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

BULLETIN 327 JUNE 30, 1939.

1. APPELLATE DECISIONS - BEAM v. CALDWELL.

ALBERT J. BEAM,

Appellant,

-vs-

THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF CALDWELL,

Respondent

On Application for Reconsideration

CONCLUSIONS

Nathan A. Whitfield, Esq., Attorney for Appellant.
Philip D. Elliot, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, Albert J. Beam, made application for reconsideration of the Commissioner's Conclusions in the above entitled matter, and hearing thereon has been duly held. The antecedent facts and the testimony introduced at the hearing may be summarized as follows:

In January and February, 1939, investigators of the Department visited the appellant's licensed premises and observed gambling on shuffleboards located therein. In due course, the Mayor and Borough Council of the Borough of Caldwell instituted disciplinary proceedings against the licensee for permitting gambling at the licensed premises and, after hearing, an order was entered revoking the license outright and directing that no further license be issued for the same premises for a period of two years. On appeal to the Commissioner the licensee contended that the extent of punishment imposed showed bias and prejudice and that, in any event, it was wholly disproportionate to the offense committed. On April 5, 1939, formal Conclusions were rendered which embodied findings that the charge of bias and prejudice was not established but that the penalty was, nevertheless, unnecessarily severe. Accordingly, the penalty imposed was reduced to a period of ninety days. See Beam v. Caldwell, Bulletin 309, Item 7. At the same time the disqualification of the premises for the two year period was vacated. See Petrulio v. Caldwell, Bulletin 309, Item 8.

On April 25, 1939, the licensee filed a petition asserting that, in accordance with the Commissioner's Conclusions, his premises had been closed since April 8, 1939; that continuation of the suspension would inevitably entail bankruptcy proceedings and irreparable loss; that the original action of the respondent was the result of bias and prejudice and that additional evidence was available to support such charge; and praying for a reconsideration of the Conclusions. On the basis of this petition, the suspension of the license was stayed pending hearing which was held on May 1, 1939.

At that hearing several investigators of the Department, Arthur Jones, a member of the Borough Council of Caldwell and others, testified. Investigator Arts testified that after the evidence of gambling at the licensed premises had been obtained, Chief of Police Sims of Caldwell told him that they were glad they "had gotten"

this tavern and that this licensee was not the type of tavern-keeper they desired in Caldwell and that Councilman Ganow had said "We will give him the works" or words to that effect. This testimony was corroborated by Investigator Thievon, who added that they said "We are glad you got him because we have been after him for quite a long time". Investigator Kane testified that on the night of the hearing before the Borough Council, Mr. Arthur Jones, a member of the Council, told him that he lived in the vicinity and that the license should be revoked because the place was a nuisance. The evidence furnished by Councilman Jones himself is enlightening. He testified that he considered that the place was a nuisance because of "drunks coming out of there" and that it ought, therefore, be closed; that he conveyed his opinion to the remaining members of the Council; and that they expressed agreement with him. The following excerpt from his testimony is particularly significant:

"THE HEARER: And you think it is a nuisance wholly apart from any gambling?

THE WITNESS: Absolutely.

THE HEARER: And, for that reason, you think it should be closed?

THE WITNESS: Absolutely."

LaSalle E. Jacobus, Borough Clerk of Caldwell, testified that after the Commissioner's Conclusions were rendered, the Mayor of Caldwell, at a Council meeting, stated, in effect, that so far as he was concerned it was now up to the Commissioner to run the taverns in Caldwell and action was taken towards reducing the Caldwell limitation from six to five, there being five taverns actually in operation, exclusive of the appellant's.

In the light of the foregoing, I am satisfied that there should be no further suspension of the appellant's license. It must be remembered that the licensee was charged only with permitting gambling on the licensed premises; he was never charged with conducting his place as a nuisance and was never given opportunity to be heard on that issue.

