

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

BULLETIN NUMBER 125.

June 20, 1936.

1. LICENSEES - TIED HOUSES - HUSBAND AND WIFE - PERMISSIBLE FOR ONE TO HAVE WHOLESALE AND THE OTHER RETAIL LICENSE BUT PRACTICE DISAPPROVED - HEREIN OF PARADISE LOST AND THE SERPENT.

Dear Commissioner:

Kindly advise me if a woman may qualify as a licensee for a Plenary Retail Distribution License on premises owned by her, whose husband is the holder of a Wholesale License on premises owned by him.

Very truly yours,

JULIUS ROSENBERG.

June 16, 1936.

Julius Rosenberg, Esq.  
Camden, New Jersey.

Dear Sir:

Section 40 of the Control Act provides:

"It shall be unlawful for .....any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages ..... And it shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any .....wholesaler ....."

The question is whether or not the relationship of husband and wife is such as to bring them within the scope of Section 40 and thereby disqualify each of them.

As used in the statute, interest, generally speaking, is something by virtue of which there is derived an advantage or profit or which involves some proprietary right or share. However, the mere relationship of husband and wife does not necessarily, as a matter of law, make them interested, in that sense, in each other's business activities. Married women have the capacity to bind themselves by contract in the same manner and to the same extent as though they were unmarried and such contracts are legal, and may be enforced at law by or against a married woman in her own name. They may acquire property. Wages and earnings gained in any employment or occupation carried on separately from the husband, and all investments, are their sole and separate property as though they were single women. They may sue and be sued in their own names, separately, and any property belonging to them is liable to satisfy their debts in the same manner as if they were unmarried.

In business, the marital relationship does not affect the legal individuality of either spouse. Hence, if within the contemplation of Section 40 there is no prohibited interest between the respective businesses, a wife is not disqualified from holding a retail license solely because her husband is the holder of a wholesale license.

But whether or not there is such an interest depends on the finding that the businesses are, in fact, actually separate and distinct. Mutual financial interest by way of joint ownership in the licensed premises or of mortgage thereon, chattel mortgage on or ownership of fixtures or other personal property, loans, the joint use of agents, servants or employees, the participation in both businesses of the two principals and other relationships of similar natures must conscientiously be avoided. The two businesses must be separate, segregated and independent at inception and ever continue so. Unlike their respective bosses, the enterprises must be strangers to each other. Tie-up between wholesaler and retailer is a most serious problem. The statute was expressly intended to prevent it. "Tied houses", relatively unimportant when the sale of other commodities is involved, were responsible prior to Prohibition for many social and economic abuses. I shall endeavor to prevent the recurrence of the evil.

I am not in favor of husbands and wives being, respectively, in the wholesale and the retail liquor business or vice versa. The opportunities are great for subterfuge and evasion. From the control standpoint, I don't like it at all. I must, however, permit it because it is technically legal but each such situation will be scrutinized with the utmost care to the end that constant compliance is made both with the letter and the spirit of Section 40. Upon proof of violation, the licensees will be handled without any kid gloves. This applies to them both. Excuses, evasions and red apples just won't go. No effort to apportion the wrong or decide who started it or whose blame it is will be made. Revocation will go against both. Issuing authorities would do well to give fair warning in all such cases of husband and wife. The Garden of Eden became vacant because of a serpent.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

2. LICENSEES - TAX, PENALTY AND REPORT DELINQUENCIES - COSTS TO COVER THE SERVICE ESTABLISHED.

June 16, 1936.

NOTICE TO ALL LICENSEES:

The State Tax Department certifies to me, from time to time, the names of all licensees who are delinquent either in the payment of liquor taxes or in failing to file reports or who have failed to pay penalties assessed by the Tax Department.

My procedure, upon such notification, is to prepare a notice of the charges, fix a time for hearing and thereupon serve the licensee. At the time fixed, a hearing is held, testimony taken and if the facts, as alleged, are proved and the delinquency still remains, orders are entered suspending the license until the end of its term with leave reserved to apply for lifting the suspension in the event that subsequent settlement is made with the State Tax Department and certified to me, whereupon an order vacating the suspension is entered.

This procedure has resulted in effecting collection of large sums of money due the State. All of it, however, takes time and expense. It is but fair that those who are in default should pay the cost of this service.

Hence, hereafter, effective immediately, no orders will be signed effecting the dismissal of such proceedings once they are instituted except upon payment of the sum of \$5.00 to cover the costs incurred by this Department, said sum to be payable by cash, money order or certified check to the order of D. Frederick Burnett, Commissioner.

Furthermore, if settlement is not made with the State Tax Department, and its release or waiver filed with me on or before the time fixed for hearing, so that it then becomes necessary for me to suspend the license, the fee to the State for lifting the order of suspension will be \$10.00 similarly payable.

