

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

BULLETIN 214

NOVEMBER 19, 1937

1. REFERENDUM - AUTHORIZING SUNDAY SALES PURSUANT TO SECTION 44 - EFFECT ON PREVIOUS RESTRICTIONS - POWER TO FIX REASONABLE HOURS OF SUNDAY SELLING NOTWITHSTANDING THE REFERENDUM.

November 12, 1937.

Ferdinand Alpaugh,
Clerk of Roxbury Township,
R.D. Flanders, N. J.

My dear Mr. Alpaugh:

I have before me your letter certifying that at the general election held in the Township of Roxbury on November 2, 1937, there was submitted the question: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" and that the vote on the question was "yes" 759, "no" 566.

I note that you have an ordinance regulating Sunday selling. Section 3 of "An Ordinance relating to the sale of alcoholic beverages and the regulation thereof," adopted by the Township Committee on May 13, 1936, provides:

"The sale of alcoholic beverages shall not be permitted between the hours of one o'clock A.M. and one o'clock P.M. on Sundays, nor between the hours of one o'clock A.M. and six o'clock A.M. on other days, prevailing time."

The affirmative vote on the referendum, in favor of Sunday sales, removed all restrictions against Sunday sales theretofore enacted. Re Runnemede, Bulletin 47, Item 7. Hence, Section 3 of the ordinance, to the extent that it dealt with Sunday sales, has been superseded by the referendum.

It follows that at present sales of alcoholic beverages may be made at any time on Sundays in your Township.

The referendum, however, does not necessarily mean that unrestricted Sunday sales must be allowed. Re Way, Bulletin 58, Item 6. The statute provides (Section 44) that if a majority of the voters shall vote "yes", the sale of alcoholic beverages shall be permitted on Sundays pursuant to the provisions of the Act. The Act elsewhere provides (Section 37) that the municipal governing body may, by ordinance or resolution, limit the hours between which the retail sales of alcoholic beverages may be made.

The Township Committee has, therefore, the power to fix hours of Sunday selling by a new ordinance or resolution, notwithstanding the referendum (Re Ewing Township, Bulletin 95, Item 11), provided the hours are reasonable in the light of the declared wishes of the electorate as expressed in the result of the referendum (Re Ewing Township, Bulletin 108, Item 1)..

Very truly yours,

D. FREDERICK BURNETT
Commissioner

New Jersey State Library

2. REFERENDUM - PROHIBITING ALL RETAIL SALES PURSUANT TO SECTION 43 - EFFECT ON OUTSTANDING LICENSES - REFUNDS.

November 12, 1937.

Harold L. Bailey,
Clerk of Downe Township,
Dividing Creek, N. J.

My dear Mr. Bailey:

I have before me your letter certifying that at the general election held in Downe Township on November 2, 1937, there was submitted the question: "Shall the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes and boats, and the issuance of any retail licenses, except as aforesaid, pursuant to the 'Act concerning alcoholic beverages' be permitted in this municipality?" and that the vote on the question was "yes" 267, "no" 319.

As the majority voted in the negative, the issuance of municipal retail licenses for premises in Downe Township has now become unlawful and all such licenses heretofore issued (of which, according to my records, there are five plenary retail distribution licenses presently outstanding) become void and inoperative thirty days after the date of the referendum, i.e. at midnight on Thursday, December 2nd.

Although it is not required by the Act, I suggest that out of fairness to the licensees you serve them at once with notice of the result of the referendum, and point out the date on which their licenses will terminate, in order that they may have as much time as possible to make the necessary arrangements. After December 2nd, it will be in violation of the law and a misdemeanor for them to conduct liquor business of any kind. No extensions of time may be granted and no exceptions made.

As all privileges under the licenses are terminated by the referendum, each of the licensees will be entitled, in accordance with the rulings made in Bulletin 58, Item 14, and Bulletin 69, Item 2, to a refund of the prorated portion of the license fee representing the unexpired term of the license, which in the present cases will be the period from December 3, 1937 through June 30, 1938.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. RETAIL LICENSES - SPECIAL CONDITIONS - APPLICATION MAY BE GRANTED FOR BUILDING NOT YET CONSTRUCTED SUBJECT TO CONDITION REQUIRING COMPLETION IN ACCORDANCE WITH PLANS SUBMITTED.

