

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

BULLETIN 292

JANUARY 10, 1939.

1. DISCIPLINARY PROCEEDINGS - SUSPENSIONS - SIGNS ON LICENSED PREMISES DURING PERIOD OF SUSPENSION - THE PRINCIPLES RESTATED - NO NECESSITY FOR CLOSED SIGNS IN SCARLET.

December 30, 1938

National Association of Retail Beverage
Dealers of New Jersey, Inc.,
Newark, New Jersey.

Gentlemen:

Although I have ruled that a licensee may redecorate and repair his licensed premises during the period of suspension of his license (Re Spindel, Bulletin 89, Item 14), I have also ruled that such a licensee may not, during that period, post a sign bearing the legend that he is closed for alterations, or any other legend which misleads the public as to the real reason for his being closed. Re Lakewood Log Cabin Inn, Bulletin 228, Item 1; Re Roxy Bar and Grill, Inc., Bulletin 254, Item 1. In Re Green Parrot, Inc., Bulletin 264, Item 3, I permitted a sign which merely stated the time when the licensee would reopen.

If you will notify me of any licensee who has posted a misleading sign during the period of suspension of his license, I shall have immediate investigation made, and, if the facts warrant, shall institute disciplinary proceedings against the offending licensees.

As to your suggestion that a penalized licensee be required to post a sign bearing a legend that his license has been suspended or revoked or a legend to a similar effect, I think such a requirement is unnecessary and therefore would merely unduly burden the already heavily loaded task of administering the liquor laws and regulations. The licensee is sufficiently penalized by the suspension or revocation of his license and by the attendant publicity of such through the local newspapers and through the licensee's apparent inability to engage in any alcoholic beverage business. All that is necessary - and as I have already ruled - is that the licensee shall not mislead the public as to his reason for not selling liquor during the period of his penalty.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 30, 1938

Re: Case No. 242

Fingerprint records disclose that, in September 1938, applicant pleaded non vult to an indictment for larceny and receiving stolen goods. The indictment sets forth that, on four different dates between December 1937 and August 1938, applicant and others stole from a corporation, therein named, linoleum, linoleum rugs and felt lining having a total value of \$119.00. After conviction, applicant was sentenced to fifteen months in a workhouse, which sentence was suspended and applicant placed on probation for two years, with costs.

New Jersey State Library

charge of entry and larceny and placed on probation, and that later in the same year he had been fined \$15.00 after being convicted on a charge of assault and battery.

At a hearing duly held, applicant testified that both convictions occurred while he was sixteen years of age; that the entry and larceny charge was based on the fact that he and other boys had entered a pool parlor and stolen some cigarettes; that the assault and battery charge arose out of a fist fight; that he was not fingerprinted at the time of either arrest referred to herein.

Because of applicant's record, which is otherwise clear, and his youth at the time these crimes were committed, I believe that it should be determined that neither crime involved moral turpitude.

It is recommended that applicant be advised that he is eligible to be employed by a licensee.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

5. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 30, 1938

Re: Case No. 245

Fingerprint records disclose that, in 1928, applicant was convicted on a charge of robbery and sentenced to a reformatory, from which he was paroled at the expiration of one year.

At a hearing duly held, applicant admitted the conviction and testified that, at the time of his arrest, he was sixteen years and ten months of age; that, shortly prior to his arrest, he had left home because his mother had remarried; that he was out of work and owed money for food and lodging; that he snatched a purse from a woman's hand while she was walking along a street in daytime; that he was immediately arrested and subsequently convicted of robbery. These facts are corroborated by our investigation.

The crime of robbery ordinarily involves moral turpitude. However, in view of applicant's record, which is otherwise clear, his youth at the time the offense was committed and all of the circumstances surrounding the offense, I believe that it should be determined that the crime did not involve moral turpitude.