These service fees paid to the Control Department are in addition to and independent of the monies paid to the State Tax Department in respect to taxes or to delinquencies.

All this - both penalties and costs - can be avoided by your punctual payment of the liquor taxes you owe to the State of New Jersey and prompt filing of the necessary reports.

D. FREDERICK BURNETT,  
Commissioner.

3. MALT BEVERAGES--"APPLE ALE" CONSISTING OF MIXTURE OF BEER AND CIDER MAY BE MANUFACTURED BY BREWERIES AND SOLD BY LICENSEES AUTHORIZED TO SELL BEER.

Gentlemen:

Our company is manufacturing and selling a naturally fermented apple cider beverage under the trade name of "Apple-ale". It contains about 7% alcohol by volume and is generally sold in case lots like beer and within the same price range as beer. We are interested in having a distributor in your state sell this product for us and desire to know what your state regulations are, if any, pertaining to the sale of same. It being a pure cider product there are no Federal regulations prohibiting its sale. The fact that it has a small alcoholic content, however, will probably classify it under some state regulation, and we desire a copy of your laws relative to same, and all other information available.

Very truly yours,

COLUMBIA FRUIT PRODUCTS CO.

June 4, 1936.

Columbia Fruit Products Company,  
Medina, New York.

Gentlemen:

Samples of "Apple Ale" were submitted by a brewery to this Department some time ago. Analyses of these samples were made and investigation was conducted as to the proposed manner of sale. It satisfactorily appeared that the product consisted

of a mixture of beer and cider and that although it contained a somewhat higher alcoholic content, it was manufactured and sold in a manner similar to ordinary beer. It has been treated as a malt alcoholic beverage by the Federal authorities and certain States.

Accordingly, this Department has ruled that "Apple Ale", consisting of a mixture of beer and cider, may be manufactured within this State by a licensed brewery and may be sold by any licensee authorized to sell beer.

The Beverage Tax Division of the State Tax Department has, however, heretofore ruled that in view of the classifications contained in the Alcoholic Beverage Tax Act, the product would not be taxable as ordinary beer but would be subject to a tax of 40¢ per gallon. In this connection you should address your further inquiries to J. Lindsay deValliere, Deputy Tax Commissioner, 1060 Broad Street, Newark, New Jersey.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

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

4. MUNICIPAL ORDINANCES - EXCEPTION FROM NUMERICAL LIMITATION IN FAVOR OF HOTELS ACCOMMODATING 30 OR MORE PERSONS TENTATIVELY APPROVED - HEREIN OF EXCEPTIONS IN FAVOR OF BONA FIDE HOTELS.

June 10, 1936.

C. A. Bond, Jr.  
Borough Clerk,  
Sea Girt, New Jersey.

Dear Sir:

I have before me the resolution adopted by your Mayor and Council on May 4, 1936 which limits the number of plenary retail consumption and plenary retail distribution licenses in the Borough.

So far as it limits the number of licenses, for the reasons stated in Bulletin 43, item 2, it does not need the Commissioner's approval in the first instance in order to be effective. It concludes, however, with the proviso that it shall not apply to recognized hotels providing sleeping accommodations for not less than thirty persons each.

There is no question in my mind as to the propriety of an exception in favor of hotels. I believe hotels as a class could be so distinguished. But I am not so sure that it is sound to qualify the exception by limiting it to a special group of hotels, that is to say, only to those which could provide sleeping accommodations for thirty or more people. The essence of the exception, as I see it, is that in order to be exempt the premises qualify as a bona fide hotel. And a bona fide hotel is a bona fide hotel regardless of the number of persons it can accommodate. Cf. re Ocean, Bulletin 115, item 11.

Nevertheless, I shall tentatively approve the exception as you have written it and leave to concrete instances which may arise in the future its practical application. If anyone considers himself aggrieved thereby and appeals therefrom, all interested parties will be given full and equal opportunity to be heard and the matter will be finally threshed out.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

5. MUNICIPAL ORDINANCES - LIMITATION OF NUMBER OF LICENSES IN PARTICULAR SECTION OF MUNICIPALITY APPROVED.

June 10, 1936.

James G. Scull,  
City Clerk,  
Somers Point, New Jersey.

Dear Sir:

I have before me the resolution adopted by the Common Council on April 20, 1936 reading:

"IT APPEARING that the main portion of the Shore Road of the City of Somers Point, New Jersey, has developed into the residential section of said City; and

"That the Common Council of the City of Somers Point is satisfied that there should be no further licenses for the sale of alcoholic beverages granted for establishments along said Shore Road other than those now existing;

"THEREFORE, BE IT RESOLVED, by the Common Council of the City of Somers Point that there be no additional licenses granted for the sale of alcoholic beverages for establishments along the Shore Road of the City of Somers Point, New Jersey

"This resolution, however, not to affect in any way the licenses now existing at the time of the passage of this resolution, nor the renewals of the said licenses."

