

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

BULLETIN 260.

JULY 15, 1938.

1. DISCIPLINARY PROCEEDINGS - ANOTHER LEWD SHOW - INADEQUATE PENALTY  
ADMINISTERED BY BOROUGH COUNCIL OF BERLIN.

July 11, 1938

William J. Willis  
Borough Clerk  
Berlin, New Jersey

My dear Mr. Willis:

I have staff report of disciplinary proceedings conducted by the Borough Council against licensee Nicholas G. Polen, Jr., t/a Three Pines Inn, on June 20, 1938, and your letter advising that the Borough Council suspended the license for ten days, from June 20 to midnight June 30, 1938.

I note that Polen was charged with permitting a lewd performance on his licensed premises. Normally, I would shrink from committing to print the details of the performance except for the fact that I believe that squeamish prudery serves no purpose except to whitewash the offending licensee. On the other hand, the full light of day cast upon these girl-degradation shows may have a cleansing effect that the woefully inadequate penalty that your Council has imposed does not have.

The staff report discloses:

"Observing from the doorway, between the barroom and the dining room, these investigators saw first a girl (Peggy Knowle), fully clad, playing an accordion and singing and dancing. They next saw a second girl (Helena Martinez), singing and dancing the "Can-Can" wearing a costume consisting of a red dress slashed to the hips. As the dance progressed, she stripped to the waist, exposing her breasts.

"The third girl (Florence Miller) entered the room fully clothed and as she sang and danced, proceeded to strip, eventually removing all of her clothing except a "G" String. Her dance was similar to that of the previous entertainer but she embroidered upon it by sitting on the laps of various spectators, suggestively swaying and wiggling and permitting the men to paw and manhandle her.

"An intermission was announced and at this point, Investigators Howe and Myers left the premises and Investigators Brooks and Sullivan entered. When the show resumed after the intermission, a woman (Helena Martinez) appeared dressed in a thin red pleated gown which she shortly removed and danced absolutely in the nude, carrying her gown in one hand with arms outstretched. As an encore, she entered and made her exit entirely in the nude. On this occasion, she did not dance but just posed and circled around before the patrons, not swaying or moving her body in suggestive movements.

"Florence Miller reappeared in a large number of vari-colored veils suspended from her neck and waist. As the dance progressed, she removed the veils one by one, finally holding them in one hand with both arms outstretched, meanwhile continuing to perform in the nude. As she had done before, she again sat in the laps of various spectators permitting them freely to manhandle her, again swaying and moving her body suggestively.

"Her performance culminated in her lying supine on the floor, giving an imitation of sexual intercourse with an imaginary partner."

Of course, the licensee claimed that he wasn't on the premises and his father claimed that he didn't have the faintest idea of what was going on. I am constantly amazed at the convenient absence of licensees when lewd shows are taking place and the astounding lack of curiosity displayed by the person left in charge.

Licensees all over the State should know by now that they, and they alone, are responsible for what goes on on their licensed premises. If they choose to permit other persons to place them in jeopardy by their neglect or incompetence, they must be held to have assumed the risk of the consequences.

The report states that the licensee was told that he must keep his entire premises, including the dining room, closed during the term of the suspension, and that the ten days' suspension was imposed because of the licensee's previous good reputation in the community and the fact that this was his first offense.

In dirty cases, like this, I am not at all impressed with the plea that this is the first time it happened. Those who are worthy of licenses should know, without being told, that it ought never to happen at all. It will continue to happen, over and over again, if the governing bodies of our municipalities fail to rise to the full measure of their duty. On the other hand, if they wish to stop making New Jersey the dumping ground for these vile shows, a few outright revocations with no excuses accepted will cleanse the situation quickly.

In its editorial of June 25th, the Perth Amboy Evening News, speaking of these indecent stag affairs, said:

"The keeper of an inn or tavern is today engaged in a legitimate business and he should conduct it along lines in keeping with other legitimate undertakings. By permitting those things which are violations of the state liquor law he is hurting his business.

"Likewise, officials who condone liquor violations and wait for the state inspectors to find violations, are inviting trouble and not looking out for the best interests of those who are carrying on a legitimate liquor business. Officials owe it to the honest dealers in alcoholic beverages to see that dishonest ones are checked in their practices."

