Sent to Regular Mailing List

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

BULLETIN NUMBER 116. April 30, 1936.

1. LICENSEES - DISQUALIFICATION -- WHENEVER A MAYOR HAS THE POWER TO SIT AS A MAGISTRATE, HE CANNOT AT THE SAME TIME HOLD A LIQUOR LICENSE.

April 22, 1936.

U. G. Johnson, Borough Clerk,
Highlands,
New Jersey.

Dear Mr. Johnson:

I have your telegram of the 21st reading:

"PARTY HOLDING RETAIL LIQUOR LICENSE DESIRES FILE FOR NOMINATION MAYOR WHO ACTS AS CHIEF POLICE ACCOUNT NO PROVISION IN DEPARTMENT FOR CHIEF MAY SIT AS MAGISTRATE CAN SUCH HOLDER OF LICENSE CONTINUE IN THAT BUSINESS IF HE BECOMES MAYOR LIMIT FOR FILING EXPIRES TWENTY THIRD RULING REQUESTED AT ONCE."

Since the Mayor has the power to sit at any time as a magistrate or police judge he cannot hold a liquor license. The duty of a magistrate is to sit in judgment on those accused of violating the law. It would be a sorry, sardonic spectacle for him as magistrate to pass judgment upon other liquor licensees who are his competitors. The conflict between his self interest and his duty forbids that he shall be a magistrate and a liquor licensee at the same time. If he cleaves to one he must forsake the other. The fact that the Mayor does not sit regularly but only casually as a magistrate is immaterial because he has the power to sit at any time. Sound public policy demands that those entrusted with the enforcement of the liquor law shall have no personal or financial interest in the liquor trade. If elected he will have to surrender his license immediately.

Cf. previous rulings: Re Wyckoff and Re Emerson, Bulletin 109, Items 5 and 6, holding that neither a licensee nor a bartender may be also a policeman; Re Bruers, Bulletin 113, Item 9, holding that a licensee may not also be a Justice of the Peace; Re Schepis, Bulletin 115, Item 3, holding that a bartender may not also be a constable.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

2. PENDING LEGISLATION - PROPOSED AMENDMENT OF SECTION 13 - PROHIBITION OF ISSUANCE OF DISTRIBUTION LICENSES FOR PREMISES WHERE OTHER MERCANTILE BUSINESS IS CARRIED ON; AND OF ISSUANCE OF MORE THAN ONE IN ANY MUNICIPALITY TO ANY PERSON OR CORPORATION; AND LIMITATION OF THE NUMBER OF SUCH LICENSES IN CITIES OF THE FIRST AND SECOND CLASS.

April 16, 1936.

D. Frederick Burnett, Commissioner.

Dear Sir: Subject: Assembly Bill 290.

We would very much appreciate your recommendations as to Assembly Bill 290, which provides that Plenary Retail Dis-

tribution Licenses shall not be issued to premises in which any other mercantile business is carried on.

This Association is in favor of this Bill for the following reasons:

After a two year survey as to the retail sale and distribution of alcoholic beverages, this Association has found law enforcement practically impossible as to restricted hours of sale and sales to minors of these beverages where such beverages are dispensed by grocery, delicatessen and combination liquor and merchandise stores.

In the State of New York and many other states liquor is not sold in premises engaged in another mercantile business. In many communities in New Jersey ordinances have been passed not to permit the sale of liquor in combination stores. In some communities in New Jersey where the sale is permitted in combination stores, we have found the issuing authorities more interested in renting premises to tenants who demanded this additional privilege than they were in the control of the retail sale of liquors.

It is our opinion, that by only permitting the retail sale of liquors in exclusive liquor stores, where minors have no business to be, and where these stores can be closed for business during restricted hours can the provisions of the Alcoholic Beverage Control Act be enforced to promote temperance.

Thanking you for your consideration of this subject, we are,

Very respectfully yours,

NATIONAL ASSOCIATION OF RETAIL
BEVERAGE DEALERS OF N. J., INC.

By: Clarence A. Legg,
Executive Secretary.

April 19, 1936.

National Association of Retail
Beverage Dealers,
Newark, N. J.

Gentlemen:

I have yours of the 16th.

Assembly #290 is designed to: (1) prohibit issuance of distribution licenses for premises where other mercantile business is carried on; (2) limit the number of distribution licenses in cities of the first and second class to one for each 10,000 population, excepting renewals; and (3) prohibit the issuance of more than one distribution license in any municipality to any person or corporation. It is thus confined to the sale of package goods and does not affect consumption of liquor over the bar.

