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

BULLETIN 217 DECEMBER 3, 1937

1. ADVERTISING - TELEGRAMS - HOLIDAY GREETINGS WITH GRATED SALES TALKS.

November 26, 1937.

The Western Union Telegraph Company,
Newark, N. J.

Gentlemen:

I have your inquiry whether there is anything in the Control Act or the State Rules which prohibits licensees from sending telegrams containing holiday greetings, coupled with an advertisement of their sale of alcoholic beverages.

Such a sales talk would seem destined to the nearest scrap basket even if preceded by the most fervent opus in your choice collection. But sellers know their sell-outs best. So they may do it if they wish and you may adorn the message with holly and bells and mistletoe too, but please omit Santa Claus and Kriss Kringles.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. APPELLATE DECISIONS - SMITH vs. WARREN TOWNSHIP

JOSEPH F. SMITH,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WARREN,) CONCLUSIONS
Respondent.)

. . . . . .

Barney Asarnow, Esq., Attorney for Appellant
No appearance for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises known as the "Community House," Mountain Crest, Warren Township.

It appears from the testimony of the Township Clerk, called on behalf of appellant, that the application was denied because the Township Committee had adopted a resolution,

on April 6, 1936, limiting such licenses to eight, all of which had been issued previously, and because the Township Committee believed that eight such licenses were sufficient for the municipality.

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 licensed applicants but also on the municipality itself. Vrabel vs. Florence, Bulletin 128, Item 4, and cases therein cited.

Appellant does not attack the reasonableness of the resolution itself, but contends that the numerical restriction is unreasonable as applied to him.

Warren Township is rural in character, with nine or ten small settlements. Mountain Crest is a new development started about three years ago. At present it contains twenty-three bungalows, the community house, a swimming pool and children's playground. Only two people resided there throughout last winter. About one hundred occupied the houses, which they own, during last summer.

The burden of proof to show that the resolution is unreasonable rests upon appellant. The proof falls far short of showing that an additional license is necessary to take care of the needs of one hundred summer residents including, I presume, a large percentage of children.

Appellant argues that the nearest licensed place is over four miles away but, in the absence of strong proof that an additional license is necessary at Mountain Crest, this fact is immaterial.

Appellant cites Wehmann vs. Hohokus, Bulletin 147, Item 8. In that case, however, the resolution was adopted after application filed and, in the absence of any evidence showing that the limitation was bona fide and not a mere after-thought, I held it unreasonable as to appellant whose evidence disclosed necessity. Here, however, the resolution was in effect for more than a year before application filed, and appellant has failed to show necessity. Current vs. Fredon, Bulletin 184, Item 1.

Appellant has not sustained the burden of proof in showing that the limiting resolution is unreasonable as applied to him.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 26, 1937.

3. APPELLATE DECISIONS - GRIEB vs. METUCHEN.

LUCAS GRIEB,

Appellant

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF METUCHEN,

Respondent

ON APPEAL

CONCLUSIONS

. . . . . .

Frederic M.P. Pearse, Jr., Esq., Attorney for Appellant.

Leon Semer, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for a grocery, fruit, and butcher store, #458 Main Street, Borough of Metuchen.

Appellant's store is located in the Borough's business section, which extends along Main Street for a distance of some 1200 feet. In that area, there are already in existence a consumption and three distribution licensees. Of the distribution establishments, one is a grocery-and-delicatessen store, located but a short distance south of appellant's place and on the same side of the street; another, an "A. & P." store, is located across the road from this grocery-and-delicatessen; and the third, a cigar-and-newspaper store, is approximately 800 feet south of appellant's place. The consumption establishment in the vicinity is located a short distance below the "A. & P." store.

Elsewhere in the Borough (which has a population of 5700-5800) there are two distribution and four consumption establishments.

One of the reasons assigned by respondent for denial of the present application is its belief that an additional distribution establishment is unnecessary in the vicinity in question.

