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

BULLETIN 337 JULY 28, 1939.

1. NEW LEGISLATION - SALES TO MINORS - NOT A MISDEMEANOR IF MADE IN GOOD FAITH IN RELIANCE ON FALSE REPRESENTATION OF MINOR AND HIS APPEARANCE AND THE REASONABLE BELIEF THAT HE IS ACTUALLY OF AGE.

Assembly Bill No. 220 was approved by Governor Moore on July 18, 1939, and thereupon became Chapter 228, P. L. 1939.

This amendment is, therefore, effective immediately.

This Act cures an unfairness to licensees and their employees which has existed since Repeal. Sales to minors ought to be a misdemeanor and the law so stated, but there it stopped. Good faith and square dealing were of no moment as the law stood. Appearances counted for nothing. Even if the minor falsely misrepresented that he was of age, the hapless bartender was rooked if it turned out that the bearded youth or the miss who had affected sophistication were in fact under twenty-one.

The proviso added by the amendment absolves the person making the sale if compliance is made with the three conditions therein set forth. I believe this law is wholly in the public interest and by providing definite, objective and practical tests, will lead to strict enforcement of the salutary rule against sales to minors by lessening jury resistance in cases where the conditions have not been performed.

Minors are again reminded, if perchance warnings to impetuous youth ever serve any purpose, that misrepresentation of their age makes them subject to conviction as a disorderly person and subject to fine up to $200.00 payable in coin of the realm.

The Act reads:

"AN ACT concerning alcoholic beverages, and amending section 33:1-77 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-77 of the Revised Statutes is hereby amended to read as follows:

"33:1-77. Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over.

"2. This act shall take effect immediately."

D. FREDERICK BURNETT,
Commissioner.

July 24, 1939.

2. RETAIL LICENSES - OUT-OF-STATE SALES - THE PRIVILEGES OF WHOLESALERS AND MANUFACTURERS DISTINGUISHED - HEREIN OF THE ECONOMIC PHILOSOPHY UNDERLYING THE SEVERAL CLASSES OF LICENSES.

Gentlemen:

I noted in bulletin #322 the ruling that plenary wholesalers have no authority to make out of state sales.

Please advise us if the same limitation applies to a retail licensee; specifically, may a retailer sell a case or less and deliver same across a state line.

Yours very truly,

SCHWARZ DRUGGISTS, INC.

Ira I. Schwarz, Treas.

July 24, 1939.

Schwarz Druggists, Inc.,
Newark, New Jersey.

Gentlemen:

I have before me your letter and presume you refer to Re Browne, Bulletin #322, Item 9, wherein I ruled that the only wholesale licenses which authorize out-of-State sales are the plenary and limited export wholesale licenses.

The Browne ruling was based upon Re Congress Beverage Co., Bulletin 290, Item 15. In that case I noted that of the six wholesaling licenses provided by statute, the two export licenses expressly confer power "to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution," but the other four were silent in this respect. So, too, it was pointed out that each of the manufacturers' licenses conferred express power to make out-of-state sales. I therefore concluded that since the Legislature had granted express power in some cases and withheld it in others, the privilege of making out-of-state sales did not exist unless it was expressly conferred.

So much for wholesale licenses.

Now our Statute, R. S. 33:1-12 (Control Act Sec. 13), in providing for the several kinds of retail licenses, does not contain the words last above quoted from the provisions for manufacturers and for wholesale export licenses, nor does it in any other way expressly confer power to make out-of-state sales upon retail licensees. At first blush, therefore, it would appear that our retailers cannot sell out-of-state. But this is not the necessary or proper conclusion.

For there is another element, hereinbefore not mentioned, to be weighed in evaluating rights conferred by manufacturing and wholesaling licenses on the one hand, from those

granted to retailers on the other, and which goes to the very heart of the economic philosophy underlying these licenses.

Every manufacturer's license confines the sale of his products, so far as New Jersey is concerned, to New Jersey wholesalers and retailers. Elsewhere, he may sell and distribute to any persons provided only that he does so in compliance with the law of the place.

The plenary brewery license will serve as an example. Its holder is entitled "to brew any malt alcoholic beverages and to distribute and sell his products to wholesalers and retailers licensed respectively in accordance with this chapter and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution."