November 12, 1937.

Raymond E. Rockefeller,
Borough Clerk,
Ramsey, N. J.

My dear Mr. Rockefeller:

I have before me resolution adopted by the Mayor and Council authorizing the issuance of a plenary retail con-

a renewal license was issued for the current term, although appellant's application had not been accompanied by the requisite fee and although at the time of issuance he had deposited but part of the fee and arranged to pay the balance in the future.

On July 20, 1937, appellant's certificate of license was taken away by the local authorities, and on July 26, respondent, without notice to appellant, adopted a resolution in effect cancelling appellant's renewal license for nonpayment of fee.

Appellant forthwith appealed from this cancellation and obtained a special order staying its effect pending determination of his appeal. Contemporaneously, the remainder of the license fee was paid to the municipal clerk without prejudice to respondent's rights.

Thereafter, on August 2, 1937, respondent adopted a resolution "restoring" the status of appellant's license, and his certificate of license was returned. Appellant nevertheless pressed his appeal, and the matter duly came on for hearing.

However, since that hearing, appellant has voluntarily surrendered and abandoned his "license". Hence, whatever the nature of the rights which appellant thus surrendered, the subject matter of this appeal is by his voluntary act no longer in existence.

The appeal, therefore, becomes moot and is hereby dismissed.

Dated: November 13, 1937.

D. FREDERICK BURNETT
COMMISSIONER

5. LICENSEES - EMPLOYMENT OF MINORS - EIGHT YEAR OLD GIRLS ARE NOT APPROPRIATE ATTRACTIONS FOR LIQUOR LICENSED NIGHT CLUBS.

Dear Sir:

My wife and 8 year old daughter and myself stop at the Berkeley Carteret Hotel. Is there a law against the child talking on the stage of their night club if she is called upon to speak as a guest.

Yours very truly,

B. J. Winters

November 15, 1937.

Mr. B. J. Winters,
Ocean Grove, N. J.

Dear Mr. Winters:

Minors under the age of fifteen years may not be employed in any manner whatsoever by any licensee, Bulletin

169, Item 15; re DeVita, Bulletin 96, Item 9.

The rule applies, whether the minor is compensated or not, to any performance, exhibition or talk given on licensed premises.

Hence, your daughter may not talk or exhibit herself on the stage of a liquor licensed night club. The fact that she is requested to do so as a guest of the management makes no difference. The question is not whether a performance is "by request" but whether it is proper. Girls of eight are not appropriate attractions for night clubs.

The hotel will be notified accordingly.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - SCULTHORPE vs. OCEANPORT

MILDRED S. SCULTHORPE,)

Appellant,)

-vs-)

BOROUGH COUNCIL OF THE)
BOROUGH OF OCEANPORT,)

Respondent.)

ON APPEAL

CONCLUSIONS

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Edward W. Wise, Esq., Attorney for Appellant

No appearance for Respondent

BY THE COMMISSIONER:

This appeal is from a three-day suspension of appellant's plenary retail consumption license.

The Order of Suspension was adopted by respondent on the evening of September 2, 1937, effective immediately. The evidence discloses that several persons appeared at the Borough meeting on September 2, 1937, and complained that loud noises were emanating from appellant's licensed premises; that the Council thereupon, and without any notice to appellant or opportunity to be heard, adopted the present Order of Suspension; and that in pursuance thereof, the local Chief of Police informed appellant that her premises must remain closed for three days.

On the following day, appellant instituted the present appeal and obtained an Order staying the suspension of her license, pending determination of this proceeding. Before such stay was procured, however, appellant was compelled to remain closed for one day in compliance with the Order of Suspension.

On September 16, 1937, subsequent to institution of this appeal, respondent adopted the following resolution:

"WHEREAS, such proceedings were had at the last regular meeting of the borough of Oceanport that the alcoholic beverage license of Mildred S. Sculthorpe, for premises known as Colonial Inn, in the Borough of Oceanport, was suspended for three days; and

"WHEREAS, the said Mildred S. Sculthorpe took an appeal therefrom and obtained a stay of such suspension after such suspension had been in force and effect for at least one full day; and

"WHEREAS, it is the intention of this body to remit any further imposition of penalty and to close the matter without further proceedings.