In Re Schwartz, Bulletin 241, Item 1, only a five day penalty was imposed by the Commissioner for an offense involving gambling on the licensed premises. While it is true that municipal issuing authorities have discretion to impose substantially greater punishment for similar offenses, their action must be the result of a bona fide determination as to the appropriate punishment for the offense charged. In the instant matter, the punishment inflicted was evidently not the result of the respondent's belief that it was commensurate with the individual offense charged and committed; on the contrary, the Council apparently concluded that the licensee's place was conducted generally as a nuisance and that, therefore, it should be closed permanently. In so doing, it improperly condemned him without preferring an appropriate charge against him and affording him a fair opportunity to be heard - priceless American guarantees which must be vigilantly guarded if individual liberties are to be preserved. Beam was entitled to his day in court whatever kind of a place he ran. Due process of law and a fair trial are of more moment than the conviction of any violator. The practice of convicting a man before he is tried is a dangerous business in a democracy.

When the case was originally before me, I found as fact that Beam had violated the law; that witnesses on his side had lied about it; that the offense was aggravated by the testimony offered in defense. Therefore, although I personally believed that a punishment of outright revocation for a first offense of gambling on shuffleboard was entirely too severe and should be reduced to five or ten days at the most, nevertheless in deference to the Mayor and Council of Caldwell and in the then belief that he had had a fair trial, I reduced it from two years but only to ninety days. Now, however, it is my duty to revalue the situation. The licensee's premises have actually been closed for seventeen days; that is sufficient in view of the limited nature of the gambling offense charged and adjudicated.

Accordingly, the suspension of appellant's license directed in the Conclusions in the above entitled matter dated April 5, 1939 is hereby terminated, effective immediately.

D. FREDERICK BURNETT,
Commissioner.

June 25, 1939.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR, EMPLOYMENT OF FEMALE BARTENDER AND IMMORAL ACTIVITIES - 55 DAYS.

In the Matter of Disciplinary Proceedings against

CLOVER INN, INC.,
60-64 Thomas St.,
Newark, N. J.,

Holder of Plenary Retail Consumption License No. C-925, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Sanford M. Kirsch, Esq., Attorney for Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with -

(1) possessing illicit liquor at his tavern on November 28, 1938, contrary to R. S. 33:1-50;

(2) permitting a female to tend bar and to sell and serve liquor at his tavern on January 11, 1939, contrary to Section (a) of resolution of August 29, 1934 of the Newark Board of Alcoholic Beverage Control; and

(3) permitting "lewdness and immoral activities" at his tavern on January 11, 1939, contrary to Rule 5 of State Regulations No. 20.

As to charge (1), the defendant pleads guilty. Investigators Quinn and Williams of this Department visited his tavern on November 28, 1938 on routine inspection and, after there testing twenty-seven bottles of liquor, seized two as being under proof,

namely, an open quart bottle labeled Calvert's Reserve Blended Whiskey 90 Proof, and an open quart bottle labeled Calvert's Special Blended Whiskey 90 Proof.

Upon analysis by the Department Chemist, the liquor in the Reserve bottle was found to be 78.8 instead of 90 proof and to contain 182 grams of solids per 100 litres as against 140 to 150 grams ordinarily found in genuine Calvert's Reserve Blended Whiskey; and the liquor in the Special bottle was found to be 80.1 instead of 90 proof and to contain 125.2 grams of solids per 100 litres as against 140 to 150 grams ordinarily found in genuine Calvert's Special Whiskey. In the Chemist's opinion, genuine liquor in the Special bottle was probably mixed with another blend of whiskey, and genuine liquor in the Reserve bottle was probably mixed with water.

The defendant's managing president testified that he is unable to account for the fact that these bottles contain liquor not genuine as labeled. Nevertheless, he is strictly accountable for possession of these refills even though he be personally innocent of the refilling. See Re Jacobs, Bulletin 315, Item 8, and Re Tumen, Bulletin 316, Item 8, where I carefully reconsidered how the problem of refills strikes at the root of liquor control.

The defendant also pleads guilty as to charge (2). On Wednesday night, January 11, 1939, at about 10:30 o'clock, Inspector Brewster and Investigator Silberman of this Department entered the defendant's tavern and remained there until 1:10 A.M. During their stay, they observed Violet, a female employee of the defendant, several times take orders for and serve liquor to patrons.

The defendant's president testified that he did not then know that females were prohibited by Newark regulation from selling or serving liquor in taverns in that city. This ignorance presents no excuse. Liquor licensees and their employees must learn the liquor regulations and remember and scrupulously adhere to them.

As to charge (3), the defendant pleads not guilty. The facts are undisputed.