Thus, brewers, vintners, distillers and rectifiers cannot sell direct to consumers in this State but only to duly licensed New Jersey wholesalers and retailers. The only exceptions to this broad statement are:

(1) The holder of a plenary winery license may sell wine to churches for religious purposes, and

(2) The holder of a limited winery license could sell his products not only to licensed wholesalers and retailers, but also to consumers. This anomaly has recently (July 18, 1939) been ironed out by abolishing this license entirely. P. L. 1939, Ch. 235.

Hence, the only existing exception to the broad statement is in favor of churches and then only for Communion purposes.

Again, the holder of every wholesaling license is confined in his distribution and sale, so far as New Jersey is concerned, to New Jersey wholesalers and retailers. The only exception to this broad proposition is the hybrid state beverage distributor's license, which permits the holder to sell, not only to licensed retailers, but also to sell unchilled, malt alcoholic beverages in quantities of not less than 144 fluid ounces "at retail to be delivered by such licensee to the person for consumption in his home"--the so-called beer route.

These two minor anomalies, hereinbefore pointed out, are insufficient to disturb the general proposition that both New Jersey manufacturers and New Jersey wholesalers cannot make any sales within this State except to New Jersey licensees--in other words, they cannot sell direct to consumers.

Now all Class C, i. e. retail, licenses are expressly designed for sale and distribution of alcoholic beverages direct to the consumer. In none of them is there any restriction upon the type or class of person to whom sales may be made. To be sure, the holders of club licenses are confined in their sales to their own members and bona fide guests but this restriction is not based upon economic considerations. So, to be sure, liquor sold for on-premises consumption may not be consumed elsewhere. So, again, some retail licensees may sell only package goods for off-premises consumption and others may sell only unchilled malt beverages in certain quantities. But these are all merely variants in the scheme of distribution. They have nothing to do with the economic status of prospective purchasers. The occupation of such purchasers is of no concern

in devising the privileges of a retail licensee although it is of vital moment in determining the rights to be conferred on producers and wholesale distributors. Neither is the location of the residence of the purchaser or the place where delivery is to be made of any weight in delineating the licensed powers of a retailer, although it may well be considered in laying out the field for manufacturers and wholesalers. Hence, silence in the statutory authorization of retailers' licenses as to out-of-state sales is not at all significant as to the existence of the privilege although it is of dispositive import in denying the right of producers and wholesale distributors to effect such sales unless the power is expressly delegated. The clear implication is that the law is not concerned with the class of persons to whom retailers may sell or the place where delivery is made.

When it comes to the consumer, he may buy where he pleases. Purchases are not confined to New Jersey residents. There is nothing provincial about our law. Citizens of other states may purchase here as freely as our own. By the same token, New Jersey retailers may, so long as sales are made for off-premises consumption and not for resale, make sales and deliveries out of the State of New Jersey as freely as within.

The foregoing merely states the law so far as New Jersey is concerned. If you wish to sell and deliver outside this State, you will, of course, have to comply with the laws of the places of such sale and distribution.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - VON ALTEN vs. HOBOKEN.

CARL VON ALTEN and MARGARET VON ALTEN (name amended to Read Von Alten instead of Van Alten at hearing),	)	
Appellants,	)	ON APPEAL
-vs-	)	CONCLUSIONS
Board of Commissioners of the City of Hoboken,	)	
Respondent.	)	

. . . . . .

E. Norman Wilson, Esq., Attorney for Appellant, Carl Von Alten.

Bernard S. Glick, Esq., Attorney for Appellant, Margaret Von Alten.

Horace L. Allen, Esq., and James A. Coolahan, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

Appellants appeal from denial of renewal of their plenary retail consumption license for premises known as 142 Garden Street, Hoboken.

Respondent alleges that it denied the application for renewal because (1) Carl VonAlten has been convicted of a crime involving moral turpitude; (2) Carl VonAlten, a married man, is accused of having had sexual relations with one Marian and one Betty on the licensed premises and at 158 Second Street, Hoboken; and (3) Carl VonAlten has been arrested and is awaiting action of the Grand Jury on a charge of violating R. S. 2:158-b.

Appellant, Carl VonAlten, admits that, in 1920, he was fined $50. after having been convicted in Springfield, Massachusetts, on a charge of larceny and that, in 1922, he was convicted in New York City of grand larceny and sentenced to serve three and one-half to seven years in Sing Sing Prison, of which sentence he served one and one-half years. The second crime clearly involves moral turpitude and he is, therefore, ineligible to hold a liquor license in this State.