The resolution expresses the Council's future licensing policy with respect to the Shore Road district. It establishes the rule before, instead of waiting until after further applications are made. That is the way it should be done. It gives prospective applicants something definite to go by and avoids, in event of future denials, the frequent charges of discrimination or that the refusal constituted mere excuse or alibi for turning some particular person down. Re Renton, Bulletin 115, item 8.

Licenses have been denied by municipal license issuing authorities on the grounds that there were a sufficient number of licensed premises in the vicinity or that the neighborhood was residential and the existing places adequately satisfied the local needs. I have affirmed such denials where such was shown to be in fact the case and the conclusion was eminently proper. See Young v. Pennsauken, Bulletin 114, item 2; Rajca v. Belleville, Bulletin 101, item 1; Crisonino v. Bayonne, Bulletin 101, item 6; Herrman v. Landis, Bulletin 88, item 1; Bowlbyville Beer Garden, Inc. v. Randolph, Bulletin 81, item 12 and the cases cited therein. I see no reason why the same policies cannot be given official standing through adoption by formal resolution.

The resolution is, therefore, approved as submitted subject, of course, to review on appeal.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

6. SALES OF ALCOHOLIC BEVERAGES MAY BE MADE TO ADULT PARENTS EVEN THOUGH ACCOMPANIED BY MINOR CHILDREN - NOT NECESSARY TO PARK THE CHILDREN OUTSIDE.

Sir:

Would you kindly send me a copy of the Law on not serving Fathers and Mothers with their Children who come into my place of business.

Two of the State Agents told me that I could not sell any thing (or even let the children) (enter my Ladies Room) To The Parents if they have their Children with them.

I do not allow any Minors or Children in the Bar, and I have been telling the Parents that I cannot serve them unless they leave their children outside, and then they leave, and do not come in again.

My trade is very much dependent on transients and they have their children in the cars with them. I have taken a large loss turning these Families away. So I hope you will kindly give me a decision on this question, that is if I can serve Parents with children in my Side Room.

I am awaiting your pleasure in this matter so as I will not break any of the laws of the State.

Sincerely yours,

Wm. F. Grubb, Sr.

June 11, 1936.

Wm. F. Grubb, Sr.,  
Tip Toe Inn,  
R.F.D., Laurel Springs, New Jersey.

Dear Sir:

On June 3d, I received your letter regarding the

serving of alcoholic beverages to parents who bring their children with them into your Inn.

The law does not prohibit your selling or serving alcoholic beverages to adult parents merely because they have minor children with them. They need not park them outside. I am very sorry my men overstated the rule. I'll go over the list of the bachelors and tether them closer.

Section 77 of the Control Act does prohibit the sale of alcoholic beverages to minors. Rule 1 of the State Rules Concerning Conduct of Licensees and Use of Licensed Premises (Compiled Rules, Regulations and Instructions, March 1936, page 55) prohibits licensees from selling, serving, delivering or allowing the service or delivery of any alcoholic beverage directly or indirectly to any minor or allowing the consumption of alcoholic beverages by any minor upon the licensed premises.

Minors are persons under the age of twenty-one years. Adults are persons over the age of twenty-one years. Under the law, you may sell to adults whether with or without their minor children but you may not under any circumstances sell or serve or deliver or permit the service or delivery of any alcoholic beverage to anyone under the age of twenty-one years or allow anyone under the age of twenty-one years to consume any alcoholic beverages on your licensed premises.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

7. MUNICIPAL ORDINANCES - EX PARTE APPROVALS BY THE COMMISSIONER  
MAY BE RECONSIDERED ON APPEAL.

June 11, 1936.

Paul C. Kemeny, Esq.,  
Perth Amboy, New Jersey.

Dear Sir:

I have before me your letter of June 2nd.

Section 16 of the Perth Amboy ordinance concerning alcoholic beverages as amended by the Board of Commissioners on August 1, 1934 requires that restaurants holding liquor licenses be closed between 2:00 a. m. and 5:00 a. m. It was approved ex parte by the Commissioner on October 2, 1934. It is, therefore, unless since amended, superseded or repealed by the local governing body, in full force and effect. As worded, it applies to all. Hence, your client's restaurant as well as all others will have to close during the prohibited hours.