Inspector Brewster and Investigator Silberman, on entering the tavern on Wednesday night, January 11, 1939, went to the bar, where they were served drinks. Violet, the defendant's employee, was seated nearby, drinking with a male patron. After this patron left, she engaged Brewster and Silberman in conversation at the bar. Later, Mildred, a customer, entered the tavern and was greeted by both Violet and Tommy, the bartender. This new arrival stating that she had "just gotten up", Tommy asked whether "she had been dreaming while in bed". She made a quip or retort of the gutter variety. Mildred later asked Tommy "if he had anything in the place to eat", a question which he answered with a filthy remark, at which both Violet and Mildred laughed.

Mildred, Violet, Brewster, and Silberman then engaged in general conversation and in drinks at the bar. As the evening grew, Violet told a dirty story in foul tongue; Mildred followed this lead with one of her own; and there then ensued a series of stories a la Rabelais or Boccaccio, but without literary taste or merit. Brewster and Silberman listened to four or five and "joined in to keep the conversation going".

The bartender, although apparently not engaging in any of the story-telling, joined the group whenever his duties permitted and seemed to be enjoying himself. At one time he urged Mildred to tell "the one about the Swede in the old country". Later, on

Violet's suggestion, he took what appeared to be an ordinary small box of safety matches from the back bar, opened the box and held a lighted match behind it, revealing the silhouetted figures of a man and women in sexual embrace. By moving the match, the bartender caused the figures to change posture suggestively.

This exchange of unprintably obscene stories and foul speech amongst the mixed group, initiated by Violet (the defendant's barmaid or waitress), urged along by the bartender and culminating in his exhibition of the trick match box with its lascivious silhouette, constitutes lewdness and immoral activity within the meaning of the State rule. The descent as low as a pictorial expression of a man and woman engaging in sexual intercourse went well beyond merely humor of low taste.

The defendant's president testified that he was unaware of the filthy talk and stories, or of the presence of the match box in the tavern and the bartender's exhibition of it. However, a licensee is strictly accountable for the misconduct of its employees on the licensed premises. Re Jacobs, supra.

I find the defendant guilty on charge (3).

As to penalty: The defendant's possession of the illicit liquor (contrary to statute) requires, under the principles set forth in Re Jacobs, supra, the minimum 30-day suspension; his employment of a female to sell and serve liquor at his tavern (contrary to Newark regulation) calls for an additional five days; and the lewdness and immoral activity at his tavern (contrary to State rule) warrants an additional twenty days; or a total suspension of fifty-five days.

Accordingly, it is, on this 25th day of June, 1939, ORDERED, that Plenary Retail Consumption License No. C-925, heretofore issued to Clover Inn, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is suspended until the end of its term, effective June 29, 1939, at midnight (Daylight Saving Time); and it is

FURTHER ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R. S. Title 33, Chapter 1) be issued to said Clover Inn, Inc. or for said premises prior to the 24th day of August, 1939.

D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - SCHUTTENBERG v. KEYPORT.

JOHN SCHUTTENBERG,)
Appellant,)
-vs-) ON APPEAL
MAYOR AND COUNCIL OF THE BOROUGH OF KEYPORT,) CONCLUSIONS
Respondent)

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for the Appellant.
John M. Pillsbury and Howard W. Roberts, Esqs., Attorneys for the Respondent.
J. F. Weigand, Esq., Attorney for the Objectors.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for appellant's grocery and delicatessen store at 11 West Front Street, Borough of Keyport.

Keyport has an area of 1½ square miles and a population of some 4940. In addition to home trade, its business activity enjoys the trade of several neighboring communities that use its facilities for shopping and also the transient trade of automobilists going through the Borough to various beaches along the Jersey shore. To accommodate public want for liquor, the Borough, since November 11, 1938, has had one club, one plenary retail distribution, and twelve plenary retail consumption licenses.

Appellant's store (operated by him for the last sixteen years) is located in Keyport's business center, on a well-traveled, but no longer the main route, to the shore points. The Borough's one "package" store is just around the corner and but 275 feet away; five taverns are also within the immediate vicinity.

On November 28, 1938, respondent introduced an ordinance (never finally adopted) to limit plenary retail distribution licenses in the Borough to two, plenary retail consumption to thirteen, and club to one - quotas which, if adopted, would permit one distribution and one consumption license over and above the number of such licenses then (and still) outstanding.

On the next day, November 29th, appellant filed his present application for a distribution license.

