COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 106 February 17, 1936

1. APPELLATE DECISIONS - McHUGH v. WEST DEPTFORD

EDWARD JOSEPH McHUGH,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF WEST DEPTFORD TOWNSHIP (GLOUCESTER COUNTY)) ON APPEAL CONCLUSIONS
Respondent)

- - - - - - - - - - - - - - - - - - -

William C. Egan, Esq., Attorney for Appellant.

Samuel T. Heritage, Chairman of the Township Committee, For Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located at #400 Red Bank Avenue, West Deptford.

Respondent contends the application was properly denied because appellant was not a resident of the Township and was therefore barred by virtue of respondent's resolution of July 8th, 1935, which reads:

> "No license shall be issued to any person who has not been a resident of the Township for the past two years."

After this appeal was heard, said resolution was disapproved by the State Commissioner because, as worded, it would prohibit the issuance of a license to anyone who had not been a resident of West Deptford for the two years preceding the date of adoption of the resolution and thus would create in favor of the few who could comply therewith a monopoly by imposing a condition with which no residents in the future could possibly comply.

Subsequently, after respondent was notified of the defect in its resolution of July 8th, it adopted on December 26, 1935 a new resolution, Section "g" of which reads:

> "No licenses shall be issued to any person who has not been a resident of the Township for the past two years immediately preceding the application for a license."

This resolution was duly approved on January 7th, 1936 by the State Commissioner and therefore is now effective.

This resolution may properly be considered by the State Commissioner although enacted after the denial of appellant's application. Stein v. West New York, Bulletin #101, Item #7; Franklin Stores Co. v. Elizabeth, Bulletin #61, Item #1. As was said in the Franklin Stores case:

> "Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do but rather a final adjudication whether the license should be issued NOW."

We come then to a consideration of the case on the merits.

Appellant stipulated that he is not a resident of West Deptford Township. He argues that the municipal policy requiring such residence is invalid because Section 22 of the Control Act defines the qualifications of an applicant for a license and omits any mention of the residence requirement in any particular municipality, and therefore, invoking the doctrine expressio unius est exclusio alterius, concludes that a municipality may not superimpose such a requirement upon the statutory qualifications set forth in the Act.

This is the identical contention considered at length in Iamello v. Rumson, Bulletin #77, Item #9, where I held that a municipal issuing authority may exercise a reasonable discretion in the issuance of licenses and may add reasonable conditions precedent to the issuance of any licenses above and beyond those expressed in the Control Act. I there said:

> "The ordinance is not repugnant to the Control Act. It does not lessen the requirements - it strengthens them by adding an additional qualification. It does not tie the hands of the State, for the State has committed the issuance of retail licenses to the several municipalities. Mere silence by the State Act on the point of local residence is not inconsistent with a local requirement on this score. The Borough ordinance does not deny , as contended, to a class of citizens, the constitutional guaranties of every citizen that, in the words of appellant's counsel, 'these guaranties are that every citizen of the State has the same right which every other citizen of the State has. Among these rights is the right to establish any business in any particular municipality without being subjected to additional restrictions which are not imposed upon all citizens.' The learned attorneys of the appellant in their excellent and helpful brief have, at this point, fallen into the error of treating as a right that which is only a privilege. See Bumball v. Bernardsville, Bulletin #66, Item #9; Krause v. Freehold, Bulletin #76, Item #8. As was said in the Bumball case, supra,

"'No one has a "right" to a license. It is, at most, a privilege conferred by the State which the issuing authority may deny in the exercise of sound discretion. Meehan v. Jersey City, 73 N.J.L. 382.'

"Appellant's theory, if sound, would make it mandatory for an issuing authority to issue a license to any person who came within the terms of the Act. In this he errs. For the Act is permissive and not mandatory. It defines the persons to whom, and the conditions under which, an issuing authority may issue a license but does not compel the issuance of such a license to anyone simply because he is not disqualified.