If your client feels that the ordinance is unreasonable as applied to restaurants, he may file an appeal from the Commissioner's approval of the regulation. The matter will then be set down for hearing and both sides will be given full and equal opportunity to be heard. Notice and petition of appeal together with acknowledgment or affidavit of service should be made in accordance with the procedure laid down in the enclosed Rules Governing Appeals.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

8. MUNICIPAL ORDINANCES - DISCRIMINATION - EXCEPTIONS TO REGULATIONS FIXING CLOSING HOURS MUST APPLY EQUALLY TO ALL LICENSEES SIMILARLY SITUATED - DISTINCTION BETWEEN BONA FIDE RESTAURANTS BASED ON THE PRESENCE OR ABSENCE OF A BAR DISAPPROVED.

June 12, 1936.

Donald M. Waesche, Esq.,  
Jersey City, New Jersey.

Dear Sir:

Re: Township of Teaneck.

I have before me the proposed amendment to Section 7 of the Township Council's ordinance concerning alcoholic beverages adopted June 24, 1935 and have given it careful consideration. The ordinance, as originally adopted, was approved by me in letter of November 12, 1935 with the exception of the limitation of the number of licenses and the hours of sale as to which approval by the Commissioner is not necessary.

Section 5 of the original ordinance provides that no plenary retail consumption licenses shall be granted, except to those holding such licenses at the time the ordinance was adopted, until the Township Council shall have fixed a quota by ordinance and further, that the section shall not prevent the granting of a license to a restaurant as defined in Section 6. Section 6 provides that no plenary retail consumption license shall be granted for any premises within five hundred feet of any other plenary retail consumption licensee and further, that this regulation also shall not apply to restaurants as thereafter defined.

Section 6 then proceeds to set up qualifications for the particular type of restaurant which may apply for a plenary retail consumption license and be exempt from these two rules. It says that such restaurants must be all on one floor level, must have not less than one thousand square feet in gross and not less than one hundred fifty square feet per room devoted to dining rooms, must be able to accommodate at one sitting not less than fifty persons, must have adequate refrigeration, kitchen facilities and stock of foodstuffs upon the premises and immediately available to patrons, must not have a bar in any dining room but must have a room separate from any dining room in which the alcoholic beverages are prepared.

It should be noted that the definition of restaurant in Section 6 does not attempt to define restaurants generically. It provides merely the administrative test for measuring who shall be exempt from the regulation prohibiting the issuance of plenary retail consumption licenses to new applicants, contained in Section 5, and from the regulation prohibiting the issuance of such licenses within five hundred feet of any other premises so licensed, contained in Section 6. It deals only with who shall get licenses. It does not affect the application of police regulations after the licenses have been issued. It does not deny that other consumption licensees can be restaurants even though they fail to meet the requirements imposed upon the particular class of restaurants described in Section 6.

Section 7, as it now stands, provides in part:

"Section 7. All licensed premises shall be closed to the public between the hours of 3 A.M. and 12 Noon on Sunday and between the hours of 2 A.M. and 6 A.M. on all other days, provided, however, that the Township Council may by resolution extend the hours of closing applicable to all licensees on special occasions."

The proposed amendment to Section 7 will add to the foregoing the further proviso:

"and provided further that the Township Council may by resolution extend the hours of closing applicable to any licensee conducting a restaurant as defined in Section 6 hereof, in response to a written request addressed to the Council in which said request the licensee shall specify the extended hours desired, and explain the reasons for the request, but during the extended hours, if and so granted, such licensee must keep locked that part of his licensed premises described under subsection (e) in Section 6 hereof and must neither sell or serve nor permit the sale, service or consumption of any alcoholic beverage during said extended hours in any part of his licensed premises."

The proposed amendment seeks to exempt from the local closing hour, after application has been made and permission has been granted, those restaurants which qualify according to the definition set out in Section 6. It would make that definition the general rule. But I can conceive of restaurants which are bona fide restaurants even though they couldn't qualify according to your rule; for instance, those restaurants which are bona fide restaurants but happen to have in their dining space a bar. As I understand it, the essence of a distinction such as you propose is whether or not the premises is a bona fide restaurant. Without considering for the moment the tests of area and capacity, which in an attempt to reduce the test to some practical yardstick may be reasonable, you otherwise attempt to measure whether or not a particular premises is a restaurant by the presence or absence in the dining space of a bar. Thus, you exclude establishments which may in fact be restaurants solely on the ground that they have a bar.