Thereafter, on December 12th, respondent expressly abandoned the proposed ordinance of November 28th; denied appellant's application; and introduced a new ordinance - finally adopted on December 27th - which fixed quotas permitting no more licenses than those then (and now) in existence - i.e., one distribution license, twelve consumption, and one club.

In explanation of this change, a Borough Councilman (whose term recently expired) testified that the proposed ordinance of November 28th was introduced and given a first reading only as a "feeler" for public reaction; that respondent at its subsequent meeting on December 12th considered that it was a "mistake" to have offered that measure even for first reading; that its introduction was therefore rescinded, and the new ordinance introduced and thereafter finally adopted.

Appellant contends that respondent nevertheless, when acting on his application at the December 12th meeting, was bound by the quota of two distribution licenses in the proposed ordinance of November 28th, and cannot rely on the later-set quota of one.

This contention is obviously without any semblance of merit.

Although the actually enacted ordinance was but first introduced at the very meeting where appellant's application was denied and not finally adopted until fifteen days thereafter (viz., December 27th), it is nevertheless a pertinent factor in deciding this appeal since it is now in existence as a formal municipal regulation limiting distribution licenses to no more than one. If that quota was adopted in good faith and is reasonable as a whole and in its application to appellant and the vicinity in question,

it is effective retroactively against him. Franklin Stores v. Elizabeth, Bulletin 61, Item 1; Widlansky v. Highland Park, Bulletin 209, Item 7; Cocciolone v. West Deptford, and Trovato v. West Deptford, Bulletin 247, Item 3; Galluccio and Sciarrabone v. Belmar, Bulletin 255, Item 8.

As to bona fides, the Councilman's explanation for abandoning the proposed measure of November 28th satisfies me that the present quota of one distribution license was adopted in good faith.

As for the reasonableness of that quota as a whole, there is no convincing evidence that it (together with the quota of twelve consumption licenses) is inadequate to service the Borough. The fact that, back some four or five years ago, two distribution licenses were outstanding in the Borough for a few months - viz., from February 5 through June 30, 1934 - is insufficient to prove any present need for that number.

Nor is there any convincing evidence that the quota is unreasonable as applied to appellant or the vicinity in question. It was testified on appellant's behalf, that the Borough's one "package" store, located just around the corner from appellant, is an outright "liquor" place; that it would be a convenience to many persons, both local and transient, to be able to buy their liquor at a "food" shop like appellant's instead of at this nearby "package" store. However, such consummate convenience for shoppers out to purchase both food and liquor or for persons who, though desirous of spirits, are loathe to enter a modern "liquor" store for them, is not a public need which requires the issuance of an additional distribution license in defiance of a local quota.

Petitions, both for and against appellant's application, were filed with respondent below. The weight to be given them lay within respondent's sound discretion. Re Powell, Bulletin 59, Item 15; Masarik et al. v. Milltown, Bulletin 283, Item 10. Nothing in the favoring petition (containing some 200 signatures) shows that respondent abused such discretion in believing an additional distribution license to be unnecessary and limiting such licenses in the Borough to one. Cf. Guarante v. Ho-Ho-Kus, Bulletin 305, Item 4.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 25, 1939.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLS - 30 DAYS.

In the Matter of Disciplinary Proceedings against

FRED WOLTON,
Third and Morris Avenues,
Long Branch, New Jersey,

Holder of Plenary Retail Consumption License No. C-7, issued by the Board of Commissioners of the City of Long Branch.

CONCLUSIONS AND ORDER

Schlossbach & Newman, Esqs., by Alvin Newman, Esq., Attorneys for the Licensee.

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge alleging that, on August 11, 1938, he possessed eight bottles of illicit alcoholic beverages, contrary to R. S. 33:1-50.

These proceedings were instituted against licensee after a report of the results of a Federal investigation was forwarded to this Department.

At the hearing it was stipulated that, on August 11, 1938, a storekeeper-gauger of the Alcohol Tax Unit, Internal Revenue Service, seized on the licensed premises the eight open bottles of alcoholic beverages mentioned in the charges filed herein and transmitted them to the chemical laboratory of the Alcohol Tax Unit where they were analyzed. A copy of the chemist's analysis was admitted into evidence in lieu of the chemist's testimony.