It is recommended that applicant be advised that he is eligible to be employed by a New Jersey licensee.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

6. RECAPITULATION OF ENFORCEMENT DIVISION ACTIVITY FOR PERIOD FROM JULY 1st
TO DECEMBER 31st, 1938, INCLUSIVE.

To: D. Frederick Burnett, Commissioner

ARRESTS	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTALS
Licensees	12	8	3	3	1	1	28
Non-Licensees	67	84	64	52	33	70	370
Total Number	79	92	67	55	34	71	398

SEIZURES

<u>Stillis</u>							
1 to 50 Gal. Capacity	12	5	10	7	3	8	45
Over 50 Gal. "	9	11	9	10	7	16	62
Total Number	21	16	19	17	10	24	107

Motor Vehicles

Trucks	1	2	0	0	2	1	6
Passenger Cars	2	10	9	3	3	6	33
Total Number	3	12	9	3	5	7	39

Alcohol

Beverage Alcohol (Gal.)	170	230	219	166	208	54	1047
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Mash

Total number gallons	40162	37647	14054	83907	9000	10074	194844
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Alcoholic Beverages

Beer, Ale, etc. (Gallons)	143	267	28	71	34	5	548
Wine (Gallons)	4127	1394	151	2821	23	4	8520
Whiskies and hard liquor (Gallons)	302	177	681	106	57	106	1429

RETAIL INSPECTIONS

Licensed premises inspected	1609	1806	1784	1883	1494	1306	9882
Illicit (bootleg) liquor	3	1	3	9	13	2	31
Gambling violations	26	26	38	62	64	23	239
Sign violations	50	83	84	57	41	22	337
Unqualified employees	288	303	180	86	70	82	1009
Other mercantile business		99	98	75	53	45	370
Disposal permits necessary		15	12	16	6	3	52
"Front" violations		3	2	2	3	2	12
Improper beer markers		8	8	7	10	1	34
Other violations found	111	25	24	53	29	31	273
Total violations found	478	563	449	367	289	211	2357
Number of bottles gauged	10845	12225	12262	12633	10560	9795	68320

STATE LICENSEES

Plant Control Inspections completed	181	238	230	195	235	251	1330
License Applications investigated	10	33	21	35	31	14	144

COMPLAINTS

Investigated and closed	285	274	394	449	358	265	2025
Investigated, pending	294	209	253	168	199	232	--

LABORATORY

Analyses made	115	136	190	136	200	189	966
Alcohol, water and artificial coloring cases	4	29	42	21	24	30	150
Poison and denaturant cases	0	0	0	3	2	1	6

Respectfully submitted,

E. W. Garrett,

Deputy Commissioner.

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1938
TO DECEMBER 31ST, 1938 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail <u>Consumption</u>		Plenary Retail <u>Distribution</u>		Club <u>No.</u> <u>Issued</u>	Fees <u>Paid</u>	Limited Retail <u>Distribution</u>		Seasonal Retail <u>Consumption</u>		Number Surren- dered <u>Expired</u>	Number Licen- ses in <u>Effect</u>	Total Fees <u>Paid</u>
	<u>No.</u> <u>Issued</u>	<u>Fees</u> <u>Paid</u>	<u>No.</u> <u>Issued</u>	<u>Fees</u> <u>Paid</u>			<u>No.</u> <u>Issued</u>	<u>Fees</u> <u>Paid</u>	<u>No.</u> <u>Issued</u>	<u>Fees</u> <u>Paid</u>			
Atlantic	458	174,903.05	60	20,150.00	13	1,000.00	2	50.00	2	291.03	3	532	196,394.08
Bergen	793	260,263.74	226	57,889.66	47	4,350.53	42	1,881.80	10	612.03	15	1,103	324,997.76
Burlington	179	55,703.89	16	3,576.72	27	3,085.94	1	25.00	1	146.96	1	223	62,538.51
Camden	460	192,509.91	47	17,310.20	58	5,327.97	1	50.00	2	600.67	3	565	215,798.75
Cape May	122	42,672.18	10	3,500.00	5	500.00					0	137	46,672.18
Cumberland	74	22,090.27	9	1,813.97	23	2,450.00					0	106	26,354.24
Essex	1477	736,525.86	357	166,458.00	75	10,308.70	25	1,245.72	2	999.60	3	1,933	915,537.88
Gloucester	111	30,276.02	9	1,325.00	6	350.00					0	126	31,951.02
Hudson	1657	683,779.52	282	109,932.18	48	6,392.16	68	2,750.00			6	2,049	802,853.86
Hunterdon	80	21,420.00	1	200.00	1	150.00					0	82	21,770.00
Mercer	447	187,485.34	41	10,700.00	36	4,730.00			1	85.85	2	523	203,001.19
Middlesex	596	235,575.42	37	10,195.00	30	2,575.00	1	25.00	5	789.78	7	662	249,160.20
Monmouth	504	199,719.62	76	20,986.36	19	2,050.00	10	425.00	29	7,696.54	32	606	230,877.52
Morris	325	95,867.08	69	16,948.40	26	2,298.50	1	35.00	13	1,867.57	21	413	117,016.55
Ocean	177	87,281.20	29	10,435.00	7	700.00					7	206	98,416.20
Passaic	902	336,794.57	117	32,827.80	34	4,049.83	18	820.42	7	1,050.00	9	1,069	375,542.62
Salem	51	16,000.00	4	550.00	7	530.00					0	62	17,080.00
Somerset	179	63,512.60	21	5,725.00	11	1,125.00					1	210	70,362.60
Sussex	160	34,321.20	8	1,225.00	5	260.00			4	600.00	4	173	36,406.20
Union	550	269,311.11	117	39,625.00	56	6,592.50	21	574.00	1	260.00	2	743	316,362.61
Warren	135	37,464.85	10	1,907.50	18	1,863.70			3	150.00	3	163	41,386.05
TOTALS	9437	3,783,477.43	1546	533,280.79	552	60,689.83	190	7,881.94	80	15,150.03	119	11,686	4,400,480.02