After licenses are granted, all those similarly situated are entitled to equal privileges and discrimination as to closing hours against some licensees and in favor of others is not permissible. Re Harrington, Bulletin 118, item 13 and the items cited therein. Regulations may not establish arbitrary, fanciful or illusory distinctions. Unless they can be said to carry out a public purpose and affect alike all persons similarly situated, regulations may not discriminate between those holding the same type of license. Re Wenzel, Bulletin 19, item 7. The mere presence of a bar in a bona fide restaurant does not, if restaurants without bars are allowed to remain open, warrant the closing of the entire restaurant. Whether the liquor is served in a bona fide restaurant over a bar or from an adjacent room is a vain distinction on which to base an exception to closing hours. The two restaurants can be put on equal footing merely by ordering the closing of the bar and prohibiting all liquor sales.

I note that the amendment would also grant permission to remain open during prohibited hours only to the particular licensee applying for same. Regulations extending local closing hours should apply impartially to all licensees similarly situated. They may not confer the privilege arbitrarily upon one particular licensee or group of licensees and deny it to others. See in this connection re Teaneck, Bulletin 120, item 3, re Harrington, Bulletin 118, item 13, re Holz, Bulletin 117, item 8 and the items cited therein.

For these reasons, the proposed amendment is disapproved.

The definition of restaurant contained in Section 6 will not suffice to support a distinction among those already holding licenses in the matter of applying the local regulation establishing closing hours. It excludes establishments which are restaurants in fact and is therefore unreasonable.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

9. AUTOMATIC SUSPENSION OF LICENSES UPON CONVICTION OF GUILT - SALUTARY OPERATION ILLUSTRATED IN TWO CASES - STAY OF CIVIL PROCEEDINGS VACATED BY COMMISSIONER UPON CONVICTION OF CRIMINAL GUILT - AUTOMATIC SUSPENSION IN NOWISE INTERFERES WITH LONGER TERM PENALTY INFLICTED BY LOCAL EXCISE BOARD - HEREIN OF LOCAL LIMITATION OF LICENSES WITH FAIRNESS TO HONEST LICENSEES.

The salutary operation of the 1935 law providing for automatic suspension of any liquor license upon conviction of violation of any provision of the Alcoholic Beverage Control Act was nicely illustrated today in two cases, one in East Orange, the other in Orange:

(1) In the East Orange case, Anthony Cassie, of 180 North Park Street, was arrested February 27, 1936, charged by State Investigators Beck and Linnenkohl, with possession of refilled bottles containing liquor different than labeled. He was held by Judge Albert L. Vreeland of East Orange for the Grand Jury and subsequently indicted and tried yesterday and today before Honorable Daniel J. Brennan, of the Essex County Quarter Sessions and a Jury.

In the meantime, on March 9th, without waiting for the courts to administer criminal punishment, the complaint was transmitted to the local Excise Board of East Orange with the Commissioner's recommendation that revocation proceedings be instituted, it being against sound public policy to permit a licensee to exercise his special privileges until formally adjudicated guilty of a crime. Criminal action is designed to punish the offender; revocation proceedings to protect the public. Accordingly revocation proceedings were instituted and a hearing held before the local Board on May 12, 1936, at which time decision was reserved. On June 2nd, the local board adjudicated the licensee guilty and ordered the license revoked, effective Saturday, June 13th. Anthony Cassie filed an appeal on the 15th, to the State Commissioner and prayed a stay of revocation pending final disposition by the Commissioner. Consent to such stay was given by the East Orange Board. Accordingly, the appeal was set down for hearing for Monday, June 22nd next, and the revocation was stayed pending the hearing of the appeal and until the further order of the Commissioner.

Yesterday, the criminal case against the licensee was brought to trial as aforesaid and continued over until this morning and then went to the jury which, after seventeen minutes deliberation, brought in a verdict of guilty. The case was vigorously prosecuted for the State by Assistant Prosecutor Michael Breitkopf. Edmund Dwyer, of Orange, represented the defendant. Staff report states that County Detective William J. Friary had assembled the evidence most effectively. Qualified representatives of the manufacturers, who have suffered on many occasions from refills, gave expert testimony to prove the dis-

crepancy in the contents of the seized bottles. One of them while on the stand demonstrated gauging to the jury by comparing the liquor in the seized bottle with that of a genuine unopened bottle bearing the same label. A "taster" from the Distilled Spirits Institute tasted the contents of both bottles and swore that the liquor in the seized bottle was not genuine. The men from this Department who testified were Investigators Beck and Linnenkohl who made the original seizure and also our then chemist, John Walczak who had made the original analyses.

As soon as report was received today of this conviction, an order was immediately entered by the Commissioner vacating the stay granted yesterday.

This order was served on the licensee at 5:15 p.m. today and his license taken up by Investigator Charles Wolf accompanied by Detective Johnson of the East Orange police. The place is now closed and will stay closed until at least the civil appeal is heard on the merits.

