

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

BULLETIN 239.

APRIL 14, 1938

1. CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES - STATE REGULATIONS NO. 20, RULE 4, WHICH FORBIDS LICENSEES TO "ALLOW, PERMIT OR SUFFER" PROSTITUTES OR OTHER PERSONS OF ILL REPUTE ON LICENSED PREMISES, MEANS THAT THE LICENSEE OR ONE OF HIS EMPLOYEES KNEW OR HAD REASON TO BELIEVE THAT SUCH PERSONS WERE UPON HIS PREMISES BUT NEVERTHELESS TOLERATED THEIR PRESENCE.

April 8, 1938

Hon. George E. Kaas,
Police Commissioner,
Newark, N. J.

Dear Mr. Kaas: Re: Harry Foster and Margie Clauss,
 477 Washington Street, Newark.

This case, made by the Police, was transmitted to me by Secretary Reichenstein of the local Excise Board on April 4th. Charges had been served on the licensees returnable April 7th, but the citations were cancelled by Mr. Reichenstein on April 4th coincident with the transmittal of the case to me, all of which was in order.

On April 7th, charges, returnable April 14th, 1938, prepared by the State Department, in substantially the same form as the original charge made by the local Excise Board, were served on the licensees, viz.: That the licensees, on March 19th, and prior thereto, allowed, on the licensed premises, prostitutes and other persons of ill repute, in violation of State Regulations 20, Rule 4, and in violation of the local Rules and Regulations, which, in so far as applicable, read:

"No Plenary Retail Consumption License..... will be granted to any person who harbors.....immoral individuals, or whose places of business has been or is used in procuring or furnishing women for immoral purposes or who supply the conveniences for the commission of.....immoral acts....."

Today Attorney Silberman of my staff, in preparing the case for trial, reports that the Police File transmitted is complete so far as proof of intercourse is concerned and the presence of the harlot upon the licensed premises, although the acts were committed in her apartment and not upon the licensed premises.

There is no proof in the record that the licensees had knowledge of the actions of the woman or what she was there for. Deputy Chief Sebold's report to you of March 21st, on which I take it you based your report of same date to Director Duffy, in urging the revocation of the license, declares:

"It is also apparent that Foster and Clauss are well aware of what occurs in their place of business."

There is, however, nothing whatsoever in the statements or in the Police Files submitted which shows knowledge or awareness by the licensees, or which might tend to impute such knowledge.

New Jersey State Library

Unless the offense can be tied in and brought home to the licensees by their knowledge, or by acquiescence, which implies knowledge, I cannot, in fairness, hold them responsible. Such a thing might happen in the best regulated club. The mere presence of a prostitute or other person of ill repute on licensed premises does not make out a case. The gist of State Regulations 20, Rule 4, is that the licensee shall not "allow, permit or suffer" such persons upon the licensed premises. Each one of these operative verbs just quoted necessarily mean that the licensee, knowing who these people are and what they are, nevertheless tolerated them on licensed premises. It was because of the absence of any such proof that I reversed the Newark Excise Board in Weiss v. Newark, Bulletin 164, Item 8, where I said:

"The only theory upon which the suspension can be sustained is that either the licensee or one of his employees knew, or had reason to believe, that either the man or the young woman was an undesirable person."

The Dutch Schultz case, Bulletin 95, Item 8, was to the same effect.

In view of the statement that the licensees were well aware of what occurs in their place, I shall continue with the case and hold the hearing on the date scheduled, but request that you transmit to me at once all information available in the Police Files which will show, or tend to show, that Foster and Clauss were so aware, together with the names and addresses of the witnesses so that they can be subpoenaed and the case be properly presented at the hearing on April 14th.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

COMPLAINTS - ABSOLUTE PLEDGE NOT TO REVEAL NAMES OF COMPLAINANTS
REITERATED - REASONS FOR THE POLICY EXPLAINED.

April 7, 1938

Dear Sir:

I represent Mr. and Mrs. _____. It appears that some time ago one Norman Myers, your agent, went before a Justice of the Peace to obtain a search warrant for the house of Mr. and Mrs. _____. The Justice of the Peace told him that some mistake must have been made and that these people would not be violating the Alcoholic Beverage Act, and that if he went to the house they would let him search the house if he so desired.