I am not saying that the Council acted in bad faith, or that it condoned the affair. Probably it was no more than a serious, although honest, error of judgment for I note that they closed down the restaurant as well as the liquor business for ten days. What I say is that nothing less than heavy-fisted revocation of the license was indicated in this case.

May I have their assurance that future cases of this kind will be visited with commensurate penalties?

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

2. SOLICITORS' PERMITS and ELIGIBILITY FOR EMPLOYMENT - REPORT ON HEARINGS HELD FOR THE FISCAL YEAR ENDING JUNE 30th, 1938.

July 6th, 1938.

MEMORANDUM TO: D. Frederick Burnett, Commissioner

From: Edward J. Dorton, Attorney-in-Chief.

IN RE: Hearings on Solicitors' Permits and Eligibility for Employment.

The following hearings with reference to the above matters were held between July 1st, 1937 and June 30th, 1938:

Hearings held on Applications for Solicitors' Permits where conviction of crime was disclosed in Questionnaire: 16

Disposition:	
Applications granted. . . . .	.9
Applications denied . . . . .	.5
Pending. . . . .	.2
	Total 16

Hearings held after issuance of Solicitor's Permit, where fingerprint record subsequently disclosed conviction of crime: 18

Disposition:	
Cancellation of permit recommended..	3
Suspension of permit for balance of term. . . . .	1
Permit surrendered. . . . .	1
Disabilities removed by Court, and recommendation made that no further action be taken. . . . .	1
Suspension of permit because of false affidavit	6
Recommendation made that no further action be taken. . . . .	6
	Total 18

Hearings held on Eligibility for Employment: 20

Disposition:	
Applicant advised that he is eligible for employment. . . . .	7
Applicant advised that he is not eligible for employment. . . . .	12
Pending. . . . .	1
	Total 20

Hearings held on application for A.R.C. Permit: 1

Disposition:	
Recommended that permit be denied..	1

Grand Total. . . . . 55

Respectfully submitted

EDWARD J. DORTON, Attorney-in-Chief

3. CLUB LICENSES - CHANGE OF NAME OF INCORPORATED CLUB - MERE CHANGE OF NAME IS WITHOUT PREJUDICE TO THE FACT OF CORPORATE EXISTENCE OVER REQUISITE PERIOD.

Dear Sir:

The Italian American Democratic Club, of the Borough of East Rutherford, a corporation of the State of New Jersey, incorporated on July 7, 1934, is about to change its corporate name to the "James M. Pecorino Association."

It desires to make application to the Borough of East Rutherford for a club liquor license.

Will you kindly advise me as to whether or not the said corporation would be considered as being incorporated from the original date, that is July 7, 1934, or from the date of change of name?

It is my understanding that before a club license may be obtained it is necessary to indicate that the organization has been in existence a certain number of years. Therefore, if the name of this association should be changed to "James M. Pecorino Association", it would be very important to know whether or not the original date of incorporation could be used by the organization under its new name.

Very truly yours,

ALBERT V. D'AMATO

July 6th, 1938.

Albert V. D'Amato, Esq.,  
East Rutherford, N. J.

Dear Mr. D'Amato:

Since the Italian American Democratic Club was actually incorporated on July 7th, 1934, its purposed change of name to "James M. Pecorino Association" will in nowise prejudice its application for club license. It is like a woman getting married and adopting her husband's name. The woman is the same -- the only change is one of mere name.

So, if your Club, pursuant to the statutes in such case made and provided, merely changes its name, such fact has no bearing at all on the question of corporate existence of the Club since 1934.

Cordially yours,

D. FREDERICK BURNETT  
Commissioner

4. SPECIAL PERMITS - NATIONAL CONVENTION OF ELKS AT ATLANTIC CITY - APPLICATION DENIED ON THE FACTS PRESENTED.

July 8th, 1938.

Atlantic City Elks Reunion Association,  
Atlantic City, N. J.

Gentlemen:

I have before me your application for a special permit for July 11th, 12th, 13th and 14th, in the Municipal Auditorium to

entertain the National Convention of the Benevolent and Protective Order of Elks.

The issuance of this permit was protested by the Atlantic City Licensed Beverage Association as unfair to licensees. The protest stated:

"Atlantic City has only one industry the entertainment of visitors. The granting of such a permit will deprive the legitimate licensees of their rightful share of this business. It will also start a precedent which will be far reaching in effect. There are already sufficient licensees to care for the demand of the convention in close proximity to the Convention Hall as well as in the City as a whole."