"NOW THEREFORE BE IT RESOLVED, that any further proceedings on the part of the Borough of Oceanport against Mildred S. Sculthorpe with reference to the suspension of beverage license issued to the said Mildred S. Sculthorpe for Colonial Inn in the Borough of Oceanport, which suspension was imposed upon the second day of September, 1937, shall be abandoned and the suspension vacated and the counsel of the Borough is hereby directed to consent to a dismissal of the appeal and to discontinue any further proceedings in the matter."

The Control Act, Section 28, provides:

"No suspension or revocation of any license shall be made until a five-day notice of the charges preferred against the licensee shall have been given to him personally or by mailing the same by registered mail addressed to him at the licensed premises and a reasonable opportunity to be heard thereon afforded to him."

For failure to give notice and prefer charges, revocation proceedings were set aside in Romeiko vs. Kearny, Bulletin 57, Item 13 ("However guilty appellant may have been in fact, it goes against the grain to revoke his license without making a specific charge against him and giving him a chance to be heard. It is not due process of law.") and McHugh vs. East Paterson, Bulletin 173, Item 7 ("It thus appears that appellant never had any chance to be heard, let alone a fair opportunity to clear himself.")

The suspension in the instant case will have to take the same course.

The municipal resolution above quoted was, therefore, adopted on sound advice. Despite its abandonment of the penalty previously inflicted, appellant is entitled to prosecute this appeal to clear her name and record. McHugh vs. East Paterson, supra.

The order of suspension heretofore made in this case by the respondent is reversed without prejudice, however, to the right of respondent to institute disciplinary proceedings

in accordance with the Act.

Dated: November 15, 1937.

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - THE HOSTESS RACKET - THE CLIFTON
PRECEDENT OF OUTRIGHT REVOCATION.

November 16, 1937.

William A. Miller,
City Clerk,
Clifton, N. J.

Dear Mr. Miller:

I have before me staff report and your certifications re disciplinary proceedings against:

1. Rudolf Shupik, adjudged guilty of having permitted hostesses and entertainers to be served with food and beverages at tables and at the bar with patrons, at the expense of patrons, in violation of Sections 4 and 5 of your local regulation, and of having employed ineligible persons without permit, and note the outright revocation of the license and the decree rendering the licensed premises ineligible for two years.

2. Precida Szadkowski, t/a Clifton Casino, charged with (a) having sold alcoholic beverages during prohibited hours, viz. after 3:00 A. M. in violation of your local regulation and (b) having permitted hostesses, entertainers and other employees to be served with food and beverages at tables and at the bar with patrons, at the expense of patrons, in violation of Sections 4 and 5 of your local regulation and note that this licensee pleaded guilty to Charge (a) and not guilty to Charge (b); that after hearing the evidence on the latter charge, the City Council entered a verdict of guilty; that the license was thereupon revoked effective November 10, 1937.

Neither expressing nor entertaining any opinion on the merits of either of these cases, which were handled by the staff in routine course, I am deeply appreciative of the prompt and wholesome manner in which the City Council have discharged what they conceive to be their duty.

Clifton licensees well knew of your local regulations forbidding the solicitation of patrons by hostesses and entertainers. This is particularly true in the Shupik case because he was before your Council about a year ago for similar violations at which time his license was suspended for a period of two days. Under date of November 19, 1936, I wrote to your Council in part as follows:

"I note with pleasure that your Council acted with promptness in this matter. I presume they took into consideration that this was the first case of its kind that had arisen in your municipality and

felt that the imposition of even a minor penalty would serve as a sufficient deterrent to further violations. I hope it does. Reports reach me, from time to time, from various parts of the State that the nefarious practice of taverns employing women, as sirens, paid on a commission basis, to entice men to drink, is growing rather than abating. I take it we all agree that the practice is an insult to decency, and a challenge to the maintenance of the privilege to dispense liquor."