It appears also that Carl VonAlten did not disclose these convictions in his various applications filed with the local Board, or in his petition of appeal filed herein. He testified that he did not make disclosure of his convictions because, in 1935, an attorney (not his attorney herein) advised that it was not necessary since the convictions were so old and because he believed that he had been pardoned. The attorney's advice was bad and he produced no proof of a pardon but merely a commutation of sentence. He cites Sudol vs. Wallington, Bulletin #276, Item 7, but this case is not in point because none of the convictions considered therein involved moral turpitude and, moreover, the conviction therein was disclosed.

The fact that Carl VonAlten is disqualified by Statute from holding a license is a sufficient reason for sustaining the denial herein without considering the other grounds alleged by respondent. The application herein was made by a partnership and each partner must be fully qualified. Since one partner is clearly disqualified, the denial was proper.

Appellant, Margaret VonAlten, filed a petition herein alleging that she had no knowledge or information concerning the criminal record of her husband; that he has offered to sell his right, title and interest in said business to her, and praying that she be permitted to continue operation of the licensed business pending an application to be made by her to respondent for a liquor license.

There is some evidence in the present appeal from which it might be inferred that Margaret VonAlten had knowledge that a man and woman were living in open lewdness at her home located at 158 Second Street, Hoboken. It may be that that evidence is sufficient to show she is unfit to hold a license. That question, however, as well as the question as to whether she would be a mere "front" for her husband, can be decided by respondent if and when Margaret VonAlten files an application in her own name. Until respondent passes on those issues, no relief will be granted to her in these proceedings. Her petition is, therefore, denied.

For the reasons aforesaid, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 23, 1939.

4. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on June 19, 1939, of a Still and a Chrysler Coupe, in a section of woodland in the vicinity of Clinton Reservoir Road, in the Township of West Milford, County of Passaic, and State of New Jersey.	:	CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On June 19, 1939 Investigators of this Department discovered an automobile parked on Clinton Reservoir Road, and later observed Levie Stanford and James Leroy May each carrying a five-gallon can, approaching said automobile. They placed the men under arrest and were led by the men to a place in the woods adjoining the road, where they discovered a still and equipment used in operating a still. The Investigators thereupon seized, as unlawful property, pursuant to R.S. 33:2, still, equipment, alcoholic beverages and automobile listed in Schedule "A" annexed hereto. Analysis disclosed that the five-gallon cans contained alcohol fit for beverage purposes. The cans bore no indicia of tax payment.

The records of this Department show no still registration certificate issued with respect to the seized still.

At a hearing held to determine whether the seized articles should be confiscated, no one appeared to contest their forfeiture.

Under the Statute, an unregistered still and articles used or adaptable for use in connection therewith are subject to confiscation. No cause is here shown why confiscation should not result in the instant case.

Accordingly, it is determined that the seized property constitutes unlawful property, and it is ordered that the same be and hereby is forfeited, in accordance with the provisions of R.S. 33:2-5, and that it shall be retained for the use of hospitals, and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT
Commissioner.

Dated: July 25, 1939.

SCHEDULE "A"

1 - 50 gallon copper still
1 - 30 gallon galvanized cooler
2 - copper coils
1 - galvanized funnel
3 - 50 gallon barrels with mash
2 - 5 gallon cans of alcohol
1 - Chrysler Coupe, New York 1939 Registration 4L-71-28

5. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction pursuant to the provisions of R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938.	:	CONCLUSIONS AND ORDER
Case No. 57.	:	

BY THE COMMISSIONER:

Petitioner has a lengthy criminal record. In 1924, when he was 19 years of age, he was ordered to make weekly payments for the support of a child as a result of bastardy proceedings; in 1925 he was found guilty of larceny and receiving stolen goods and placed on probation for three years; in 1929 he pleaded non vult to an assault charge in an indictment for rape and received a suspended sentence; in the same year he was convicted in the Police Court on a charge of assault and battery preferred by his wife and received a suspended sentence; and in January 1930 he pleaded non vult to attempted larceny and receiving stolen goods and was sentenced to sixty days in the County Jail. Since that time he has not been convicted of any crime.

On behalf of petitioner, an attorney at law, a medical doctor and a businessman engaged in the trucking business, who have known petitioner respectively for six, nine and nine years, testified that, to the best of their knowledge, petitioner's reputation has been good during the time they have known him. A businessman engaged in the oil business, who has known petitioner for twenty-two years, testified that he had heard of the various convictions which occurred prior to 1930, but that since 1930 petitioner has not been in any trouble with the police.