Myers appeared at the residence, saw Mrs. _____ and advised her that a complaint had been made that they were bootlegging and violating the Alcoholic Beverage Act by having illegal liquor in their possession. She advised him that she was perfectly willing to let him search the house if he so desired. He did not, however, do so, but did enter into the living room of the house and apparently became satisfied that they were respectable and responsible people. Mr. Myers refused to divulge who made the complaint. Mr. and Mrs. _____ are church people, belonging to the Methodist Church in _____, have been respected citizens in the community for years, and they feel that it is going to be necessary for them to take some action in this matter unless the party who made the complaint is disclosed. Certainly, if Myers was doing this of his own free will he should be prosecuted for the injury that he has caused to these people. If he did not do it of his own free will and complaint was made we would like to have that information.

Will you kindly furnish it to us or is it going to be necessary for us to prosecute Myers.

Awaiting your advice,

Very truly yours,
Waddington & Mathews
By-E. C. Waddington.

April 9, 1938

Waddington & Mathews, Esqs.,
Camden, N. J.

Att: E. C. Waddington, Esq.

Gentlemen:

I have yours of April 7th in behalf of Mr. and Mrs. _____.

I appreciate the candor of your letter. Also the natural indignation and anger of Mr. and Mrs. _____. It certainly was a scurvy trick on the part of some mischief maker to humiliate these good people by subjecting them to a charge that they were indulging in illicit liquor traffic. Horse-whipping is none too good for vicious trouble makers of this kind. Mrs. _____ met the matter splendidly head on by inviting Investigator Myers of my staff to search to his heart's content. Evidently a few moment's inspection sufficed.

Instead of adding color to the complaint, she annihilated it completely by her voluntary cooperation, so that the name of _____ is absolutely clear on our records.

Under the particular facts of this case, I wish I could give you the name or names of the complainants, for if I were in the position of Mr. and Mrs. _____, I certainly would at least want to know who it was that had done this thing!

But, I cannot divulge that name or names without breaking a promise publicly made and frequently reiterated that the names of informants will not be revealed.

This policy was laid down almost at the inception of my administration. Thus, in Bulletin 24, Item 1, as early as April 22, 1934, I refused to divulge to the City Clerk of Newark the names of certain complainants in a case then pending before the local excise board, stating:

"The names of such citizens will be held in sacred confidence and never be disclosed without their express written consent."

Again, on December 23, 1935, in discussing the bootleg problem, in Bulletin 101, Item 2, I invited the public to volunteer information to me under the promise:

"Signed letters will always be treated in sacred confidence and the name of informant never disclosed to anyone."

Later, in a radio address I made January 27, 1936, reported in Bulletin 104, Item 5, I said (in part):

"You, friends of the radio audience, as good citizens, are just as necessary to this civic work as the police. You can be of immense help. It is you who see and hear firsthand those things which the police

could never approach because their uniforms give warning, and which my men, commonly called from the department's initials the ABC men, roughly only four to a whole county, can, because of their small numbers, even hope to patrol thoroughly let alone control. It is you who see cheating saloons doing business on Election Day while the polls are open; it is you who see saloons doing business after closing hours; or on prohibited Sunday hours. It is you who see bootleg bought, sold and delivered; it is you who see young girls and young boys plied with liquor till they reel, or sold the pocket flasks which anoint wild orgies in high speed machines of their own, or, as happens, of their indulgent parents. The sale of liquor to minors in these days of high powered engines of destruction with which the public highways are crowded is the greatest curse of liquor. It is you who stumble into disgusting scenes at bars, in back rooms, in booths, on public dance floors, and in places that have the outward appearances of decency but are sinks of debauchery. If you want to lighten your own tax burden by making others bear their full share, if you want decency, if you want law and order, if you really want to help keep liquor in its place and broken legs and broken lives out of your homes, then obey that impulse! Do your duty, take your pen in hand and tell the department what you know, what you have seen and who, where and when. Address your letter to the ABC Commissioner, 744 Broad Street, Newark.

"I sympathize with your desire not to become 'involved', not 'to be mixed up in it', to leave the dirt to its own rot. I realize full well that you don't want to be considered a crank or a squawker or prunes and prisms. I know that all too often the informer gets his pains for his thanks. If he says he saw the holdup or the assault, or the murder, all too often his name and even his address immediately appears on the front page with full detail of what he saw and what he said. And then because of this unfair publicity, he shivers and quakes lest the underworld make reprisals on him or his loved ones for 'butting in'. No wonder law-abiding citizens have become apathetic or even cowardly! The cause too often is gross betrayal of confidential information by legal authorities, over-anxious to build a newspaper case of their own prowess. Information given in confidence all too often burns a hole in the official portfolio. Changing the simile, it 'leaks'. Anything that makes a citizen fear, blights his usefulness. Public opinion must be backed by public action. If fear is the key log which jams the channel of free interchange, it must be pried loose. The privacy of the citizen who volunteers information must be respected to the last ditch. Information given by him must always be treated in sacred confidence.