D. FREDERICK BURNETT, Commissioner

Report for the six months period ending January 1st, 1939.

Respectfully submitted,
Erwin B. Hoek,
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - NOISE AND NUISANCE.

In the Matter of Disciplinary)
Proceedings against)

R. & F. CO., INC.,)
94 So. Orange Ave.,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-175, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
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Stanton J. MacIntosh, Esq., Attorney for the State Department of
Alcoholic Beverage Control.
George R. Sommer, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with operating its tavern in an unnecessarily noisy manner and as a nuisance, in violation of Rule 5 of State Regulations No. 20.

The tavern, in existence since Repeal, is located in a business neighborhood, there being, however, residences above the various stores in the area. The tavern itself contains a barroom and a rear sitting room, with an electric victrola located in the latter room. Mrs. Reiff, the defendant's manager and majority stockholder, lives above the tavern with her four children (the youngest of which is apparently of high school age).

On the night of Friday, July 8 last, Investigators Kane and DiPietro of this Department kept the tavern under surveillance from 10:15 P.M. until shortly after midnight. During that time, while stationed 200 feet away, they heard the murmur of voices and victrola music emanating from the tavern. Also, at one time, 10 colored men emerged from the tavern and stood in front and talked in loud tones.

After midnight, the investigators entered the tavern and remained until 1:10 A.M. While they were there, a patron inserted a coin in the victrola which began to play "very loud". Mrs. Reiff, however, immediately went to the victrola and adjusted it to "a much lower tone." When the investigators left the tavern (at 1:10 A.M.), they stationed themselves at a point 150 feet away and could hear the sound of the victrola, now playing a different tune and apparently in louder volume than when they left.

The investigators returned to the neighborhood on the night of Tuesday, July 19 last. From 10:15 P.M. until about 12:30 A.M., they stationed themselves next door to the tavern in the home of Mr. Haberman (who maintains a glazier business on the first floor and lives on the second floor of a building directly adjoining the tavern). During that time, the victrola and talking in the tavern were very audible to the investigators. On leaving Haberman's place (at 12:30 A.M.), they could hear the sound of the victrola and the talking at a point 150 feet from the tavern.

On both occasions, the entrance to the tavern, because of the summer season, was covered by only a screen door.

Haberman, the next door neighbor, testified that he had experienced difficulty in sleeping during July and August last because of the noise from the victrola and the talking in the tavern, every night except Mondays and Tuesdays, and that his daughters had similar trouble. He admits, however, that his daughters refused to testify in support of the present charge against the defendant. Although his wife vacationed at Mount Freedom during those two months, it is uncertain whether this was because of the alleged noise or because "she got sick."

