Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 114 April 15, 1936.

1. PENDING LEGISLATION - PROPOSED AMENDMENT OF SECTION 2 - ELIMINATION OF PRIVILEGE OF IMPORTING ALCOHOLIC BEVERAGES INTO NEW JERSEY FOR PERSONAL CONSUMPTION EXCEPT UNDER SPECIAL PERMIT.

April 8, 1936

Dear Sir:

Clients have requested our opinion on Senate 269 introduced March 30, 1936 by Senator Powell and referred to Committee on Judiciary. It purports to amend Section 2 of the Control Act by eliminating the privilege of importing into the State from other states or countries alcoholic beverages for personal consumption, except under special permit.

We shall appreciate an expression of your official attitude towards said bill.

Very truly yours,

PITNEY, HARDIN & SKINNER.

April 8, 1936.

Pitney, Hardin & Skinner, Esqs.,
744 Broad Street,
Newark, New Jersey.

Gentlemen:

I have yours of the 8th.

My reaction is best expressed, perhaps, by my letter of March 27th to New Jersey Licensed Beverage Association, reading:

"Pursuant to your request, my Legal Division has drafted in proper form, ready for immediate enactment, the enclosed amendment to Sec. 2 of the Control Act which, if enacted, will eliminate entirely the privilege of importing into this State any alcoholic beverages for personal consumption from any other state or country, except under special permit of $5.00.

"The present Section 2 affords the privilege to carry into this state for personal consumption a quarter barrel of beer and one gallon of wine and two quarts of any other alcoholic beverage, within any consecutive period of twenty-four hours. It is limited to the quantities specified. The purposed amendment will do away with the privilege entirely.

"I understand that the object of your amendment is to prevent people living along the Delaware River

side of the State from buying liquor at Pennsylvania stores in quantitites of two quarts at a time and toting it back into this State, thereby diminishing the sales which otherwise might reasonably be expected to be made by New Jersey licensees. By the same token, of course, people on this side of the Hudson River will be guilty of a misdemeanor if they bring with them a bottle of any liquor from New York or elsewhere into New Jersey.

"In considering the advisability of enacting your purposed amendment into law, bear in mind the substantial resentment which ensued upon the recent attempt by Westchester County (New York) liquor dealers to exclude minor importations for personal consumption from Connecticut. The public is sensitive to any attempt to cause the respective states to isolate themselves economically or to create tariff barriers in favor of local liquor dealers. Arthur Krock, Esq., writing in the New York Times of December 27, 1935 (Bulletin 102, item 7) said:

> "'To a lay mind the upshot of sustaining the Westchester County and New Jersey tariff barriers would be the erection of forty-eight separate interstate commerce sovereignties in the nation, with barbed-wire boundaries and octrois at their borders.'

"The reply of Nathan L. Jacobs, my Counsel (same Bulletin item) dispelled, I believe, any doubts as to the constitutionality of such legislation. It follows that if New Jersey can limit importation to two quarts of hard liquor, it can, so far as constitutional power is concerned, eliminate it entirely, or, as your proposed amendment provides, make it subject to special $5.00 permit in each case.

"The power, therefore exists. The serious question to which I invite your most careful consideration is the policy of its exercise."

Mr. William H. Raney, of Trenton, an officer of the Association, has since informed me that he believes that the measure will bring in $100,000.00 of revenue to the State. Assuming this estimate to be reasonable, consideration must also be given to the cost of enforcement and the irritability and antagonism that would be engendered among our citizens if every automobile entering the State is to be searched and every package carried by hand or on the person examined.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. APPELLATE DECISIONS - YOUNG vs. PENNSAUKEN.

REBA YOUNG,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PENNSAUKEN,) CONCLUSIONS
Respondent.)

Harry M. Mendell, Esq., Attorney for Appellant.

BY THE COMMISSIONER:

Appellant appeals from the denial of her application for a plenary retail consumption license at 4508-4510 Roosevelt Avenue, Township of Pennsauken.

Respondent contends that the application was properly denied because there is no need for an additional licensed premises in that neighborhood.