"I invoke your help under solemn pledge hereby given that your name will never be disclosed to anybody, not even to the prosecuting authorities; not even to our own field-men, for it is immaterial to them whence the information comes. What counts is the truth, not the source of it. NEVER means forever plus a day. My field men are determined and courageous. They will check up the information. If found to be true, it is they who will face the fire and testify to the facts. Please give us the facts. You drop out of the picture at that point. We do the rest. Don't write anonymously. Sign your name and address. You have nothing to fear. Remember the pledge -- remember the address: The ABC Commissioner, 744 Broad Street, Newark. Remember this is your department; that this business of

alcoholic beverage control is your business; that it involves your taxes, your children, your homes."

Again, on July 29, 1936, in Bulletin 136, Item 3, I said:

"This Department does not contend that there is no violation of the Control Act. Probably there are many violations committed every day, but this is where we need your cooperation. The Commissioner has often urged the public to inform him of any violations which they may see. Complaints are received daily by this Department and in each case the complaint is investigated thoroughly and appropriate steps taken at once to correct the situation if the complaint is verified.

"If you have any knowledge of violation of the Control Act, I urge that you forward such information direct to Commissioner Burnett in a letter addressed to him. This information will be kept in the strictest confidence and your name will not be revealed under any circumstances to anyone. If you and every other public spirited citizen would make it their duty to forward such information to the Commissioner, it would go a long way toward better enforcement of the law."

This policy has been consistently followed and no exceptions are made. It has been of great value in the public interest and much information has come to the Department under the pledge of confidence that otherwise would never be known or at least be slowly caught up with. To be sure, it has in a few cases, such as the one concerning which you write, been abused, and that is deplorable. But the greater good that the policy accomplishes far outweighs the few and occasional cases where somebody tried to humiliate someone else without a vestige of foundation. And in those rare cases, the truth always comes to the surface. The moment investigation is made, the complaint disintegrates and innocence is affirmatively established.

You might say at this point: "Well, then, when innocence has been established, why should not the names of the complainants who have made false accusations be given out?" At first blush, this sounds plausible, but it would never do for it would fritter away and eventually destroy all the benefit from the policy of confidence presently established, for every person writing in would have it in the back of his mind that his name would be given out if I came to the conclusion that the complaint was unfounded. Such a rule would mean that complainants seeking to do a civic duty would, at their peril, have to guarantee the information vouchsafed. Suspicious circumstances which might constitute an invaluable lead to my enforcement division would be passed up because they do not complete or make a case. Who would dare take their pen in hand and sign their name if they thought that, unless tangible evidence were disclosed as a result of it, they themselves would be the target instead of the person whom they believed to be the wrongdoer? You will see, I hope, on reflection, that no such exception can be made.

As regards the instant complaint, somebody may have been bona fide mistaken. While I do not see myself how that could be possible and how it appears to be wholly spite work, for which I have the utmost contempt, nevertheless I do not know and, making due allowance for the frailties of human nature, cannot fairly judge, and, therefore, will make no exception to the rigid rule that there is no disclosure of informants' names whatsoever. Even if the information came from the veriest rat, it would still be my duty to keep my own promise.

If I have bored you to tears with this long recital, it is not with any lack of confidence, but solely in deference to the injured feelings of your clients, for which I am personally very sorry.

In specific answer to your letter, Norman Myers only did his duty as directed. He correctly refused to divulge the name of the party who made the complaint. Under our practice, he doesn't even know it. The complaints are assigned to the field men by a bare number. Even if he had known the name, if he had divulged it to anyone, he would have been summarily discharged. I assume full responsibility for Myers' refusal to divulge the name of the complainant.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. STATUTORY AUTOMATIC SUSPENSION - APPLICATION TO LIFT - MOSQUE GRILL - CONCLUSIONS.

In the Matter of the Application)
for Return of Plenary Retail)
Consumption License C-140, issued) CONCLUSIONS
to Mosque Grill, Inc., 49 Orchard)
Street, Newark, N. J.)

Michael Breittkopf, Esq., Attorney for the Petitioner.

