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

BULLETIN 227 JANUARY 31, 1938.

1. RULES AND REGULATIONS - REVISION AND COMPILATION.

The Rules and Regulations have been revised, compiled and issued in a pamphlet dated "January, 1938", and, as therein set forth, are hereby promulgated effective immediately. All previous Rules and Regulations, in so far as they are inconsistent with those contained in the pamphlet aforesaid, are superseded.

All licensees and Municipal Clerks will receive the pamphlet without any request therefor. All other persons may obtain it by written request to the Department.

D. FREDERICK BURNETT
Commissioner

Dated: January 23, 1938.

2. LICENSEES - EMPLOYEES - DISQUALIFICATION - AN EMPLOYEE OF A LICENSEE MAY NOT ALSO BE A SPECIAL POLICE OFFICER.

January 20, 1938.

Joseph B. Sugrue, Esq.,
Assistant Corporation Counsel,
Newark, N. J.

Dear Mr. Sugrue:

A liquor licensee may not also be a policeman. Neither may he be a constable. Nor may licensees employ policemen or constables in any capacity. Nor may a licensee be a Police Commissioner or serve on the Police Committee.

Rulings made in Re Scott, Bulletin 109, Item 5 (licensee-policeman), Re Franco, Bulletin 109, Item 6 (bartender-policeman), Re Schepis, Bulletin 115, Item 3 (bartender-constable), Re DuPree, Bulletin 156, Item 11 (licensee-Police Marshal) and Re Everson, Bulletin 162, Item 10 (licensee-member of Police Committee), will give you the reasons.

A policeman must be prepared to discharge his duties at any time and in any emergency. He cannot choose the laws he will enforce, or, as judges and magistrates do in cases involving self-interest, disqualify himself when it is a liquor matter.

If, therefore, the applicant for the appointment as Special Officer wishes to continue in the employ of a liquor licensee, he must forego the job as Police Officer.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. TABLE FOR CONVERTING SECTIONS OF THE ALCOHOLIC BEVERAGE CONTROL ACT INTO TERMS OF THE 1937 REVISED STATUTES.

MEMO. TO: COMMISSIONER BURNETT
FROM: N.L. JACOBS, Counsel.

The Revised Statutes were enacted on December 20, 1937 (P.L. 1937, c.188) and may properly be cited as follows: "R.S. Sec. _____". The provisions of the Control Act, amended and supplemented, as they appear respectively in (1) the Control Act pamphlet and (2) the Revised Statutes, are herewith correlated.

Control Act Section:	Revision Section:
1	33:1-1
2	33:1-2
3	33:1-3
4	33:1-4
5	33:1-5
6	33:1-21
6A	33:1-21.1
6B	33:1-21.2
7	33:1-6
8	33:1-7
9	33:1-8
10	33:1-9
11	33:1-10
12	33:1-11
13	33:1-12
14	33:1-13
14a.	33:1-14
*14b(1)) *14b(2)) *14b(3))	33:1-67
15	33:1-15
16	33:1-17
17	33:1-18
18	33:1-19
*18A	33:1-20
19	33:1-22
20	33:1-23
21	33:1-24
22	33:1-25
*22A	33:1-12.1
*22B	33:1-31.2
23	33:1-26
24	33:1-27
25	33:1-28
*25A	33:1-79) 33:1-80)
26	33:1-29
27	33:1-30
28	33:1-31
29	33:1-32
30	33:1-33
31	33:1-34
32	33:1-35
33	33:1-36
34	33:1-37
35	33:1-38
36	33:1-39
*36A	33:1-39.1
37	33:1-40
38	33:1-41
39	33:1-42
40	33:1-43
*40A	33:1-43.1
41	33:1-44
42	33:1-45
43	33:1-46
44	33:1-47
*44A	33:1-47.1
45	33:1-48
46	**
*46A	**
47	33:1-49
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73	33:1-72
74	33:1-73
75	33:1-74
*75A	33:1-75
76	33:1-76
77	33:1-77
*77A	33:1-81
78	33:1-78
79	**
*80	33:1-16
*81	33:1-1.1
*82	33:1-31.1
*83A	33:2-1
*83B	33:2-2
*83C	33:2-3) 33:2-4)
*83D	33:2-5