(1) Under existing law, each municipality may, by ordinance, determine for itself whether distribution licensees

should be restricted from engaging in other business at the licensed premises. Some municipalities have adopted such ordinances. Others have not. In many of the smaller municipalities, distribution licensees could not survive economically if they were confined to the sale of liquor. The question is one of economics rather than control. Considerations of home rule support the existing statutory policy which affords an option to each community to decide for itself. I am not prepared to recommend that it be altered.

(2) I have given much thought to the problem of limitation of licenses. Although the interests of control demand a reduction in the number of licenses in certain municipalities, such reduction should not be sought through an arbitrary State-wide limitation based on population. Such limitation will merely enfranchise present licensees, whether worthy or unworthy, oftentimes selected without adequate investigation by the municipal authorities. Worthy new applicants and much needed new capital will be excluded, municipalities will lose revenue and licenses may become political footballs to be awarded to the highest bidder. Under the present law, each municipality may decide for itself how many licenses are needed in the light of population, geographical conditions, community sentiment and other local considerations. I am heartily in favor of limitation of licenses when done locally to fit the needs of a particular municipality and not based on some arbitrary State-wide proposition without reference to the needs and wishes of the particular community.

(3) The amendment seeks to substitute, so far as distribution licenses are concerned, a mandatory provision for the existing option afforded to municipalities to prohibit the issuance of more than one retail license to any person or corporation. The proposal raises innumerable social and economic questions revolving about the issue of whether chain stores in general should be restricted or prohibited. The problem does not pertain particularly to liquor, but relates to all business, and should be considered in that light. Since it does not affect control, no opinion is expressed thereon.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

3. LICENSEES - RESPONSIBILITY FOR BOOTLEG LIQUOR IN ANY PART OF HIS BUILDING - HEREIN OF THE CONTROL WHICH A LICENSEE MUST EXERCISE OVER HIS ROOMERS.

Dear Commissioner:

It is a matter of common knowledge that many unsuccessful tavern keepers will report, or have others report, that his more successful competitor is selling bootleg. This in many cases is a false rumor.

We have a member, doing a fairly good business, who rents rooms above his tavern to men by the week and month. In the town where he is located, like many other small towns, there are a number of speakeasies.

This licensee is a law abiding citizen, but is very much concerned that your investigators might find a bottle of illegal liquor in the quarters of one of his tenants.

Please advise what protection this licensee has against such a contingency.

Recently your investigators searched this licensee's building from top to bottom, but found no evidence of any illegal liquor therein.

Very truly yours,
NATIONAL ASSOCIATION OF RETAIL
BEVERAGE DEALERS OF N. J., INC.

By: C. A. Legg,
Sec'y. & Treas.

April 4, 1936.

April 21, 1936.

National Association of Retail Beverage
Dealers of New Jersey, Inc.,
Newark, N. J.

Gentlemen:

I have yours of the 4th.

Eternal vigilance is the only protection against such a contingency. There are no automatic "outs". A licensee should exercise the utmost care to select his tenants, and then see to it that they keep straight. Why should he, if operating a legitimate tavern on the ground floor, tolerate upstairs a nest of roomers with a taste for bootleg? He is the master of his own house. Tell him to exercise his authority. As a privileged licensee, he must keep his building, as well as himself, above suspicion. There is no such thing as a licensee subletting without recourse. His self interest will blend nicely with his conscience.

Sincerely yours,
D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - PALMER vs. ENGLISHTOWN.

LESTER J. PALMER, Appellant,	)	
-vs-	)	ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF ENGLISHTOWN, Respondent.	)	CONCLUSIONS

Camp, Lederer & Citta, Esqs., by Joseph A. Citta, Esq., Attorneys for Appellant.
Borough Clerk, Walter H. Emmons, for Respondent, Pro se.

BY THE COMMISSIONER:

This is an appeal from the denial of plenary retail consumption license for premises known as 55 Main Street, Englishtown.

No answer was filed by respondent. On the date set for the hearing of this appeal, appellant and his witnesses appeared but no one appeared for the Borough of Englishtown. In accordance with Rule #10 of the Rules Governing Appeals, Bulletin #81, item 13, appellant was permitted to proceed ex parte, on condition that respondent might present its case at a subsequent date agreeable to all parties or might file an answer herein stating that the Borough Council had no objections to the granting of the appeal in accordance with the procedure set forth in Bulletin #82, item 11.