"The Commissioner has often ruled heretofore that the mere fact that a person is not barred from receiving a license under the Control Act does not make it mandatory upon the issuing authority to grant his application. On the contrary, if in the exercise of a reasonable discretion the issuing authority determines that the granting of the application is undesirable the Commissioner has sustained its action in denying the application. Thus in numerous cases, where an applicant was not personally disqualified under the Act, the denial of his application was sustained on the ground that the municipal issuing authority reasonably determined that he was personally unfit to receive a license. Orofino v. Millburn, Bulletin #45, Item #15; Saft v. Union, Bulletin #37, Item #8; Moss & Convery v. Trenton, Bulletin #29, Item #12; Meyers v. Cranford, Bulletin #44, Item #4. Similarly the Commissioner has affirmed refusals to issue licenses to applicants qualified as to person and place on the ground that a sufficient number of licensed premises existed in the vicinity and the issuance of an additional license would be socially undesirable. Bader v. Camden, Bulletin #44, Item #8; Furman v. Springfield, Bulletin #49; Item #6; Faccidomo v. Union Beach, Bulletin #55, Item #8; Clement v. Loder, Bulletin #52, Item #5."

With reference to the further question as to the reasonableness of a local requirement that an applicant for a retail license be a resident of the municipality in which the premises sought to be licensed are located, I ruled:

"We come, then, to the remaining question - whether the requirement that an applicant for a retail license be a resident of the municipality in which the premises sought to be licensed are located, for a period of one year prior to the filing of the application, is reasonable. The dispensation of alcoholic beverages from time immemorial has been recognized as impregnated with public interest. The character of the persons to whom the privilege of making such sales is entrusted is of utmost importance - perhaps in the long run the most effective safeguard against abuses. An issuing authority is under the positive duty to insure the issuance of licenses only to persons of good character. It must, therefore, investigate carefully all applicants. Any requirement reasonably designed to facilitate such investigation is eminently proper. The requirement that a person be a resident of the municipality from which he seeks a license, for a period of time, so that he may become known and a basis laid to judge his character has a direct and immediate connection with the proper administration of licenses. In Re Piscataway, Bulletin #75, Item #9, the Commissioner said: 'I can see a good

reason why a person may be required to reside in a Township for three years as a condition precedent to obtaining a liquor license. Because of his residence, opportunities would be afforded to form some estimate of his character'."

This case is governed by the rulings previously made.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: February 8, 1936.

2. APPELLATE DECISIONS - RECCHIA v. ORANGE.

NICHOLAS J. RECCHIA,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE,)
Respondent.)

ON APPEAL

CONCLUSIONS

- - - - - - - - - - - - - - - - - -

Richard J. Fitzmaurice, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent.
J. A. Palmieri, Esq., Attorney for Peter Cecere, Owner of Premises.

BY THE COMMISSIONER:

This is an appeal from a revocation of appellant's retail consumption license for premises located at 132 South Essex Avenue, Orange, for violation of the Control Act, and also from the refusal of respondent to transfer the said license from 132 South Essex Avenue to 130 South Essex Avenue, Orange.

At the hearing it appeared that two investigators of this Department inspected the licensed premises on August 20, 1934. The investigators found and seized admittedly illicit alcohol upon the premises, viz:

1 Quart bottle "Old Bill" Whiskey,
1 5-gallon can, about 7/8 full of alcohol,
1 1-gallon glass jug full of alcohol which had been colored and diluted,
1 1-gallon glass jug 1/2 full of alcohol which had been colored and diluted,
1 1-gallon jug of wine,
1 Quart bottle "Sweepstakes" Whiskey.

On the day following the seizure, appellant was arrested; and later was indicted for possessing said illicit liquor with

intent to sell it, and on October 14, 1935 entered a plea of non vult.

On or about October 29, 1935 respondent instituted these proceedings.

At the hearing held before respondent, the licensee was found guilty upon the first and third charges, which are set forth in said notice as follows:

"1 - That on August 20th, 1934, you did own, possess, keep and store certain illicit Beverages on premises at 132 South Essex Avenue, Orange, New Jersey, with intent to sell the said illicit Beverages, in violation of Section 48 of an Act entitled (an Act concerning Alcoholic Beverages) passed December 6th, 1933 and the acts supplemental thereto and amendatory thereof.

"3 - That on August 20th, 1934, you did fail to have proper stamps or other proper evidence of payment of the tax required to be paid to the State of New Jersey, on certain Alcoholic Beverages owned or controlled or possessed by you."

The respondent thereupon revoked appellant's license.