On behalf of the defendant, Mrs. Reiff and her daughter testified that Mr. Reiff (now deceased) started the tavern as a result of Haberman's advice and loan of money; that Haberman himself frequented the tavern until Mr. Reiff's death in 1936, and has since changed in attitude toward the Reiffs; that no person in the neighborhood other than Haberman has ever complained about the tavern; that the victrola has been on the premises since 1934 and is generally played only until midnight during the week; that the tavern is open until 3:00 A.M. on Saturdays, 1:30 A.M. on Fridays, and 1:00 A.M. on other days.

Six other persons were produced by the defendant. Two of these witnesses live next door to the tavern on the side away from Haberman's home; another lives directly across the street; another lives directly in back of the tavern, his bedroom being 25 feet from the rear of that building; another, until September last, lived two doors away from the tavern; another operates a nearby business which is open 35% of the time until 10:30, 11:00 or 12:00 P.M. These persons testified that they have never been disturbed by any noises from the tavern.

On the above state of the record, I conclude that there is insufficient proof that the defendant has operated its tavern in an excessively noisy manner and as a nuisance. The neighborhood itself is business in character. There is no sign that any unseemly behavior or disorder ever occurred on the licensed premises. Six qualified persons in the immediate area deny any unnecessary noise or disturbance. Although the investigators heard the victrola and talking from a point 150 feet away from the tavern, it must be remembered that such occurred during midsummer when the tavern's entrance was open.

Taverns are attendant with a certain amount of inescapable noise. The chief complaint against the defendant's place seems to be the victrola. Mrs. Reiff declares that this is played no later than midnight on weekdays. Let her continue this salutary practice.

The charge is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 30, 1938.

9. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS.

In the Matter of Disciplinary)
 Proceedings against)

EMANUEL MORGANSTERN and)
 EDWARD A. OLINER,)
 128 Wilson Avenue,)
 Newark, N. J.,)

CONCLUSIONS
 AND ORDER

Holders of Plenary Retail Consump-)
 tion License C-458, issued by the)
 Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Newark.)

Stanton J. MacIntosh, Esq., Attorney for the State Department of
 Alcoholic Beverage Control.
 Harold Simandl, Esq., by Sidney Simandl, Esq., Attorney for the
 Licensees.

BY THE COMMISSIONER:

The defendants are charged with selling and serving beer to
 a minor, in violation of Statute and State Rule.

On August 20 last, Hazel Ferguson, a 16-year-old girl,
 entered the defendants' tavern with her brother and his "girl
 friend." The three sat at a table where Hazel's mother and a friend
 were already seated. There is considerable difference in testimony
 as to what occurred. Hazel testified that she and her two compan-
 ions entered the premises at 8:30 P.M.; that a round of five beers
 was ordered and served at the table while she was away from it;
 that, when a second round of drinks was ordered, she asked for a
 drink of birch beer. Her mother's friend testified that Hazel and
 her two companions entered the tavern at 11:00 P.M.; that, when they
 seated themselves at the table, her brother ordered three glasses of
 beer, which were served to him, his "girl friend" and Hazel; that he
 (the witness) then ordered a round of five beers, which was served
 to the entire party, and that Hazel's brother thereupon followed
 suit; that Hazel was present when the defendant's waiter took the
 orders for, and served, the above rounds of beer.

On behalf of the defendants, the waiter testified that the
 first order he took, and served, was a round of five beers; that, at
 the time of taking this order and serving it, the only persons at
 the table were Hazel's mother and her friend; that, when he returned
 for the next order, he saw Hazel at the table for the first time and
 refused to serve her real beer but gave her birch beer instead.

I find the defendants guilty as charged. Even disregarding
 all other testimony, it is undenied that the waiter served at least
 one round of beer at Hazel's table. His story that, when taking and
 serving the order, only Hazel's mother and her friend were there, is,
 even if true, no defense. Where a licensee, as here, freely permits
 16-year-old minors upon the premises, it is his duty to see that
 liquor served at empty places at the tables is not intended for some
 of these minors. Were it otherwise, minors need but disappear tem-
 porarily in order to have licensees serve liquor to them with im-
 puny.