The Chief of Police in the municipality in which petitioner resides had advised that there are no pending complaints, investigations or reports concerning petitioner and no arrests other than those in connection with the convictions referred to herein and an arrest in 1935 on a charge of "insufficient funds", which charge was withdrawn.

I am satisfied from the evidence that petitioner has led an honest and law-abiding life for more than nine years last past. In view thereof and the report of the Chief of Police, I shall give petitioner the benefit of the doubt in concluding that, despite his past record, his association with the alcholic beverage industry in the future will not be prejudicial to the interests of that industry.

It is, therefore, on this 24th day of July, 1939,

ORDERED that petitioner's disqualification from holding a license or being employed by a licensee because of the convictions referred to herein, be and the same is hereby removed, in accordance with R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

D. FREDERICK BURNETT,
Commissioner.

6..INTERIM PERMITS - PENDING ACTION BY LICENSE ISSUING AUTHORITY UPON APPLICATION FOR RENEWAL LICENSE - AMENDMENT TO CONDITIONS PURSUANT TO WHICH PERMIT WAS ISSUED.

Dear Sir:

I am in receipt of copy of Special Permit No. AI-44 issued to Joseph Zuccarella at 351-3 Perry Street, Trenton.

This permit is conditioned "that in the event of granting of permittee's application for license, the Board of Commissioners shall retain the full annual fee for such license."

It is my understanding that Mr. Zuccarella was closed for the first six days in July and re-opened on the 7th by authority of your permit. Was it intended by your permit that we should retain the whole annual fee in this case or the prorated portion thereof from July 7, 1939?

Very truly yours,

John L. Haney,
City Clerk.

July 24, 1939.

John L. Haney,
City Clerk,
Trenton, New Jersey.

My dear Mr. Haney:

I have before me yours of the 12th, re Special Permit AI No. 44, issued to Joseph Zuccarella, 351-3 Perry Street, Trenton, to continue business pending action by the Board of Commissioners upon his application for renewal of plenary retail consumption license.

When the form of interim permit was devised, it was thought that requests therefor would be for permits to continue business on July 1st, without interruption. Hence, the direction that if permittee's pending application for license was granted, the municipality should retain the full annual license fee. It later appeared, however, that in all circumstances this was not the case. Either because they did not know about the permit, or anticipated action upon their pending applications at an early date, some discontinued business temporarily and applied for the permit after July 1st. Such, apparently, was Zuccarella's case.

Municipalities are authorized under the Act to impose license fees only from the effective date of the license. R.S. 33:1-26. The statute provides that "....the respective fees for any such license shall be prorated according to the effective date of such license and based on the respective annual fee as in this act provided. Where the license fee deposited with the application exceeds such prorated fee, a refund of the excess shall be made...." The licensee must pay, however, for the time he actually does business, or is authorized to do business, notwithstanding that the license is issued at a later date. But he should not pay for the period he conducted no business and was not authorized to do so. Hence, the effective date of the license, in situations where this interim permit has been issued, will be the effective date of the permit, for that was when the licensee was authorized to do business and for which he must pay whether he actually did business or not.

Carrying this out, and pursuant to express reservation in the permit that it shall be subject to all limitations and conditions therein set forth or thereafter imposed by the State Commissioner, I now declare that the condition in Special Permit AI reading:

> "This permit is expressly conditioned that in the event of granting of permittee's application for license, the said shall retain the full annual fee for such license."

is amended to read and henceforth in all such permits, shall read:

> "This permit is expressly conditioned that in the event of granting of permittee's application for license, the license issuing authority shall retain the full annual fee for such license, less the prorated portion thereof representing the period prior to the effective date of this permit during which the applicant did not engage in the sale of alcoholic beverages."

I further declare that the condition in Special Permit AI reading:

> "This permit is expressly conditioned in the event of denial of permittee's application for License, the said shall retain the prorated daily license fee from July 1, 19..., to the date of termination of this permit, plus 10% of the full annual license fee as required by Statute."

is amended to read and henceforth in all such permits, shall read:

> "This permit is expressly conditioned that in the event of denial of permittee's application for license, the license issuing authority shall retain, in addition to the statutory ten per cent investigation fee, the prorated portion of the annual license fee for the period during which this permit shall have been in effect."