I find that the protest is well-founded. Licensees in your city pay large fees and depend mostly on Conventions and transients for the bulk of their trade. There is a copious supply of places already licensed in Atlantic City. The Elks need have no fear of going athirst. The regular licensees can be relied upon to give exemplary service to these visitors so welcome to the playground of the nation.

The application for Special Permit is, therefore, denied.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

5. ICE CREAM - WITH INFUSED LIQUORS - FORBIDDEN.

Dear Sir:

We have now pending at the United States Patent Office at Washington, D. C. an application for a patent covering the manufacture of a "Liquorized Ice-Cream."

The patent application embraces ice-cream and ice-cream specialties into which are infused liquors of any of the known type designations, as: Sloe Gin, Rum, Cognac, Whiskey, Scotch, etc. The desired liquor, or liquors, are infused into the body of the ice-cream during its regular course of manufacture as one of its regular ingredients. It should be especially noted that the ice-cream is not covered on its surface with the liquor after the cream has been made, as a syrup or flavoring poured over a plate of ice-cream at an ice-cream parlor. The liquor is put into the ice-cream in such a way as to become an inherent part of the product. The proportion of liquor in the ice-cream may be anywhere from 5% to 25%.

What we desire to know is whether a product, such as described above, would come under the jurisdiction of the Department of Alcoholic Beverage Control, and if so, what regulations are we to observe in its manufacture, sale and distribution in so far as your Department is concerned; and if not, we should appreciate it very much if you will direct us to that State of New Jersey Governmental body under whose jurisdiction and supervision this product would come.

We shall be thankful to you very much for any assistance you might give us in this matter.

Very truly yours,

LONDON & COMPANY, INC.

BY:

S. W. PITCHENIK

July 9th, 1938.

London & Company, Inc.  
Elizabeth, N. J.

Gentlemen:

I have before me your letter of June 28th re "Liquorized Ice-Cream."

The fact that liquor is to be an integral part of the infused delicacy to the extent of five to twenty-five per cent., coupled with the well known melting propensities of ice cream, brings the purposed product within the jurisdiction of this Department. R. S. 33:1-1 (Control Act, Sec. 1-a).

The manufacture, sale and possession of liquored candy has heretofore been forbidden in New Jersey. Re Lily Candy Co., Bulletin 51, Item 8. Liquorized ice cream is equally attractive to children and likely to reach them despite attempted safeguards. It will therefore likewise be forbidden.

The manufacture of such ice cream by non-licensees is in violation of the Control Act and will be diligently prosecuted. The manufacture, sale or possession of such ice cream by licensees will result not only in prosecution but also in revocation of the license.

This ruling is effective immediately.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

#### 6. LABELING REGULATIONS - MALT BEVERAGES - AMENDMENT.

On December 17, 1936, the Federal regulations governing labeling of malt beverages previously adopted in New Jersey for the sake of uniformity, were, so far as the labeling of ale, porter and stout were concerned, virtually abrogated because it appeared that ale may be and was being made with a less alcoholic content than the 5% minimum required by the Federal rule. Re New Jersey Brewers' Association, Bulletin 154, Item 5. I saw no reason why the alcoholic content of ale should be stepped up for the mere sake of distinguishing it from beer, believing that the better public policy favored less rather than more alcohol by volume.

The Federal labeling regulations were not formally suspended but announcement was made that "no one will be prosecuted or prejudiced in New Jersey for making or selling ale, porter, or stout and labeled or advertised as such even though it does

"contain less alcohol than 5% by volume."

The Federal regulations concerning malt beverages have since been amended and the former requirement that only such products as contain 5% or more of alcohol by volume could be designated as "ale", "porter", or "stout", has been eliminated. In its place has been substituted the requirement that no product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to "ale", "porter", or "stout" and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices), shall bear any of these class designations.

Herewith follows the text of the Federal amendment:

"REGULATIONS NO. 7

AMENDMENT NO. 1.

"Amending Certain Provisions of the Malt Beverages Labeling and Advertising Regulations with Reference to Designating Products as 'Ale', 'Porter', or 'Stout', or by Distinctive or Fanciful Names, and to other matters.