At the hearing of the appeal, appellant contended that the illcit alcohol had been left upon the premises by a former licensee, that he had seen the five-gallon can in the cellar but had never investigated to learn the contents thereof, and that the two one-gallon jugs were stored in the cellar and were covered with dust. No one representing the former licensee was produced to support this theory as to the manner in which the illicit alcohol happened to be upon the premises. It further appeared that the licensee had taken the place over from the former licensee about eight (8) months prior to the seizure and thus it would seem that the appellant had ample opportunity to investigate the contents of the can. Furthermore, it appears from the evidence of one of the investigators that the jugs were clean and that the can was "brand new".

I give no credence to the testimony of appellant on this score in view of his admission by his plea of non vult of the truth of the charges made by respondent. If guilty there, he is guilty here.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: February 10, 1936.

3. APPELLATE DECISIONS - HELKE v. LOWER PENNS NECK

OSCAR HELKE, SR., Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LOWER PENNS NECK (SALEM COUNTY), Respondent	)	ON APPEAL CONCLUSIONS

Joseph Narrow, Esq., Attorney for Appellant.

W. Orvyl Schalick, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located on Main Street, Pennsville, Lower Penns Neck Township.

Respondent contends that the application was properly denied because appellant is not the sole person interested therein but that, on the contrary, his daughter, Ida McKinley, who has not resided in New Jersey for the past five years and who has been convicted of a violation of the Control Act, has an undisclosed interest in the business to be conducted under the license applied for.

Appellant is 72 years old. His daughter, Mrs. McKinley resides in and conducts a restaurant upon the premises sought to be licensed. In January, 1935, she was convicted of illegal sale of alcoholic beverages, the violation having occurred at the premises now in question. Appellant resides in a different portion of the Township. He admits that if his application is granted his daughter will continue to operate the restaurant for him and that if his business is successful he will provide her with enough money to live. He claims that she is not to have anything to do with the liquor end of the business or to receive any fixed salary.

At the hearing appellant testified that he had used his own money to pay the license fee and had enough to start the business.

After the hearing an investigation conducted by this Department disclosed that he was on the Emergency Relief rolls of Salem County, whereupon appellant admitted that he had borrowed the money to be used in payment of the license fee from one of his sons-in-law.

The false testimony given by appellant at the hearing is in itself sufficient reason to dismiss the present appeal. See Zelenak v. Trenton, Bulletin #35, Item #9; Rayfield v. Conover, Bulletin #65, Item #2.

Furthermore, it indicates a disposition to conceal the real situation underlying the application. Considered together with all the other facts in the case, the respondent's finding is amply supported that appellant is not the sole person interested in the application.

The action of respondent is affirmed.

Dated: February 10, 1936 D. FREDERICK BURNETT
Commissioner

4. MUNICIPAL ORDINANCES - VALIDITY - DISCRIMINATION BETWEEN MEMBERS OF THE SAME LICENSE CLASS

MUNICIPAL ORDINANCES - PENALTIES - SHOULD BE DETERMINED WITH RESPECT TO EACH VIOLATION SO AS TO FIT THE CRIME.

February 5, 1936.

Wilfred L. Baldwin,
City Clerk,
Rahway, New Jersey

Dear Sir:

I have before me for consideration:

* * * * *

6. A resolution adopted by the Municipal Board on December 12, 1933, being Rules 1 through 8, regulating the sale of alcoholic beverages, as supplemented by

7. A resolution adopted by the Municipal Board on January 29, 1934, being Rule 9.

* * * * *

9. A resolution adopted by the Municipal Board on March 8, 1934, amending Rule 1 of Item 6.

* * * * *

14. A resolution adopted by the Municipal Board on March 7, 1935, amending Rule 1 of Item 6.

* * * * *

They are approved as submitted subject to the following comments and exceptions:

* * * * *

Item 6 as supplemented by Item 7 and as amended by Items 9 and 14:

These items consist of nine rules regulating the sale of alcoholic beverages under plenary retail consumption and plenary retail distribution licenses. By their terms, they do not apply to plenary retail consumption licensees which are clubs and sell alcoholic beverages to members and guests exclusively. So far as some of these rules are concerned, the exception exempting

clubs is proper. I have approved some such exceptions in favor of clubs, even though they could be questioned on the grounds of discriminating between members of the same license class, because police power and public policy have reasonably supported clubs being so distinguished. Bulletin 43, item 11, Bulletin 19, item 7 and Bulletin 7, item 1. But it does not follow that the exception in favor of clubs is proper in all cases.