BY THE COMMISSIONER:

The petition alleges that one Harry Leitner leased the premises in question and obtained a license to operate a tavern in the basement; that, as the result of a ruling of the State Commissioner, Leitner, who had been convicted of a crime involving moral turpitude in 1922, was advised that he could no longer operate the tavern by reason of his conviction; that, consequently, he sold the tavern to one Julia Doyle, receiving rent from her as sub-lessee; that she operated the tavern for about two years and then gave it up; that then one Mary Latowski, alias Sally Lasky, who had had experience in the restaurant and hotel business, became interested in acquiring this tavern; that to insure himself of a tenant, Leitner advanced \$500.00, as a loan, to Sally Lasky, with which she acquired the liquor license and moved in as a tenant of Leitner at \$50.00 a month; that she formed a corporation, known as Mosque Grill, Inc., of which she was the principal stockholder; that the corporation made application to the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter called the "Excise Board") for transfer of license which had been issued to Julia Doyle and that, after due and proper investigation and consideration, the Excise Board granted the transfer; that later, on July 1, 1936, and again on July 1, 1937, the license was renewed by the Excise Board; that subsequently Petitioner was served with an order directing it to show cause why its license should not be suspended or revoked for misstatement of facts in the application; that the complaint was heard by the Excise Board in November, 1937, and that the Board, after considering all the testimony of the witnesses, on March 3, 1938, dismissed the charges for lack of evidence; that a criminal complaint was subsequently made against Sally Lasky, charging her with having made a false statement in obtaining the license, which complaint was based upon the same facts as were presented before the Excise Board and which complaint had been dismissed by that Board; that a criminal complaint was made

against Harry Leitner for aiding and abetting Sally Lasky in making that statement; that these charges were heard by the Honorable Daniel J. Brennan, Judge of the Essex County Special Sessions Court, and the defendants were convicted as charged.

The petition then proceeds to analyze the several counts in the indictment and the testimony produced at the trial before the learned Judge and the petitioner's version of the facts.

The petition then alleges that, after the conviction, and on March 30, 1938, Louis Teufel, James Adams, Frank Catina and one other, all detectives working under the direction of Philip Sebold, Deputy Chief of the Newark Police, without notice or just cause, illegally took from Petitioner its Plenary Retail Consumption License granted to it by the Excise Board.

The Petitioner alleges that the taking of the license by the police was unwarranted and unlawful by reason of the fact that all proceedings instituted against the Mosque Grill, Inc. had been adjudicated in its favor.

The prayer is that the State Commissioner return and reinstate the license.

It is unnecessary to discuss the indictment or the testimony or the petitioner's side of the story. The fact remains that Sally Lasky was convicted and the conviction stands until set aside on appeal. The point that Judge Brennan convicted her on the same facts on which the Excise Board had dismissed the complaint for lack of evidence, was thought by the recent Grand Jury to be significant, but it is immaterial so far as the present petition is concerned. For, if the evidence was sufficient, as Judge Brennan found, he was in nowise bound by the previous dismissal of the complaint by the Excise Board. If, in fact, the evidence was insufficient, the plain remedy of petitioner is appeal to a higher court. It cannot be attacked collaterally.

Deputy Chief Sebold, in causing the license to be picked up immediately following the conviction, was wholly within his rights. All he did was to do his duty promptly. It may be true that all proceedings against the Mosque Grill itself have been adjudicated in its favor. But it is also true that, upon conviction of a violation of the Alcoholic Beverage Control Act, any liquor license held at the time of the conviction shall, in the language of the Act, "suspend automatically and without notice." (R. S. 33:1-31.1, P. L. 1935, c. 254). There was, therefore, just cause for picking up the license and no notice was required. It is true that the Mosque Grill, as a corporation, was not itself convicted, but the Act recognizes that corporations are responsible for the actions of those who pull the wires behind its veil and expressly provides that a corporate license shall be automatically suspended upon conviction, for a violation of the Act, of any person who is a director, or officer, or stockholder owning 10% or more of the stock. Sally Lasky was both director, officer and majority stockholder. Hence, upon her conviction for a violation of the Control Act, the license of the Mosque Grill was automatically suspended and the suspension remains in full force throughout the entire term of the license unless lifted, in the State Commissioner's discretion, for good cause shown.

No such cause being shown, and nothing appearing to indicate that the license was unlawfully taken or unlawfully detained, the Petition to return and reinstate the license is denied.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 10, 1938.

4. INSPECTORS AND INVESTIGATORS - NOT AGAINST LAW OR RULES OR POLICIES TO HOLD STOCK OR BE AN OFFICER IN AN INSURANCE AGENCY BUT OTHERWISE IF THE BUSINESS VENTURE CONCERNED OR HAD CONNECTION WITH ALCOHOLIC BEVERAGES OR IF OFFICIAL POSITION WAS USED TO SOLICIT OR ACCEPT INSURANCE FROM LIQUOR LICENSEES.