"Pursuant to the provisions of Sections 5 (e) and (f) of the Federal Alcohol Administration Act, as amended, Regulations No. 7, Relating to Labeling and Advertising of Malt Beverages, are amended as follows:

"1. Article II, Section 24 (a), of said regulations is amended to read:

"(a) The class of the malt beverage shall be stated and, if desired, the type thereof may be stated. Statements of class and type shall conform to the designation of the product as known to the trade. If the product is not known to the trade under a particular designation, a distinctive or fanciful name, together with an adequate and truthful statement of the composition of the product, shall be stated, and such statement shall be deemed to be a statement of class and type for the purposes of these regulations.

"2. Article II, Section 24 (d), of said regulations is amended to read:

"(d) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to 'ale', 'porter', or 'stout' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices), shall bear any of these class designations.

"3. Article II, Section 24 (e), of said regulations is amended to read:

"(e) Geographical names for distinctive types of malt beverages (other than names found by the

Administrator under subsection (f) to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless (1) in direct conjunction with the name there appears the word 'type' or the word 'American', or some other statement indicating the true place of production in lettering substantially as conspicuous as such name, and (2) the malt beverages to which the name is applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wurzbürger, Pilsen (Pilsener and Pilsner): Provided, That notwithstanding the foregoing provisions of this section, beer which is produced in the United States may be designated as 'Pilsen', 'Pilsener', or 'Pilsner' without further modification, if it conforms to such type.

"4. Article II, Section 24 (f), of said regulations is amended to read:

"(f) Only such geographical names for distinctive types of malt beverages as the Administrator finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic, e.g., India Pale Ale.

"5. Article V, Section 54 (d) (2), of said regulations is amended to read:

"(2) No product other than a malt beverage fermented at comparatively high temperature, possessing the characteristics generally attributed to 'ale', 'porter', or 'stout' and produced without the use of coloring or flavoring materials (other than those recognized in standard brewing practices), shall be designated in any advertisement by any of these class designations.

"These amendments shall become effective fourteen days after the date of filing with the Division of the Federal Register.

W. S. Alexander  
Administrator  
Federal Alcohol Administration

"Approved, this 21st day of June, 1938

Stephen B. Gibbons  
Acting Secretary of the Treasury

(Filed with the Division of the Federal Register, June 23, 1938, at 4:16 P.M.)"

The foregoing amendment is hereby approved.

Accordingly, State Regulations No. 24, being the rules governing the labeling of alcoholic beverages packaged or sold

within New Jersey, are hereby repromulgated, effective August 1, 1938, viz.:

"Regulations heretofore announced by the Federal Alcohol Administration relating to labeling of distilled spirits, wine and malt beverages packaged for shipment in interstate or foreign commerce are made a part hereof as though fully set forth and are hereby promulgated with respect to the State of New Jersey; the aforesaid regulations shall apply to distilled spirits, wine and malt beverages packaged purely for intrastate shipment within New Jersey to the same extent as though intended for interstate or foreign shipment."

D. FREDERICK BURNETT  
Commissioner

7. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of An Application )	
to Remove Disqualification because )	
of a Conviction, Pursuant to the )	CONCLUSIONS
Provisions of R.S. 33:1-31.2 (as )	AND
amended by Chapter 350, P.L. 1938). )	ORDER
Case No. 28. )	

.....  
Daniel DeBrier, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

This application is filed pursuant to the amendment above mentioned, which became effective June 14, 1938 and which reduced the period of time which must elapse after conviction from ten years to five years.

The facts concerning the crime of which petitioner was convicted are set forth in Re Case No. 61, Bulletin 193, Item 2. Inasmuch as that conviction occurred in 1932 and the petitioner served no time in any penal institution as a result of said conviction, he is now eligible to file the petition herein considered.

At a hearing duly held, petitioner testified that he has lived in the community where he now resides for the past twenty-five years. After his conviction, which occurred in Florida during a visit to that State, he returned to his home in New Jersey and has continued to reside in the same municipality since that time. Since 1932 he has been steadily employed. He is unmarried and resides with his parents.

Testimony as to petitioner's good character was given by the pastor of his church, who has known him for six years; by the editor of a newspaper, who has known him for eighteen years; by a bank employee, who has known him for twenty-four years, and by two business men, who have known him respectively for fifteen and five years. All of these witnesses testified that petitioner has conducted himself in a law abiding manner during the time that they have known him, and that his reputation is good.