Furthermore, I see no reason for disbelieving the testimony
 of the friend of Hazel's mother about three drinks of beer being
 served to Hazel. The Hearer reports that of all witnesses who took

the stand and testified relative to the sale and service of the beers, he alone gave the impression of complete frankness and honesty.

The service of the beer to Hazel, although not a sale in the ordinary sense, nevertheless constitutes a sale as well as service of the beer to her for the purpose of the Alcoholic Beverage Control law. R. S. 33:1-1(w); Control Act, Sec. 1(v).

This is the defendants' first offense of record. Their license will be suspended for ten (10) days for sale and service to a minor.

Accordingly, it is on this 30th day of December, 1938,

ORDERED that plenary retail consumption license #C-458, heretofore issued to Emanuel Morganstern and Edward A. Oliner, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of ten (10) days, commencing January 9, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

10. EDUCATIONAL CAMPAIGN

January 3, 1939

To: Commissioner Burnett
From: E. W. Garrett

Herewith list of addresses made by members of the Department in connection with Educational Campaign during the period July 1, 1938 to December 31, 1938, and the organizations before which appearances were made:

July 12th	Rotary Club, Belvidere	S. J. MacIntosh
July 26th	Kiwanis Club, Paterson	S. J. MacIntosh
July 26th	Kiwanis Club, Perth Amboy	D. J. Murray
July 26th	American Legion, Verona	Philip Finzel
Aug. 24th	Jersey City Retail Liquor Dealers Association at West Caldwell	E. M. Tapner
Aug. 26th	Rotary Club, Long Branch	D. J. Murray
Sept. 13th	Bergen County Forest #108, Tall Cedars of Lebanon, at Carlstadt	Edward Lurie and Philip Finzel
Oct. 2nd	Western Essex Retail Liquor Dealers Association, West Caldwell	E. M. Tapner
Oct. 4th	W.P.A. Teachers Institute, Normal School, Jersey City	J. F. Brewster
Oct. 4th	Lions Club, Frenchtown	Judiah Higgins
Oct. 10th	Men's Club, Methodist Church, Caldwell	James Clinch
Oct. 15th	High School Men's Association, Newark	D. Frederick Burnett

Oct. 17th	Rotary Club, South Plainfield	D. J. Murray
Oct. 19th	New Jersey State Police Training School, Trenton	Edward Lurie
Oct. 24th	7th and 8th Grades, Junior School, Moorestown	J. F. Brewster
Nov. 2nd	Kiwanis Club, Madison	S.J. MacIntosh
Nov. 7th	Ringo's Grange	Judiah Higgins
Nov. 13th	Young People's Union, New Brunswick	D. J. Murray
Nov. 14th	Lambda Alpha Phi, Newark	D. Frederick Burnett
Nov. 14th	Morris County Retail Liquor Dealers' Association, at Singac	D. J. Murray
Nov. 15th	Junior Metro Club, c/o Sherwin Williams Paint Co., Newark	S.J. MacIntosh
Nov. 15th	Ewing Township Retail Beverage Association, at Trenton	H. B. Poole
Nov. 17th	Men's Club, Sixth Presbyterian Church, Newark	M. E. Ash
Nov. 18th	New York Joint Legislative Committee on Interstate Cooperation, Second Regional Conference on Liquor Control, New York City	N. L. Jacobs
Nov. 18th	Men's Club, First Presbyterian Church, Asbury Park	D. J. Murray
Nov. 21st	Alumni, N. Y. U. Law School, Newark	D. Frederick Burnett
Nov. 22nd	Lions Club, Asbury Park	Charles Basile
Nov. 22nd	The Square Club, Garwood	E. W. Garrett
Nov. 28th	Royal Arcanum #2227, Atlantic City	Simon Lippman
Nov. 29th	Ocean County Division #10, New Jersey Licensed Beverage Association, Seaside Heights	Charles Basile
Dec. 1st	Quad Club, Irvington	M. E. Ash
Dec. 2nd and 3rd	Mercer County Federation of Young Men's Christian Associations, Trenton	H. B. Poole
Dec. 3rd	Newark School Men's Club, Newark	D. Frederick Burnett
Dec. 6th	New Jersey Licensed Beverage Association, Division #23, Gloucester City	Frank Middleton
Dec. 8th	University of Pittsburgh's New Jersey Alumni Association, Newark	Charles E. Hendrickson
Dec. 19th	Men's Club of the Church of the	

11. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES ON SUNDAY BEFORE HOURS - HEREIN OF LICENSEES PLAYING GOOD SAMARITAN TO SICK CUSTOMERS DURING TIMES THE RULES REQUIRE THE PLACE TO BE CLOSED.