For instance, your Rule 1 as amended fixes opening and closing hours. The exception in favor of clubs in this instance would confer upon certain plenary retail consumption licensees (those which qualify as clubs) the privilege of selling alcoholic beverages on weekdays for five hours longer and on Sundays for seven hours longer than other members of the same license class. I am not at all sure that the exception in this case is sound. If public policy demands that consumption licensees be closed at a certain hour, it should be carefully considered whether or not the motivating causes for that policy would require that the hours apply to all consumption licensees without exception. There is no doubt in my mind but that such an exception in favor of clubs would add materially to the present difficulties inherent in the policing of such organizations. Cf. re Rumson, Bulletin 87, item 11.

* * * * *

Rule 1 provides in conclusion that "Nothing in this ruling shall be construed to permit stores operating under a Plenary Retail Distribution License to keep open beyond their regular hours of business for the sole purpose of selling alcoholic beverages." I take it that this means that distribution licensees who conduct in conjunction with the sale of alcoholic beverages other mercantile businesses, are to continue to close their entire premises at the same hour as was customary for them to close before they obtained their alcoholic beverage licenses. Thus chain grocery stores holding distribution licenses would be required by the rule to continue to close at 6:00 p. m. on weekdays with the exception of the customary nine o'clock closing on Saturdays and to remain closed all day on Sundays; delicatessens and drug stores holding distribution licenses would be required to close at their customary hours which, as I have observed, varies from early evening to early morning depending on the amount of business being done; distribution licensees selling alcoholic beverages exclusively would not be required to close until the general closing hour fixed in Rule 1 for all licensees. So the rule would not fix any general closing hour for distribution licensees; some would be required to close early, others permitted to close late, each case depending on the hour that the holder of the license had customarily closed his business before obtaining same.

Now, in the first place, I don't think that there is any justification for distinguishing between distribution licensees so far as the hours between which alcoholic beverages may be sold are concerned. If the sale of alcoholic beverages by certain distribution licensees is, during particular hours, socially undesirable, then such sale by other distribution licensees between those hours is at least equally as undesirable. Why should some be allowed longer hours than others? Unless the distinction can be grounded in sound public policy, it is unreasonable and unfair.

Secondly, the regulation is too indefinite. To carry out your purpose, you would have to fix the hour when each particular

distribution licensee must close. Otherwise, no one could be sure what each particular licensee's closing hour would be. The licensee himself could change it at will by lengthening or shortening the hours during which he would conduct his other mercantile business. So the regulation is really no rule at all and is, therefore, unenforceable. In order to be legally enforceable, it should definitely indicate the specific requirements with which licensees must comply, the particular rules which must be obeyed, the actual conduct which is prohibited. The only question rules should leave open is one of compliance. Re Rockaway Township, Bulletin 98, item 5.

The concluding paragraph of Rule 1, quoted above, is, for these reasons, disapproved.

* * * * *

Rule 3 requires conformity with the approved zoning map of the City of Rahway relating to business districts. Standing alone there is no question but that the regulation is proper. But how about the general exception from all of the rules that you made in favor of clubs holding consumption licenses which sell to members and guests exclusively. Are you sure that such an exception can be made to your zoning ordinance? I doubt it and suggest that you refer the question to your own counsel for his advice.

Rule 4 says that no women or persons under twenty-one years of age are permitted to tend bar. Now Section 22 of the Act prohibits the issuance of any license to anyone under legal age and Section 23 of the Act prohibits the employment by a licensee of anyone who would fail to qualify as a licensee. And the only permissible exceptions to the rule in Section 23 require the Commissioner's approval first obtained but in no event, allow anyone so employed to sell or solicit the sale of any alcoholic beverage. Thus, persons under the age of twenty-one years are prohibited by statute from tending bar and there is no authority conferred upon anyone to make exceptions to the contrary. So your general exception aforesaid in favor of clubs is, so far as it applies to this rule, disapproved. Moreover, to the extent that it would permit women to tend bar in these favored clubs, it is also disapproved for if the employment of women bartenders is contrary to your Board's policy with respect to consumption licensees generally, I don't think it ought to be relaxed for the benefit of certain clubs.

Rule 5 says that the sale of alcoholic beverages is not permitted to minors, mental defectives, or habitual drunkards. I see no justification for the exception in favor of clubs so far as this rule is concerned. Sales to minors, mental defectives or habitual drunkards should not be tolerated under any circumstances. The exception, as applied to this rule, is disapproved.