From the evidence, I am satisfied that petitioner has conducted himself in a law abiding manner for more than five years last past; that he is not a person of the criminal type but, rather, a young man of good general character who made a single

mistake for which he has paid the penalty; and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 11th day of July, 1938 ORDERED that petitioner's disqualification from holding a license or being employed by a licensee, because of the conviction of the crime set forth above, be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

D. FREDERICK BURNETT  
Commissioner

8. PERMITS TO MANUFACTURE ALCOHOLIC BEVERAGES FOR PERSONAL CONSUMPTION - NO AUTHORITY IN MUNICIPALITIES TO ISSUE PERMITS TO MAKE BEER.

July 1, 1938.

Harvey Bartow,  
Clerk of Independence Township,  
R.D. 1, Hackettstown, N. J.

My dear Mr. Bartow:

Your understanding of the law is correct. There is nothing in the statute which gives either the municipal clerk or the municipal governing body the authority to grant anyone the privilege of making beer or any other alcoholic beverage.

Your inquirer can obtain a permit to make wine for his own use by applying to me for a special wine permit pursuant to R.S. 33:1-75 (Control Act Reprint, Sec. \*75A), and the rules governing wine permits, regulations No. 13 (Pamphlet Rules, page 54). That is the only exception to manufacturing that the law allows. But he cannot get a permit to make beer, because there is no such thing. Beer can be manufactured only pursuant to a brewery license (Control Act, Sec. 11(1) a and b). The fees are relatively high, and, I take it, he would not be interested.

Under the present alcoholic beverage law, no alcoholic beverages may be manufactured except pursuant to license or permit. To do so without proper license or permit is a misdemeanor, subjecting the offender to arrest and fine of \$1,000.00 or imprisonment for not more than three years or both. Please tell him, therefore, that he must not make the wine until the wine permit is issued to him, and that under no circumstances may he make the beer, because to do so would be contrary to the law, for which he could incur the punishments set forth above.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

9. RETAIL LICENSEES - MEASUREMENT OF CONTENTS OF OPEN CONTAINERS - TEMPORARY REMOVAL OF CONTENTS FOR MEASUREMENT NOT PROHIBITED - THE RESPONSIBILITY OF THE LICENSEE TO SEE THAT THE CONTENTS IS RETURNED TO ITS PROPER CONTAINER WITHOUT ADULTERATION IS ABSOLUTE.

Dear Sir:

I represent Mr. Charles Serventi of 38 Newark Street, Hoboken, N. J., who is the holder of a plenary retail consumption

license and conducts a tavern on said premises. He desires to install a checkup system on his employees and wishes your advice in the matter as to whether same is permissible under the act.

Each and every bartender is given certain bottles of liquor at the commencement of his day's work. At the termination of his day's work, my client desires to check up on each and every bartender by measuring the contents of each and every bartender's bottles with a liquid measure, and in this way my client can tell whether he has received the proper amount of money from the bartenders. To accomplish this purpose, it will be necessary for my client to empty the bottles of each bartender into said measure and return the contents as soon as he has completed the checkup.

He finds that in the last six months he has been unable to check up as to whether or not his bartenders are working on the level with him and he must find some means of checking up on them, and it is absolutely necessary for him to install the aforementioned method.

My question to you is whether he can follow this method under the statutes.

Very truly yours,

NATHAN ZEICHNER

July 1, 1938

Nathan Zeichner, Esq.,  
Hoboken, N. J.

My dear Mr. Zeichner:

There will be no objection, so far as this Department is concerned, to Mr. Serventi's measuring the contents in his open bottles at the end of the day, even though the contents must be removed from the bottle to do so.

But caution Mr. Serventi that it is his absolute responsibility to see to it that the liquor gets back into the same bottle from which it was taken, without any adulteration of any kind. Should an inspection reveal that he has in his bottles contents otherwise than as represented by the label, he will be charged with possession of illicit alcoholic beverages, and no such excuse as "the liquor had been removed solely for the purpose of measuring", will be accepted.

I suggest that before you proceed with your plan, you obtain ruling from the Federal authorities. So far as the State law is concerned, I shall rule that the removal of the contents solely for the purpose of measuring same is not rebottling.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 10. SIGNS - THE USE OF UNSIGHTLY SIGNS IN WINDOWS OF RETAIL PREMISES DEPRECATED.

July 6, 1938.

Mr. Robert Ellis,  
Bogota, New Jersey.