The present actions are a refreshing response and a drastic warning that your Council means grim business.

All of my investigators were high in their praise of the manner in which these cases were presented before your Council by attorney John G. Dluhy. Such assistance goes a long way in disciplinary proceedings. Incidentally, my men loathe the work of tracking down calloused and predatory females who give a bad name to every place they infest. It is our duty, however, to keep taverns decent and we therefore welcome the splendid backstopping given by the Clifton authorities.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

8. LICENSEES - SELF-SERVICE PLAN - RETAIL LICENSEES MAY NOT APPLY SELF-SERVICE PLAN TO ALCOHOLIC BEVERAGES.

November 3rd, 1937.

Sergeant Bernard Mallon,
Police Department,
North Bergen, N. J.

Dear Sir:

Your telephone inquiry as to whether the self-service plan in vogue in the grocery department of an Atlantic and Pacific Tea Company store in your municipality may be applied to its liquor department has been considered.

No discussion is required at this late date to establish the differentiation between the handling of alcoholic beverages with its dangerous incidents and other types of merchandise. The legislature has expressly provided that only persons meeting certain qualifications may handle alcoholic beverages on behalf of the seller and in so far as the buyer is concerned he or she must, in any event, be at least 21 years of age. If self service of liquor were permitted, these statutory restrictions would be rendered nugatory. It is safer that, so far as liquor is concerned, the traditional manner of sale be retained and that the sale be made directly by and to duly qualified persons.

Accordingly, you are advised that a self service plan may not be made applicable to alcoholic beverages by any retail licensee.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

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

9. HOSPITALS - MEDICINAL ALCOHOL - ALCOHOL INTENDED FOR USE AND USED SOLELY AS AN ANTISEPTIC AND IN THE PREPARATION OF LINIMENTS MAY BE PURCHASED BY A HOSPITAL WITHOUT ANY SPECIAL PERMIT FROM THIS DEPARTMENT.

November 5, 1937.

Gilbert E. Crogan, Jr. Esq.,
Bound Brook, N. J.

Dear Mr. Crogan:

It is my understanding that the Calco Chemical Co. Inc. maintains a hospital in its plant at Bound Brook; that in the course of the conduct of the hospital, ethyl alcohol is used for antiseptic purposes and for the compounding of liniments; that it contemplates purchasing alcohol for such purposes from the U.S. Industrial Alcohol Co. which does not hold any license under the Control Act; and that the inquiry is whether such purchases of alcohol may be made without any license or permit from this Department.

Although the legislature has included alcohol within the definition of alcoholic beverages contained in Section 1, it is evident that the licensing and other restrictive provisions of the Act were not intended to apply to alcohol actually used for medicinal and antiseptic purposes and not for beverage purposes. Thus, Section 27 expressly provides that the provisions of the Act shall not apply to alcohol used in the manufacture and sale of "medicinal, pharmaceutical, antiseptic and toilet preparations" unfit in fact for beverage purposes. The alcohol purchased by the Calco Chemical Co. and used in the manufacture of liniments falls directly within the letter of the statute. Furthermore, in the light of its purpose, it would seem that Section 27 should be construed also to exempt from the provisions of the Act the alcohol purchased by the Calco Chemical Co. and used solely for antiseptic purposes. The failure to use this alcohol in the manufacture of a compounded preparation does not lessen the significance of the fact that it is actually intended and used for medicinal purposes and not for beverage purposes.

It is, therefore, the Commissioner's ruling that the Calco Chemical Co. may purchase alcohol from the U.S. Industrial Alcohol Co. without permit from this Department, provided the purchased alcohol is intended for use and used in its hospital as an antiseptic and in the preparation of liniments.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

10. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES -
THE STRIP-TEASE - HEREIN OF BLUING FOR WHITEWASHING PURPOSES.

November 17, 1937

Sidney J. Turner, Clerk
Borough of Totowa
Paterson, New Jersey

Dear Mr. Turner:

I have before me "Memorandum and Conclusions" signed by the Councilmen who heard the charges against Madeline Borsdorf, t/a Elm Palms, viz. (a) permitting lewd and immoral activities on the licensed premises, (b) permitting gambling on the licensed premises and (c) employing non-resident entertainers without having obtained any permit.