The premises in question are located on Roosevelt Avenue about one hundred (100) feet south of Maple Avenue. While there is a large amount of traffic on Maple Avenue, Roosevelt Avenue is narrow and, for the greater part, residential. There are three places already licensed for consumption in the vicinity. One is but two hundred fifty (250) feet, the second is six hundred fifty (650) feet and the third is eight hundred seventy-five (875) feet away from the premises for which the license is sought. A distribution license has been issued for a store only seventy-five (75) feet from appellant's premises. All five members of the Township Committee voted to deny the license. Four of them testified at the hearing that there was no need for an additional place for the sale of alcoholic beverages in that neighborhood.

The right of respondent to deny an application where the granting thereof would result in the existence of too many licensed places in any particular vicinity, is well settled. Lockett v. Way Bulletin #88, item 2, and cases therein cited.

The appellant contends, however, that the respondent municipality, having adopted a resolution limiting the number of consumption licenses to 50 and having issued only 39 such licenses, 11 vacancies now exist and, since no question is raised as to appellant's personal worthiness or the suitability of her premises (except as to some minor changes upon which the license could readily be conditioned), that the appellant is entitled as of right to a license, or, more accurately, that a denial of her application for one of the existing vacancies under such circumstances would be arbitrary and unreasonably discriminatory. Appellant relies on Eisen vs. Plainfield, Bulletin #68, item 12, and Sosnow Drug Co. vs. Freehold, Bulletin #68, item 13.

In the Eisen case, I ruled that under an ordinance fixing the maximum number of distribution licenses, an applicant who was personally fit and whose premises were suitable and properly located, should receive a license so long as the maximum number fixed by the ordinance had not been issued; that to deny such an application without cause against person or place would be arbitrary and unreasonable; that to deny it because of the present opinion of the issuing authority that a sufficient number of licenses had already been issued was improper when that opinion conflicted with an ordinance; that to say that the municipality had changed its mind was not sufficient; that it was necessary to change the ordinance, which was the only legal way in which the municipality could manifest its change of opinion. All that really was decided in the Eisen case was that the governing body of a municipality was bound by its own ordinances so long as those ordinances were in full force and effect; that where the maximum number of licenses has been fixed by ordinance, that number could not be decreased except by amending or repealing the ordinance; that whatever was done inconsistent with the ordinance, lacked validity.

The Sosnow case stands for the same proposition. The difference between that and the Eisen case was that the limitation

in Freehold had been effected by resolution instead of by ordinance. The trouble was that the Freehold resolution still stood in full force and effect. The municipality had the power to change it but they had not exercised that power.

Thus, in both these cases, it appears that the real point decided was that vacancies existing under formal municipal regulations limiting the number of licensees could not be demolished by mere informal expressions of opinion by the local license issuing body.

The situation is quite different in the instant case. Here the respondent municipality is not sniping at its own regulations or seeking to make them inoperative by indirection but, admitting the vacancies to exist, its point is that there are sufficient licenses in the immediate vicinity of the place for which the license is sought. Such an opinion or decision, if backed by facts, is consonant with the limitation and not repugnant to it --pursuant to it and not in nullification of it.

The facts hereinbefore recited showing the number of licensed places in the vicinity substantiate the decision of the Township Committee that there was no need for an additional place in that neighborhood.

In Vicari vs. Bloomfield, Bulletin #57, item 4, I held that the Town of Bloomfield, which by resolution had limited the number of a certain class of licenses to 25 and had issued 23 and had adopted a policy not to issue more than one license of this class in any one vicinity but to spread the same throughout the Town, was wholly within its rights. The same principle is involved in the instant case. The immediate neighborhood of appellant's place is shown by respondent to be well supplied. Appellant has not proved the need of another licensed place in the neighborhood.

The action of respondent is, therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: April 6, 1936.

3. HOME MADE WINE - WINE MANUFACTURED FOR PERSONAL CONSUMPTION PURSUANT TO SPECIAL PERMIT MAY NOT, UNDER ANY CIRCUMSTANCES, BE USED IN THE MAKING OF BRANDY - STILLS - CAUSES OF EXPLOSION OF ILLICIT STILLS.