A local issuing authority may validly deny a municipal retail license, whether consumption or distribution, if a sufficient number of liquor establishments are already outstanding in the area. As to distribution licenses, see Lan vs. Millburn, Bulletin 163, Item 11; Kahn vs. Orange, Bulletin 173, Item 5; Crociata vs. Clifton, Bulletin 189, Item 6; Shor & Reibel vs. Linden, Bulletin 190, Item 9; Burdo vs. Hillside, Bulletin 191, Item 10; Widlandsky vs. Highland Park, Bulletin 209, Item 7.

The burden rests upon appellant to demonstrate that respondent's judgment has been arbitrary or unreasonable. As I said in Colonna vs. Montclair, Bulletin 39, Item 8, and again in Nabed vs. Fair Lawn, Bulletin 188, Item 5:

"The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently serviced by another liquor store is difficult to sustain, especially in the case of a distribution license for off-premises consumption. For, with telephone and transportation facilities, such a store can properly service an area of much greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality. Its decision may be reversed if it fails in the ultimate test of public necessity and convenience."

The only evidence produced by appellant to show that respondent's judgment was arbitrary or unreasonable, or to show public convenience or necessity for another distribution place in the vicinity in question, is testimony that appellant has been engaged in the grocery business in or about Metuchen for twelve years; that he has developed a patronage; and that many of his patrons have requested that he obtain a distribution license. There is no showing that any of these patrons will be seriously inconvenienced by making their purchases of liquor at the nearby or other distribution establishments in the Borough. Furthermore, as I said in Burdo vs. Hillside, supra:

"The mere fact that the issuance of a distribution license would benefit appellant is not a sufficient reason for the issuance of such license. Moran vs. West Orange, Bulletin 143, Item 8. The test to be applied is whether or not the general welfare of the community and the needs of those residing therein require the issuance of another license."

I find that appellant has not sustained the requisite burden of proof with respect to this issue. It is, therefore, unnecessary to consider the additional reasons assigned by respondent in justification of its denial in this case.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 26, 1937.

4. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

Re: Case #185

This is to determine applicant's eligibility for employment by a liquor licensee in this State. Applicant is a truck-driver now in the employ of a company holding a transportation license.

In the winter of 1933, applicant, the head of a family including himself, his wife, and two infant children, applied to the "E.R.A." for relief. He was duly placed on the relief rolls and furnished $7.00 per fortnight and a daily bottle of milk, a quota soon changed to $4.50 per week. While still on relief applicant secured part-time employment as a truck-driver, netting (so he claims) an average salary of $20.00 per week. He failed to divulge this employment to the

relief authorities and continued to accept relief checks forwarded under his representation that he was unemployed. This continued for three or four months until applicant obtained full-time employment earning approximately forty-five dollars per week, at which time he duly reported off relief. Becoming once more unemployed, some seven months thereafter, applicant re-applied for relief, and in answer to questions, revealed the fact that he previously had been accepting relief while on part-time employment. This disclosure resulted in applicant's being charged with having fraudulently obtained relief. He pleaded non vult to this charge, was convicted, and served a sixty-day sentence in the county jail.

Applicant's reason for having accepted relief under the false representation that he was unemployed was thus explained by him:

> "I didn't report off relief. I figured I wanted to get ahead a bit."

Although, in view of applicant's impecunious circumstances, much may be argued in mitigation of his crime, nevertheless it indubitably involves moral turpitude. Obtaining goods under false pretenses is ordinarily a crime involving moral turpitude. In Re Hearing #164, Bulletin 175, Item 12. Similarly, the crime of obtaining relief under false pretenses involves the same element.

It is recommended that applicant be declared ineligible under Section 22 of the Control Act for employment by a liquor licensee in this State.

Nathan Davis
Attorney

November 27, 1937.

The Hearer concludes that the crime involved moral turpitude. I am not so sure. No question but that it was a crime; and that society should vindicate its laws and inflict exemplary punishment as a deterrent to other cheaters. He has served his term; he has been punished severely. The question now is should his offense be branded as one so heinous, so infamous, that it must be declared to have involved moral turpitude with result that he be deprived of his present employment.