Rule 8 provides that any violation of the regulations, as well as the provisions of the Act, will be punished by suspension of the license for the term of two years. The statute confers upon each municipal issuing authority the power to suspend or revoke any license issued by it for such violations but it does not fix the term of the suspension to be imposed. Instead, it leaves it open so that the issuing authority may, in its judgment and discretion impose penalties in accordance with the nature of the offense. You, however, have resolved to impose a two-year sus-

pension for any violation regardless of its nature and by so doing have, so far as the penalty is concerned, prejudged each and every case. Now I am heartily in favor of good, strapping penaltie where warranted but I also think that penalties should fit the crime. They must be reasonable. Otherwise, they smack of the inquisition and do as much to bring the law into disrepute as lack of enforcement. I think it would be wise if you would exscind from Rule 8 the words "will be punished by suspension of the license for the term of two years" and in place thereof substitute therefor "shall be cause for suspension or revocation of the license." Then each case can be determined on its merits and punishment inflicted accordingly.

Consider Rule 8 also in its relation to the exception in favor of clubs. Surely this exception cannot operate in this case. There is no justification for exempting a particular group of licensees from compliance with your rules or the statute. Nor is there any justification for granting them immunity from the punishment which Rule 8 would impose.

* * * * *

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. MUNICIPAL ORDINANCES - REQUIREMENTS OF RESIDENCE WITHIN MUNICIPALITY - VALIDITY WITH RESPECT TO INDIVIDUAL AND CORPORATE APPLICANTS.

February 5, 1936.

Harlan P Ross
Borough Clerk
Bogota, New Jersey

Dear Sir:

I have before me your letter of January 17th and the proposed ordinance to regulate the sale of alcoholic beverages in the Borough of Bogota. The proposed ordinance, upon final adoption, will be approved as submitted subject to the following comments and exceptions:

* * * * *

Section 5 says that no retail license shall be issued to a natural person unless he shall have been a resident of the Borough of Bogota for at least two years continuously immediately prior to the submission of the application. That regulation standing alone is approved. Iamello v. Rumson, Bulletin 77, item 9. The section then goes on to provide in the case of corporate applicants that unless each officer and each director and each holder of ten per centum or more in beneficial interest of the capital stock qualifies as an individual applicant in all respects, no license shall be granted. This requires compliance by corporate applicants not only with the qualifications required by statute of individual applicants but also with your local rule requiring of individual applicants two years' residence in the Borough. It raises many questions.

The statute, Chapter 254, P. L. 1935, Control Act reprint Section *22A, says that no municipal retail license shall be

issued to any corporation, except for premises operated as a bona fide hotel, unless each holder of more than ten per centum of its stock qualifies in all respects as an individual applicant. In Section 22, it says that in the case of corporate applicants each officer and each director and each holder of ten per cent or more of the capital stock must qualify as an individual applicant in all respects except as to citizenship, residence or age. This means that if the applicant for a retail license is a corporation, and the application is for premises to be operated as a bona fide hotel, that each officer and each director and each holder of ten per cent or more of the capital stock must qualify as individual applicants in all respects except as to citizenship, residence or age; that the corporation is not disqualified if an officer or a director or any such stockholder is an alien or a non-resident or a minor. It also means that if the applicant for a retail license is a corporation, and the application is for premises other than a bona fide hotel, that each officer and each director must qualify as individual applicants in all respects except as to citizenship, residence or age and that each holder of more than ten per cent of its stock must qualify as an individual applicant in all respects with no exceptions; that the corporation is not disqualified if an officer or a director is an alien or a non-resident or a minor but that it is disqualified if any holder of more than ten per cent of the stock is an alien or a non-resident or a minor. Your regulation, on the other hand, would require of corporate applicants that each officer and each director and each holder of ten per cent or more of the capital stock qualify in all cases as an individual applicant in all respects requiring, in addition to the statutory qualifications, two years' residence within the municipality.

In Iamello v. Rumson, supra, I ruled that it was not compulsory that an issuing authority issue a license to every person who came within the terms of the Act. The Act is permissiv and not mandatory. It defines the persons to whom and the conditions under which an issuing authority may issue a license but does not compel the issuance of a license to anyone who is not otherwise qualified. The Act says in Section 29 that each issuing authority by resolution first approved by the Commissioner may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of the Act and to secure compliance with the provisions thereof. In Section 21, it imposes upon each issuing authority the duty to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of the Act. In Section 74, it says that the Act is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed. There appears to be ample authority in support of the conclusion that municipalities may exercise reasonable discretion in the administration of the issuance of licenses and may superimpose reasonable conditions precedent to the issuance of the licenses although there may be no express warrant therefor in the Act in so many words. So the question boils down to whether or not in each case, the additional regulation is reasonable.