March 26, 1936.

Dear Mr. Burnett:

We should be grateful indeed if you could have some member of your staff answer the attached questions:

1. Can I obtain a license for a small still for the purpose of distilling this wine, and how much will it cost? (home made wine)

2. Would also appreciate it if you can tell me what makes running a still dangerous, by that I mean

what causes the frequent explosions that are reported in the papers?

Cordially yours,

ALEX N. SLOAN, JR.,
Query Editor

March 28, 1936.

Newark Sunday Call,
Newark, N. J.

Gentlemen: Att: Mr. Alex N. Sloan, Jr.
Query Editor

I have your letter of March 26th.

Under the Control Act, the Commissioner may issue special permits authorizing the manufacture within homes or other premises used in connection therewith of wines in quantities of not more than 200 gallons for personal consumption only. In the absence of such permit the manufacture of wine even for personal consumption is unlawful. Where wine is manufactured for personal consumption pursuant to such permit, it may not, under any circumstances, be used in the making of brandy.

Illicit still explosions oftentimes result from the use of inferior boilers incapable of withstanding the large amount of steam required for the distilling process, the absence of proper technique on the part of the operator resulting in too rapid expansion and the absence of proper ventilating system to take care of the incidental fumes and vapors which may be readily ignited.

May I suggest that you caution interested persons that under the Control Act possession of a still is unlawful unless it is properly registered with the Department of Alcoholic Beverage Control pursuant to the enclosed Rules Governing Registration of Stills.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

4. WAREHOUSES - APPLICATION FOR ADDITIONAL WAREHOUSE TO PERMIT SALE OF WINE AT RETAIL PURSUANT TO LIMITED WINERY LICENSE WILL BE DENIED WHERE PREMISES ARE UNSUITABLE.

IN THE MATTER OF THE APPLICATION OF EMANUELE RICCHIUTI, FOR AN ADDITIONAL WAREHOUSE AT 133 CLINTON STREET, HOBOKEN, NEW JERSEY) CONCLUSIONS

Emanuele Ricchiuti, Applicant Pro Se

Application was duly made by Emanuele Ricchiuti, holder of limited winery license #V1-14, for authority to operate an additional warehouse at #133 Clinton Street, Hoboken. Objection was made to the granting of the application and a hearing was held.

The applicant has been engaged in the retail sale of wine at his licensed winery located at #312 Second Street, Hoboken. Because of limitations of space and other difficulties, the licensee has found it inconvenient to continue such operations at the premises presently licensed. He desires to conduct his retail sales pursuant to his license from a spare room located in the rear of his grocery store at #133 Clinton Street, Hoboken. The building in which the grocery store and spare room are located is an eight-family apartment house in a congested area. There is a school located on the opposite side of the street and the neighborhood abounds with children. The entrance to the spare room will not be through the grocery store. The licensee testified that in the event a customer in the grocery store desired to purchase wine, he would be requested to leave the store and reenter the building through another door used by other occupants thereof and then proceed to the spare room.

The foregoing statement of facts renders evident the conclusion that the premises sought to be licensed are not suitable for the sale of alcoholic beverages in the manner contemplated. The proximity of the school and the presence of numerous school children call for a denial of the application. Cf. Space vs. Wantage, Bulletin #77, Item #13. Furthermore, the manner of sale would not be conducive to adequate regulation and the high standards necessary for the proper conduct of the business.

Accordingly, the application for an additional warehouse is denied.

D. FREDERICK BURNETT
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner

Dated: April 4th, 1936.

5. PROHIBITED INTERESTS IN LICENSED PREMISES - BREWERY MAY ALTER OR REMODEL PREMISES OWNED AT THE TIME OF PASSAGE OF THE CONTROL ACT EVEN THOUGH PREMISES ARE OPERATED AS A LICENSED RETAIL ESTABLISHMENT - WHERE LICENSEE ENLARGES HIS PREMISES, HE MAY APPLY FOR TRANSFER TO ENLARGED PREMISES PROVIDED THE LICENSED ESTABLISHMENT IS CONDUCTED AS A SINGLE BUSINESS.