The effective date of the permit will coincide, in all cases, with the date on which the applicant resumed business.

As Mr. Zuccarella resumed business on July 7th, the effective date of his license, when issued to him by the Board of Commissioners, will be July 7th and the license fee to be retained by the municipality will be prorated from and including that date. If he has deposited the full annual fee, he will be entitled to a rebate of the difference.

Thank you very much for bringing the matter to my attention.

Copy of letter of even date to Mr. Zuccarella in regard to the above is enclosed.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. NEW LEGISLATION - MUNICIPAL REGULATIONS - MAY BE ENACTED HEREAFTER ONLY BY ORDINANCE.

Assembly Bill No. 206 was approved by Governor Moore on July 18, 1939, and thereupon became Chapter 234, P.L. 1939.

This supplement is therefore effective immediately.

It reads:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. No regulation concerning the sale, transportation, delivery, serving, mixing, distribution, storing or possession of alcoholic beverages at retail, or the conduct of any business licensed to sell alcoholic beverages at retail, or the nature and condition of the premises upon which the sale of alcoholic beverages at retail may be made, or the retail sale of alcoholic beverages on Sunday, or the fixing of license fees, shall hereafter be adopted by the governing board or body of any municipality except by ordinance; provided, however, all such regulations heretofore adopted by the governing board or body of any municipality whether by ordinance or resolution shall continue in full force and effect until repealed, amended or otherwise altered or changed by ordinance.

"2. The provisions of this act shall not apply to municipalities situated in counties of the sixth class.

"3. This act shall take effect immediately."

D. FREDERICK BURNETT,
Commissioner.

July 25, 1939.

8. NEW LEGISLATION - TIED HOUSES - MORATORIUM EXTENDED PROVIDED THAT NONE OF THE PRODUCTS OF THE BREWERY, WINERY, DISTILLERY, RECTIFYING AND BLENDING PLANT, OR WHOLESALER IS SOLD DIRECTLY OR INDIRECTLY AT THE LICENSED PREMISES.

Assembly Bill No. 218 was approved by Governor Moore on July 18, 1939, and thereupon became Chapter 255, P.L. 1939.

This amendment is therefore effective immediately.

The amendment reads:

"AN ACT concerning alcoholic beverages, and amending section 33:1-43 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-43 of the Revised Statutes is hereby amended to read as follows:

"33:1-43. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in anyway whatsoever in any

brewery, winery, distillery,or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this chapter, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler. Prior to December sixth, one thousand nine hundred and forty, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages. On and after December sixth, one thousand nine hundred and forty, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages; provided, none of the products of the brewery, winery, distillery, rectifying and blending plant, or wholesaler, is sold directly or indirectly at the licensed premises.

"It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part, or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaling or importing interests of any kind whatsoever outside of the State.

"No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or product offered for sale by such brewery, winery, distillery or rectifying and blending plant or wholesaler.

"2. This act shall take effect immediately."

D. FREDERICK BURNETT,
Commissioner.

July 25, 1939.

9. NEW LEGISLATION - ABOLITION OF LIMITED WINERY LICENSE - INTERPRETATION.

Assembly Bill 321 was approved by Governor Moore on July 18, 1939 and thereupon became Chapter 235, P.L. 1939.

This amendment is effective immediately.

The act, entitled "An Act concerning alcoholic beverages and amending Section 33:1-10 of the Revised Statutes", amends this section to read the same as heretofore EXCEPT, however, that all mention of and reference to the Limited Winery License, heretofore provided for by this section, is entirely omitted. Otherwise, the statute is the same as before.

This means that the Limited Winery License has been eliminated from the list of available manufacturing licenses and thereby

one of the anomalies of sales by producer direct to consumer has been ironed out as mentioned in Re Schwarz Druggists, Bulletin #337, Item 2.

No Limited Winery Licenses have been issued since July 18th last and no such licenses will, of course, be issued in the future.

Question now arises as to the effect of this amendment upon Limited Winery Licenses issued before July 18th.

Unquestionably, the Legislature could constitutionally not only prohibit the issuance of additional licenses but also terminate immediately all outstanding licenses. The question is whether it did. That depends upon the legislative intent -- that is, whether the elimination of the paragraph which authorized the issuance of Limited Winery Licenses was meant also to terminate instantly such licenses as had theretofore been issued and which, under their terms, would otherwise continue until the specified maximum quantity of wine shall have been manufactured, or until July 1st, 1940 arrives, whichever event might first occur.