It appears from the analysis made by the chemist that the liquor contained in each of the seized bottles varied in proof, acid content and solid content from genuine samples of the whiskies described on the labels affixed to said bottles. Moreover, the liquor in each of the eight bottles contained no artificial coloring, whereas the genuine samples of each item contained artificial coloring. The chemist testified that, in his opinion, the eight bottles had been refilled with a whiskey having all natural coloring and, hence, that the bottles did not contain liquor as specified on the labels.

No denaturants were found in any of the seized bottles.

The licensee places the blame upon a bartender who was discharged as soon as the violation was discovered. He admits that he is responsible for the acts of the bartender, but pleads that this fact should be taken into consideration in imposing a penalty.

The bartender was not produced before me. He may have been discharged after the violation was discovered, but there is nothing before me on which I can adjudicate the guilt of the discharged bartender. The law makes the master responsible for everything that goes on on licensed premises, whether it is the personal fault of the master or not. Applying the regular rule, the license will have to be suspended for thirty days.

Accordingly, it is on this 25th day of June, 1939,

ORDERED that Plenary Retail Consumption License No. C-7, heretofore issued to Fred Wolton by the Board of Commissioners of the City of Long Branch, shall be and the same is hereby suspended until the end of its term, effective June 29, 1939 at midnight (Daylight Saving Time); and it is

FURTHER ORDERED, that no renewal or other license under the Alcoholic Beverage Control Act (R. S. Title 33, Chapter 1) be issued to said Fred Wolton or for said premises prior to the 30th day of July, 1939.

D. FREDERICK BURNETT,
Commissioner.

5. WAREHOUSE RECEIPTS - PERMISSIBLE FOR RETAILER TO HOLD AS COLLATERAL FOR UNPAID PURCHASE PRICE THEREOF OWED BY WHOLESALER, PROVIDED A BONA FIDE SALE IS CONSUMMATED.

TIED HOUSES - BONA FIDE SALES OF THE SUBJECT MATTER OF CONFLICTING INTERESTS ARE PERMISSIBLE EVEN THOUGH VENDOR MAY HOLD A PURCHASE MONEY LIEN ON THE SUBJECT MATTER AS COLLATERAL.

June 8, 1939

To: D. Frederick Burnett, Commissioner
From: Erwin B. Hock, Deputy Commissioner

Re: Wilkinson, Gaddis & Company,
95 Parkhurst St., Newark, N.J. License WR-30

The above corporation holds Warehouse Receipts License WR-30 for the present fiscal year.

V. P. Wilkinson of the above corporation visited me yesterday and stated that this corporation intends to discontinue its Warehouse Receipts License at the end of the present fiscal year. The corporation, he says, intends to apply for retail licenses for its several retail stores in various municipalities throughout the State.

Mr. Wilkinson realizes that the corporation must discontinue all wholesaling of alcoholic beverages in order to obtain the retail licenses. They, therefore, propose to sell entirely the warehouse receipts presently owned by the corporation to Austin, Nichols & Co., Inc., 82 Poinier St., Newark, N. J., holder of Plenary Wholesale License W-64, before the expiration of their Warehouse Receipts License on June 30th.

The proposed sale of the receipts by Wilkinson, Gaddis & Co. to Austin, Nichols & Co. according to Mr. Wilkinson, will be consummated as follows: Wilkinson, Gaddis & Co. will transfer title in all of the receipts to Austin, Nichols & Co., but the former corporation will actually hold the receipts as collateral because Austin, Nichols & Co. will be unable to make payment in full therefor. As Austin, Nichols & Co. pays for the receipts they will be turned over to Austin, Nichols & Co. for withdrawal of the alcoholic beverages.

The only question, therefore, seems to be whether or not the holding of this collateral by Wilkinson, Gaddis & Co. would constitute a prohibitive interest as between a retailer and wholesaler which would prevent this corporation from obtaining retail licenses for the next fiscal year.

I would appreciate an early ruling on this question because Wilkinson, Gaddis & Co. are very anxious to consummate the above sale, if it is allowed, and start their applications for retail licenses.

Respectfully submitted,
Erwin B. Hock,
Deputy Commissioner.

June 25, 1939

MR. HOCK:

If this is an out and out sale, and the only interest of the vendor in the collateral is a lien for the unpaid purchase price and the transaction is bona fide throughout, the sale may be consummated and thereupon the vendor will be in a position to apply for a retail license.