It was not right; it was not straight; it was fraud. But what was the picture confronting him? A wife - two infant children - four dollars and a half a week for the four of them, plus a daily bottle of milk. Later he sought and obtained part-time employment for $20.00 a week. He should have promptly disclosed it as he later did when he obtained full time work. Instead, he hung on to the meager public pittance figuring he "wanted to get ahead a bit." All too often, the dole withers the morale of those who have to accept it. Those of us who are fortunate to be employed, do not understand the process by which the receipt of public gratuity is soured into a claim of private right. It is disintegration, but I don't believe it is depravity. Public interest cannot condone or connive at the offense of those who stretch open hands without honest disclosure. But he has been amply penalized for this. Society's interests do not demand that he be punished beyond the sixty days he spent in jail. Nothing is gained by taking him off his truck and putting his family back in the relief line. However deplorable

the offense, I doubt that it involved moral turpitude. To be in doubt is to be resolved. In pity, I resolve the doubt in his favor.

The proceedings are dismissed.

D. FREDERICK BURNETT
Commissioner

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

November 27, 1937.

Re: Case No. 193

This is to determine whether solicitor's permit should be revoked on the ground that he has been convicted of a crime involving moral turpitude within the meaning of Section 22 of the Control Act.

In 1920, solicitor obtained employment at a national bank and rose successively from messenger boy to bookkeeper, teller, and assistant head-teller. While in the last position, he embezzled, during the years 1930-34, $5700. of moneys submitted for deposit and made false entries to cover his defalcations. He states that over-spending prompted him to this criminal behavior; that, when his embezzlement reached the sum of $5700., he realized the futility of his position and voluntarily disclosed what he had done; and that, after disclosure, he ultimately made full restitution.

Upon indictment in 1935 for such embezzlement and making of false entries, solicitor entered a plea of either guilty or non vult and was duly convicted and sentenced to six months' imprisonment.

Embezzlement of bank funds by a teller, with attendant false entries to conceal his defalcations is indubitably a crime involving moral turpitude. Cf. Re: Case 122, Bulletin 170, Item 6, Bulletin 184, Item 4, Bulletin 209, Item 12; Re Case #49, Bulletin 186, Item 10. The fact that solicitor voluntarily disclosed his defalcations and the fact that he ultimately made restitution, while tending to redeem solicitor, do not vary the character of the crime which he committed.

Solicitor having thus been convicted of a crime involving moral turpitude, it is recommended that his permit be cancelled forthwith.

Nathan Davis
Attorney

Approved:

D. FREDERICK BURNETT
Commissioner

6. DISCIPLINARY PROCEEDINGS - SPECIAL PERMITS - WILLIAM GUSKIND.

In the Matter of Disciplinary Proceedings against

WILLIAM GUSKIND,
136 Danforth Avenue,
Jersey City, New Jersey,

Holder of Plenary Retail Consumption License No. C-524 issued by the Board of Commissioners of the Mayor and Aldermen of the City of Jersey City, for the fiscal year 1936-1937.

CONCLUSIONS AND ORDER

. . . . . .

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.
William C. Egan, Esq., Attorney for Licensee and Anna Guskind, Owner of Licensed Building.

BY THE COMMISSIONER:

Charges were served, summarized as follows:

1. That licensee, together with one Otto Kramer, secured from this Department Special Permit No. 7747 based upon a false statement made in the application therefor, it being therein stated that the Wauseka Club, Inc. was the only one for whose benefit a boat ride was to be conducted whereas in fact the licensee and said Club were to share equally in the profits derived from the sale of alcoholic beverages on said boat ride;

2. That licensee permitted an unlicensed transporter to transport certain alcoholic beverages from a certain steamboat to his licensed premises;

3. That licensee purchased and received certain alcoholic beverages from Wauseka Club, Inc. for resale at his licensed premises.

Copy of charges was served also upon Anna Guskind, owner of the property containing the licensed premises, in accordance with the provisions of Section 28 of the Control Act.

I find the facts to be as follows:

About August 10, 1936 Wauseka Club, Inc. filed an application for a special permit to sell alcoholic beverages on a boat ride to be held on the evening of August 12, 1936. Application was signed "Wauseka Club, Inc. by Otto Kramer, Chairman" and contained the following question and answer:

> "For whose benefit is the affair conducted? State fully who will receive any of the proceeds. --- Wauseka Club, Inc."