The reason why the stay was vacated today notwithstanding its grant yesterday upon the consent of the local board, is because of the law of 1935 (c.254) which suspends every license automatically and without notice upon conviction of the licensee. The statute provides "the pendency of an appeal from the conviction shall not affect the suspension which should continue for the balance of the term of the license unless the commissioner, in his discretion, and for good cause shown, shall otherwise order." In view of a trial before judge and jury followed by conviction, the Commissioner has refused to stay the automatic suspension and the order entered today so provides.

Credit for the thought of such automatic suspension is gladly given to the New Jersey Licensed Beverage Association who first suggested that to me. Last year's Legislature thought well of it too and translated it into law so that now automatic suspension follows every criminal conviction of a licensee for violation of the alcoholic beverage law.

(2) The second case arose in Orange. Anthony Capawanna, of 51 South Day Street, was visited on March 26th, 1936 by State Investigators Linnenkohl and Creveling on routine inspection, who tested two open bottles behind the bar disclosing that they contained whiskey other than as represented by the labels. Subsequent analysis by the Department chemist confirmed their findings.

The licensee was arrested March 31st, 1936, held by Police Judge Martin J. McHugh of Orange for the Grand Jury, subsequently indicted and on notice reaching the Department today that he had pleaded "non vult", his license became automatically suspended pursuant to Statute. Accordingly, Investigator Wolf, accompanied by a member of the Orange Police, closed up the premises at noon today.

Similarly, as in the East Orange case, the charges had been transmitted to the local Excise Board of Orange on April 6th, 1936 by the Commissioner, with recommendation to institute revocation proceedings, which was done.

The licensee testified he had been working for six months in a hat shop and therefore was away from the tavern a great deal, and that he never tampered with any alcoholic beverages. The case

was tried before the local board, which reserved decision and yesterday found him guilty and suspended his license for thirty days to begin on June 17th. Since the current license year terminates on June 30th, the Board provided that its sentence was to be enforced in the following manner, viz.: Suspension of his present license for the balance of the term; application for a renewal license not to be considered until July 15th.

The statutory automatic suspension executed today at noon, as aforesaid, therefore became instantly effective without waiting for the local suspension scheduled to begin tomorrow. It automatically supersedes the order of the local board, to the extent of beginning immediately without waiting for the time otherwise fixed. It in nowise, however, affects the determination of the local Board that no application for a new license will be even considered by it until July 15th at the earliest.

Presumably the Orange Board will take this conviction into careful consideration in determining whether any renewal license should be granted Capawanna at all. The Commissioner has strongly recommended to all municipalities desiring to limit the number of licenses, that renewals be granted to all licensees who have clear records but that, upon conviction of any serious violation, the particular licensee should be rejected on renewal and that the number of licenses be automatically reduced by each such rejection as well as upon revocation.

If such policy is uniformly adopted by each municipality in the State in every case involving possession of illicit liquor, it will go a long way to wipe out bootleg and thereby alleviate the distress of law-abiding licensees who, paying the full tax on legitimate liquor, cannot compete against the outlaws.

What's more every sale of bootleg deprives the State of just so much revenue. The greater the tax from liquor the less on our homes. Assuming a constant thirst to be slaked, the demand is driven into chartered tax channels as illicit liquor is banished. The cheating licensee is unfair to his customers who rely and have a right to rely that he is dispensing legitimate liquor without worry as to its purity or lest it be "cracked" from poisonous denaturants. The possession of illicit liquor is therefore a hit below the belt not only to the legitimate traffic but also to every citizen who rents or owns a home.

D. FREDERICK BURNETT  
Commissioner

Dated: June 16, 1936.

10. APPELLATE DECISIONS - POWELL vs. BRIDGETON.

ALFRED POWELL,	)	
	)	
Appellant,	)	
	)	ON APPEAL
-vs-	)	
	)	CONCLUSIONS
CITY COUNCIL OF THE	)	
CITY OF BRIDGETON,	)	
	)	
Respondent	)	

J. Peter Davidow, Esq., Attorney for Appellant.  
Samuel Iredell, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for premises described in the Notice of Appeal as 132 West Vine Street, Bridgeton.

Respondent denied the application for the following reasons: (1) no such street; (2) not accessible to Police Force; (3) property owners oppose granting of license in such place.

Appellant was licensed to sell alcoholic beverages in the Township of Hopewell until that Township went dry. His premises in Hopewell were a short distance beyond the Bridgeton City line. He now seeks a distribution license for premises located in a building which he has recently erected as his home at a cost of about Fifteen Hundred (\$1500.) Dollars. The building is located on a gravel road which is twenty feet wide, and on which there is no through traffic and very little traffic of any kind. From the photographs introduced in evidence, the building is located in what appears to be a grove, through which this gravel road passes. Appellant apparently is in the same general location as when he operated in Hopewell, but now he has crossed the City Line into Bridgeton and settled on this lonely road a distance of about three hundred (300) feet within the City limits.