Subsequently, the Borough Clerk advised me that at a special meeting of the Mayor and Council held a few days before the date set for the original hearing of this appeal, it had been regularly moved and carried that no representative be sent to the hearing and that "they stand the same as when the application was denied". The letter from the Clerk continued as follows:

> "At the discussion of this application, there was taken into consideration the statement made by citizens, i.e., that there was no need for another retail consumption licensed place in the Borough, that there was not a profitable income for another and that this business should not be made competitive for the best interests of our people."

Accordingly, it appeared that the license had been denied because there was a sufficient number of licensed places in the Borough. The case, therefore, was set down for an adjourned hearing, at which both parties appeared.

Appellant now conducts a butcher store in premises adjoining the place for which the license is sought. It is agreed that he is a man of excellent character and reputation and that, aside from some minor changes which appellant agreed to make, the premises are suitable for the conduct of the business. The sole issue is whether or not the action of the Borough Council in denying the license because there is a sufficient number of licensed premises in the Borough, was reasonable under the circumstances of this case.

It appears that the population of the Borough is approximately eight hundred (800). The premises for which the license is sought are located in the business district, which extends about two blocks along Main Street. At present there are two consumption licenses outstanding. One has been issued to a hotel which has been operating since about 1752 and which is located about one hundred (100) feet away from the premises for which the license is sought. The other consumption license has been issued to a place about a half-mile away, on the outskirts of the Borough.

Appellant contends that there is need for another licensed place because, in the days before Prohibition when the population of the Borough was less than today and when the through traffic was much smaller, the Borough had issued licenses to three hotels. Appellant had presented to respondent a petition containing the names of one hundred thirty-three (133) people who requested that the license be granted. At the hearing appellant

produced two residents who testified that the hotel did not cater to the ordinary workingman and that an additional license was necessary to take care of this class of trade. Appellant contended also that the license was required to take care of the needs of the inhabitants of the Township of Manalapan (which surrounds the Borough) who did their shopping in Englishtown, although this was weakened somewhat by testimony given by respondent's witnesses, that most of the residents of the Township did their shopping in Freehold.

On behalf of respondent, one of the members of the Council testified that it was the opinion of the majority of the members of the Council that "the two existing places could very nicely supply the needs of Englishtown". The Clerk of the Borough expressed the opinion that another licensed place was not needed. Both of these witnesses testified that to the best of their knowledge no one, except drunk or disorderly, had ever been refused service at the hotel.

It was further testified that a petition containing the names of about seventy-six (76) people protesting against the issuance of the license, had been filed with the Council. It appears also that there are approximately seven (7) licenses outstanding in Manalapan Township which surrounds the Borough, whereas in pre-Prohibition days the only licensed places in the Township were three still houses where whiskey could be purchased in quantities of more than a quart.

Considering the fact that there are already two licensed places in a Borough, with a total population of approximately eight hundred (800), and the fact that the surrounding township seems to be rather liberally supplied with licensed places, it cannot be said that a refusal to issue another license in Englishtown, is unreasonable. The determination of the question as to the number of licensed premises which should be permitted in any given vicinity is a matter confined to the sound discretion of the issuing authority. Connolly vs. Middletown, Bulletin #81, item 11, and cases therein cited. Where, as here, an attack is made upon the exercise of that discretion, the burden rests upon the appellant to prove the abuse of that discretion by clear and convincing evidence. All that appears in this case is a mere difference of opinion. Kalish vs. Linden, Bulletin #71, item 14.

The action of respondent Board is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: April 20, 1936.

5. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS

April 13th, 1936.

RE: Application for Solicitor's Permit - Case No. 17

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. In his questionnaire applicant admitted that he had been convicted of a crime, and explained the details of the conviction as follows: "In the year of 1925 or 1926, assault resulting from an automobile accident and fined $500." Notice was served upon him to show why his application should not be denied on the ground that he had

been convicted of a crime involving moral turpitude, and a hearing was duly held.

Our investigation disclosed that in the month of November 1924 applicant was arrested on the sworn complaint of a police officer. The following day he was fined $100. for speeding and was held for the Grand Jury on a charge of assault with intent to kill the officer. Subsequently indicted on the latter charge, he pleaded non vult thereto and was fined $500.