There is no doubt in my mind but that the requirement that individual applicants for retail licenses be residents of the municipality in which they are applying for a period of two years prior to filing the application is reasonable. Unquestionably, individuals would become better known to the local authorities by reason of this residence and the local control of the sale of alcoholic beverages may be materially aided thereby. Because of the residence, opportunity would be afforded to form some estimate of the individual applicant's character. But a corporation in the eyes of the law is a distinct legal entity. Its members, although comprising the corporation and responsible for its actions, do not act as individuals. Further, the statute already imposes stringent requirements upon corporate applicants

and, moreover, contemplates careful investigation of corporate as well as other applicants in order to determine that the corporation, as an organization of persons, is qualified to receive a license. I think that the statutory requirements with respect to corporations go far enough. Further restrictions, to my mind, would unnecessarily hamper legitimate business. As it now stands, you are fully protected by the statute. And the additional requirements, rather than proving of benefit, may possibly exclude corporations otherwise desirable and fully qualified. The restrictions you have superimposed upon corporate applicants over and above those imposed by statute are not reasonable. They are disapproved.

I suggest that you revise the section so as to include only its first sentence; to wit, "Section 5. Residence Requirement. No retail license shall be issued to a natural person unless he shall have been a resident of the Borough of Bogota for at least two years continuously immediately prior to the submission of the application." The rest of the section can be omitted entirely because it deals with matters already controlled by statute which need not be included in the ordinance in order to be effective. To leave them out will help reduce the incidental cost of printing and advertising.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. LICENSES - AUTOMATIC SUSPENSION - WHEN AND TO WHAT EXTENT LIFTED BY STATE COMMISSIONER FOR GOOD CAUSE SHOWN - HEREIN OF BOOTLEG LIQUOR AND PENALTIES UPON LICENSEES.

In the Matter of the Petition)
-of-)
LEON STEIN, to Lift Suspension) ON PETITION
of License.) CONCLUSIONS
- - - - - - - - - - - - - - - - - -

BY THE COMMISSIONER:

It appears from staff reports that a complaint was received that the above licensee sold illicit alcoholic beverages and that he kept his illegal stock in his automobile parked in front of his tavern. On July 25, 1935, Investigators Boehm and King proceeded to Passaic and inspected the licensed premises. They observed a 1928 Chevrolet car parked in front of the tavern. The licensee admitted that it was his car. It was locked and after considerable discussion the licensee finally agreed to open the door of the car. Upon opening the door he picked up a package which the Investigators declare he endeavored to smash. They prevented him from doing this and discovered that the package contained a half gallon jug of alcohol bearing no tax stamps. The licensee was arrested and the car confiscated.

Stein was indicted; tried in Special Sessions; found guilty and fined $100 and placed on probation.

The license was therefore automatically suspended by this conviction until the end of the license period, viz.: June 30, 1936. The licensed premises were ordered closed on January 27, 1936.

The petition now filed to lift the suspension denies knowledge of the alcohol found in his car and claims that the licensee is a victim of circumstantial evidence alleging that one of his competitors probably placed the alcohol in his car.

The fact that he was found guilty in the criminal court is dispositive for there he must be found guilty beyond a reasonable doubt or else not at all.

On the other hand, there are no aggravating circumstances, in fact, his general good reputation is attested by the Mayor and two Commissioners of Passaic, who believe that the punishment already inflicted has taught him the needed lesson.

The policy, however, of this Department, as set forth in re Morris, Bulletin 98, item 10, is that a minimum of thirty days suspension will be inflicted upon all licensees found guilty of dealing in bootleg liquor, because such action undermines the basis principle of Repeal which permits the sale of legitimate alcoholic beverages and, as a necessary consequence, outlaws all bootleg liquor. Persons licensed to sell legitimate beverages must conduct themselves so that the public is assured that they are worthy of confidence.

Hence for the reasons set forth in re Morris, the petition to lift the statutory automatic suspension is denied at the present time, but will be granted effective February 27, 1936.

Until then the license stands suspended. An order will be entered accordingly.