Control Act Section:	Revision Section:	Control Act Section:	Revision Section:
*83E	33:2-11	*83H	33:2-8
*83F	33:2-6	*83I	33:2-9
*83G	33:2-7	*83J	33:2-10

* Supplements to original Statute
**Not included in Revision
*** Repealed

Dated: January 21, 1938.

4. LICENSED PREMISES - MUST BE IN POSSESSION AND UNDER CONTROL OF LICENSEE - NO OBJECTION TO HOLDING CLUB MEETINGS OR SOCIAL AFFAIRS IN TAVERNS.

Dear Sir:

Kindly advise me if there is any prohibition in the existing regulations against a corporation for non-pecuniary profit, which I am about to incorporate for social and athletic activities, renting a room for meeting on premises leased to a licensed tavern. This association is a separate entity from the tavern.

Very truly yours,

Joseph A. DeStefano.

January 22, 1938.

Joseph A. DeStefano, Esq.,
Montclair, N. J.

My dear Mr. DeStefano:

If the lease from the tavern by which the club takes possession of its club room gives the club exclusive possession of the quarters, then the club room may not continue to be part of the licensed premises and the licensee will have to petition the municipal license issuing authority in accordance with the procedure set forth in re Daly, Bulletin 171, Item 3, to have his premises cut down accordingly.

Licensees may hold licenses only for premises over which they have possession and control. See re Kashner, Bulletin 199, Item 12.

If, on the other hand, the licensee merely permits the club to use the room for its meetings, retaining full control over the premises, then there is no objection so long as good order is maintained at all times and no conduct permitted which would be in violation of the law or the rules. There is nothing barring the holding of social affairs or club meetings in taverns. Re Lervison, Bulletin 210, Item 1.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS - DYNOWSKY vs. NEWARK and SEILER

MARY DYNOWSKY,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and GEORGE SEILER, trading as GLUE POT TAVERN,

Respondents.

ON APPEAL

CONCLUSIONS

. . . . . .

Ernest P. Biro, Esq., Attorney for Appellant.
No appearance on behalf of Respondent Municipal Board of Alcoholic Beverage Control of the City of Newark.
Sidney Simandl, Esq., Attorney for Respondent Licensee.

BY THE COMMISSIONER:

Appellant appeals from renewal of a plenary retail consumption license to George Seiler for premises located at 347 Waverly Avenue, Newark.

Appellant contends that the renewal should have been refused because "The said licensed premises had been improperly conducted prior to the said issuance in that loud music and other noises were permitted upon the said premises during the night and early hours of the morning to the great disturbance of residents in the vicinity, and in that loud offensive language was used and permitted upon the said premises, and in that drunken persons left the said premises and caused a nuisance of themselves to the residents in the surrounding neighborhood, and in that drunken men, drunken women, and drunken children had been served on the said premises."

The proofs produced at the hearing fail to sustain appellant's allegations, except as to loud music and singing upon the licensed premises.

Respondent Seiler employs, from time to time, a three-piece orchestra, consisting of piano, saxophone and a bass drum. This acoustic battery goes into action on Saturday nights and occasionally on other nights when special affairs are held. An automatic music box constitutes the reserves.

There is a conflict of evidence as to the hour at which music is stopped. Appellant and three other witnesses testified that the music has often continued until 2:00 A. M. and is very annoying. They admit that conditions have improved somewhat since the appeal was instituted. On the other hand, respondent Seiler's witnesses testified that the music always stops before 1:00 A.M. and police officers of the City of Newark testified that, at the time they investigated complaints made, the music had stopped before that hour. One of the musicians, Peter J. Meyer, testified:

"Q. What pieces do you have?
A. Piano, saxophone, and drum, and I am the noise maker.
Q. Are you facetious about that?
A. I am a little insulted about it.
Q. Do you play loud or soft?
A. I am noted for a soft drummer; in fact I have it muffled.