The application was sent to this Department by the licensee, William Guskind, who advanced the permit fee amounting to $10.00, and who received by mail at his licensed premises the special permit issued to Wauseka Club, Inc. The licensee, William Guskind, was a member of said Club and, prior to the date upon which

the application was filed, he had been appointed as Chairman of the Refreshment Committee for the boat ride by said Otto Kramer, who was general chairman of the Arrangement Committee. On the evening of August 12, eight half-barrels and four-quarter-barrels of beer were delivered by a brewery to the pier from which the boat was to sail. The delivery slip for the beer was made out to "W. Guskind, 136 Danforth Avenue, Jersey City", and the duplicate delivery slip is signed "Wm. Guskind." The barrels of beer were placed upon the boat, but on the boat ride only about one barrel of beer was sold. When the boat returned to the pier, the remaining barrels were unloaded from the boat to the pier and subsequently placed upon an unlicensed truck. Guskind, who had the special permit in his possession, rode with the driver of this truck to 136 Danforth Avenue, Jersey City, where the barrels were removed and stored in the cellar of Guskind's licensed premises. Subsequently, the contents of these barrels were sold by Guskind in the regular course of his licensed business. He reported the amount of beer sold on the boat and the balance thereof sold on his licensed premises in his monthly report to the State Tax Commissioner. Wauseka Club, Inc. has never filed with the State Tax Commissioner any report of the purchases and sales of alcoholic beverages made pursuant to its permit, as required by the terms of said permit.

As regards the first charge, the evidence shows that on May 5, 1937 the licensee, William Guskind, gave a written statement to Investigators of this Department wherein, among other things, he says:

> "When the moonlight sail of the club was decided upon, Otto Kramer, the general chairman, asked me to take entire charge of all refreshments and drinks on the boat, and it was agreed between him and I that the club and I would share the net profits, if any, on a 50-50 basis. I was to absorb all losses, if any.
>
> "I also volunteered to make application for the special permit for the club, which I did, and advanced the $10.00, and if a profit would have been made I would have deducted the same amount as expense."

At the hearing both Kramer and Guskind testified that the arrangement to split the profits was not made until after the application was filed, and Guskind further testified that in fact the arrangement was that fifty per cent. of the profits was to go to the Club and the other fifty per cent. was to be divided between Guskind and the members of the Refreshment Committee as "more or less payment" for their services on the boat ride.

As a matter of fact, there were no profits but, from the evidence, I am satisfied that an arrangement to split the profits, if any, between Guskind and the Club was made at the time Guskind was appointed Chairman of the Refreshment Committee, and that the explanation that this arrangement was not made until after the application was filed is a mere afterthought.

The Club having obtained a special permit could have arranged with Mr. Guskind to buy the alcoholic beverages from him

or could have hired him under the special permit to manage the refreshment stands on the boat and to handle the sales of liquor for them providing that the Club accepted full responsibility for whatever was done by the concessionnaire, and that the Club retained at all times full control over the concessionnaire and the premises so temporarily licensed. In re Dodge, Bulletin 177, Item 10. But the arrangement went beyond this. It contemplated sales under the special permit, in the profits of which the licensee Guskind was to participate to the extent of fifty per cent. Guskind could not have obtained the permit in his own name, in re Zogg, Bulletin 132, Item 10, and an arrangement such as was made herein will not be permitted if in fact it is designed merely as a subterfuge to permit a retail licensee to sell or participate in sales away from his licensed premises.

On behalf of Guskind it is argued that he had no intention of violating the Control Act. Regardless, however, of his intention, it appears that there was a suppression of a material fact in the application for the special permit. The fact that he was to participate in the profits to the extent of fifty per cent, should have been disclosed because that fact would have been dispositive against issuance of the permit. The evidence showing that Guskind arranged with this Department for the issuance of the permit, paid the permit fee and had the permit itself mailed to his premises, sufficiently shows his knowledge of the contents of the application. I, therefore, find him guilty as to the first charge.