The memorandum states: "The first witness called on behalf of complaint was Mr. Leo King who was duly sworn and his evidence was substantially as follows:

"That he is an investigator for the Department of Alcoholic Beverage Control of the State of New Jersey; that pursuant to a complaint filed in the office of the Department that there had been violations of the Alcoholic Beverage Control Rules and Regulations at the premises of Madeline Borsdorf, holder of Plenary Retail Consumption License, C-8, issued July 1st, 1937, he, in company with one, Frederick J. Best, on Sunday, September 12th, 1937, at 12:30 A. M. proceeded to the licensed premises for the purpose of making an investigation. The witness King described in detail the lay-out of the licensed premises. He stated that upon arrival at the licensed premises a floor show was in progress and that he and Best stationed themselves at the door leading to the main entrance of the dining room and witnessed the performance which was in progress, seeing the latter part of the show. The witness, King, thereupon gave a description of the performances of the show. One of the performers, he stated, was introduced by the mistress of ceremonies, who announced "This will be a strip-tease dance by Miss Dabney, whom we have all been waiting for; that thereupon Miss Dabney appeared on the dance floor wearing a light blue dress, and proceeded to dance about the floor and as she danced removed her clothing piece by piece until she was entirely in the nude, finally leaving the dance floor;

The witness, King, testified that at the conclusion of this performance, he, in company with Best, then entered the bar room where they observed a bagatelle machine in operation; that at 1:30 A. M. the floor show was over and that they remained in the premises until 2:10 A. M., when the witness King noticed the girl who did the strip-tease dance stationed in the doorway of a

room which is connected with the bar and also leading into the kitchen; that he saw a man there whom he was informed was the husband of the licensee (indicating and pointing with his finger at Mr. Borsdorf in the Council Chamber), and who acted in the capacity of the owner of the premises; that in order to obtain further information he requested an introduction to the girl who did the strip-tease dance, which was given. And that he asked the girl to drink with him to which she consented. The witness stated that he introduced himself as 'Leo' and introduced Best as 'Fred', and that the girl gave her name as Dorothy Dabney; that while the witness King, Best and Miss Dabney were in conversation and drinking at the bar and at about 2:10 A. M., the licensee, Mrs. Borsdorf, came to the barroom and called to Miss Dabney that it was time to get ready for the next show and that thereupon Miss Dabney left the witness King and Mr. Best, stating that the witness King and Mr. Best should wait around. That the witness King told Miss Dabney that he had missed the first part of the show; that later on Miss Dabney appeared on the dance floor to perform her dance; that at this time the witness and Best were seated at a table inside the dance hall where they were able to obtain a good view of the dance; that after her dance, Miss Dabney passed by the table where they sat and that she was entirely in the nude. The witness testified that at the conclusion of the performance, he and Mr. Best were asked by the owner of the premises to come again on Wednesday night when there would be a special show for men. The witness stated that he and Best left the premises at about 3:20 A. M. and that there were people still in the premises but that the bar was closed.

"The witness King testified further that on September 25th, 1937, he visited the premises with Investigator Best, arriving there at 10:30 P. M. and remaining until 2:30 or 3:30 A. M.; the witness described the performances leading up to a strip-tease dance by a person introduced as 'Miss Personality', who appeared on the floor and was dressed in a light, thin gown and danced about the floor, disrobing piece by piece until she was entirely in the nude, with the exception of a small band about four inches wide about the lower region; that about 2:30 A. M. the strip-tease dancer reappeared, wearing a greenish dress and went through practically the same movements and actions as in the first show.

"On cross-examination, the witness was interrogated at some length as to the details of what transpired as outlined in his direct examination. Counsel for the Defendant tried to bring from the witness the fact that it might have been an illusion which produced the effects of an individual in the nude, contending that this could be done if certain bluish lights were directed upon the individual performing - but the witness stated that he was positive as to what he says he saw and was very emphatic about what he says he saw.