April 1st, 1936.

Dear Sir:

My father, Mr. William Heller, is the owner and operator of a tavern located at #874 Clinton Avenue, Irvington, New Jersey. He has been located there for more than ten years. The premises are owned by the Oraton Investment Co., a subsidiary of C. Feigenspan Corp. and in which my father is a month to month tenant. The premises consist of a three-story building, known as #872-874 Clinton Avenue. The upper two stories are untenanted. The ground or street floor consists of two stores separated by a hallway containing a staircase leading to the upper floors.

The westerly store known as #874 Clinton Avenue is rented by my father, William Heller. The easterly store is, at present, vacant.

My father desires to rent the vacant store, providing alterations are made, as a grill room in which liquor and food are to be served, and for which he is to pay additional rent. The vacant store, in its present condition is too small and it is for this reason that it has been vacant most of the time.

My father has suggested the following proposition to the owner of the building, that the wall separating the vacant store and the adjacent hallway be broken through and the stairway removed (there being another stairway available for use) and one large store be made of the vacant store combined with the hallway. The cost of the alteration is estimated at Three Hundred Fifty ($350.00) Dollars. All other interior work is to be done by my father.

The owner has agreed to pay for the alteration, subject to your approval, which it deems necessary to conform with the state law.

It is my contention that the above mentioned alteration is an improvement to the building proper and therefore does not violate the law stating that a brewery shall not aid a tavern financially or otherwise.

However, if your approval cannot be obtained consenting to the owners making the aforementioned alterations, my father is willing to make the said improvements at his own expense if your department approves.

I am enclosing herewith a rough sketch of the premises.

Respectfully yours,

ABE HELLER

April 4, 1936.

Mr. Abe Heller,
Irvington, N. J.

Dear Sir:

I have your letter of April 1st.

One of the well recognized objections to the methods of distribution of beer prior to the era of prohibition was the fact that brewers oftentimes controlled the retail trade. The Control Act evidences a clear legislative intent to eliminate the brewery controlled saloon and the regulations of the Department have been calculated to achieve this purpose. See Bulletin #78, Item #1.

Section 40 expressly prohibits brewers from being interested in the retailing of alcoholic beverages. It contains a proviso, however, to the effect that prior to December 6, 1936, the brewery's ownership of premises operated by a retail licensee shall not constitute a prohibited interest if such ownership existed at the time of the passage of the Control Act. This proviso was designed to avoid serious economic waste. In order to obtain its full benefit of ownership, it may be necessary for the brewery to alter or remodel the building and the conclusion may readily be reached that such alteration or remodeling falls within the

privileges afforded by the proviso. See Bulletin #54, Item #6.

Accordingly, it is the ruling of the Commissioner that prior to December 6, 1936, a brewery may alter or remodel premises owned by it at the time of the passage of the Control Act, even though such premises are operated as a retail licensed establishment.

The facts outlined in your letter present another questio not raised by you. The diagram submitted does not indicate whether the premises at 872 Clinton Avenue and 874 Clinton Avenue are to be operated as a single establishment. If not, it is clear that a separate license will be necessary to permit the sale of alcoholic beverages at 872 Clinton Avenue. If the stores are to be converted into one premises for the conduct of a single business, application for transfer of the existing license to cover the enlarged premises may be made pursuant to the principles set forth in Bulletin #89, Item #7.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

6. ALCOHOLIC BEVERAGE - WHAT CONSTITUTES - PRODUCT NOT SOLD AS BEVERAGE BUT AS FOOD PRODUCT AND MEETING SPECIFIED REQUIREMENTS WILL NOT BE CONSIDERED AS AN ALCOHOLIC BEVERAGE WITHIN THE PROVISIONS OF THE CONTROL ACT.

April 1, 1936.