April 5, 1938

Gentlemen:

It has been brought to the attention of this Society that one of its Members is an Inspector for the Alcoholic Beverage Control. Further that the Insurance Agency Corporation, of which he is an officer and stockholder, has as other stockholders the Common Pleas Judge of this County, and his wife.

It has been suggested that this situation is a violation of the rules and regulations of the Commission, and a statement or ruling on the subject will be greatly appreciated.

Very truly yours,
Wildwood Insurance Society,
Dean P. Zeller, President.

April 9, 1938

Wildwood Insurance Society,
Wildwood, N. J.

Att: Dean P. Zeller, President.

Gentlemen:

I have yours of the 5th and appreciate your candor. There is absolutely nothing in the law, or in the rules or my policies against a member of my staff holding stock or being an officer of an insurance agency. It seems to me that he is in pretty good company with Judge Way!

It would be otherwise, of course, if the agency or any other venture in which my men are concerned were dealing in alcoholic beverages, or had connection or association therewith. So, also, if a member of my staff should abuse his official position either to solicit or accept insurance from liquor licensees. Any of these, or similar matters, would be cause for instant disqualification.

Will you kindly advise which one of my men it is to whom you refer, so that I may make specific inquiries from him to make sure that there is no violation of the spirit of the rules or policies.

Your cooperation is greatly appreciated.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

5. EGG-NOG - SPECIAL DISPENSATION FOR EASTER-TIDE

April 12, 1938

Mr. William C. Hullings,
Riverside, N. J.

Dear Mr. Hullings:

I have yours of the 11th inquiring whether you may sell egg-nog on Saturday, April 16th.

You may.

I am glad to say the dispensation has not been abused. It is good, not only for Saturday, but also on Thursday and Friday this week, and until next Monday, at midnight.

With best wishes and thoughts of chicks and bunnies,
I am

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - CLUB LICENSES - SALES TO NON-MEMBERS.

April 11, 1938

Jacob Van Hook,
Borough Clerk,
Wallington, New Jersey.

Dear Mr. Van Hook:

I have staff report and Borough Council's certification of the proceedings against Polish Peoples Home, charged with having sold alcoholic beverages to non-members in violation of the terms of its club license.

I note the licensee pleaded guilty to the charge and that the license was suspended for three days.

Please extend to the members of the Council my appreciation for their prompt and effective action. Club licensees must be brought to the realization that their sales of alcoholic beverages must be confined strictly within the terms of their license. To allow any leeway in the enforcement of this provision of the law would be manifestly unfair to the holders of plenary retail consumption licensees who pay a much higher fee for the additional privileges which permit them to serve to the public at large.

If the Polish Peoples Home desires to sell to the public at large, it should take out a plenary retail consumption license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - THREE DAYS' SUSPENSION PLUS TIMELY WARNING.

April 11, 1938

Charles L. Smith, Esq.,
Township Clerk,
Egg Harbor Township,
Mays Landing R. D., N. J.

Dear Mr. Smith:

I have staff report and your certification of the proceedings before the Township Committee of Egg Harbor Township against Josephine Ford Hornikel, charged with having sold and served alcoholic beverages to five minors - two girls, one fifteen and the other seventeen years of age, and three boys, two sixteen years old and the other eighteen.

The report states:

"On March 6, 1938, Senior Inspector Lippman and Investigator Gold visited the licensed premises, arriving at about 12:25 A. M. Their attention was immediately attracted to a table where five young people were seated - two girls and three boys. All appeared to be minors. The officers observed drinks being served to all these young people. A short time later, it appeared to the officers that they had been recognized because a waitress came to the table occupied by the young people and asked them to sign a paper. One boy signed. Senior Inspector Lippman then made known his identity and found that the paper was a letterhead of the 'Wagon Wheel Log Cabin' and written thereon was a statement to the effect that the undersigned were over the age of twenty-one years. The officers questioned the young people and found the ages of the girls to be fifteen and seventeen; two of the boys were sixteen and the other eighteen years of age.

"The licensee and the waitress who had served the minors were arrested.

"At the hearing, Inspector Lippman and Investigator Gold testified to the above happenings. The minors were present but were not called to testify.

"The licensee testified to the effect that she had given explicit instructions to her help not to serve minors. The waitress who had served the minors also testified.