As to the second charge, I am satisfied that the licensee believed that he was complying with the law by riding upon the truck from the pier to his licensed premises with the special permit in his possession. The special permit provides that the Permittee may transport alcoholic beverages "to aforementioned premises *** in any vehicle provided this permit is carried by such vehicle so transporting alcoholic beverages." It is silent as to transportation from the premises at which sale is permitted. The fact that some beer was left after the boat returned created a situation not contemplated at the time the permit was obtained. The policeman at the pier, early on the morning of August 13th, ordered Guskind to have the beer removed. In this emergency Guskind telephoned to an iceman whom he knew, and arranged with him to transport the beer from the pier to the licensed premises, the permit being carried on the iceman's truck. While the transportation may have been technically illegal, I do not find any intent to aid or abet a violation of the Act and, hence, find the licensee not guilty as to the second charge.

As to the third charge, the facts outlined herein fail to show that the licensee purchased or received any beer from the Wauseka Club, Inc. for resale at his licensed premises. The beer at all times belonged to Guskind. Hence he is not guilty as to the third charge.

In fixing punishment I am taking into consideration the fact that this is the first case of this kind which has been presented, and that the licensee was a bona fide member of the Club and Chairman of the Refreshment Committee. His dual capacity as retail licensee and as Chairman may have confused him as to his privileges. The suppression of a material fact in the application, however, cannot go unscathed. Accordingly,

Plenary Retail Consumption License No. C-527, heretofore issued to William Guskind for the current fiscal year by the Board of Commissioners of the Mayor and Aldermen of Jersey City, is hereby suspended for one day, commencing at 3:00 A. M. December 2, 1937 and terminating at 3:00 A. M. December 3, 1937.

The proceedings against Anna Guskind, owner of the premises, are dismissed.

D. FREDERICK BURNETT
Commissioner

Dated: November 27, 1937.

7. LIMITATION OF LICENSES - PREMISES AFFECTED - NO PREFERENTIAL RIGHTS IN LANDLORDS.

Dear Sir:

In Paterson the Board of Aldermen have a law, as you undoubtedly know, whereby the number of licenses are limited to three hundred. At the present time, I understand, there are more than three hundred licenses outstanding. Consequently for some time in the future, no licenses will be issued in Paterson until the number of outstanding licenses are below the alloted number.

My father is the owner of a property wherein a cafe has been located for some fifty years. At the present time there is a tenant in these premises, who is about to move leaving the premises both vacant and without a license.

My father has been successful in obtaining a liquor license in his own name, but he has never been in the liquor business and does not wish to start now. However, he has a prospective tenant who will take the premises, provided he can either purchase or use our license. In the event that the license is transferred to the prospective tenant, there is the possibility that the tenant, upon removal, will either take the license with him or surrender it to the City of Paterson and thereupon obtain cash for the same, again leaving my father in possession of a piece of property which has been used as a saloon for so many years, and without a license to operate.

What I am particularly interested in knowing is whether or not there is some legal method and acceptable to your department whereby the license may be retained by my father as property owner and allowing another to use the same, but not being liable for any penalties against the property owner in the event of any violations of the law by the tenant.

It seems unfair that a property owner should not be able to protect his property in some manner so that the restriction of the number of licenses in the City of Paterson will not in effect be a confiscation of the property rights of a landlord.

An early reply suggesting any method which will not be in violation of your department and at the same time protecting the rights of my father, will be indeed appreciated.

Very truly yours,

EDMUND KONESKY

November 28, 1937.

Edmund Konesky, Esq.,
Paterson, N. J.

My dear Mr Konesky:

I understand that because the present tenant in your father's property is moving and transferring his license elsewhere, your father has obtained a license in his own name and that, as he does not wish to go into the liquor business himself, he is now looking for a new tenant who will either purchase or use his license; further that the numerical limitation of licenses has necessitated obtaining this license via transfer from someone else. I appreciate your concern that this license, if transferred to a new tenant, may subsequently be surrendered or again transferred by the new licensee to another place or revoked for a cause for which your father is not at fault.

The situation brings into sharp relief the serious manner in which limitations affect landlords and the risk that they run in fitting up their premises so that they are suitable only for the liquor business and thereafter losing their tenants.