J. Lindsay de Valliere, Esq.,
Deputy Commissioner,
State Tax Department,
Beverage Tax Division,
Newark, N. J.

Dear Mr. de Valliere:

The question submitted by you as to whether the food product labeled "Reevatone" and similar products are alcoholic beverages within the meaning of the Control Act has been carefully considered and analyses thereof have been obtained from chemists employed by this Department and the Alcohol Tax Unit, Internal Revenue Service, Treasury Department.

The Treasury Department has ruled that if such products generally described as products of the "Advocaat type" meet the following requirements, they will not be subject to the Federal rectification tax:

(1) maximum amount of alcohol - 18%
(2) minimum solids - 40%
(3) not less than 40% of the solid material should be from egg yolk, which should yield not less than 6% protein of the product
(4) medicated with one dose of recognized drugs per fluid ounce (commonly used Fowler's Solution of Glycerophosphates).

Since the foregoing requirements are calculated to insure that the product will not be used for beverage purposes, but will be used solely as a food product and to achieve uniformity of administration in this connection this Department has adopted simila requirements.

Accordingly, you are advised that where it is evident that a product is being sold not as a beverage but as a food product and meets the requirements set forth above, it will not be considered as an alcoholic beverage within the provisions of the Control Act.

So much for the general principles to be applied.

Rulings on Reevatone and each of the other products heretofore submitted will be forwarded to you at earliest convenient moment.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

7. MERCANTILE BUSINESS - WHAT CONSTITUTES - DOES NOT INCLUDE PRIZE FIGHTS AND BOXING MATCHES - WHETHER LICENSE SHOULD BE ISSUED FOR PREMISES WHERE PRIZE FIGHTS AND BOXING MATCHES ARE CONDUCTED RESTS IN FIRST INSTANCE WITH MUNICIPAL ISSUING AUTHORITY.

Dear Sir:

Would you kindly advise me if it is permissible for the holder of a Plenary Retail Consumption License here at this resort to operate a fight club upon the premises which are covered in his application for such liquor license.

It appears that authority from the State controling A.A.U. bouts has sanctioned such fights.

Attention has been called to the fact that among the audience are many minors witnessing the show which is presented on the same floor as the licensed premises, set apart by two doors leading to the barroom.

Admission is charged to witness the bouts, and we are desirous to know if this is in accordance with the rules and regulations of your department.

A bout is scheduled to be held on Friday evening of this week, and if not in accordance with the requirements we would be pleased to be advised in time that proper action can be taken.

Very truly yours,
Borough of Keansburg, N. J.
By: - Richard A. Jessen,
Municipal Clerk.

PS:- Announcement from the ring that refreshments can be secured at the bar was made at the last event, which is noted that the bar is not closed during the bouts.

R.A.J.

March 25, 1936.

Mr. Richard A. Jessen,
Municipal Clerk,
Keansburg, N. J.

Dear Sir:

Section 13 (1) of the Control Act prohibits the issuance of consumption licenses for premises where other mercantile business is carried on (except the keeping of a hotel or restaurant etc.). The phrase "mercantile business" in its generally accepted sense refers to the buying and selling of goods or merchandise or the dealing in the purchase and sale of commodities. This would exclude the conduct of prize fights and boxing matches, which do not involve the sales of merchandise. See Bulletin #47, Item #6, enclosed. It may well be that a municipal issuing authority, in the exercise of its general police powers and the powers conferred by section 37 of the Control Act, may deny an application for a license for premises in which prize fights and boxing matches are conducted. The determination of whether such a policy should be adopted rests in the first instance with the municipal issuing authority, subject to appeal to the Commissioner. In the absence of such policy, however, there is nothing to prevent the issuance of the license for such premises.

The fact that minors will be present in the licensed premises does not alter this conclusion. See Bulletin #50, Item #1, Sheet #3.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

8. LICENSED PREMISES - ALCOHOLIC BEVERAGES MAY BE SOLD ON PICNIC GROUNDS SURROUNDING LICENSED BUILDING PROVIDED SUCH GROUNDS ARE INCLUDED WITHIN LICENSED PREMISES DESCRIBED IN APPLICATION FOR LICENSE - IF NOT SO INCLUDED, APPLICATION FOR TRANSFER TO INCLUDE SUCH GROUNDS MAY BE MADE.