"The witness King testified further that while watching the performance on this date, they observed Investigators Robbins and Higginbotham seated among the spectators and who were there without the knowledge of Inspectors King and Best.

"The witness King testified further that he wasn't positively sure whether the spotlight was used on the dancers, but he did say, however, that the lights were dimmed and of amber color but that he was able to see what transpired.

"The next witness called on behalf of the Complainant was Philip Finzel, whose evidence was substantially as follows:

"That he is an investigator for the Department of Alcoholic Beverage Control of New Jersey; that on the evening of September 15th, 1937, he, in company with Investigator Cox were assigned by the Department to investigate complaints made concerning violations committed at the Palms on Route 6; that pursuant to instructions from the Department he, in company with Investigator Cox proceeded to the Palms, arriving there around ten o'clock and upon arrival entered the barroom; that there were present in the dining room about eighty-five or ninety people, employees of the Manhattan Rubber Company, who were having an affair in the dance hall; witnessed the first part of the show which was on when he arrived there. That the owner's wife was playing an accordion; that later on a woman was introduced and danced; that he was in the back of the dining hall when the dance was going on. The witness testified that one of the dancers was announced and introduced to those present in the dining room and that during her dance, she removed her clothing piece by piece until she was entirely nude from the waist up; that later on the same girl appeared and again danced and the crowd were yelling for her to give the real stuff; during her dance the second time, she removed her clothing piece by piece until she was entirely in the nude and as she left the floor she held her pieces of clothing in the one hand, using the other hand to cover the vulva.

"The witness testified further that on September 18th, 1937, he, in company with Investigator Cox returned to the licensed premises, arriving there at about 10:45 P. M.; that about 12:45 the floor show started; that Mrs. Borsdorf played the accordion - announced that a lady she called 'Miss Personality' would entertain in a strip-tease dance; that the lady performed a dance holding plumes on her arms, waving the plumes up and down in front of her, finally exposing the upper portion of her body in the nude, continuing dancing until all her clothing was off and when leaving the floor, holding the plumes above her with one hand and covering the vulva with the other; that about twenty minutes later she returned to the dance floor and performed the dance again in the same manner, excepting that she wore a small 'G-String' or a small ornament in front of her vulva; that the witness left the premises at about three o'clock.

"The witness Finzel was cross-examined at some length by counsel for the Defendant, concerning the detail covered by the witness on direct examination. On cross-examination the witness stated there was present a Mr. Cook of the Manhattan Rubber Company, who acted as Master of Ceremonies that evening, or rather toastmaster, but that the speaking was all over when he arrived there. The witness noticed a bowling ball machine in the barroom, thought it was called a 'skee-ball'.

"The next witness called for the Complainant was Mr. Anthony Robbins, who was sworn and his evidence was substantially as follows:

"That he is an Investigator of the Department of Alcoholic Beverage Control; that on September 26th, 1937, he had been assigned to investigate operations at the premises of the

Defendant; that on the said September 26th, he, in company with Investigator Higginbotham proceeded to the licensed premises, arriving there at about twelve o'clock or shortly after; that the show started shortly after their arrival, that there were three acts in the show and that Mrs. Borsdorf played the accordion, making four acts in all; that among the acts was a strip-tease dancer who danced and who during her dance removed her clothing piece by piece until she was absolutely in the nude with the exception of a 'G-string' or narrow band covering the lower part of her body; he left the premises at about three-thirty Daylight Savings time or two-thirty standard time, with Investigator Higginbotham; he saw a pin-ball machine being operated in the bar-room by both men and women and saw the bartender hand over nickels to persons who were successful in playing the machine; he testified that the lights were dimmed almost to the extent of darkness while the strip-tease dance was being performed and without a spotlight, but, however, sufficient light to clearly see the dancers; that at the two o'clock show the same thing transpired as in the previous show; the strip-tease dancer was not entirely in the nude, having a little ornament of some nature covering the lower part of her body or the vulva.

"At the conclusion of the testimony of the foregoing witness, Mr. Frommelt, representing the Borough Council, stated that there were three other witnesses which he could produce but that their evidence would only be corroborative of the witnesses already produced. Counsel entered into a stipulation that if the witnesses, Frederick J. Best, Jacob Cox and R. S. Higginbotham were produced, their evidence would be the same as given by the preceding witnesses. This concluded the complainant's case.