Since the act does not contain any express provision which sheds light in this connection, resort must be had to general principles of law.

In the absence of clear language indicating the contrary, statutes are to be given prospective and not retroactive effect. See Citizens Gas Light Co. vs. Alden, 44 N.J.L. 648, 653 (E. & A. 1882); Regan vs. State Board of Education, 109 N.J.L. 1, 5 (Sup. Ct. 1932) aff'd 112 N.J.L. 196 (E. & A. 1933). In the latter case, Mr. Justice Trenchard said:

> "Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot otherwise be satisfied. This rule ought especially to be adhered to when such a construction will alter the pre-existing situation of the parties or will affect their antecedent rights, services or remuneration, which is so obviously improper that nothing ought to uphold and vindicate the interpretation but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature."

See also the collection of cases in Wittes vs. Repko, 107 Eq. 132 (E. & A. 1930).

In State vs. Kane, 101 Atl. 239 (Del. 1917), a special license for one year, authorizing the sale of liquor in quantities less than one quart, had been issued pursuant to express statutory provision. During the term of the license the statute was amended by striking out the aforementioned provision. The Court held that, notwithstanding the amendatory statute, the license continued in force until the expiration of its term, and in the course of its opinion, said:

> "It is not questioned that the legislature may revoke a license previously given for the sale of intoxicating liquor, because such license is only a privilege; but in order that a statute shall have that effect it must be clear that such was the legislative intent. When the later statute makes it unlawful to sell intoxicating liquor at all, or unless the licensee procures a further

license or complies with some additional requirement, there can be no question about the intent, but when the statute merely repeals the law which authorizes the issuance of a license for the sale of liquor, in a particular way, as in the present case, the legal effect is only to prevent the issuance of any other license of the same kind. *** There is nothing in the repealing act to show that it was intended to have any other effect than to prevent the Clerk of the Peace from issuing any other licenses under the act repealed.

"While the act in question is not retroactive in terms, it would unquestionably have that effect if given the construction contended for by the State; and the law is well settled that an act of the legislature will not be held to operate retrospectively unless the legislative intention that it shall have such operation be clearly shown."

The limited winery licensees who obtained their licenses prior to the passage of A-321 acted pursuant to then existing law and on the faith thereof have presumably expended substantial sums of money. The immediate termination of their licenses would appear to be not only unfair but also, in the light of the cases cited above, contrary to applicable principles of general statutory construction.

Accordingly, I rule that the enactment of this amendment did not operate to terminate immediately the Limited Winery Licenses which were theretofore properly issued. Hence, such licenses will continue in full force and effect until the maximum quantity of wine specified in each such license shall have been manufactured, but in any event not longer than June 30th, 1940.

D. FREDERICK BURNETT,
Commissioner.

July 26, 1939.

10. ADVERTISING - PERMISSIBLE FOR WHOLESALERS TO GIVE GUMMED PAPER TAPE WITH ADVERTISEMENT TO RETAILERS, PROVIDED IT DOES NOT CAUSE ALL ADVERTISING MATTER FURNISHED TO EXCEED $50 WORTH PER YEAR.

July 26, 1939.

Jerome Weil, State Manager,
K. Arakelian, Inc.,
Maplewood, New Jersey.

My dear Mr. Weil:

It is permissible, under the State Alcoholic Beverage Law and Regulations, for you to give gummed paper tape to retailers, with advertisement such as:

"Mission Bell Wines
John's Liquor Store
500 Main St.
Washington."

provided it does not cause the aggregate cost or reasonable value of all signs, equipment and advertising matter furnished by you to each retailer to exceed the allowable $50.00 per year. See Regu-

lations No. 21, Rule 1, Pamphlet Rules, page 64.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. LICENSEES - EMPLOYEES - COUNTY FREEHOLDERS - COUNTY FREEHOLDER MAY OBTAIN LIQUOR LICENSE OR BE EMPLOYED BY A LICENSEE.

July 26, 1939.

State Beverage Distributor's Ass'n of N. J.
Newark, New Jersey.

Gentlemen:

Solicitors' permits are not issuable to members of municipal governing bodies or license issuing authorities, or to persons charged or entrusted with the enforcement of the Alcoholic Beverage Laws. Regulations No. 12, Rule 8, Pamphlet Rules, page 54. They are issuable, however, to persons holding office as County Freeholder for the reason that the official duties of Freeholders in no wise concern or relate to alcoholic beverage control. See, generally, Re Kerner, Bulletin 298, item 9, and more specifically, Re Lehman, Bulletin 198, item 3.