April 3, 1936.

Mrs. Rose Campanello,
Mt. Ephraim P.O.
Bellmawr, N. J.

Dear Madam:

I have your letter of March 30th.

The application for a license contains a description of the premises where the alcoholic beverages are to be sold. See Bulletin #35, Item #15. If the premises thus described include the grounds surrounding the licensed building and now sought to be used as a picnic ground, alcoholic beverages may be sold thereon pursuant to the license. See Bulletin #78, Item #10.

However, if such grounds are not included within the premises described in the application and the license issued pursuant thereto, it will be necessary that application be made to the municipal issuing authority pursuant to Bulletin #89, Item #7, enclosed herewith, for a transfer of license to premises which may include the licensed building and the surrounding picnic grounds.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

9. TRANSPORTATION OF ALCOHOLIC BEVERAGES - RETAIL LICENSEE MAY DELIVER ALCOHOLIC BEVERAGES, WITHOUT LIMIT AS TO AMOUNT, IN HIS OWN VEHICLES PROVIDED SUCH VEHICLES BEAR TRANSPORTATION INSIGNIA AND NOT OTHERWISE - WHOLESALE LICENSEE DELIVERING ALCOHOLIC BEVERAGES TO A VEHICLE IS UNDER OBLIGATION TO ASCERTAIN IF THE VEHICLE IS PROPERLY LICENSED - RETAIL LICENSEE NOT PROHIBITED FROM CARRYING ON HIS PERSON ALCOHOLIC BEVERAGES PURCHASED FROM LICENSED WHOLESALER OR MANUFACTURER WITHIN THIS STATE.

March 28, 1936.

Gentlemen:

Please give us the proper ruling on deliveries of liquors to retail consumption and distribution licensees who call at our warehouse.

1. Can the retail licensee carry his own goods in his own car without a transportation insignia?

2. Is there a limit to the quantity he may carry?

3. If a transportation insignia is required can a retail consumption licensee deliver in his own car to his trade? There is an impression that a consumption licensee may not deliver.

4. Is the responsibility our's to see that liquor called for at our warehouse is carried in a conveyance which meets the requirements of your department or is that up to the licensee himself?

5. We have a number of nearby retail consumption licensees who do not have cars or who do not use them for picking up their wants. Is there any regulation regarding a man walking in and carrying away his goods on foot or by trolley or bus as long as we make certain that the goods are for the licensee and either the licensee or his recognized agent call for them?

Yours truly,
JAMES D. THOMPSON, Inc.
C.E.Wriggins
Secretary

March 31, 1936.

James D. Thompson, Inc.,
Camden, N. J.

Att: Mr. C. E. Wriggins,
Secretary

Dear Sir:

I have your letter of March 28th and your inquiries are answered herewith seriatim:

(a) A retail licensee may not transport alcoholic beverages in a vehicle which does not bear a transportation insignia. Under the Rules Governing the Issuance of Transportation Insignia every licensee, except public warehouse and warehouse receipts licensees, is entitled to one insignia free of charge to be affixed to his own vehicle used in connection with his business.

(2) Where the licensee's vehicle bears proper transportation insignia he may carry alcoholic beverages in connection with his business without limit as to amount.

(3) Under section 25 of the Control Act retail licensees including retail consumption licensees, may deliver alcoholic beverages in their own vehicles bearing proper transportation insignia in connection with their businesses.

(4) A wholesale licensee delivering alcoholic beverages to a vehicle is under obligation to ascertain that the vehicle is properly licensed. The presence of proper transportation insignia is sufficient evidence of such fact.

(5) There is no regulation of this Department prohibiting a retail licensee or his representative from carrying on his person alcoholic beverages purchased from a licensed wholesaler or manufacturer within this State.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

10. BULLETIN ITEMS CORRECTED.

Bulletin Number 95 contains two items each numbered 11, one on Sheet #17, the other on Sheet #18.