Q. What days of the week --(witness interrupting)?
A. Only Saturdays-- I can recall only one other night, some special affair was there
Q. Until what time do you play on Saturdays?
A. One o'clock sharp, and at a quarter to one he comes in and says, "That's all."

I shall adopt the hour which the respondent Seiler has himself fixed as the time when the music is to cease. Folks whose homes are in the vicinity are entitled to rest and quiet during the sleeping hours of the night. Szanger vs. Newark Bulletin 145, Item 4. I see no reason in the proofs, however, why the liquor license itself should be set aside. The main thing is to abate the nuisance and make living in the neighborhood tolerable.

The action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark in renewing the license to George Seiler is therefore affirmed, but said license is hereby modified by subjecting it to the following special condition hereby imposed, viz.:

"That all music furnished either by any form of mechanical device or by an orchestra, band, or otherwise by players shall cease at 1:00 A. M. on every day of the week."

D. FREDERICK BURNETT
Commissioner

January 20, 1938.

6. APPELLATE DECISIONS - GREAT EASTERN SUPER MARKETS, INC. vs. ORANGE.

GREAT EASTERN SUPER MARKETS, INC., a corporation of New Jersey,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL of the CITY OF ORANGE,

Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Abraham M. Herman, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located at 250 Central Avenue,

Orange.

Respondent denied the license on the ground as alleged, that there were a sufficient number of package goods stores in the City of Orange.

There are presently outstanding twenty-one of such distribution licenses. No new distribution licenses have been issued during recent years, with the exception of a license granted to one Jacob Zeichner, which replaced a similar license previously existing a few doors away and, hence, did not increase the number of distribution licenses outstanding.

Appellant does not argue that the City, considered in its entirety, needs more than twenty-one distribution licenses. Its argument is that ten of said licenses are located on Main Street, whereas only two are located on Central Avenue. It contends that, while Main Street is the principal street, Central Avenue is the second largest business artery in the City of Orange; that there is a large residential section to the south of its premises, and that the needs of the residents of this section require a liquor department in the large retail market operated by appellant. It may well be that too many distribution licenses have been issued on Main Street. Previous errors in licensing, however, do not justify the issuance of further licenses in another section of the City unless the need for another license appears. Crisonino vs. Bayonne, Bulletin 101, Item 6. In view of the fact that there are presently outstanding a distribution license on the opposite side of Central Avenue, diagonally across from appellant's market, and another on the same side of Central Avenue about two blocks to the west, it does not appear that another distribution license is needed in this section of the City. Colonna vs. Montclair, Bulletin 39, Item 8; Crociata vs. Clifton, Bulletin 189, Item 6; Shor vs. Linden, Bulletin 190, Item 9. The mere fact that the issuance of a distribution license would benefit appellant is not a sufficient reason for the issuance of such a license. The test to be applied is whether the general welfare of the community and the needs of those residing therein require the issuance of another license. Burdo vs. Hillside, Bulletin 191, Item 10. Judging by these standards, appellant has failed to sustain the burden of proof in showing that public convenience and necessity demand an additional package goods license in the Central Avenue section of Orange.

There remains still for consideration appellant's allegation of discrimination in that, despite the alleged policy not to issue new licenses, respondent did grant two consumption licenses, one to Patrick Barr, the other to Margaret Costa, at the same time it denied appellant's application.

Aside from the fact that there are essential differences between consumption and distribution licenses, the only thing with which we are concerned on this appeal is whether or not appellant's application was properly denied. If the respondent municipal board in issuing the Barr and Costa licenses failed to live up to its own avowed policy, that is the subject for a separate appeal. The issuance of those licenses cannot be attacked in this proceeding to which Barr and Costa are not parties and in which they have no chance to be heard. Steup vs. Wyckoff, Bulletin 155, Item 12. If in fact the Barr and Costa licenses were improperly issued, that is no reason why the application of this appellant must be granted. Two wrongs do not make a right.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: January 24, 1938.