At the hearing applicant explained that on the morning in question he was returning home in his automobile about 3 A.M. and had just turned on to a highway from a side street when he heard a police whistle blown; that he did not stop but continued on to his home and was arrested a few days later; that his car at no time struck the policeman's motorcycle; that he was advised to plead non vult to the indictment because he had no witnesses. He further testified that thereafter the police officer admitted that applicant's car had never touched his motorcycle but that, in fact, his motorcycle accidently had run off the road while he was following the applicant's car.

Ordinarily the crime of assault with intent to kill would involve moral turpitude, U.S. ex rel Schladzien vs. Warden, 45 Fed. 2nd 204, but if the explanation given by the applicant were true, it might be that moral turpitude would not be involved in the crime for which he was convicted.

Request was made by the applicant that he be given an opportunity to produce the police officer to substantiate his story. At a later date the officer appeared and said that all of the facts were set forth fully in a statement which he had made to the Prosecutor shortly after the arrest. An examination of this statement shows that during this early morning chase, the policeman had followed the applicant's car for a distance of about eight (8) miles at a high rate of speed and had fired five (5) shots at the other car during the course of the pursuit. It further showed that applicant endeavored three (3) times to run the policeman's motorcycle off the road and that on the third attempt applicant turned his car and struck the handlebar of the policeman's motorcycle.

The officer's statement shows not a mere accident but, rather a deliberate vicious action the part of the applicant, which consisted, at the very least, of an aggravated assault upon the officer. If the conviction of the applicant under such circumstances does not bring a sense of shame, it ought to. Bulletin #17, item 1. In my opinion the conviction set forth above involves moral turpitude.

It is recommended that the permit be denied.

EDWARD J. DORTON
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - GIMBEL vs. PENNSAUKEN.

FAY GIMBEL and SAUL GIMBEL,
Appellants,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PENNSAUKEN, et als,
Respondents

On Appeal

CONCLUSIONS

Frank L. Lario, Esq., Attorney for Appellants
Thomas F. Salter, Esq., Attorney for Respondent, Township Committee of the Township of Pennsauken
Bernard C. Luethy, Esq., Attorney for William I. May

BY THE COMMISSIONER:

The petition of appeal filed herein seeks to review respondent's denial of an application for a plenary retail consumption license by Fay Gimbel for premises located at 4800 Crescent Boulevard, Pennsauken and known as "Rustic Inn", and its granting of an application for transfer of license C-32 issued to Richard A. Deighan for the above-mentioned premises to William I. May, 4823 Crescent Boulevard, Pennsauken.

On January 13, 1936 respondent, Township Committee of the Township of Pennsauken, issued its fortieth consumption license and adopted a resolution which provided in part that "no more than 40 plenary retail consumption licenses ***shall be in effect in the Township of Pennsauken at any time". The reasonableness of this resolution is conceded by all of the parties.

In January, 1936, Richard A. Deighan vacated the licensed premises. On January 28, 1936 application for a new license for the premises known as "Rustic Inn" was filed by Fay Gimbel and on the same day application for transfer of Richard A. Deighan's license to William I. May, 4823 Crescent Boulevard, Pennsauken was also filed. On February 10, 1936 respondent granted the application for transfer and then denied the application by Fay Gimbel on the ground that the resolution of January 13, 1936 prohibited the issuance of more than the forty consumption licenses already in existence. The appeal herein was filed by the applicant, Fay Gimbel, and her son, Saul Gimbel, the owner of the premises sought to be licensed, and in addition to the Township Committee, Richard A. Deighan and William I. May were made parties.

The contention on the appeal from the denial of Fay Gimbel's application seems to be that the premises located at #4800 Crescent Boulevard are suitable only for the conduct of an inn and that a license is economically essential; that the equities of the owner of the previously licensed premises are more substantial than any equities supporting the licensee, Richard A. Deighan, and his transferee; and that appellant, Fay Gimbel, is entitled to a license in preference to the transferee, William I May. Conceding, for the argument, that, if a vacancy within the

limitation of forty existed, the appellants would be entitled to priority over a new applicant, it nevertheless does not follow that appellant,Fay Gimbel, is entitled to a license. The mere fact that Richard A. Deighan ceased to have any interest in the premises at 4800 Crescent Boulevard did not create a vacancy in the number of licenses. In legal contemplation, his license remained in full effect and might be transferred to other premises or to another person and other premises at any time prior to its expiration. Whether or not the license was transferred, there were forty licenses outstanding and consequently appellant, Fay Gimbel, would not, in any event, be entitled to a license under the valid limitation theretofore adopted by the Township Committee. Cf. Franklin Stores Co. vs. Belleville, Bulletin #102, Item 2; Sosnow Drug Co. vs. Freehold, Bulletin #68, item 13. In the latter case the Commissioner said:

> "So long as a municipality maintains a resolution limiting the number of licenses of record on its books, that resolution is binding not only on license applicants but also upon the municipality itself."