In the Matter of Disciplinary
Proceedings against

LOUIS SHORE,
110 - 12th Avenue,
Newark, New Jersey,

Holder of Plenary Retail Consump-
tion License No. C-97, issued by
the Municipal Board of Alcoholic
Beverage Control of the City of
Newark.
- - - - -)

CONCLUSIONS
AND ORDER

A. W. Wasserman, Esq., Attorney for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee is charged with selling and serving alcoholic beverages and keeping his licensed premises open at 11:15 A.M. on Sunday, December 4, 1938, in violation of Newark Ordinance No.6579, which (with certain exceptions here not material) forbids the service or sale of alcoholic beverages and opening of licensed premises between 3:00 A.M. and noon on Sundays.

Officer McCormack, of the Newark Police Department, testified that, on the morning in question, he and Detective Fischer saw a man, whom they afterwards learned was Frank Wright, enter a hallway which leads to living quarters above the licensee's tavern; that they followed him into the hallway and thence through a wash-room into the barroom of the tavern; that, when they arrived in the barroom, they saw the licensee standing behind the bar holding an open bottle of whiskey from which he was about to pour a drink into a glass which stood on the bar in front of Wright; that they found a dollar bill on the bar near the glass.

The licensee testified that, at the time in question, he and three of his porters were on the premises for the purpose of cleaning up; that Wright had told him he was sick and trying to get a glass of liquor but that he (the licensee) had refused to sell or serve any liquor before noon. The licensee denied that the bottle of whiskey was open or that he saw a dollar bill on the bar. After his arrest, however, licensee signed a statement, in which the following admission appears:

"When Mr. Wright walked in he asked for a drink of liquor and placed a dollar bill on the ice box. Mr. Wright said to me that he was sick and pleaded with me to give him a drink of liquor. I went to the back of the ice box and was pouring a one ounce and a quarter glass of 'Skyscraper Whiskey' for which I charge 15¢. As I was serving Mr.Wright two men came in and identified themselves as Police Officers and placed me and Mr. Wright under arrest."

There is nothing to show that the statement was obtained by force or duress, as contended by the licensee; the Police Officers testified that the statement was read to the licensee before he signed it.

The evidence is sufficient to show that the licensee sold a drink during prohibited hours, and the fact that such sale was made to a customer during those hours is sufficient to show that the licensee kept his premises open for the purpose of entertaining customers during the time prohibited by the Newark Ordinance.

Licensees will be well advised not to play Good Samaritan to sick customers during the times the rules require the place to be closed.

This is the defendant's first conviction. His license will be suspended for five days for selling and serving alcoholic beverages during prohibited hours, and for an additional five days for keeping his premises open during prohibited hours.

Accordingly, it is on this 4th day of January, 1939,

ORDERED that Plenary Retail Consumption License No. C-97, heretofore issued to Louis Shore by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for the period of ten (10) days, beginning January 7, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

12. PLENARY RETAIL CONSUMPTION LICENSEES - OTHER MERCANTILE BUSINESS - RESTAURANTS HOLDING SUCH LICENSES MAY SELL SANDWICHES AND FOOD, PREPARED AND INTENDED FOR IMMEDIATE CONSUMPTION ELSEWHERE, AS A SERVICE INCIDENTAL TO THE RESTAURANT BUSINESS.

January 3, 1939

Mr. S. H. Stotter,
Bridgeton, N. J.

My dear Mr. Stotter:

The holders of plenary retail consumption licenses may sell food for on-premises consumption, whether the premises is conducted as a tavern or as a restaurant. Re Grimes, Bulletin 287, Item 3. The law (R. S. 33:1-12), however, prohibits plenary retail consumption licensees from conducting any mercantile business on the licensed premises other than the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of non-alcoholic beverages as accessory beverages to alcoholic beverages.