7. APPELLATE DECISIONS - ZICHERMAN vs. NEWARK.

BERTHA ZICHERMAN,)
Appellant,)
-vs-) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,) CONCLUSIONS
Respondent.)
)

. . . . . .

Saul C. Schultzman, Esq., and Harold Simandl, Esq., Attorneys for Appellant

James F. X. O'Brien, Esq., by Joseph Sugrue, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to renew a plenary retail consumption license for premises located at 174 West Kinney Street, City of Newark, where appellant has conducted a tavern since July 1934.

Respondent contends that its action was proper (1) because the premises are unsuitable for a tavern and (2) because appellant is unfit for a renewal. However, since it has produced no evidence to overcome appellant's positive proof of suitability of the premises, its case rests upon the sole issue of appellant's fitness.

It lies within the sound discretion of an issuing authority, as limited by the Control Act and the State regulations, to determine whether an applicant is worthy of a renewal license; for no licensee enjoys a vested right to a renewal. Re Marritz, Bulletin 61, Item 8; American Legion vs. Beverly, Bulletin 200, Item 14. However, the determination must be founded upon valid and substantial ground. See Vuono vs. Belleville, Bulletin 163, Item 12; Jones vs. Absecon, Bulletin 218, Item 1.

Respondent attempts to support its determination of unfitness by pointing to the fact that in September 1935 it found appellant guilty of possessing illicit liquor and suspended her license for ten days. Although this violation did not mandatorily disqualify appellant from a renewal of her license for the succeeding term 1936-7, the respondent would have been justified on that ground alone in refusing a renewal. Case after case has been decided where renewals have been denied and upheld because of previous misconduct of the licensee. White vs. Bordentown, Bulletin 130, Item 4; Wellens vs. Passaic, Bulletin 134, Item 4; Schelf vs. Weehawken, Bulletin 138, Item 10; Girard vs. Trenton, Bulletin 140, Item 2; Greenberg vs. Caldwell, Bulletin 141, Item 7; Brown vs. Newark, Bulletin 146, Item 9; Hagenbucher vs. Somers Point, Bulletin 192, Item 6; Repici vs. Hamilton, Bulletin 201, Item 8, Hagerty vs. Cranbury, Bulletin 202, Item 2; Klotz vs. Trenton Bulletin 202, Item 7; Callahan vs.

Keansburg, Bulletin 204, Item 6. Cf. Orofino vs. Millburn, Bulletin 45, Item 15, rehearing denied, Bulletin 61, Item 9. In fact, I have repeatedly urged that municipalities which really desire to cut down the number of their licensees deny renewal to those licensees who have misconducted themselves. Re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Haney, Bulletin 119, Item 9; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10.

But respondent instead of denying the renewal granted it, and thus put appellant to the test of future behavior. Respondent may not now dig up that offense after condoning it. If coupled with new offenses, either of the same or of different kind, it may, of course, be reverted to as a link in the proof-chain of general unworthiness. But, standing alone, after the renewal license has been issued with full knowledge of the earlier offense and in spite of it, it does not prove present unworthiness. The only question in such case is what has been the licensee's behavior since renewal.

The remaining facts upon which respondent seeks to justify its determination of unfitness relate to appellant's brothers, Murray and Fred Jayson.

It appears that Murray Jayson, who "helped out" at appellant's tavern on occasions, shot and killed a man at the premises on March 4 or 5, 1937, while helping to close the tavern, and was subsequently convicted of manslaughter. According to Murray Jayson's undisputed testimony, he seized a gun kept at the premises and went forward to the homicide because of apprehension that the decedent was attempting a "hold-up".