My dear Mr. Ellis:

There is nothing in the State law or regulations which would prevent you from putting signs in your windows reading:

"Look for our adv. in Friday's Bergen Evening Record."

"1500 cans and bottles of beer and soda on ice at all times."

I don't think, however, that it's such a good thing for you to do. People get a very bad reaction from signs advertising alcoholic beverages plastered all over tavern windows. It makes an extremely unsightly appearance at best. It is just the sort of thing that builds up an adverse public reaction to the liquor industry as a whole.

I think it would be much better if you would keep whatever signs you put in your windows small and quiet and very dignified.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 11. RETAIL LICENSEES - REBATES - REIMBURSEMENT TO PATRONS FOR COST OF TELEPHONE ORDERS IS A REBATE AND, THEREFORE, PROHIBITED.

Honorable Sir:

We are contemplating a refund system to those who phone in their orders for our wares.

However, before doing so we are herewith enclosing a card with the nickel inserted for your approval.

Kindly inform us whether by doing so we would not be violating any rules laid down by Your Honor.

Respectfully yours,

INTERNATIONAL LIQUOR CO.

July 6, 1938.

International Liquor Co.  
Newark, N. J.

Gentlemen:

I have yours enclosing card holding a 5¢ coin, which is purposed to be sent to patrons who telephone their orders,

reimbursing them for the call. It reads:

"You were nice enough to call us ....  
 ....We want to pay for your call

Thank you."

State Regulations No. 20, Rule 20, provides:

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

The nickel payment is a rebate and, therefore, prohibited.

You may have your nickel back if you will call for it.

Very truly yours,

D. FREDERICK BURNETT  
 Commissioner.

12. ADVERTISING - PERMISSIBLE FOR BREWERY TO DISTRIBUTE METAL POCKET PIECE OR RABBIT'S FOOT DIRECTLY TO CONSUMERS WHO BELIEVE IN SIGNS.

Dear Mr. Burnett:

Will you please give us the following information with regard to advertising Beer in newspapers published in your State.

In one small portion of an advertisement for a certain brand of beer, it is proposed to offer to send to any reader, without cost or obligation of any kind, a little advertising novelty such as a metal pocket piece, or a rabbit's foot.

These items have practically no intrinsic value, since the metal pocket piece can be purchased by the advertiser at about  $1\frac{1}{2}\text{¢}$  each, and the rabbit's foot can be purchased at about  $2\text{¢}$  or  $2\frac{1}{2}\text{¢}$  each.

The offer would not require the person who sends for the little souvenir to purchase anything at all, or to perform any service in return for getting the souvenir. He would simply write to the brewery for it, and the souvenir would be mailed direct to his address.

In our opinion this is a legitimate means of distributing advertising novelties, and we would like to receive your assurance that it does not conflict with any restrictions on advertising which have been established in your State.

Very truly yours,

MONROE F. DREHER, INC.

July 11, 1938.

Monroe F. Dreher, Inc.,  
New York City.

Gentlemen:

There is nothing in the New Jersey Alcoholic Beverage Law or regulations at the present time which, if you think the public believes in signs, would prevent a brewery from distributing a pocket piece or a rabbit's foot directly to consumers. Nor is there anything which would bar the brewery from offering either hunch or hutch in newspaper advertisements.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner.

13. PRICE FIXING - NO POWER IN MUNICIPALITIES TO ADOPT REGULATIONS FIXING PRICES.

LICENSES - PLEDGE - AGREEMENT TO PLEDGE LICENSE, TO BE FORFEITED OR SURRENDERED IF CONTRACT IS BROKEN, IS VOID.

Dear Sir:

Would you kindly answer the following questions for the Phillipsburg Retail Liquor Dealers' Association?

1. Under the A. B. C. Act, is it legal for a municipal issuing authority to enact an ordinance, providing that a majority of the licensees concur, regulating the size and price of containers for dispensing alcoholic beverages by the drink?

2. Can a licensee post his license, in lieu of a cash bond, to be forfeited or surrendered by him, in the event he breaks the provisions of a contract signed by him without duress?

Very truly yours,

E. J. McCann, Secretary.

July 11, 1938.

Edward J. McCann, Secretary,  
Phillipsburg Retail Liquor Dealers' Association,  
Phillipsburg, N. J.

My dear Mr. McCann:

I have your letter and will give you the answers to your questions in the order that you ask them.