Accordingly, the appeal from the denial of Fay Gimbel's application for a forty-first license must fail.

In the light of the foregoing, appellants are not in any direct way aggrieved by the transfer of Richard A. Deighan's license. It will be assumed, however, that they may review the propriety thereof in their capacity as private citizens.

The qualifications of the transferee and the suitability of his premises are not questioned by the appellants. Their position is that action on the application for transfer should have been deferred pending determination of certain charges made by one of the appellants that Richard A. Deighan possessed illicit beverages at his licensed premises.

Although the Township Committee could rightfully have deferred action on the application for transfer, it was under no obligation to do so. The license was in good standing and no revocation proceedings were pending; indeed, investigation of the charges had not been completed. The transfer of the license would not bar subsequent revocation proceedings against Richard A. Deighan and an order of revocation or suspension could be made binding upon the transferee by making him a party. Under the foregoing circumstances it cannot be said that the Township Committee's refusal to defer action on the application for transfer pending determination of the charges constituted an improper exercise of its discretion.

The action of respondent, Township Committee of the Township of Pennsauken, in denying the application for plenary retail consumption license filed by Fay Gimbel and granting the application for transfer of license No. C-32 to William I. May, 4823 Crescent Boulevard, Pennsauken, is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: April 19, 1936.

7. LICENSES - LIMITATION OF NUMBER - HEREIN OF PRINCIPLES APPLICABLE TO MUNICIPAL REGULATIONS DESIGNED TO REDUCE THE NUMBER OUTSTANDING WITH FAIRNESS TO PRESENT LICENSEES.

Edward F. Juska, Esq.,
Keansburg, New Jersey.

Dear Sir:

I have yours of the 14th concerning limitation of the number of licenses in Keansburg in which you say "the problem here in Keansburg is rather acute inasmuch as we have thirty-three licensed places in a town which has a winter population of about twenty-four hundred."

Your problem is indeed acute.

Limiting the number of licenses to a quota equal to the number outstanding at the time of the adoption of the limitation does not present any serious difficulties. But to reduce the number below that presently outstanding raises delicate and difficult questions. If an arbitrary reduction were attempted, the Borough Council would have to decide, when the time for renewals came around, which, out of all of the licensees, are to be the favored few when all of them, presumably, are equally well qualified and worthy.

I say "presumably". By that I assume the record of each is absolutely clear. Of course, if charges have been preferred and the licensee has been convicted and it has been necessary to suspend him or reprimand him, then the omission of such licensee from the reduced list would give him no just cause for complaint for it has been his own fault. To that extent, I will gladly go along. Those licensees who have given the municipal authorities trouble are the ones who may well be eliminated when the number is to be reduced. When it comes to adjudicated fault, I am heartily in favor of the survival of those who have obeyed the law.

But assuming each licensee's record is clear, it is obvious that some yardstick would have to be set up by which the Council could be guided in making its selection. Just how to do that so that it would apply with equal fairness to all, I really do not know. Certainly, the time of filing is not a fair test. It sounds all very plausible on the surface to say "first come, first served". But there are too many obvious tricks inherent in such a scheme. Inside tips to jump the field or get under the wire ahead of somebody else leads all too surely to justified charges of political or personal favoritism. Friends of the administration are protected when the secret word is passed "Now is the time." The non-contributors are left at the post. The object of limitations is not to catch licensees napping but to choose the best. Hence, on appeal I shall scrutinize any such procedure with the utmost care. I submit that if a licensee's record is clear, the fact that he has in good faith and in reliance upon his license incurred commitments and made expenditures in improving his premises and building up his business is substantial reason to warrant renewal of his license privilege and not to

reject him because of favoritism or politics or under any other unfair or arbitrary procedure. I advise against any such course.