It further appears that Fred Jayson, who has been employed by appellant as a bartender at the tavern, was convicted in 1920, when 20 years of age, for assault and battery; in 1927, for creating a disturbance in violation of city ordinance; and apparently in 1932, again for assault and battery.

Nothing in these facts relating to Murray and Fred Jayson are sufficient to prove appellant guilty of any improper conduct or personally unfit for a renewal license. As to the manslaughter, there is no contention or indication that she was herself at fault. Nor did she act in any way improperly by accepting the services of her brother Murray, who, until his aforementioned conviction for manslaughter, had never been convicted of any crime. Nor did appellant violate any law or regulation in employing her brother Fred as bartender. So far as appears, his convictions for assault and battery in 1920 and 1932 were, in each instance, for an ordinary fight growing out of an altercation, and his conviction in 1927 for violation of city ordinance grew out of a loud verbal argument in a hotel lobby at 3:30 in the morning. These offenses, as they thus appear, are not crimes involving moral turpitude within Section 22 of the Control Act and consequently do not disqualify Fred Jayson from employment by a licensee. Re Hearing 166, Bulletin 180, Item 7; Re Hearing 173, Bulletin 193, Item 10; cf. Re Case 65, Bulletin 195, Item 11. Nor do they brand him as a "criminal" or a "person of ill-repute" within the State regulation prohibiting licensees from allowing "known criminals" or "persons of ill-repute" upon their licensed premises. Rule 2 of "Rules Concerning Conduct of Licensees, etc."

In view of the gravity of the crime committed by her brother at appellant's tavern, respondent was justified in considering her application for renewal with great care. But I find that no valid and substantial ground appears for refusal to renew her license. While respondent was and is justifiably entitled to view further services of Murray Jayson at the tavern with apprehension, the special condition set forth below affords adequate protection.

The action of respondent is, therefore, reversed. The license shall issue forthwith as applied for, but subject to the following special condition hereby imposed, viz: — "That Murray Jayson shall not be employed in rendering any service to appellant at the licensed premises in any capacity whatsoever."

D. FREDERICK BURNETT
Dated: January 24, 1938. Commissioner

8. APPELLATE DECISIONS - COCCIOLONE vs. WEST DEPTFORD TOWNSHIP.

MICHAEL COCCIOLONE,)
Appellant,)
-against-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WEST DEPTFORD AND BENIAMINE BAFILE,) CONCLUSIONS
Respondents.)
. . . . . .

Fred A. Gravino, Esq., Attorney for Appellant.
Julius Rosenberg, Esq., Attorney for Respondent Beniamine Bafile
William J. McEwan, Township Clerk, for Respondent, Township Committee of the Township of West Deptford.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license to the respondent, Beniamine Bafile, for premises located on Salem Pike, Mount Royal, West Deptford Township, Gloucester County.

Respondent, Beniamine Bafile, first obtained a license on July 1, 1935; this license was renewed on July 1, 1936, and again on July 1, 1937. Prior to the last renewal, the appellant filed an objection with the respondent Township Committee on the ground that Bafile had not been resident within New Jersey for five (5) years and was, therefore, disqualified under R.S. Sec. 33:1-25 (Control Act, Sec.22) from holding a municipal retail license. Following the overruling of this objection and the renewal of the license, the appellant duly filed this appeal.

It is not disputed that until 1926, Bafile resided at his property located at 1139 South 13th Street, Philadelphia and was domiciled in the State of Pennsylvania. In 1926, he purchased, in conjunction with relatives, land in the Township of West Deptford, New Jersey, built a bungalow and, at a later date, an additional building thereon. The record is not clear as to how much of his time was spent in New Jersey from 1926 to 1931. However, in 1931 the New Jersey premises were rented to and occupied until 1933 by a family named Talamagro and from 1933 through March 1934 they were rented to and occupied by a family named Leafey. Bafile testified that, during the aforementioned periods, two rooms on the upper floor of his building in West Deptford were retained for the use of his wife and himself and that he spent much of his time in New Jersey. However, I am satisfied from the evidence that although he may have visited New Jersey on occasional week-ends, he was employed in Philadelphia and maintained his regular home at 1139 South 13th Street, Philadelphia from 1931 to 1934.