The City Engineer testified that West Vine Street has never been accepted as a city street by Bridgeton. Appellant testified that it has been used as a street for more than twenty years. Whether it is a "street" or merely a "road", it is in the outskirts of the City, a distance of at least a mile and a half from the City Hall. The Commissioner of Public Safety has testified that this place could not be properly policed. It appears also that the three other distribution licenses which have been issued by Bridgeton are located in the business district, near the center of the City.

"Policing and the problem of enforcement vary according to the particular community." *Buonanno vs. Westfield*, Bulletin #124, item 2. The determination of respondent that this place cannot be properly policed does not seem to be unreasonable. Under the circumstances it is unnecessary to consider the objections filed by property owners residing in the immediate vicinity.

The action of respondent is affirmed.

Dated: June 17, 1936.

D. FREDERICK BURNETT  
Commissioner

11. BULLETIN ITEMS CORRECTED.

The reference to the notice concerning signs, set forth in the second paragraph of Bulletin 120, Item 10, should be "Bulletin 120, Item 1" and not "Bulletin 118, Item 1".

12. APPELLATE DECISIONS - LACKOWITZ vs. WATERFORD.

MARTHA LACKOWITZ,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	
TOWNSHIP COMMITTEE OF THE	)	CONCLUSIONS
TOWNSHIP OF WATERFORD (CAMDEN	)	
COUNTY)	)	
	)	
Respondent.	)	
	)	

.....

Philip Blank, Esq., Attorney for Appellant.

Joseph DeSorte, Township Committeeman, For Respondent.

BY THE COMMISSIONER:

Appellant is now the holder of a plenary retail distribution license for premises on Atco Avenue, Waterford Township. She now wants a plenary retail consumption license at the same premises. Her application for the latter license was denied. Hence this appeal.

The premises are on a main thoroughfare, one block from the business center of Waterford Township, in what is locally known as the Atco Section. The population of the Township is approximately only 2500. There are now issued and outstanding 10 retail consumption licenses in addition to appellant's distribution license. Just across the street from appellant is a small saloon. Hardly, then, an arid locality!

The fact that appellant's good character is attested by the issuance to her of a distribution license is not at all dispositive as to whether the consumption of liquor, as distinguished from its mere sale in sealed containers, should be licensed on the same premises.

Consumption licenses and distribution licenses afford different privileges and are separately treated throughout the Control Act. See In re: Duffy, Bulletin 103, item 1; see also In re: Somerville, Bulletin 110, Item 6. Premises licensed for retail distribution are like any other package goods store. The liquor which is sold is for off-premises consumption only. Liquor so long as sealed in a bottle, has no appreciable effect on human conduct. A consumption license is something quite different. Here, as the name implies, liquor may be consumed on the premises. Such an establishment begets, successively, relaxation, good fellowship, conviviality. Or - with apologies to the behaviorists: let down, getting out of oneself, and then climbing on top of the world. The ringing glass, the raucous laugh, the valiant but resonant flights of "Sweet Adeline" are subdued only by the last stroke of the curfew. Even then, the tumult and the shouting die but slowly.

The control problem is therefore intrinsically different in the case of premises licensed for consumption of liquor thereon as distinguished from its sale in sealed containers.

The question before me is thus reduced to the inquiry whether or not the action of respondent in denying this application was reasonable.

The right of a municipality to deny an application where the issuance thereof would result in the existence of too many licensed places in any given vicinity is settled. Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935); Crisonino v. Bayonne, Bulletin 101, item 6 and cases therein cited. The determination of the number of licensed premises which should be permitted in any given vicinity is confided to the sound discretion of the issuing authority. Palmer v. Englishtown, Bulletin 116, item 4; Connolly v. Middletown, Bulletin 81, item 11. The character of the neighborhood is a proper element in determining this question. Shinn v. Camden, Bulletin 64, item 8.

In the instant case, a resident testified on behalf of the appellant that he thought another saloon could carry on a comfortable business at the location in question. However, he had never been in the place across the street when the proprietor had been unable to accommodate all the customers. He did indicate some inconvenience on occasions when the bar was crowded and it was necessary to wait to be served. The witness would not say that another saloon was necessary. On the other hand, a member of the Township Committee testified that it was the unanimous opinion of the issuing authority that the vicinity was adequately served. Several protests were registered against the issuance of an additional retail consumption license. The witness conceded that in the farming section of the township licenses had been issued for premises not more than 50 feet apart. I have already held, however, that such action does not indicate unfair discrimination among applicants in the absence of a showing that the two neighborhoods are similar. Rajca v. Belleville, Bulletin 101, item 1; Battaglia v. Glassboro, Bulletin 66, item 4.