Dated February 10, 1936.

D. FREDERICK BURNETT
Commissioner

7. CONSUMPTION LICENSES - "MULLIGAN" - WHAT IT IS AND QUESTIONS AS TO ITS EFFECT.

February 10, 1936.

Thomas MacNamara, Secretary,
N. J. Brewers Association.

Dear Mr. MacNamara:

I have request for ruling whether "mulligan" is permissible. On inquiry as to just what "mulligan" is, I am informed: "Mulligan is made out of any one of the following substances: Whiskey, Gin, Beer or Ale, with red peppers. The dry red peppers are put in a bottle the size of a catsup bottle, and about six or eight ounces of the above named liquids are poured into the bottle to saturate

the peppers. A few drops of this solution is put into a glass of beer to give a heating effect when the same is drunk."

While the idea is not particularly intriguing, I do not think offhand of any objection if someone wants his beer a la Tabasco.

However, I am not at all sure of the results of this "heating effect". Who administers the dose--the bar keeper or the customer? Would the customer recognize it if put in without his knowledge? If injected into the customer's glass, would it create a demand for a different brand? What are its effects other than heating? What are its legitimate uses? And its abuses? Is it conducive to temperance and control? Does it stimulate or satisfy thirst? Is its use approved by the brewers? Do they use it themselves? What has been their experience with it? What is the considered recommendation of your Assocation?

Decision reserved.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

8. REVOCATION PROCEEDINGS - APPEALS - PROCEDURE INDICATED.

February 11, 1936

Rose Marie Miceli,
Union City, New Jersey.

Dear Madam:

In your letter your state that you are the innocent victim of circumstantial evidence. You refer to the fact that your retail consumption license was revoked by the Board of Commissioners of Union City. You say the facts are that two of the Investigators from this Department found four bottles of inferior liquor which was due to the carelessness of a bartender; that after your license was revoked this bartender telephoned you and said he had tampered with the bottles.

The reports in the file in this case indicate that your husband Philip Yandolino, who was acting as bartender when the Investigators visited the licensed premises on October 29, 1935, admitted that he was the one who had added water to the liquor; that he also took the stand at the revocation hearing before the Board of Commissioners of Union City and admitted his guilt.

You further state that you consider the revocation unjust; that you have read in the local papers where more serious cases than yours have resulted in only a short suspension. The extent and severity of sentence in your case--as in all revocation proceedings handled by municipalities--rests entirely in the hands of Board before whom you were summoned. Any petition by

you directed solely to the question of punishment should be made to the Board of Commissioners of Union City.

If you feel you were improperly adjudicated guilty on the facts, you have the right, conferred by Section 28 of the Control Act of this State, to file a formal appeal with the State Commissioner within thirty (30) days after you have been served with notice of your sentence. The pertinent part of said section follows:

> "In the event of any suspension or revocation of any license by the other issuing authority, the licensee may, within thirty (30) days after the date of service or of mailing of said notice of suspension or of revocation, appeal to the commissioner from the action of the other issuing authority in suspending or revoking such license which appeal shall act as a stay of such suspension or revocation pending the determination thereof unless the commissioner shall otherwise order."

The file in your case further indicates that you were served with the Order of Revocation on January 15, 1936. The thirty (30) day period within which you may file an appeal would therefore expire on February 14th, next. If it is your purpose to appeal you must proceed with the utmost speed. A copy of the Rules Governing Appeals together with forms of Petition of Appeal are enclosed herewith.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Jerome B. McKenna,
Attorney

9. RULES GOVERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - RULE 2 - ELECTION DAY CLOSING - RULE DOES NOT APPLY TO SCHOOL ELECTIONS.

February 14, 1936.

See Bulletin 230, item 7, Re Oakford vs. Cobb, extending the rule to recall elections despite the fact that such elections are not provided for by the General Election Law.

Emile E. Bugnon, Chief of Police,
Wood-Ridge, N. J.

My dear Chief Bugnon:

I have yours of the 13th re school election in your Borough on February 11th.

You were entirely correct in your impression that Rule 2 governing the conduct of licensees, which provides that "No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is held, while the polls are open for voting at such election" does not apply to school elections.

The four classes of elections set forth in the rule

are those specifically set forth in the Election Law. Since the school election is not a special election within the purview of the Election Law, the rule has no application to school elections.

Cordially yours

Commissioner