"The defense thereupon proceeded to trial.

"Mr. Ernest Borsdorf was thereupon sworn and his testimony in his own behalf was substantially as follows:

"That his wife, Madeline Borsdorf, is the licensed owner of the premises known as 'The Palms', situate on State Highway Route #6, Totowa Borough; that he and his wife have conducted the licensed premises for a period of approximately a year and eight months; that previous to this time, he and his wife conducted a tavern known as 'Teddy's', situated on the Hamburg Turnpike in Wayne Township, being located there for a period of about two years. He testified that he did conduct floor shows at their premises on the various dates set out in the complaint but absolutely denies that they were lewd and of an immoral character, as complained of - in other words, completely denying each and every charge set forth in the complaint. He testified that he hires his performers from Sally Shaw, who conducts an agency in New York City, requesting that a certain number of acts be sent out and that the performers are sent out unknown to him as to what the acts consist of; that it has always been his endeavor to have good, clean acts. He testified that the dance performed by Miss Dabney on September 12th, 1937, was not lewd and immoral; that he distinctly recalls the performances of September 12th and particularly the dance of Miss Dabney; that he ran and operated the spotlight at the premises and so operated the spotlight on that particular evening and he by reason of this, has his attention directed at all times to the performers. He testified that the woman did not completely disrobe; that he did not and would not permit such an occurrence; that every performer that comes there and dances is what is known as a 'Veil Dance',

the performer wearing a flesh colored pair of panties with what is known as a 'G-string', and that is what the performer, Miss Dabney, wore on that occasion; the witness testified that he has been connected with moving picture houses as a spotlight operator for many years, being employed by Warner Brothers at the Fabian Theater at the present time. The witness testified that many different stunts can be performed through the use of various spotlights, one of which is if a performer is wearing flesh colored tights, as the performer did on the occasions at his premises, with a blue spotlight on the performer, it has a tendency to deceive the public and leave the impression that the performer is naked or in the nude. In other words, that the blue light when flashed on a flesh colored object causes an optical illusion; that when this is done, it causes what it is known in theatrical circles as a semi-nude act - it fools the people, giving the appearance that the person performing is practically in the nude when in reality, they are not.

"The witness testified that on the evening of September 15th, he was present at the floor show and operated the spotlight on that occasion; he does not recall just what color spotlight was used; that on many occasions the performer asks for a particular colored spotlight; for a nude appearance a blue spotlight is used; did not see Mr. King there and denies that he introduced Mr. King to Miss Dabney - never saw him before.

"With reference to September 25th, was present but does not recall the names of the performers and is absolutely sure that no one of the performers appeared and danced in the nude. The witness testified that he felt that he had a good name and that he would not do anything that would hurt his character or reputation. The witness stated further that for a period of years, he was a vaudeville performer and he has seen the effect of a blue light on flesh colored tights, making it appear that the person was in the nude.

"The next witness was the Defendant, Madeline Borsdorf. She testified that she is the owner of license C-8 since July 1st, 1937; that previous to June, 1936, she conducted a tavern on the Pompton Turnpike in Wayne Township; that during the entire time she has conducted her business, no charges have ever been made against her; that previous to entering the tavern business, for a period of approximately seven and a half years, she was organist in the Palace Theater in Passaic, New Jersey. Enters a general denial to the specific charges that dancers performed in the nude at her premises. Testified that the dancers on all occasions wore flesh-colored panties and were properly clothed, that the flesh-colored clothing was always used and the effect of a blue light on flesh clothing tended to deceive the eye; created an illusion; knows from experience that in the vaudeville business that blue lights on flesh tights are used to create a nude effect.

"The Defendant produced two witnesses, Mayor Andrew C. Van Riper and Chief of Police Albert Rountree of Haledon, New Jersey, who testified that they knew Ernest Borsdorf and Madeline Borsdorf, his wife, for over fifteen years and that their reputation for being peaceable and law-abiding citizens is of the highest.