"Inspector Lippman reports that a Mr. Duell, who stated that he was counsel for the Atlantic County Retail Beverage Dealers Association, made a plea to the Committee for leniency on behalf of the licensee, pointing out how difficult it is for licensees to determine the ages of their patrons.

"NOTE: The report of Inspector Lippman sets forth that the licensee had caused the arrest of the five minors and charged them with having misrepresented their ages; that they were found guilty before a justice of the peace, fined \$100.00 each but sentence was suspended.

"Verdict - Guilty.

"The following certification has been received from the Township Committee:

"As the Issuing Body for licenses for the sale of alcoholic beverages in the Township we do so only with the determination that a licensee comply with the laws of the state concerning the sale of alcoholic beverages. Wilful violation of the law, especially the sale of intoxicant beverages to minors (persons under the age of 21), will not be tolerated by this Issuing Body. We reserve it as our right and duty where flagrant violation is proven that it shall be a just cause of suspension or revocation of the license of the offender.

"You are furnished with the law in regard to the sale of alcoholic beverages in all its phases. It will stand you in hand to make a complete study of the law as to what you have or have not the right to do. In regard to the question of the age of young persons it has always been deemed a safe policy that when you are in doubt do not do anything until the doubt is removed.

"In regard to the case that has come before us today we believe that the licensee took ordinary precaution not to violate the law but not sufficient precaution to meet the requirements of the law. We therefore find it our duty to suspend your license for seventy-two (72) hours, starting 12:00 Noon, Monday, March 28, 1938 to Thursday, March 31st, 1938, 12:00 Noon.

"If you have a doubt it would be better if you dismissed the people from the saloon unserved thus avoiding possibility of precaution of young people where they might not see the seriousness of the matter. In the future we shall look for the full cooperation from you in a fulfillment of the law in relation to the sale of alcoholic beverages at your place.

TOWNSHIP COMMITTEE OF EGG HARBOR

ATTEST:

Charles L. Smith,
Twp. Clerk

Wm. A. McMahon
B. M. Godfrey
Harry C. Angerman"

Expressing no opinion on the merits of the case because it might come before me by way of an appeal, I wish to state that the Committee handed out good and sound advice to all liquor licensees when it stated that "In regard to the question of the age of young persons, it has always been deemed a safe policy that when you are in doubt do not do anything until the doubt is removed."

I sincerely hope that your warning will have the desired effect. If not, more drastic punishment is indicated in future cases of its kind.

Please thank the members of your Township Committee for me. They have done their duty well and promptly.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. APPELLATE DECISIONS - SOBOCIENSKI and FRANKLIN STORES CO. v. NEWARK and INTERNATIONAL LIQUOR CO.

EDWARD S. SOBOCIENSKI and)
FRANKLIN STORES CO., a cor-)
poration,)

Appellants,)

-vs-

ON APPEAL
CONCLUSIONS

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK and INTERNATIONAL LIQUOR)
CO., a corporation,)

Respondents.)
-----)

Louis B. Englander, Esq., Attorney for Appellants.
Joseph B. Sugrue, Esq., Attorney for Respondent Municipal Board.
Cohen & Klein, Esqs., by Philip Klein, Esq. and Lawrence N.
Rosenbaum, Esq., Attorneys for Respondent Licensee International
Liquor Co.

BY THE COMMISSIONER:

Appellants, the individual being an officer of the corporate appellant, appeal from the action of respondent Municipal Board in issuing a plenary retail distribution license to the International Liquor Co. (hereafter called International), for premises located at 77-79 Jones Street, Newark.

The issuance of the license is alleged to be improper because:

- (1) "On or about the 9th day of September, 1937 the Board of Alcoholic Beverage Control of the City of Newark did unanimously resolve that it was to the best interests of the public to limit the number of liquor distribution licenses in the City of Newark and that no new ones would issue thereafter, and in violation of this resolution said respondent did issue the license herein objected to by the appellant and in issue on this appeal.
- (2) "The area wherein the proposed licensee would be situated is over-crowded with licensees for the sale of liquor, there being approximately 92 such dealers within an area of a half mile; that to allow an additional license is contrary to the letter and spirit of our statute;
- (3) "The overruling of the appellant's aforesaid objection was arbitrary, without justification and without merit and will cause petitioner irreparable loss and injury.
- (4) "Appellant is informed and verily believes that the parties named as stockholders, officers and directors of the International Liquor Co. in its application for the aforesaid plenary retail distribution license, are not the real parties in interest but that they are acting on behalf of unnamed persons."