Your father may not rent his license or allow anyone else to use it. A license is a personal privilege, exercisable only by the licensee. Any person who exercises or attempts to exercise or holds himself out as being authorized to exercise the rights and privileges of a license except the licensee, is guilty of a misdemeanor. Control Act, Section 23; P.L. 1934, c. 124. Licenses may not be held by one person as a front for another. Licenses held by fronts are subject to revocation. Re Bodenstein, Bulletin 90, Item 10; re Moran, Bulletin 182, Item 5 and re Blum, Bulletin 183, Item 2. See also re Toma and Fraccacreta, Bulletin 170, Item 1.

The only way a new tenant can operate the business under your father's license is to first have the license formally transferred by the Paterson Board. That would mean, however, that all of the rights and privileges under the license, originally conferred upon your father, would then accrue to the transferee. He could use it as he saw fit, surrender it or transfer it to another person or place. Any agreement between the parties seeking to bind the tenant to retransfer the license or to give your father any control over its use or disposition would be contrary to public policy and, therefore, void. Walsh vs. Bradley (New Jersey Chancery) reported in Bulletin 166, Item 4; Thorman vs. Mount Ephraim, Bulletin 169, Item 7

Of course, you realize that every place in the City of Paterson cannot be given a liquor license. The issuance of licenses can't go on indefinitely. The Board, in fixing its limitation for the City at three hundred, has evidently decided in the exercise of sound discretion that three hundred is enough. No one place is entitled to a license more than another. The mere fact that your father's place has been operated as a cafe for some fifty years entitles it to no preference over the others. It is entirely possible that many places more desirable from the licensing standpoint have since been erected. Whether one is preferable from the public standpoint to another is a matter which must be determined in each particular case by the local license issuing authority. It is inevitable that

many desirable places will have to go without any liquor license. So far from crying "confiscation" your father should congratulate himself on his luck thus far. If the rule were otherwise, tenants would have to pay whatever rents favored landlords might exact.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. DISCIPLINARY PROCEEDINGS - FORBIDDEN INTEREST OF STATE BEVERAGE DISTRIBUTOR IN RETAIL OUTLET - ALEXANDER ROSENBERG.

In the Matter of Disciplinary Proceedings against)
)
ALEXANDER ROSENBERG, t/a BERLIN BOTTLING CO.,)
286 White Horse Pike,)
Berlin, New Jersey,) CONCLUSIONS AND ORDER
)
Holder of State Beverage Distributor's License No. SBD-79 for the fiscal year 1936-1937, and State Beverage Distributor's License No. SBD-79 for the fiscal year 1937-1938.))
)
. . . . . .

Julius Rosenberg, Esq. and David L. Visor, Esq., Attorneys for the Licensee,
Jerome B. McKenna, Esq., Attorney for the Department.

BY THE COMMISSIONER:

Notice to show cause why State Beverage Distributor's License No. SBD-79, issued for the fiscal year 1936-1937 to Alexander Rosenberg, trading as Berlin Bottling Co., was duly served upon the licensee who is also the owner of the licensed premises at 286 White Horse Pike, Berlin.

The first and second charges allege:

"1. That on January 25, 1937, and on divers days prior thereto, you were interested in the retailing of alcoholic beverages in that you did have an interest in the retail establishment of William C.R. Shaw, trading as Terminal Cafe, S/S Berlin Road and Trolley Terminal, Clementon, N.J. contrary to Section 40 of 'An Act Concerning Alcoholic Beverages', P.L. 1936, c. 436; as amended and supplemented ***.

"2. That on April 26, 1937, and on divers days prior thereto, you were interested in the retailing of alcoholic beverages in that you did have an interest in the retail establishment of Elizabeth Starr, trading as Terminal Cafe, situated as aforesaid; contrary to Section 40 of the above Act."