D. FREDERICK BURNETT,
Commissioner.

6. PENDING LEGISLATION - LIMITATION OF LICENSES - ASSEMBLY 358 - REPORT AND RECOMMENDATIONS OF THE COMMISSIONER TO THE LEGISLATURE.

June 26, 1939.

Herbert J. Pascoe, Speaker,

and

Assemblymen Donal J. Connolly,
Vincent S. Haneman,
Ralph E. Lum, Jr.,
S. Emlen Stokes,
William R. Ward,
Anthony E. Wickham.

MR. SPEAKER and ASSEMBLYMEN:

Herewith report and recommendation requested by you at the conclusion of the public hearing held on Assembly 358.

The bill is designed to effect a limitation of the number of new licenses issuable, based exclusively on population. It does not affect licenses now outstanding or reduce the number in any way. It expressly preserves all present rights of transfer as to existing licenses and their future renewals.

The law now confers power upon the governing board or body of each municipality, each for itself (except in Sixth Class Counties) to limit, by ordinance, the number of licenses to sell alcoholic beverages at retail. Any person affected who considers himself aggrieved may appeal to the State Commissioner who, after public hearing, may vacate or amend the limitation.

Pursuant to this salutary principle of Home Rule, many municipalities have adopted such ordinances practically all of which have been upheld on appeal and their provisions rigorously applied and enforced by the Commissioner. These ordinances may be changed from time to time by the municipality as experience dictates. This latter power has been exercised in several instances, sometimes increasing, sometimes lessening the number of licenses in the particular community.

The present bill abrogates the power of municipalities each for itself to determine how many licenses may be issued in a particular community and substitutes a state-wide limitation based substantially on the respective populations according to the last preceding Federal census. Power is reserved to municipalities to limit licenses to a lesser number than permitted by the Bill but no revision upward is allowed.

The proponents of the measure argue that temptation to violate the law and the regulations go with overcrowded conditions; that the bill if enacted would make for better enforcement because the licensed privilege would be made worth while; that municipal ordinances can be and have been changed by political expediency and by greed or need of revenue.

The opponents argue that the bill would regulate by arbitrary State mandate what should be determined by local conditions for which it makes no allowance; that it would settle

by rigid formula and without knowledge of facts what should be settled according to local circumstances, and substitutes a rule that would operate blindly without regard for actual conditions -- in short, that the number could best be determined by each municipality for itself just as each municipality should have and does have the option to decide whether it shall be bone dry or wet, and, if the latter, whether the taverns should be closed on Sundays or not, and the hours of sale on week days.

It is true that local regulations have sometimes been dictated by political considerations and the number of licenses determined by thoughts only of revenue produced. For this there is an appeal. Under the proposed bill, there is no appeal.

It is true that too many licenses have been issued in some municipalities. What is needed is reduction. This can be accomplished with fairness to existing licensees by refusing renewals to those who have violated the law or the rules and by reducing the number of outstanding licenses accordingly. Every revocation should lower the number. Elimination for fault is the fair and the quick cure for those who resort to improper practices.

The instant bill does not effect reduction of the number of existing licenses in any way. In fact it perpetuates them by the privilege of transfer. It creates a monopoly so much so that no new dollars in this line may be brought into a community except by transfer from an existing licensee. Present licenses become a virtual franchise with resultant hawking and peddling and sale at whatever price the traffic will bear. The excess over the cost of the license would be a personal profit to its lucky holder and no part of it would go to the municipality which conferred the privilege.

Arbitrary limitation based on population figures of a decade ago are not a good substitute for control based on experience and changing conditions. Some municipalities have doubled their population since 1930; others have fewer residents. Many of the shore municipalities have a summer population many times the number of the permanent residents on which the census is based. Arbitrary figures can readily produce incongruous results.

Chapter 61, P.L. 1939, which effects, in Sixth Class Counties, a limitation analogous to the instant Bill is experimental legislation the results of which it would be well to heed before extending it all over the State.

From the public standpoint the primary problem, after all, is not how many taverns we have but how well they are conducted.

I recommend that you do not enact the Bill into law.

Respectfully submitted,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR - CANCELLATION OF LICENSE.