The number of consumption licensees, however, can be limited to a quota less than those presently outstanding without prejudice to the renewal of existing licenses, if the regulation, by its wording, makes appropriate provision such as the following which is offered as a practical solution, viz:

> The number of plenary retail consumption licenses issued and outstanding in the Borough of Keansburg at the same time shall not exceed -----, provided, however, that this limitation shall not prevent the issuance of renewals of plenary retail consumption licenses to persons holding such licenses at the time this regulation was adopted and further provided, that this limitation shall not prevent the transfer of licenses according to law. No new plenary retail consumption licenses shall be issued to anyone not holding such a license at the time this regulation was adopted unless and until the number issued and outstanding shall be reduced by surrender, revocation or non-renewal to less than -----.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

April 23, 1936.

8. APPELLATE DECISIONS - LIGHT vs. RIDGEFIELD.

DOROTHY LIGHT, :

Appellant, :

-vs- :

MAYOR AND COUNCIL OF THE BOROUGH OF RIDGEFIELD, :

Respondent. :

ON APPEAL

CONCLUSIONS

Pesin & Pesin, Esqs., by Meyer Pesin, Esq., For the Appellant.
Lloyd L. Schroeder, Esq., For the Respondent.

BY THE COMMISSIONER:

This is an appeal from the suspension of plenary retail consumption license held by appellant for premises known as Light's Inn, Ridgefield, N. J.

The suspension resulted from a determination by the Mayor and Council of the Borough of Ridgefield that appellant possessed on the licensed premises a gallon jug and a pint bottle, each containing illicit alcoholic beverages; and that appellant possessed on the licensed premises, slot machines suitable for gambling purposes.

On the afternoon of February 27, 1936, two Investigators of the Department of Alcoholic Beverage Control visited the prem-

ises in question. One of the Investigators, George N. Anderson, inspected the cellar of the Inn. In one section of the cellar was the kitchen and heating plant. In a second section, the Investigator found a large assortment of bottles, corks, labels, and paraphernalia,--the ordinary merchandise content of a malt and hop store. In a third section of the cellar, which had a dirt floor, no windows and no electric light fixtures, the Investigator found a 30 gallon keg, a gallon jug and a pint bottle. There were no revenue stamps on any of the three containers. With them was found a red lantern in good condition and full of oil. The Investigator tasted the contents of the 30 gallon keg; he testified that he knew from its taste that it was alcoholic. The Investigator picked up the gallon jug and pint bottle and left the keg standing in the cellar. It contained at the time he left it approximately 7 or 8 gallons of liquid. When he returned to the cellar several hours later, the keg had been emptied except for about a cupful.

The Investigator brought the gallon jug and pint bottle upstairs and telephoned for the Department Chemist. The Chemist's certificate of analysis shows that both the jug and bottle contained illicit alcoholic beverages. There was no dust on either, and the gallon jug had a new-appearing applejack label.

No analysis was made of the contents of the 30 gallon keg. An inspection of the liquors behind the bar disclosed nothing irregular. The general manager of the Inn, Edward M. Light, when confronted with the jug and bottle denied any knowledge of them. He said that the malt and hop store merchandise had been left there several years prior, and gave the Investigators the name of the owner.

The licensee did not appear at the hearing. Her manager, Edward M. Light, testified that he had charge of the premises and that he had no knowledge whatever of the presence of the illicit beverages. He stated that the portion of the cellar where the containers were found was unused and was often flooded with water because of the low, uncemented floor. No effect of water, however, on the applejack label or the red lantern was noted by the witnesses,--indicating that the gallon jug and lantern had been in that portion of the cellar only a short time. The appellant's bartender testified that the adjoining portion of the cellar was a storage room for banquet tables and that these were used with some frequency.

Appellant moved for a dismissal of the charges for the reason that no search warrant was obtained by the Investigators. Section 32 of the Control Act expressly permits Investigators to inspect licensed premises without a warrant. See also State vs. Schill (Essex Co. Com. Pl. 1935), Bulletin 79, Item 8. Even if the evidence had been obtained without due compliance with legal requirements, it is admissible and competent in this State. State vs. Gillette, 103 N.J.L. 523, 138 Atl. 381 (Sup. Ct. 1927).

The appellant objected to the admission in evidence of the Department Chemist's certificate. This is expressly made admissible by Section 34 of the Control Act. I recently concluded in Re: Bergen County Prosecutor's Office, Bulletin 110, Item 8, that such certificates are admissible in criminal proceedings. A fortiori they are admissible here.

Objection was made by the appellant to the admission of

any evidence concerning the 30 gallon keg since appellant had not been formally charged with its possession. Such evidence is clearly admissible to show an intent to possess illicit alcoholic beverages and to corroborate the charge that there was an actual possession of the two smaller containers. See Great Notch Villa vs. Clifton, Bulletin 91, Item 11. It is admissible, further, to rebut the inference made by the appellant that the illicit beverages were "planted" by a dismissed employee.