It is admitted that in 1934 Bafile obtained a driver's license giving his Philadelphia address, registered his automobile in the State of Pennsylvania, and registered in Philadelphia as a voter. He denied that he actually voted in Philadelphia but the official records for the year 1934 on file with the Custodian of Registration Records, City Hall, Philadelphia, establish the contrary. They were specially examined by investigators of the Department and contain notations to the effect that Bafile had voted at the Fall Primary, the November Election and the Spring Primary. The following biographical information, furnished by Bafile at the time of his Pennsylvania registration, also appears on the records:

Occupation -	Chemist
Present residence	1139 South 13th Street-Owner
Length of residence -	27 years in the State and 18 years in the District
Place of residence at time of last registration -	1139 South 13th Street, Philadelphia, Pa.

Bafile now asserts that he has, at all times since 1926, intended New Jersey to be his permanent home and his legal domicile. Although it is true that the question at issue depends largely on intention, Bafile's mere statement of his intention is not controlling. The intent which may reasonably be deduced from his acts is controlling. See Lilly vs. Way, Bulletin 220, Item 1:-

> "The question of residence is largely one of intention. This does not mean that the question is to be necessarily decided accordingly as a person avows or declares a given place to be his domicile. Such a declaration, it is true, is entitled to great weight and, if his words are supported by his actions, might be conclusive.

> But the actual intent, if kept secret and not disclosed until some self-serving occasion presents, is not dispositive. What governs is the reasonably presumable intent to be deduced, not only from what one says, but also from what one does. Actions often speak louder than words. What counts is not intent in the shadows but rather mental resolve illumined by deeds."

Bafile's conduct in 1934 leaves no question that he was then domiciled in Pennsylvania. He worked and spent most of his time in Philadelphia; he obtained his driver's license and registered his automobile in Pennsylvania; he registered to vote in Philadelphia, stating that he had been resident within Philadelphia for 27 years and within the particular District for 18 years, and actually voted several times. The cumulative effect of the foregoing acts unavoidably compels the conclusion that in 1934 he considered his real "home" as being in Philadelphia. Cf. Re Orland, Bulletin 143, Item 6. His present protestations to the contrary, being motivated entirely by his self-interest, are not entitled to credit. The law does not permit individuals to choose their past domiciles in accordance with present desires. I, therefore, find that Bafile has not been resident within New Jersey for five (5) years continuously immediately prior to his application and hence is disqualified from holding a municipal retail license under the provisions of R.S. Sec. 33:1-25 (Control Act, Sec. 22).

The action of the respondent, Township Committee, is reversed, the license issued to the respondent, Beniamino Bafile, is set aside and declared void, and the licensee is directed to cease doing business forthwith.

D. FREDERICK BURNETT
Commissioner

Dated: January 24, 1938.

9. MUNICIPAL ORDINANCES - SCREENS - MUNICIPAL REGULATION REQUIRING VIEW OF INTERIOR OF LICENSED PREMISES MUST PROVIDE A REASONABLE AND DEFINITE TEST BY WHICH COMPLIANCE CAN BE JUDGED.

January 24, 1938.

Henry Handelman, Esq.,
Dunellen, N. J.

My dear Mr. Handelman:

I have before me your letter of the 4th re Section 15 of the ordinance regulating the sale of alcoholic beverages adopted by the Dunellen Borough Council on July 2, 1934, which provides:

> "Section 15. All premises in which said alcoholic beverages shall be sold or otherwise dispensed, excepting those which hold Club licenses, shall have reasonable access of light from the public highway, and such premises shall be deemed to have reasonable access of light when a normal sized adult can, on inspection from the exterior, view the interior of said licensed premises."

You inquire as to the height to which curtains in the windows of taverns must be limited in order to comply with the ordinance.