A duly qualified person may obtain a solicitor's permit and be employed by a state beverage distributor, notwithstanding that he holds office as County Freeholder.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. ADVERTISING - BOOK MATCHES - "BIGGEST GLASS OF BEER IN TOWN - 22 OUNCES 10¢" - DISAPPROVED.

July 26, 1939.

Dominick P. Labella, Esq.,
Newark, New Jersey.

My dear Mr. Labella:

Pursuant to ruling in Re Simandl, Bulletin 282, item 1, it is technically permissible for retailers to advertise on book matches "Biggest glass of beer in town - 22 ounces 10¢." I do not favor it, however. It is bad business because it cheapens the industry and is just the sort of advertising that eventually is going to cause an adverse public reaction.

Don't do it. If necessary, I shall make a rule against it.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS - PRESENT STATUS OF CAMP NORDLAND CASE - HEREIN OF THE NATURE OF THE PROBLEM PRESENTED.

July 27, 1939.

Mr. Arthur D. Wilson,
Newton, N. J.

My dear Mr. Wilson: RE: CAMP NORDLAND

I have before me your letter and petition signed, as you say, by approximately 1,000 residents of Sussex County requesting me to uphold the decision of the Township Committee of Andover in denying renewal of a liquor license to August Klapprott. This outdoes the petition bearing 933 signatures filed in his behalf. You understand, of course, that cases are not decided by counting names on petitions but solely on the sworn testimony subject to cross-examination and the law applicable to the facts so established.

The hearing was held on Monday, July 24th. The testimony taken in the long hearings before the Township Committee, consisting of 316 pages, together with the testimony taken on July 24th, which covers an additional 101 pages, together with the briefs of the lawyers, have now been dumped in my lap for decision. It means that I shall have to read the testimony from beginning to end, which is, of itself, a staggering job in the midst of many others also crying for disposition and then to consider the pleadings, the exhibits and the briefs of the lawyers.

I do not entertain, let alone express, any opinion on the merits of the case. Everything depends on the facts brought out in the testimony.

I am glad that you and your fellow signers are so interested in this matter and shall send you a copy of the decision when made, whether it accords with your views or not. My position is that of a judge or an umpire and I have to call the strikes just as I see them. In our zeal to uphold American institutions, we must be very careful lest we ourselves violate the American principle of a square deal and a fair trial by an unprejudiced judge. In this respect, the case is comparable to a murder trial. I have no hesitancy in saying, as judge, that if one man murders another he should get the chair. But the question to be decided is whether the man charged with the crime is or is not guilty. So, in the instant case, I haven't any idea until I read the testimony whether or not the appellant is guilty of violating the law or of anything else which should deprive him of a license. That is what the present trial is for.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. APPLICATION FOR AGE, RESIDENCE OR CITIZENSHIP PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

July 27th, 1939.

RE: Case No. 283

Applicant for an "ARC" permit having been convicted in Connecticut in 1930 for "setting up a lottery", hearing was held to determine whether his crime involved moral turpitude and hence disqualified him from holding a liquor license or being employed by a liquor licensee in this State. R.S. 33:1-25, 26.

The lottery with which applicant was connected operated on a large scale throughout Connecticut, selling 100,000 tickets weekly at fifty cents a piece. Applicant, though stating that the lottery was really owned by his uncle, admits that he was connected with it for a year and a half and was one of the "lieutenants" in its operation, that he was being paid $150. per week for his services, and that he knew he was engaging in an illegal enterprise.

The lottery was raided in 1929 and applicant (then twenty-six years of age) arrested. He pleaded guilty to the charges against him, was sentenced to one year's imprisonment and served about half of that term.

Conducting extensive commercialized gambling for the public in the form, as here, of a large-scale lottery in a State where such is prohibited, is, even though the operator be a "lieutenant" of the real owner, base in character and involves moral turpitude. Re Instructions and Explanations, Bulletin 2, Item 8.

Being convicted of such a crime, applicant is, therefore, disqualified from holding a liquor license or being employed by a liquor licensee in this State.

Accordingly, it is recommended that his application for "ARC" permit be denied.

Nathan Davis
Attorney-in-Chief

Approved:

Frederick Burnett
Commissioner