Appellant further objected to the testimony of Investigator Anderson that he knew from the taste that the large keg contained an alcoholic beverage. Unfortunately, the taste is all too easily acquired, and a sip of a high proof alcoholic mixture, even to a novice, is enough for unmistakeable recognition. As an Investigator of this Department Anderson has had extensive experience sufficient to qualify him to detect by taste an alcoholic content. The admission of such evidence has repeatedly been sustained. See cases collected in Lewinsohn vs. United States, 278 Fed. 421 (C.C.A. Ill. 1922) cert. denied, 258 U.S. 630, 42 Sup. Ct. 463. Section 81 of the Control Act raises a presumption that the alcoholic contents of the keg were intended for use for beverage purposes and contained more than one-half of one percent of alcohol by volume.

The credibility of the manager, Edward M. Light, is impeached by the wide discrepancy between his testimony at a preliminary hearing in this cause and the testimony of his own witness on appeal, Michael Mostowitz. At the preliminary hearing, Light testified that the malt and hop store merchandise was left with him about December 1933 by a man who subsequently died. According to Light, this man said "'I am sick and going to the hospital and if I come out I will sell it.'" Light further testified that he asked the son of the owner to remove the paraphernalia and the son replied that he did not have the money to take it out. But the son, Michael Mostowitz, testified that he himself delivered the merchandise to the premises in question in July 1934; that his father had died in 1931; that at one time Light asked him to move it but the matter slipped his mind. He stated that his father was in a hospital some weeks before his death. It is conceded that the premises was built in 1933.

I am satisfied that the evidence fully supports the charge of possession of illicit alcoholic beverages. In view of this conclusion it is unnecessary to discuss the additional charge of possession of slot machines for gambling purposes.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 25, 1936.

9. FORFEITURE--UNLAWFUL PROPERTY--CLAIM BY CONDITIONAL VENDOR WILL BE DENIED WHERE HE KNEW OF SUSPICIOUS CIRCUMSTANCES AT THE TIME VEHICLE WAS SOLD.

File #1416
In the Matter of the Seizure on March 23, 1935, of two motor vehicles and other personal property found on premises known and designated as #619-621 Jefferson Street, in the City of Hoboken, County of Hudson, and State of New Jersey.

On Hearing

CONCLUSIONS, DETERMINATION AND ORDER

Appearances:
Universal Credit Company by H.L.Richardson and William R. Stuart.

Pursuant to the provisions of the Control Act, hearing was duly held to determine whether the seized property hereinafter described constitutes unlawful property and should be forfeited to the State. The seizure was made at premises located at #619-621 Jefferson Street, Hoboken, and included the following property:

1 - Ford Truck, Motor No. B.B. I-81067929, 1935 N.Y. Registration Com. 400-787

1 - Dodge Delivery Truck, Motor No. A32601

14 - Bundles cardboard cartons
146 - 5 gallon cans (empty)
9 - Drums of oil
2 - Canvas covers
1 - Drum of chemicals
1 - 5 gallon bottle of acid
6 - Cartons of yeast
3 - Bags of white soda
5 pieces of tool equipment

The Dodge truck bore no license plates; the Ford truck was registered in the name of Joseph Harris. Neither Joseph Harris nor any other person claiming to be the owner of any of the seized property appeared at the hearing. The evidence satisfactorily establishes that all of the seized property was used in unlawful alcoholic beverage activity in violation of the Control Act.

It is, therefore, on this 27th day of April, 1936, ORDERED and DETERMINED that all of the property hereinbefore described constitutes unlawful property and is forfeited to the State.

An appearance was entered at the hearing on behalf of Universal Credit Company, the holder of a conditional sales contract on the Ford truck. Under the provisions of the Control Act in effect on the date of seizure, the lien of the claimant, Universal Credit Company, is entitled to recognition unless it had knowledge of the unlawful use to which the seized vehicle was put or knowledge of such facts and circumstances as would have led a person of ordinary prudence to discover such use.