I don't know, because the test established by the ordinance is whether a normal sized adult can, on inspection from the exterior, view the interior. I don't know how tall a normal sized adult is. Furthermore, I doubt that anyone else does.

I think, therefore, that the section, as presently worded, is bad for indefiniteness, and, as a practical matter, is unenforceable.

The only way the licensees could comply with, or the police could enforce, such a regulation as Section 15 purports to set forth, would be if the regulation itself specified the maximum height in feet and inches.

I therefore suggest, if it is the desire of the Council to require that the interior of licensed premises be open to public view, that you submit to the Council an amendment designed to remedy the regulation in this regard at earliest moment.

While on the question of curtains and screens and the opening of premises to public view, I refer you to Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1, the subject of which was the Plainfield regulation dealing with this matter. No question was raised on the appeal as to the maximum allowable height for screens, the regulation being attacked by the local Liquor Dealers Association on the ground that it was unjustly discriminatory. My decision was that it was valid. It may be of help to you in making your revision.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. ADVERTISING - TIE-UP WITH PATRIOTIC ORGANIZATION DEPRECATED - HEREIN OF BASS DRUM ADVERTISING.

January 24, 1938.

Henry E. Dostalik, President,
Argonne Post #6, American Legion,
Elizabeth, N. J.

My dear Mr. Dostalik:

I have before me your letter of the 17th inquiring whether your American Legion Post may be sponsored by a brewery, the Post to get uniforms and equipment for its Drum Corps, and the brewery to get its name on the bass drum.

The brewery may, if it wishes, donate the uniforms and equipment to the Corps, since the Post holds no liquor license. But I think, on reflection, you will agree with me that it is singularly inappropriate for any military organization, let alone one with the unparalleled prestige of the American Legion, to parade the virtues of Blank's Beer on the big bass drum. Its own name commands respect, especially yours with the memorable Argonne a part of it. Any commercial advertisement detracts.

I advise against it.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. LICENSED PREMISES -- MAY NOT BE CLOSED DOWN BY POLICE EXCEPT IN CASE OF EMERGENCY AND THEN ONLY SO LONG AS THE EMERGENCY LASTS -- THE REQUISITES OF DUE PROCESS OF LAW EXAMINED AND APPLIED.

Dear Sir:

Would you be kind enough to advise me if you have issued a bulletin empowering the Police Department of a municipality such as Atlantic City, through the Chief of Police or his subordinates to close a licensed premises pending an investigation. It would seem to me that Police Departments should have the power to close a place pending their investigation and with a further thought with perhaps preventing the recurrence of any brawl or fight until the matter is judicially determined by the Commissioner or the issuing authorities of a municipality as provided for in the act.

Very truly yours,

James McMenamin
CHIEF OF POLICE

January 27, 1938

James McMenamin, Chief of Police
Atlantic City, New Jersey

My dear Chief:

There is no provision in the Alcoholic Beverage Control Act, nor is there any State rule which permits a municipal issuing authority or the State Commissioner to close down a licensed premises except in accordance with procedure set forth in Section 28 of the Control Act. That section, among other things, provides:

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

The only exception is in case of emergency where I have ruled that in the exercise of proper police power, a licensed place may be summarily closed but that as soon as the emergency is over, it should be permitted to reopen. Thus, In Re White, Bulletin 24, Item 4, I said:

"Closing the place is, in effect, a suspension. A suspension is pro tanto a revocation. To accomplish this legally, the statutory requisites must be obeyed.

"It is recognized, however, that situations may arise which require immediate action by duly constituted police authorities. The health, safety and lives of the public are the supreme law, and, in cases of public emergency, warrant the exercise of the reserved police power of the State to protect its inhabitants. Rules and requisites laid down to govern the normal may have to give way in emergencies. Thus, an order to close instantly all saloons in case of a riot and to keep them closed until the mob was under control, is undebatably proper. But scrupulous caution must be exercised to make sure that a real emergency actually exists. And the dispensation is good only so long as the emergency continues.