In March 1935 the Terminal Cafe was operated by Jennie Wolf, a consumption licensee. On March 18, 1935, she executed a chattel mortgage on the bar, fixtures and liquors contained in her licensed premises to National Bank of Clementon. On September 14, 1935 the Bank assigned said chattel mortgage to Alexander Rosenberg, who was the holder of a State Beverage

Distributor's license at that time. In October 1936 Jennie Wolf discontinued business at the Terminal Cafe. On October 29, 1936 Alexander Rosenberg executed an assignment of said chattel mortgage to his brother, Julius Rosenberg, an attorney, and on the following day Jennie Wolf executed a bill of sale to Julius Rosenberg for the items set forth in said chattel mortgage. At the same time, apparently, she delivered her license to Julius Rosenberg with a blank assignment of the license executed by her. Julius Rosenberg testified that he took the license with him and kept it in his office for fear somebody might steal it.

Alexander Rosenberg apparently violated Section 40 of the Control Act in taking the assignment of the mortgage from Jennie Wolf. In re Carabelli, Bulletin 174, Item 15. He is not, however, being tried for that violation and, hence, it is unnecessary to consider his testimony that he believed the chattel mortgage covered only household furniture. The facts concerning this chattel mortgage are set forth merely to give the complete history of this transaction.

In November 1936 Alexander Rosenberg met Shaw. There is a conflict of testimony as to whether he told Shaw that he had a place in Clementon, or that his brother, Julius, controlled the place. In any event, Shaw obtained the Wolf license, together with the blank assignment, from Julius Rosenberg and, later, the Wolf license was duly transferred to Shaw by the local issuing authorities.

On December 4, 1936, shortly before Shaw began doing business at the Terminal Cafe, the National Bank of Clementon discounted a note for $250.00, signed by Maud E. Shaw and endorsed by Cletus R. Shaw and Alexander Rosenberg. Cletus R. Shaw obtained the proceeds of the note. Shaw testified that he left $125.00 at the Bank for Alexander Rosenberg on account of the fixtures and the license. On the other hand, Alexander Rosenberg testified that he did not receive anything from the proceeds of the note, and the Bank records, as produced, do not support Shaw's testimony. Shaw admits that he paid nothing to Jennie Wolf or to Julius Rosenberg, but it is clear that he did invest a large portion of the proceeds of the note in equipping and operating the licensed premises. In January 1937 Shaw discontinued business at the Terminal Cafe because of lack of business. Thereafter Alexander Rosenberg assumed payment of the balance due on said note because of Shaw's failure to make payments thereon.

It appears from the testimony that, after Shaw closed the Terminal Cafe, Alexander Rosenberg obtained possession of the consumption license for the premises and delivered it to his brother, Julius. It is immaterial whether the license was stolen from Shaw, as he alleges, or obtained from an employee of Shaw, as Alexander Rosenberg testified.

With the license again in possession of his brother, Alexander Rosenberg carried on negotiations with Elizabeth Starr, who finally agreed to purchase the business at the Terminal Cafe. According to the testimony, these negotiations were carried on by Alexander Rosenberg merely as an agent of his brother, Julius. A short time later, Elizabeth Starr obtained a further transfer of the Wolf license, with Shaw's consent.

The whole case smacks of illegal control of a license. See decision of Vice-Chancellor Bigelow in Walsh vs. Bradley, 121 N.J. Equity 359. Granting the good faith of the parties when Alexander Rosenberg transferred the chattel mortgage to his brother, Julius, on October 29, 1936, in payment of legal fees which were then due and owing, such chattel mortgage purports to affect only the fixtures and liquor. It could not legally affect the liquor license itself. Yet, here, this license seems to have been hawked about by both Julius and Alexander, with the latter now claiming to have acted only as the agent of his brother to protect the latter's interest in the fixtures and liquor. The evidence convinces me that both Rosenbergs assumed control of the license itself, and also that Alexander Rosenberg assisted Shaw in operating the Terminal Cafe by endorsing the note given to the Bank. I reach this conclusion despite the testimony of Alexander Rosenberg that at the time the note was discounted he expected to accommodate Shaw for only a short period of time until Shaw obtained money from other sources. Manufacturers and wholesalers are not to be interested, directly or indirectly, in retail licenses even for a short period of time.

Hence, I find the licensee guilty of the first charge. The evidence does not establish that he had an interest in the retail establishment of Elizabeth Starr and, hence, I find him not guilty of the second charge.