Item 11 on Sheet #17, being the decision in Marsteller vs. Hagenbucher, et al, is now renumbered as Item 10.

11. APPELLATE DECISIONS - ECKERLE vs. CAMDEN.

ALBERT W. ECKERLE,)
Appellant,)
-vs-
BOARD OF COMMISSIONERS OF CAMDEN AND MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF CAMDEN,) ON APPEAL
Respondents.) CONCLUSIONS

Frederick J. Gassert, Esq., Attorney for Appellant.
No appearance for Respondents.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises located at #2277 South Seventh Street, Camden.

The application was denied by the Board of Commissioners of the City of Camden on September 12, 1935 because of an alleged misstatement in the application as to the residence of appellant. Thereafter the Board of Commissioners, on September 26, 1935, passed a resolution in which said denial was reconsidered and rescinded and the license thereupon granted.

On October 7, 1935, I advised the City Clerk that such reconsideration was invalid and not within the jurisdiction of the Board of Commissioners, Plager vs. Atlantic City, Bulletin #80, item 11, and suggested that the license be cancelled as inadvertently issued and that the application be formally denied, not on the merits but as not within the jurisdiction of the Board. Bulletin #91, item 7.

Replying to this communication the City Counsel advised me that when the application was originally denied on September 12, 1935, the Commissioners had a report that the man was a non-resident but that, after refusing the license on this ground, they ascertained that the man was a resident and that they felt justified in reconsidering and rescinding the previous refusal which was based on a false premise. His letter concludes as follows:

> "Nevertheless, we will proceed as you suggest - let the man appeal and we will probably file an answer saying that we have no defence."

Thereafter a Municipal Board of Alcoholic Beverage Control was duly appointed in the City of Camden, and, in accordance with the aforesaid ruling, this Board cancelled the license which had been issued to appellant. An appeal was duly filed and an application made to me by appellant for a special permit to operate his business at the above address as a consumption licensee until his appeal should be adjudicated. The special permit was granted.

At the hearing of this appeal respondent did not appear. Testimony was taken which showed that appellant was personally qualified and that he had complied with all the statutory prerequisites. He testified specifically that the question in the application as to his residences had been correctly answered. Although respondent has not filed an answer consenting to the issuance of the license, a letter was introduced at the hearing, signed by the chairman of the Municipal Board of Alcoholic Beverage Control, reading in part as follows:

> "Mr. Eckerle has been deprived of his license merely over a technicality and through no fault of his own, nor any wish of ours. In fact, if it was possible for our Board to grant him this license, it would have been done."

Nothing appears before me against the character or conduct of appellant and, from the evidence produced, I conclude that

he is entitled to a license. Maurer vs. Sussex, Bulletin #85, item 11; Malone vs. Bordentown, Bulletin #90, item 12.

The action of respondent Board of Commissioners of Camden, taken on September 12, 1935, is, therefore, reversed.

D. FREDERICK BURNETT
Commissioner

Dated: April 6, 1936.

12. APPELLATE DECISIONS - VRABEL vs. FLORENCE.

EDWARD VRABEL,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FLORENCE,

Respondent.

CONCLUSIONS AND ORDER

Crawford Jamieson, Esq., Attorney for Appellant.
Howard Eastwood, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from an alleged denial of a plenary retail consumption license for premises known as 14 Alden Avenue, Roebling.

At the hearing it appeared that appellant had filed an application, paid the required fee and presented a Federal Tax Stamp. It was not clear whether appellant had properly advertised his notice of intention. The Township Committee has never taken any formal action denying or rejecting the application. There was merely an informal discussion between the members of the Township Committee and the appellant. At this discussion appellant was informed that he could not obtain a license for various reasons.

Attorneys for both parties entered into a stipulation waiving any question as to the proper advertising of notice of intention and agreeing to have the case decided on its merits as if the application had been formally denied and appellant notified of said rejection.

The statutory requirements regarding advertising notice of intention cannot be waived, Trotto vs. Trenton, Bulletin #46, item 11, and in the absence of a formal ruling by respondent upon the application filed, there is no action from which to appeal.