In the Matter of Disciplinary Proceedings against

DUTCH DISTRIBUTORS, INC., 84 Cambridge Avenue, Jersey City, N. J.,

Holder of State Beverage Distributor's License SBD-200.

ORDER

It appearing that Dutch Distributors, Inc., a corporation, holder of State Beverage Distributor's License SBD-200, has pleaded guilty to the following charges, dated February 23, 1939, duly served upon it, to wit:

1. In your application for State Beverage Distributor's license, dated June 10, 1938, upon which license SBD-200 was issued, you falsely stated, in answer to question 23, that no other individual or corporation was interested directly or indirectly in your business, whereas, in truth and fact, Old Dutch Brewers, Inc., a foreign corporation, was so interested, contrary to R. S. 33:1-25.

2. In your application for State Beverage Distributor's license, dated June 10, 1938, upon which license SBD-200 was issued, you falsely stated, in answer to question 27, that no individual or corporation had any beneficial interest directly or indirectly in the stock of your corporation other than the stockholders therein mentioned, whereas, in truth and fact, Louis Hertzberg and Old Dutch Brewers, Inc., a foreign corporation, did have such interest, contrary to R.S.33:1-25.

3. In your application for Limited Wholesale License, dated December 1, 1938, now pending before this Department, you falsely stated, in answer to question 23, that no other individual or corporation was interested directly or indirectly in your business, whereas, in truth and fact, Old Dutch Brewers, Inc., a foreign corporation, was so interested, contrary to R. S. 33:1-25.

4. In your application for Limited Wholesale License, dated December 1, 1938, now pending before this Department, you falsely stated, in answer to question 27, that no individual or corporation had any beneficial interest directly or indirectly in the stock of your corporation other than the stockholders therein mentioned, whereas, in truth and fact, Louis Hertzberg and Old Dutch Brewers, Inc., a foreign corporation, did have such interest, contrary to R. S. 33:1-25.

5. On or before July 1, 1938, and thereafter, you were directly or indirectly interested in Old Dutch Brewers, Inc., a foreign brewery, which interest was in violation of the terms of your license, contrary to R. S. 33:1-11(2c) and R. S. 33:1-43, as amended and supplemented.

6. On or about November 5, 1938, and on divers days prior thereto, you failed and neglected to file with this Department a statement, supplemental to the statement dated June 14, 1938, setting forth the names of all persons who became connected with you in any capacity whatsoever within ten days after such connection, and particularly did you fail and neglect to so file with respect to Charles Zimmerman, H. Finkelstein, Sam Edelman and Belle Chesluk, contrary to Rule 4 of State Regulations No. 10.

and

It further appearing that said licensee has tendered its said license for cancellation, and has agreed to desist and refrain from all operations thereunder;

It is, on this 24th day of June, 1939,

ORDERED, that State Beverage Distributor's license SBD-200, heretofore issued to Dutch Distributors, Inc. for premises at 84 Cambridge Avenue, Jersey City, be and the same is hereby cancelled of record; and

IT IS FURTHER ORDERED that said Dutch Distributors, Inc. henceforth desist and refrain from all operations under said license.

D. FREDERICK BURNETT,
Commissioner.

8. IMPORTATION - WINE FOR PHARMACEUTICAL USE - WHOLESALE LICENSE REQUIRED.

Dear Mr. Burnett:

A number of pharmaceutical manufacturers in your State have indicated an interest in our Sherry wine which is made in our licensed winery at Brocton, New York. This Sherry is to be used by these New Jersey manufacturing and pharmaceutical houses for strictly non-beverage purposes, namely, in certain of their elixirs and medicinal preparations.

Proper permit to cover shipment of our wine for non-beverage purposes into your State would, of course, be applied for at the proper time.

The purpose of this letter is to obtain a ruling from you which would permit us to ship our wine for such non-beverage purposes into your State without having to clear same through a New Jersey wholesale licensee. Our customers are all old well-established pharmaceutical manufacturers of excellent reputation. In view of this and the further fact that the wine is for strictly non-beverage use and as such is exempt from taxation in your State, will, we feel, justify our request for such a ruling.

Very truly yours,
National Grape Corporation

June 26, 1939

National Grape Corporation,
New York, N. Y.