Claimant's inquiry respecting the character of the purchaser and his intended use of the motor vehicle made prior to the acceptance by it of the conditional sales contract, disclosed that he was residing at the Belvidere Hotel in New York City and had previously resided at the Taft, Plymouth and Victoria Hotels in the same city; that Harris stated that he was a truck driver employed by the Inter-City Beverage Company at a salary of $75.00 per week and at the same time employed by the New Mayfair Ticket Agency as a ticket speculator on a commission basis earning an average of $50.00 a week, and that he intended to go into the trucking business himself to do general delivery work for the Inter-City Beverage Company. Its inquiry further disclosed that he was reputed to be a former racetrack man. The Inter-City Beverage Company, a dealer in alcoholic beverages, upon inquiry confirmed the statement made by Harris as to his employment by it.

The conditional sales contract was executed approximately

ten days after the inquiry by the claimant, at which time Harris gave his address as #820 Riverside Drive, New York City, and shortly thereafter and without any additional inquiry, claimant financed two more trucks for Harris.

Harris made one payment on account of his indebtedness approximately a month after the purchase of the motor vehicle and thereafter defaulted on his payments; within approximately six weeks after the sale, claimant had several men attempting to locate Harris or the motor vehicle because, as the Credit Manager of claimant testified, "We did not like the looks of the transaction and in view of his occupation, trucking beer, and in view of the amount involved and the particular time of the year." Claimant was unsuccessful in locating either Harris or the motor vehicle and such vehicle was in fact in use in connection with the activities of an alcohol "drop" located in Hoboken.

In general, a vendor of a motor vehicle may assume that the purchaser does not contemplate use thereof in unlawful alcoholic beverage activity. If the sale is in the usual course of business and adequate investigation discloses nothing to place the vendor on notice or excite his suspicion, his claim will be recognized. Cf. Owens v. Commonwealth, 167 S.E. 377 (Va. 1933).

The instant case, however, does not come within the purview of this rule since there were many facts which should have aroused the claimant's suspicions. The reasonable inference to be drawn from the facts within claimant's knowledge, was that the purchaser was not a reputable businessman. The opinion the claimant had of the transaction as voiced by the Credit Manager and as translated into action immediately after the first default, was based, except for the default in payment, solely upon the facts disclosed to it by its inquiry, evidencing that it too drew the same inference as to the character of the purchaser.

Furthermore, claimant was advised that the purchaser was going to use the motor vehicle to transport alcoholic beverages and nowhere in the testimony does it appear that any inquiry was made of Harris by it as to what steps he had taken or intended to take to comply with whatever laws covered the transportation of such alcoholic beverages. The circumstances disclosed that the sale was not an ordinary sale and that the facts within the claimant's knowledge were such as would have led a reasonably prudent person to discover the intended unlawful use of the motor vehicle. The claim of said Universal Credit Company will therefore be denied.

It is further ORDERED that all of the seized property above described shall be retained for the use of hospitals and State, county and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

April 27th, 1936.

10. MUNICIPAL ORDINANCES - SEARCHES AND SEIZURES UNDER SEARCH WARRANTS CONTROLLED ENTIRELY BY STATUTE AND NOT BY MUNICIPAL REGULATION.

April 27, 1936.

Sidney Goldman, Esq.,
City Attorney,
Trenton, New Jersey.

My dear Mr. Goldman:

I have yours of the 24th and the memo enclosed herewith re proposed amendments and additions to your pending alcoholic beverage ordinance, requesting answer in time for your meeting tomorrow night.

I note that Section c of Item H is taken from Sections 54 through 61 of the Act. It provides for search warrants, their manner of issuance and execution, the time when they shall be served and within which they must be returned, receipt for property seized thereunder, the return of property seized otherwise than as provided therein, and for the punishment of anyone knowingly obstructing their execution. I do not think that these matters are within your jurisdiction. The subject of search warrants is one, I believe, which the State statutes alone can control. It is true that your section does no more than to repeat the provisions of the statute, adapting same in its wording to inclusion in your ordinance, but that does not remedy the situation because it still would purport to provide for search warrants by virtue of authority conferred not by the Act but by the ordinance and this I do not think that municipalities can do. We do not have in New Jersey any general enabling statute conferring upon municipalities the authority to make ordinances dealing with searches and seizures under search warrants and I venture the opinion that in the absence thereof the issuance of search warrants can be governed only by and in the manner prescribed in other particular statutes expressly controlling same. You have given me such a short time in which to reply that I have not been able to go into the matter sufficiently to reach a definite conclusion on the point. I suggest that until we can do so and find sufficient authority therefor, that you leave Section c of Item H out. Your local magistrates are fully protected by the sections of the statute from which it was taken in any event.

Very truly yours,

Commissioner.