"Mr. Judson Cook was sworn as a witness for the Defendant, and testified that he is employed by the Manhattan Rubber Manufacturing Company of Passaic, and was master of ceremonies or toastmaster at a dinner held at the Palms on the evening of September 15th; that there were approximately 100 men present at the dinner and about twenty came in later; that he witnessed the dance alleged to have been in the nude, by the witnesses for the Complainant, and testifies that the dancer was partly clothed and not entirely in the nude as testified to; that he was within fifteen feet of the dancer and that there was a blue spotlight thrown on her, the lights in the dance hall being very much dimmed; that the smoke that night was very, very heavy and that it was with difficulty that you could see through the hall; that he recalls that someone in the crowd had a five-cell spotlight which was directed on the dancer and that person sat alongside of him and that the spotlight was a white light and that he saw a so-called net gauze over the dancer's skin.

"No evidence was submitted whatever to substantiate charges six and seven as set out in the complaint.

"In fact, one of the witnesses for the Complainant, volunteered the statement that it was the Commissioner's ruling that the pin-ball game was a game of skill.

"There was no evidence submitted regarding the licensing of out-of-town performers, or permits having been obtained from the Alcoholic Beverage Control Commissioner to perform at the licensed premises.

"CONCLUSIONS

"Relative to the specific charges set out in the complaint that on said various dates the Defendant permitted, allowed and suffered lewd and immoral acts and activities in and upon her premises, in that 'strip-tease performances' were given by female entertainers in the course of which said female entertainers did appear 'entirely in the nude' and did dance in the nude, we find the Defendant not guilty.

"Relative to the charges of permitting gambling on the licensed premises and employing persons ineligible for a license without special permit, as provided in Sections 22 and 23 of the Control Act -- for lack of evidence to sustain these charges, we find the Defendant not guilty."

It is apparent upon reading the Conclusions as to the strip tease act that your Councilmen were more impressed by the self-serving denials of the licensee and her husband than by the sworn testimony of the disinterested inspectors that the woman stripped until she was bare. To be sure, there was the support of the toastmaster that on one occasion the dancer was not entirely in the nude, there being a "so-called net gauze over the dancer's skin" which discovery he made by sitting next to someone, unnamed, who had the urge to direct a five-cell spotlight on the dancer. And there was much talk of the effect of blue lights on flesh colored "clothing" -- of illusions, and deceit, and making a fool of the people. Bluing has ever been used to whiten the wash!

If the testimony of my men be wholly disregarded and everything said by the defense be taken without discount, it still remains true that the licensee deliberately attempted to create the very impression of lewdness and immoral activities that the rule forbids. Whatever has the appearance of evil and is separated from it only by a "so-called net gauze" is not fit for taverns.

No defense was interposed to the testimony that the bartender was paying off players of the bagatelle and horse-racing machines in nickels. What more proof of gambling could be asked than the playing of such machines against the house?

The licensee's manager admitted that the "talent" came from New York. That of itself put the burden on the defense to prove that the out-of-town performers were licensed. Why then should that charge have been dismissed?

Hereafter, and until a proper control of the conduct of licensees and the use of licensed premises is effected in Totowa, all future disciplinary proceedings against Totowa licensees will be conducted directly by this Department.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. DISCIPLINARY PROCEEDINGS - GAMBLING - FIFTEEN DAYS SUSPENSION.

November 17, 1937.

Edith A. Varley, Clerk,
Borough of Somerville,
Somerville, New Jersey.

Dear Madam:

I have staff report and your certification of the proceeding before the Borough Council of Somerville against Pride of Somerset Lodge #388, I.B.P.O.E. of W., charged with having permitted gambling on the licensed premises in violation of the State Rule.

I note the licensee pleaded guilty to the charge and that the license was suspended for a period of fifteen days -- November 9 to November 23, 1937.

Please convey to the members of the Borough Council my sincere appreciation for their prompt attention to this matter and for the inflicting of such a substantial penalty. It indicates to me that your Borough Council shares the belief that the only proper course for law authorities to take is that, so long as the law against gambling remains on our books, it is our duty to enforce it.

Cordially yours,

D. Frederick Burnett
Commissioner