitted that the licensed premises as described in the application include the locker room in the smaller building which is located about two hundred feet away from the main club house. The only point to be decided is whether the lobby in which the machines were found is part of the locker room. The evidence shows that the lobby contained a cigar counter at one end, and two sets of lockers in which the machines were found. It appears that there was a larger locker room immediately adjoining this lobby but, under the circumstances, I believe that the lobby should be considered as part of the locker room as described in the application. I find the licensee guilty as to the second charge.

This is the first proceeding in which the licensee has been adjudicated guilty of any violation, although it received warnings in June 1936 and in December 1937 after slot machines had been found upon its premises on both occasions.

I shall suspend the license for five days.

Accordingly, it is on this 4th day of December, 1938,

ORDERED that Club License No. CB-63, issued to Braidburn Country Club, Inc. by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for five (5) days, effective December 8, 1938 at 2:00 A.M.

A handwritten signature in cursive script, appearing to read "Frederick M. ...". The signature is written in dark ink and is positioned above the printed title "Commissioner."

Commissioner.