As to (1): Respondent International sets forth in its answer that there was and is no numerical limitation in the City of Newark. R. S. Sec. 33:1-40 (Control Act Sec. 37) provides that the governing board or body of each municipality may as regards said municipality by ordinance limit the number of licenses to sell alcoholic beverages at retail. Section 37 of the Control Act as

originally enacted provided that such limitation might be by ordinance or resolution, but said Section was amended by P.L. 1937, Chapter 136, so that on and after July 1, 1937, all new municipal regulations limiting the number of licenses must be adopted by ordinance, which insures notice and hearing to all interested parties. Therefore, the subsequently enacted resolution of September 9, 1937 has no legal effect. Re New Legislation, Bulletin 185, Item 3; Re Sahl, Bulletin 198, Item 11; Re Perry, Bulletin 199, Item 3; Re Livelli, Bulletin 235, Item 14. Hence, even if the resolution were violated, the fact affords no ground of appeal since the resolution itself is impotent.

As to (2): Appellants' testimony shows that ninety-three licenses of various types have been issued within a radius of a half mile of the intersection of 15th Avenue and Jones Street. A distribution license held by appellant Franklin Stores Co. is located at 261 Springfield Avenue, about three hundred eighty-one feet distant from the premises for which the license was granted to International. These premises had been previously licensed and are located at the intersection of 15th Avenue and Jones Street. Springfield Avenue, one of the principal business streets of the City, passes this intersection at an angle. Buses run on 15th Avenue, Jones Street and Springfield Avenue. Numerous places of business are located in the immediate vicinity. Appellants do not say why they contented themselves with choosing a radius of half a mile to measure the number of licenses in this busy, built-up section of the City. If they had taken a mile, the number of licenses issued would have been much larger. Taking a reasonable radius of five hundred feet, I find that such a circle, the diameter of which takes in about four city blocks, includes ten taverns but only one package goods store other than the International, viz., the shop of the appellant, Franklin Stores Co. Outside the casual bottled goods sold by the taverns, this appellant has no competition in that area of a thousand feet diameter except the present store of the International. The number of licenses which shall be granted, especially in a business district of this type, is peculiarly within the discretion of the issuing authority. Kalish v. Linden, Bulletin 71, Item 14. While unquestionably there are a large number of licensed premises in this section of the City, I do not find that respondent Municipal Board abused its discretion in granting another distribution license in this busy section.

As to (3): It appears that on November 3, 1937, Edward Sobocienski, one of the appellants, filed written objections to the granting of the license subsequently issued to International. A hearing on said objections was held on November 12, 1937, at the time the license was granted. While the objections filed on November 3rd are of a general nature and state no specific reasons, it appears from the minutes that the objection was based upon the alleged violation of the municipal resolution, in which there is no point as hereinbefore determined. There is nothing in the evidence which would support appellants' contention that the action of Municipal Board in granting this license was arbitrary. As to interference with their business and their alleged irreparable loss and injury, the test is not the private rights of any individual but, rather, the welfare of the entire community.

If this were all, the action of the respondent board would be affirmed. But there is another contention still to consider.

As to (4): To support this allegation, appellants subpoenaed all the records of International. In accordance with said subpoena, the certificate of incorporation, certificate book and minute book were introduced into evidence. Nothing in these records discloses that any persons other than those mentioned in the application are interested in International. Appellants were

permitted to examine at length both the President and Secretary of International with reference to the contributions made by each of the shareholders of the corporation and the alleged interest of others in the corporation. Both witnesses denied that any persons other than those shown on the books of the corporation were interested therein. Appellants were likewise permitted to examine the Secretary as to entries in the bank book prior to the date upon which International began doing business and such entries were fully explained. Appellants attempted to elicit information as to the amount of money paid for merchandise and as to prices paid for certain merchandise. Objection having been made that appellants were thus attempting to delve into the private affairs of the corporation, the objection was sustained. Appellants requested adjournment to produce further evidence. Respondents objected thereto and the request was denied by the Hearer.

I think the adjournment should have been granted. It was requested in view of rulings of the Hearer excluding certain evidence offered by appellants. Most of those rulings were correct but some of them were unnecessarily severe in a case of this kind. Where fraud is charged, the widest latitude should be allowed in the presentation of evidence given under a promise to connect. Thus, I deem that under a charge that the parties ostensibly named as stockholders, officers and directors are not the real parties in interest but are acting on behalf of unnamed persons, and in view that the paid in capital of the International Liquor Co. was but \$3,000.00, appellants were entitled to show in what capacity Leonard Rosenstein, an employee of International, had been previously employed by other liquor dealers and that the question asked of Fred Nieburg, President of the International, viz.: "When you were before the Liquor Board did you tell the Board you were going to spend \$20,000.00 in erecting this establishment?" should have been answered. So, without further discussion, some other questions. Hence, a further hearing will be afforded appellants, on due notice to all parties, to present such testimony as may fairly and properly come within the issues raised by the fourth ground of appeal, to which the hearing will be confined.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 12, 1938.