Gentlemen:

R. S. 33:1-29 (Control Act, Section 26) provides that:

"Druggists and pharmacists duly registered under the laws of the State of New Jersey as such may, upon their respective registered premises as aforesaid, without license hereunder, purchase and use alcoholic beverages for the compounding of physicians' prescriptions and for the preparation of mixtures and medicines, unfit for use as beverages, and sell same after being so compounded or prepared, subject to rules and regulations; ***."

This Section also provides that wholesale licensees may sell alcoholic beverages directly to registered druggists and pharmacists for the use above authorized, subject, however, to rules and regulations.

Under the foregoing provisions, druggists and pharmacists are in a position somewhat analogous to that of retail liquor licensees in that they may prepare and sell mixtures of alcoholic beverages to the general public and, further, in that they may buy direct from wholesale liquor licensees just as if they were retail licensees. These privileges are conferred without license or fee, but are expressly conditioned that the compounded mixtures, when sold to the public, be "unfit for use as beverages."

Now alcoholic beverages may not be imported into New Jersey by retail licensees. They may be transported into this State for commercial purposes only where they are owned by or sold to the holder of a New Jersey manufacturer's or wholesaler's license. There is no reason why druggists and pharmacists should have a greater privilege in respect to importation of liquor than any one else. Nor is there any reason why your concern, which deals in alcoholic beverages, should enjoy a wholesaler's privileges in New Jersey without being licensed as a wholesaler is, to sell alcoholic beverages in this State. After all, you are not selling medicine but potable alcoholic beverages, which might just as well be supplied by a New Jersey vintner or wholesaler. Since the latter are required to be licensed in order to do the things which you purpose, the rules of fair competition demand that you also should be required to take out a license in order to accomplish the same thing. There is every reason why you, like everybody else, dealing in such a commodity, should be subject to control.

I, therefore, rule that you may not sell or ship alcoholic beverages to pharmaceutical manufacturers in this State except you qualify by taking out a wholesaler's license.

No opinion is expressed on the subject of taxation which is exclusively within the province of the State Tax Commissioner.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDERED.

In the Matter of the Seizure of a still on premises occupied by Willie Grant, on Reeves Street, Whitesboro, Middle Township, County of Cape May and State of New Jersey	ON HEARING CONCLUSIONS AND ORDER

R. J. Hogan, Esq., Attorney for Henry Johnson.

Investigators of this Department seized an unregistered still, consisting of a copper cooker and goose neck, a galvanized cooler, and a set of copper coils, which they found in a building on premises occupied by Willie Grant on Reeves Street, Whitesboro, Middle Township, in the County of Cape May.

At a hearing duly held, pursuant to the provisions of R. S. Title 33, Chapter 2, to determine whether the still should be confiscated and the premises padlocked, no one appeared to contest the proceedings.

Under the statute, an unregistered still is subject to confiscation, and in addition, a padlocking penalty may be imposed upon the premises in or upon which such still is found. No cause was shown at the hearing why confiscation and padlocking should not result in the instant case.

Subsequent to the hearing, counsel submitted the affidavit of Henry Johnson, the owner of the realty, in support of his request that the premises should not be padlocked. The affidavit, in effect, sets forth that he resides in Indiana, Pennsylvania; that in September 1937, he entered into an agreement to sell the premises to Willie Grant for the sum of $400.00, of which $200.00 still remains unpaid; that since Willie Grant took possession of the premises immediately upon the signing of the agreement, he had no occasion to visit the premises; that the still was on the property without his knowledge; and that if the premises are padlocked, Willie Grant may refuse to make further payments on his contract.

It thus appears that the padlocking of the premises will not affect Henry Johnson's interest in the property as long as he continues to receive payments on the contract, hence he has not shown good cause why a padlocking penalty should not be imposed. However, if the agreement of sale is subsequently terminated and he re-acquires the right to enter into possession of the premises, he may apply to lift the padlocking.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:2-5, and shall be retained for the use of hospitals, and State, County and municipal institutions, or may be destroyed in whole or in part, at the direction of the Commissioner.

It is the Commissioner's further order that premises occupied by Willie Grant, located on Reeves Street, Whitesboro, in the Township of Middle, County of Cape May and State of New Jersey, including all of the buildings erected thereon, being the premises

in which the illicit still was found, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the 30th day of June, 1939, and terminating the 30th day of December, 1939.

Frederick Burnett

Commissioner.

Dated: June 24, 1939.