There is no doubt but that the retail sale by the ordinary tavern of sandwiches to take off the premises would constitute other mercantile business.

A different case, however, is presented by the bona fide restaurant. The essence of the restaurant business is the sale of services. While it is true that the service involves the sale of food, it is not the sale of foodstuffs in the sense of constituting a mercantile business, such as that of the grocery or delicatessen. To be sure, groceries, and to an even greater extent delicatessens, sell food that is ready for immediate consumption, no cooking, mixing or other preparation being necessary. But no one will contend that such sales are anything but the conduct of a mercantile business. The test, therefore, is not the particular article of food or the

degree of preparation, but whether the transaction involves the rendition of a service or the sale of a mercantile commodity. Restaurants often have occasion to sell food to customers to take out. Luncheons are sent to offices. Sandwiches are prepared for consumption elsewhere. Such sales are purely incidental to the regular restaurant business. I see no reason why they should be prohibited.

It is therefore ruled that restaurants holding liquor licenses may sell sandwiches and other food prepared and intended for immediate consumption elsewhere, as a service incidental to their regular restaurant business, notwithstanding it is sold to be consumed off the premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. REFUNDS - AFTER REFERENDUM - NONE PAYABLE WHERE THERE IS A MERE LESSENING OF THE LICENSE PRIVILEGES - PERMISSIBLE ONLY WHERE ALL PRIVILEGES UNDER LICENSE ARE TERMINATED.

REFERENDUM - SUNDAY SALES - NO RIGHT IN LICENSEE TO CONTINUE SUNDAY SALES AFTER REFERENDUM PROHIBITING SAME MERELY BECAUSE THE PRIVILEGE EXISTED WHEN THE LICENSE WAS ISSUED.

January 3, 1939

Mr. Percy Lee Hood,
Bridgeton, N. J.

My dear Mr. Hood:

It is not possible to give you a refund because the Fairfield Township referendum has taken away your privilege of Sunday selling, or to permit you to continue to sell on Sundays until your license expires, on the ground, as you say, that you had bought and paid for the privilege for 365 days.

A refund is permissible where a referendum wipes out a license in its entirety. Re Bailey, Bulletin 58, Item 14. The Fairfield referendum, however, has not made your license void. It has resulted merely in the abrogation of a part of your privileges. There is something, to be sure, to be said in your favor on this score. I had a similar question, however, arise some years ago in connection with the Downe Township referendum which cancelled permission of plenary consumption licensees to sell for on-premises consumption, leaving them only the privilege of sale of package goods - the so-called distribution privilege - and there ruled that no refund was payable for a mere circumscription of licensed privileges. Re Bailey, Bulletin 69, Item 1. I there said:

"The unsurmountable difficulty is that there is no way to apportion the loss of the privilege and measure its extent in terms of license fees. The law does not fix any relation or proportion of the consumption feature to the distribution feature. The first impulse to say that they are 'fifty-fifty' and hence if one is taken away by referendum half of the fee should be rebated is specious because the law does not require that the fee for a consumption license which embraces both features shall be twice the fee for a distribution license which has but the one privilege. It is not only possible, but some municipalities actually have fixed each fee at the same figure. It is legal, although not logical, if they fix the distribution fee twice the consumption license fee.

"Moreover, all licenses are mere privileges and subject at all times to the police power of the State. Every State rule and every approved municipal regulation narrows the privilege to some extent and, when enacted subsequent to the issuance of a license, takes away something from the privilege as originally granted. But for such deduction from or contraction of a license, no recompense is payable nor is refund allowable. I have gone as far as possible along this line in allowing full proportionate rebate when a license is entirely wiped out by referendum, e.g., a club license. But none is allowable merely because Sunday selling is taken away. If any part remains after a referendum the licensee may exercise it but may claim no rebate. It is only when he wholly surrenders his license or his license is wholly taken from him by referendum that there is room for rebate."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULES - 10 DAYS' SUSPENSION.