9. LICENSES - INTEREST IN LICENSED PREMISES - WHEN NEW LICENSE MAY BE ISSUED FOR VACATED PREMISES - HEREIN OF THE CONTINUING EFFECT OF THE OLD LICENSE.

April 12, 1938

Thomas Potanski,
South River, N. J.

Dear Mr. Potanski:

I have your letter reading:

"I don't understand where two licenses can be issued for one place, which I think is illegal."

I understand that you have vacated the premises at 98 Causeway because your landlord raised your rent, and that you are no longer in possession of those premises. If that is so, and if you have no right to such possession, it would be legal for the Borough Council of South River to issue another license for the same premises.

A license may lawfully be granted in respect to premises for which another license has previously been issued even if the earlier license is still outstanding if the holder of the original license has lost or relinquished all his interest in the premises in question.

Your present license is still "alive." You do not have to surrender it. It is yours. It is true that as matters now stand you cannot exercise any privileges under that license because it was granted in respect to premises 98 Causeway and, as to those premises, I take it that you can show neither the fact of possession nor the right to possession. But if you can acquire a suitable location and induce the governing body of South River to transfer your license to a new location, then your license will confer full right upon you to sell at the new location.

For previous rulings in this regard - In Re Morrissey, Bulletin 228, Item 7, In Re Kappelmann, Bulletin 211, Item 1, and In Re Boettiger, Bulletin 98, Item II.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. NEW LEGISLATION - AMENDMENT TO R. S. 33:1-2 (CONTROL ACT, SEC. 2) - IMPORTATION OF LIQUOR INTO NEW JERSEY FOR PERSONAL CONSUMPTION.

Assembly Bill No. 407 was approved by Governor Moore on April 4, 1938 and thereupon became Chapter 79 of the Laws of 1938.

It is effective immediately.

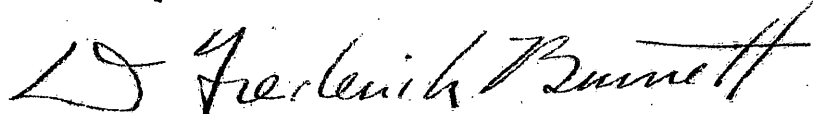
It amends R. S. 33:1-2 (Section 2 of the Control Act) to read as follows:

"33:1-2. It shall be unlawful to manufacture, sell, possess with intent to sell, transport, warehouse, rectify, blend, treat, fortify, mix, process, bottle or distribute alcoholic beverages in this State, except pursuant to and within the terms of a license, or as otherwise expressly authorized, under this chapter; but any drink actually intended for immediate personal consumption may be mixed by any person; and alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle from a point within this State to the extent of, not exceeding one-half barrel, or two cases containing not in excess of twenty-four quarts in all, of beer, ale or porter, and five gallons of wine and twelve quarts of other alcoholic beverages within any consecutive period of twenty-four hours, and from a point outside this State to the extent of, not exceeding one-fourth barrel or one case containing not in excess of twelve quarts in all, of beer, ale or porter, and one gallon of wine and one gallon of other alcoholic beverages within any consecutive period of twenty-four hours. If any person or persons desire to transport alcoholic beverages intended only for personal consumption in quantities in excess of those above-mentioned, an application may be made to the commissioner who may, upon being satisfied of the good faith of the applicant, and upon payment of a fee of five dollars issue a special permit limited by such conditions as the commissioner may impose, authorizing such transportation of alcoholic beverages in quantities in excess of those above-mentioned."

It is now permissible for persons to import distilled liquors into New Jersey for personal consumption, to the extent of one gallon, instead of two quarts as heretofore, without license or permit of any kind.

The State law now conforms with the Federal law which exempts importations to the extent of one gallon from Federal duty and Internal Revenue Tax. The reasons for the change, viz., the desirability of achieving uniformity and the misapprehension of the law that arose because of the lack of it, are set forth in Re Stokes, Bulletin 231, Item 7.

The Bill received the whole-hearted approval of the New Jersey Commission on Interstate Cooperation.



Commissioner.

New Jersey State Library