1. There is nothing in the Alcoholic Beverage Law which would give municipalities the authority to regulate the size and price of containers for dispensing alcoholic beverages by the drink. It is therefore beyond their powers. Price fixing is an exceedingly delicate and difficult thing and may not be

undertaken without express statutory authority. It makes no difference that a majority of the licensees affected would concur. Even if they all agreed, any such ordinance would be inept and inert, for, as I pointed out in Bulletin 138, Item 8:

"Such jurisdiction cannot be attained by agreement for even though all to be affected consent, such consent is only good till cancelled. If someone violates the pact - runs out on the others - then what? Control begins where power to enforce exists irrespective of consent and independent of dissent."

2. It would be wholly improper for a licensee to post his license, in lieu of cash bond, the license to be forfeited or surrendered in the event that the licensee breaks the provisions of a contract. Licensees cannot dispose of their licenses except as provided by law. Licenses can be used only by the persons to whom they have been duly issued or transferred. Any agreement between a licensee and someone else seeking to give the other person any control over the use or disposition of the license is contrary to public policy, and, therefore void. See Walsh v. Bradley (N. J. Chancery), Bulletin 166, Item 4.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

14. ADVERTISING - DIGNIFIED APPEAL SINCERELY COUNSELING MODERATION IS IN ORDER.

ADVERTISEMENT "YOU'RE A HERO TO YOUR SON" APPROVED.

July 11, 1938.

Seagram-Distillers Corporation,  
New York City.

Att: Walter M. Swertfager  
Director of Public Relations

Gentlemen:

I have before me your letter of June 25th.

Your advertisement: "You're a hero to your son", which I note appeared coincidentally with Father's Day, impressed me very favorably - particularly where you said:

"Nothing is quite so disillusioning to the clear eyes of a youngster as the sight of a man - his own father - who has used liquor unwisely and immoderately.

"The damage goes far deeper than a momentary shame.

"Any man who cannot drink wisely and moderately, owes it to his son....his family, not to drink at all."

Dignified and restrained appeal, sincerely counseling moderation, is quite in order.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 15. STATE BEVERAGE DISTRIBUTORS - SALES AND DELIVERIES IN "DRY" MUNICIPALITIES.

July 12, 1938.

Kotok Beverage, Inc.,  
Millville, New Jersey.

Gentlemen:

I have your letter of June 25th inquiring if it is permissible for a state beverage distributor to make deliveries in a "dry" municipality if the governing body has no objections.

Merely to say that the municipality is dry does not give me sufficient information to answer your question. There are a number of ways in which a municipality could be dry and each might have different legal consequences.

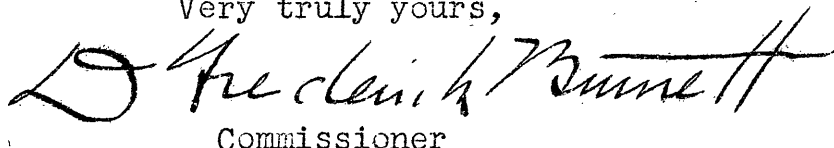
If it is "dry" because of referendum, then it would be unlawful for state beverage distributors to make deliveries in the municipality of any kind - to retailers because there would be no retailers, and to consumers because the delivery would constitute a sale which would be prohibited by the referendum. See Re Lewis, Bulletin 235, Item 17. Cf. Re K & O Liquor Store, Bulletin 201, Item 7; Re Weston, Bulletin 171, Item 1.

If it is "dry" because the municipality has prohibited by ordinance the issuance of all retail licenses, then it would be unlawful for state beverage distributors to make deliveries to any retailers because there would be none, but it would not be unlawful for them to make deliveries to consumers because such deliveries would not be barred by the ordinance.

If the municipality is "dry" because it has failed to fix retail license fees and issue licenses, or if the fees are fixed but no licenses are outstanding, the same result as in the preceding paragraph follows.

State beverage distributors may not make deliveries to consumers in any municipality during the hours retail sales are prohibited in that municipality by resolution, ordinance or referendum. See Re Lewis, supra; Re K & O, supra; Re Quality Liquor Co., Bulletin 189, Item 12; Re Weston, supra; Re Hickey, Bulletin 124, Item 8; Re Woodruff, Bulletin 82, Item 15; Re Spencer, Bulletin 82, Item 12.

Very truly yours,



Commissioner

New Jersey State Library

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