The evidence does not sustain the third charge which concerned the operation of a retail business by a Mrs. Helen Levy, a sister of the licensee.

At the time these proceedings were instituted, Alexander Rosenberg held State Beverage Distributor's License No. SBD-79 for the fiscal year 1936-1937. He now holds State Beverage Distributor's License No. SBD-79 for the current fiscal year. The penalty will run against his present license. In re Antico, Bulletin 195, Item 9.

Accordingly, it is on this 28th day of November, 1937, ORDERED that State Beverage Distributor's License No. SBD-79, issued to Alexander Rosenberg, t/a Berlin Bottling Co. for the present fiscal year, be and the same is hereby suspended for ten (10) days, beginning December 3, 1937.

D. FREDERICK BURNETT
Commissioner

9. DISCIPLINARY PROCEEDINGS - SALES AFTER HOURS - 20 DAYS' SUSPENSION TEACHES CHEATERS THAT THE LAW WAS MADE TO BE OBEYED.

November 29, 1937.

Walter H. Stull,
Township Clerk of Pemberton,
Browns Mills, N. J.

Dear Mr. Stull:

I have staff report of the proceedings before the Township Committee of Pemberton against Susie Johnson, who

runs a place called Silver Moon, and note that she was adjudicated guilty of having sold alcoholic beverages during prohibited hours, and that her license was suspended for twenty days.

Expressing no opinion on the merits of the case because it might come before me by way of an appeal, I wish to extend to you and to the members of the Committee my sincere appreciation for the thorough and effective manner in which this case was brought to a conclusion. My men were high in their praise of the businesslike manner in which the hearing was conducted.

According to the staff report, the lights were extinguished over the bar at the closing time. That, however, proved to be a mere gesture for it appears that, ten minutes afterwards, Susie Johnson drew five beers and served them to a party and a few minutes later, the waitress served another party with highballs and beer and then two other sales were made still later. Thus in her urge to make a few more pennies, the licensee set at defiance the laws of the community. When privileges are abused, there is just one sure way of teaching cheaters that the law was made to be obeyed and that political pull and molly-coddling official favoritism will get them nowhere and that is to deprive them of the privilege for a period so long that it hurts. Real appreciation of what one used to enjoy begins at the moment it is missed.

Your Committee has done splendidly well. I doubt if it ever becomes necessary to repeat the dose.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

10. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - TEN DAYS' SUSPENSION.

November 29, 1937.

Mr. Frank J. Kehoe,
Borough Clerk,
New Milford, N. J.

Dear Mr. Kehoe:

I have staff report of the proceedings before the Borough Council of New Milford against Edward H. Sargeant, t/a Alamo Club, charged with having sold alcoholic beverages to minors.

The report states:

"On September 4, 1937, this Department was notified by Chief of Police Purdy of the Borough of Cresskill that an automobile accident had occurred in his Borough resulting in

the death of one person and injuries to two others. His reason for calling this Department was that on questioning two of the occupants of the car, he was informed that they were minors and had been drinking. Accordingly, Investigators Emmetts and Joret were assigned. They ascertained that on September 4, 1937, Stanley Wiseman (age 20) was driving his Ford Roadster along Grant Avenue, in Cresskill; that at about three hundred feet west of Cottage Place the car left the road and turned completely over, throwing Wiseman and the two other occupants, Gifford Nelson Cole (age 18) and Leo Tilson (age 20) out upon the ground. Tilson died as a result of injuries and Wiseman and Cole were injured. Statements taken from Cole and Wiseman revealed that they had been served alcoholic beverages shortly before the accident in the above licensed premises.

"At the hearing the minors testified that they had been served alcoholic beverages at the licensed premises."

I note the licensee was adjudicated guilty and that his license was suspended for ten days.

Expressing no opinion on the merits of the case because it might come before me by way of an appeal, I wish to express to the members of the Borough Council my sincere appreciation for their prompt and salutary action. We have been having much trouble all along the line with sales to boys and girls under age. Drunken driving is becoming an increasing menace to life and limb. Licensees who contribute to the cause must be taught their responsibility.

Very truly yours,

Commissioner