"Tested by these principles, the action of the Director of Public Safety in closing the place immediately upon commission of the homicide was eminently proper. On the other hand, there is no warrant whatsoever for keeping it closed after the investigation was completed. That order should be abrogated forthwith.

"If the Police Department have valid grounds for revocation, the proper procedure should be taken. Unless and until the case is fairly adjudicated against the licensee, her rights must be honored."

To extend the exception would be without sanction in law or justice.

In Romeiko v. Kearny, Bulletin 57, Item 15, I said:

"Even where there seems to be no question of the truth of the charges upon which revocation proceedings are based, fairness to the licensee requires that the opportunity to be heard provided by the Act be extended to him. Assuming that appellant has committed the violation charged, the penalty which the respondent could fix varies from a minor suspension to absolute revocation entailing the licensee's disqualification for a period of two (2) years. It is conceivable that appellant may have been able to present evidence of extenuating circumstances which would have deterred respondent from imposing the most extreme penalty. The Act requires that he should have been afforded an opportunity to do so. 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."

In the absence of a real emergency, to close a place down until the issuing authority can judicially determine whether it ought to be closed at all, is to condemn a licensee in a high-handed, unfair and wholly un-American way. Instead of presuming him innocent, the police would treat him as if he were guilty and that without any trial, any charges, any chance to be heard. That is why I will not allow licensees to be railroaded however sincere the police may be in their belief of his guilt.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

12. RULES GOVERNING EQUIPMENT, SIGNS AND OTHER ADVERTISING MATTER - INDIRECT ADVERTISING OF PRICE - ADVERTISEMENT OF LIQUOR AT "CUT RATE" ON EXTERIOR OF PREMISES OR ON INTERIOR WHEN VISIBLE FROM THE STREET IS PROHIBITED - ADVERTISEMENT OF DRUGS AT CUT RATE NOT PROHIBITED PROVIDED IT APPLIES SOLELY TO DRUGS.

Dear Sir:

The Sosnow Drug Company, the holder of a Retail Plenary Distribution License in the Borough of Freehold recently was advised by the Department of Alcoholic Beverage Control that it had violated the rulings of your office in that it had displayed a sign bearing the inscription "cut-rate" on its window displays. This licensee, in addition to selling liquor, also sells drugs and other sundries While the licensee has complied with the requests of your department in the removal of the aforesaid sign, it nevertheless feels itself aggrieved in that the ruling is manifestly working an injustice on the licensee.

With respect to displaying "cut-rate" signs in any display or windows where liquors are shown, it is willing to comply with any ruling of Your Honor, but feels that it should not be prohibited from displaying "cut-rate" signs over such items which are exclusively drugs or other sundries.

The licensee, some time ago, ordered signs to be attached to its window displays and is now placed in a position where it will sustain considerable financial loss unless the aforesaid ruling is modified to permit the licensee to exhibit "cut-rate" signs on such window displays as are exclusively drug and sundry items.

Your advice as to the above matters will be greatly appreciated.

Very truly yours,

Harry A. Sosnow

January 26, 1938.

Harry A. Sosnow, Esq.,
Newark, N. J.

Dear Sir:

It is not permissible to use a sign on the exterior of a licensed premises or on the interior thereof when visible

from the street if the sign reads "Cut Rate Liquors" or merely "Cut Rate." The latter sign would naturally lead patrons to believe that the words "cut rate" applied to liquor as well as to all other articles of merchandise.

Our records show that on November 16th, 1937, your client was served with copies of Bulletin 82, Item 7 and Bulletin 120, Item 10. There is enclosed herewith, for your information, ruling made in Re Felko, Bulletin 162, Item 3, which also discusses this question.

There is no objection, however, to the use of a sign reading "Cut Rate Drugs" in one of the windows of your client's premises provided all the letters on the sign are of the same size and provided also that no items except drugs are displayed in that window.

Very truly yours,

Commissioner