A petition addressed to me and signed by some 100 residents of the Atco Section requests the granting of the license to appellant. While this petition serves as a massed character recommendation, it cannot outweigh the considered determination of the issuing authority. In Re: Powell, Bulletin 59, item 15, the effect of a neighborhood petition was considered:

"There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation without any considered thought of contents or effect or the argument on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides."

See also Dunster v. Bernards, Bulletin 99, item 1.

The appellant has not sustained the burden upon her of showing that an additional licensed place is needed to take care of the thirst requirements of those residing in or passing through the Township. Lisi v. Newfield, Bulletin 121, item 9. The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT  
Commissioner

Dated: June 18, 1936.

13. TRANSPORTATION OF ALCOHOLIC BEVERAGES - EMPLOYEES OF LICENSEES HAVE NO RIGHT TO TRANSPORT FOR EMPLOYERS IN PRIVATE UNLICENSED VEHICLES WITHOUT TRANSPORTATION INSIGNIA - ARREST AND SEIZURE JUSTIFIED - CONFISCATION REMITTED IN INSTANT CASE BECAUSE OF GOOD FAITH AND UNWITTING VIOLATION

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC  
BEVERAGE CONTROL

In the Matter of the Seizure on )  
May 27, 1936, of certain alcoholic ) On Application for Return  
beverages and a motor vehicle ) of Seized Property  
belonging to Robert Stiasny. )  
. . . . . ) CONCLUSIONS

Appearances: Joseph A. Feder, Esq. for Robert Stiasny

BY THE COMMISSIONER:

On May 27, 1936, Departmental investigators arrested Robert Stiasny while he was transporting approximately 28 quarts of whiskey and 15 quarts of wine in his motor vehicle, without a permit or license to do so. His vehicle and the liquor were seized at the same time.

He now makes application for the return of his motor vehicle.

He is employed as restaurant manager for the Novelty Bar & Grill, a licensed retailer, and blames the occurrence on the "price war" being waged at the time. He says that the liquor, while awaiting delivery to various customers of the Novelty Bar, took up valuable space and obstructed the making of sales; that the rush of business was so great and the place so crowded that good judgment "went by the boards", and acting on impulse, he went outside the scope of his employment and placed the liquor in his own vehicle, intending to transfer it to his employer's licensed vehicle, parked in a nearby garage, so to transport it to its purchaser.

Transportation of alcoholic beverages within this State, except a limited quantity intended in good faith to be used solely for personal consumption, must be made in vehicles licensed for that purpose and bearing the prescribed transportation insignia or decalcomania. Stiasny's machine was not so licensed.

The arrest and seizure was therefore justified.

Stiasny pleads ignorance of the law, and asserts that he was honestly unaware that the transportation of the alcoholic beverages in his own machine for his employer was in violation of the law.

There is nothing inherently wrong in a licensed retailer making deliveries of alcoholic beverages purchased from him. Limitations were put on such transportation solely for the purpose of control. Licensees were limited to the use of their own vehicles in transporting alcoholic beverages so that persons without a license should not be permitted to engage in such transportation

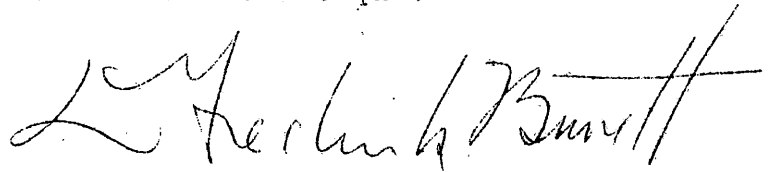
under cloak of insignia issued to licensees. The insignia was required in order that all vehicles authorized to transport alcoholic beverages should bear a uniform identification that would furnish my enforcement men with an immediate test determinable by inspection as to whether there was authority or not to transport such beverages.

The evidence does not indicate that Robert Stiassny intended to deliberately violate the law. Stiassny apparently had no motive other than that of an over-zealous employee, and he stepped out of bounds.

I find that Robert Stiassny acted in good faith and unknowingly violated the law. He does not appear to have been especially interested in the liquor business, bears a good reputation, and while ignorance of the law excuses no one, confiscation of his vehicle is an exceedingly severe penalty. Payment of the costs incurred in connection with the seizure, and the inconvenience sustained by him in being deprived of the use of his car since the seizure, will serve to sufficiently impress him with the fact that the law must be obeyed.

I direct that the vehicle be returned to Robert Stiassny upon payment by him of the reasonable costs incurred in connection with such seizure. Also the liquor.

Dated: June 19, 1936.



D. FREDERICK BURNETT,  
Commissioner.