January 3, 1939

Henry E. Diehl,
Township Clerk,
Teaneck, N. J.

My dear Mr. Diehl:

I have before me staff report and letters of November 18th and 22nd re disciplinary proceedings conducted by the Township Council on November 15th against Alexander Stankewich, 1452 Queen Anne Road.

I note that Stankewich was charged with sale of alcoholic beverages and keeping his premises open on General Election Day last past; that he waived the five-day notice of the charges, pleaded guilty, and his license was suspended for ten days, commencing November 15th.

The penalty imposed is exactly in accordance with my recommendation for Election Day violations. The speed and dispatch with which the proceedings were conducted is noteworthy. Please express to the members of the Council my thanks.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. DISCIPLINARY PROCEEDINGS - ELECTION DAY VIOLATIONS - HEREIN OF PROMISES IN LIEU OF PERFORMANCE.

January 3, 1939

Francis M. Seaman, Esq.,
City Attorney,
Perth Amboy, N. J.

My dear Mr. Seaman:

I have before me staff report and your letter of November 16th re disciplinary proceedings conducted by the Perth Amboy Board of Commissioners on the same day against

1. John Balasich
260 Washington Street
License #C-55
2. Italian Tripoli Club
409 Johnstone Street
Club License #CB-2
3. John Otlowski,
220 Hall Avenue
License #C-8

I note that all were charged with sale of alcoholic beverages on Primary Election Day last past; that all were found guilty and the license of Balasich was suspended for three days, but as to the other two sentence was suspended.

According to the staff report, the Mayor and the Commissioner of Public Safety announced that violations of the alcoholic beverage law would not be tolerated; that in the future, drastic penalties would be imposed and that the Board of Commissioners was at all times ready to cooperate with this Department. It is difficult to reconcile this pronouncement with the action in the instant cases. In transmitting the disciplinary proceedings, the Board of Commissioners was informed of my recommendation that a minimum suspension of ten days be imposed in all cases involving Election Day violations. The necessity for such a penalty is amply demonstrated by the fact that Perth Amboy was the source of three of the Election Day violations that were discovered out of a total of 19 in the entire State.

What subsequently happened on December 7th in the disciplinary proceedings against Paul A. Trygar does not lessen the aforesaid difficulty.

Trygar was up for sale or delivery of alcoholic beverages on General Election Day while the polls were open. The Election Day Rule expressly forbids, not only sale but also delivery to any consumer. The licensee himself admitted that he had made delivery of the beer. It makes no difference whether the consumers were his friends or his wife's relations, or whether the delivery was made in the kitchen or in the sink. The fact was that the beer was drawn from the bar, which everybody except your Commissioners knows is part of the licensed premises. Yet, in spite of this, he was found not guilty.

A little performance from now on instead of mere promises will stop Election Day Violations in Perth Amboy if the Board really desires.

Well done is better than well said.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

16. DISCIPLINARY PROCEEDINGS - GAMBLING - 5 DAYS.

January 3, 1939

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

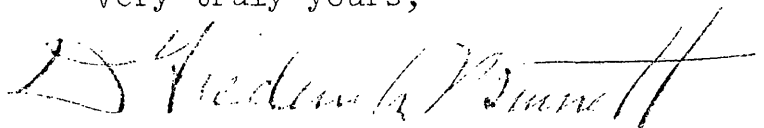
My dear Mr. Rockefeller:

I have before me staff report and your letter of November 29th enclosing resolution and order adopted by the Mayor and Council on November 28th in disciplinary proceedings against Basil Bros., Inc., 92 East Main Street.

I note that the licensee was charged with possession of a "Fairgrounds" machine which paid off in cash, in violation of State Regulations 20, Rule 8, and punchboards in violation of State Regulations 20, Rule 6; that the licensee waived service of formal charges and pleaded guilty, whereupon the license was suspended for five days.

Please express to the Mayor and Council my appreciation for their prompt action and the penalty that was imposed. The celerity with which the proceeding was disposed of is commendable, and the penalty seems proper under the circumstances.

Very truly yours,

A handwritten signature in cursive script, reading "D. Frederick Burnett". The signature is written in dark ink and is positioned above the printed name of the Commissioner.

Commissioner.