At the hearing respondent agreed to consider appellant's application on the merits and to pass upon the question of proper advertisement of notice of intention at its next meeting. Appellant thereupon requested leave to withdraw his appeal as prematurely brought.

The motion of appellant is granted without prejudice.

D. FREDERICK BURNETT
Commissioner

Dated: April 6, 1936.

13. APPELLATE DECISIONS - ECKERT vs. PATERSON.

WILLIAM ECKERT,

Appellant,

-vs-

BOARD OF ALDERMEN OF THE CITY OF PATERSON,

Respondent.

ON APPEAL
CONCLUSIONS

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

William Eckert, Pro Se.
No appearance in behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from the suspension of appellant's license No. C-149.

After a hearing duly held, respondent suspended the license until the end of the fiscal year, viz., until June 30th next, after finding appellant guilty on the following charge:

> "That said William Eckert, in violation of Section 22 of the Alcoholic Beverage Act, in answer to Question 8 on his application for a license, dated June 20, 1935 - 'Have you***ever been convicted of any crime?' answered 'No' which was then and there contrary to fact well known to said William Eckert."

At the hearing appellant admitted that he had answered "No" to Question 8 in said application. He admitted also that he was the person described in two certain indictments as "James King, alias William Eckert", which indictments were returned to the Court of Quarter Sessions of the County of Philadelphia, Pennsylvania in September Sessions 1920. One of these indictments was for larceny and receiving stolen goods, the other for carrying concealed deadly weapons. Exemplified copies of the records of the said Court of Quarter Sessions show that on October 11, 1920 James King, alias William Eckert, pleaded "nolle vult" to the first indictment and guilty to the second indictment.

In attempting to explain his false statement, appellant testified that when he first applied for a license in December 1933, he read his application over carefully and saw Question 8 contained therein. Before answering the question, he sought the advice of a friend of his, who is a member of the Police Department in Paterson, and this friend advised him to "forget about it; they have no record and the charge is outlawed". Acting on this advice, appellant answered Question 8 in the negative and in his various applications for licenses since that time has answered Question 8 in the same way.

Even if appellant's story is true, it is not a valid excuse. The same situation arose in the case of Gale vs. Newark, Bulletin #95, item 6, wherein it was said:

> "Licensees are to obey the law and make applications which are absolutely true. They are not to run out on the alibi of 'advice'. The only good advice is to comply strictly with the law. Poor advice is no defense. Of course, it falls on grateful ears when it enables the licensee to refrain from disclosing something which he fears might prevent the issuance of his license!"

Respondent has found the appellant guilty of making a false statement in his application, and there is ample evidence to support that finding of fact. Applicants who don't tell the truth won't get licenses. Lynch vs. Paterson, Bulletin #107, item 1, and cases therein cited. It follows that applicants who don't tell the truth will lose their licenses. Section 22 of the Control Act specifically provides that fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for revocation.

The only difficulty in this case is whether the judgment of suspension should be merely affirmed or whether, on the evidence produced, I should revoke the license. Section 28 of the Act provides that the other issuing authority may suspend or revoke a license for violation of any of the provisions of the Act. Ordinarily, the punishment to be meted out to a guilty licensee is to be determined by the local issuing authorities. Robinson vs. Newark, Bulletin #54, item 2; Great Notch vs. Clifton, Bulletin #91, item 11; cf. in re Morris, Bulletin #98, item 10.

Much may be said in favor of the contention that the only proper penalty in this case is a revocation of the license, in view of the language of Section 22 of the Control Act. It will be unnecessary, however, to determine that question in this case. An affirmance of the action of respondent in suspending the license for the balance of its term will require appellant to make a new application if he desires to continue in the business after July 1, 1936. At that time, if such application is made, the local authorities may determine whether he has been convicted of crimes involving moral turpitude, in which event he would be forever barred from obtaining a license. I feel, therefore, that it will be sufficient in this case to affirm the suspension.

The action of respondent is, therefore, affirmed.

Dated: April 7, 1936. Commissioner