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

BULLETIN 252. JUNE 13, 1938

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - LOTTERY - LUCKY NUMBER DRAWINGS FOR LIQUOR PRIZES.

In the Matter of Disciplinary Proceedings against	:	
ALPINE VILLAGE TAVERN, INC., 1000 Broad Street, Newark, New Jersey,	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-259, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	:	

Vincent Belfatto, Esq., Attorney for Licensee.
Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were duly served on the licensee, alleging that on May 5, 1938 it allowed, permitted and suffered a lottery to be conducted on its licensed premises, in violation of Rule 6 of State Regulations No. 20.

The licensee, pleading non vult, denies any knowledge "that it was conducting anything that was unlawful."

The facts of the case are: On the evening in question, a girl employee went from table to table in the licensed premises and placed a small card bearing a number in front of each patron; that subsequently a drawing was held and three prizes were awarded to the holders of the cards bearing the lucky numbers, a split bottle of champagne being awarded as a first prize, a bottle of wine as a second and a bottle of wine as a third prize. No money was paid by the patrons for the tickets placed on the table, and no admission fee to the licensed premises was charged. It appears, however, that the licensee had on its premises a sign reading:

"Thursday, May 5th, 1938, Lucky Number Prize."

It seems to be settled in New Jersey that a distribution of prizes by chance is a lottery even in the absence of any showing that the persons participating therein have parted with anything of value for the right to so participate. State vs. Shorts, 32 N.J.Law 398; Market Plumbing and Heating Supply Co. vs. Spangenberger, 112 N.J.Law 46 (Sup. Ct. 1933), Affirmed 114 N.J.Law 270, (E. & A. 1934).

In Re The Great Atlantic & Pacific Tea Company, Bulletin #172, Item 9, I said:

"Rule 6 of the Rules Concerning Conduct of Licensees applies, however, even though the chances or tickets are given away free for the rule prohibits not only the sale of tickets or participation rights but goes further and expressly provides: 'No licensee shall allow, suffer or permit any lottery to be conducted ..... on or about the licensed premises.'"

This ruling was followed in Re Kavaleer, Bulletin 216, Item 5; Re Kohn, Bulletin 233, Item 1; Re Tartar, Bulletin 233, Item 3. In the present case the gaming feature was that a patron of the tavern might get a prize of varying value according to the chance of the drawing. It is obvious that the chance of the draw is the bait to lure people to patronize this tavern instead of those which comply with the State rules.

The licensee attempts to shield itself behind the ruling made in Re Laird, Bulletin 119, Item 6. In that case the Junior Service League of Short Hills, whose funds are used solely for charitable purposes, gave a dance at the Short Hills Club and asked in advance for permission to use a home-made "wheel of chance" for the purpose of distributing prizes which had all been donated. On that showing, I saw no reason why the young women of the Junior League should be denied the flutter and fun of distributing such prizes by lucky chance and, therefore, ruled that the liquor license of the Short Hills Club would not be jeopardized by the affair the young ladies purposed to conduct. The ruling was restricted, of course, to the facts stated. The mere distribution by lucky chance of donated prizes at an affair conducted by an outside organization on licensed premises presents an entirely different problem in liquor control than the commercialized drawing conducted in this licensee's tavern. In the one case, the element of innocent fun is the controlling feature. In the other, the prime objective is the increase of the licensee's business by luring patronage in defiance of the State rules prohibiting the practice.

I find the licensee guilty as charged.

Accordingly, it is on this 8th day of June, 1938 ORDERED that plenary retail consumption license No. C-259, heretofore issued to Alpine Village Tavern, Inc., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing June 11, 1938, at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT
Commissioner

2. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO NON-MEMBERS, VIOLATION OF BINGO REGULATIONS AND CONDUCTING A LOTTERY.

In the Matter of Disciplinary Proceedings against)
)
CLUB WINDSOR, INC., 954 - 18th Avenue, Newark, New Jersey,)
)
Holder of Club License No. CB-50, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.) CONCLUSIONS AND ORDER
. . . . . .

George A. Henderson, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The charges served upon the licensee may be summarized as follows:

(1) Selling alcoholic beverages to John L. Arts, who was neither a bona fide member nor a bona fide guest of the Club, in violation of R.S. 33:1-12 (Control Act, Section 13(5) and in further violation of Rule 5 of State Regulations No. 7;

(2) Selling alcoholic beverages to Charles E. Hendrickson, was was neither a bona fide member nor a bona fide guest of the Club, in violation of R.S. 33:1-12 (Control Act, Section 13(5)) and in further violation of Rule 5 of State Regulations No. 7;

(3) Allowing a Bingo game to be conducted in a room in which a bar for the service, delivery and sale of alcoholic beverages is located and in a room where alcoholic beverages are sold, served, delivered and consumed, in violation of Rule 16 of State Regulations No. 20;

(4) Allowing a lottery to be conducted on or about the licensed premises, in violation of Rule 6 of State Regulations No. 20.

All of said violations are alleged to have occurred on May 17, 1938.

Licensee pleads non vult as to Charges (1), (2) and (3), and not guilty as to Charge (4).

On the evening of May 17, 1938, Investigators Arts and Hendrickson, of this Department, visited the licensed premises. Neither of them is a member of Club Windsor, Inc. and neither of them was a guest of any member of said Club on the evening in question. Each Investigator paid twenty-five cents admission to the Bingo games which were being held at the Club on that evening. One-half of the admission ticket was retained by an attendant at the door, and the other half was handed to the Investigators, with instructions to keep said half of the ticket for a door prize. Bingo was played in a room in which a bar is located, During the intermission between the Bingo games, both of the Investigators were served with alcoholic beverages at said bar. Neither of them was questioned as to whether they were members of the Club, or guests of any member Later in the evening, a drawing was held for the door prize. A ham was awarded to the holder of the lucky ticket.

Frankly admitting the sales to non-members and the playing of Bingo in a room in which a bar is located, the licensee alleges in mitigation that it had never before sold to non-members, and that plans which had been made to partition off the portion of the club room containing the bar had been held in abeyance because the Club intended to move to other premises.

Club licensees get their license for a fee far less than regular retail consumption licensees, but this special privilege is expressly conditioned that they may sell only to members and their bona fide guests. When clubs sell to other persons, it is most unfair competition with those who pay the higher license fee in order to sell to all comers.

The belated announcement of plans to erect partitions is no excuse for violating the State rule which expressly prohibits not only the playing of Bingo in a room where a bar is located but also the selling of alcoholic beverages in any room where game is

played while the game is in progress. Rule 16 clearly prohibits the playing of Bingo in a room in which a bar for the service, delivery or sale of alcoholic beverages is located. The serving of liquor during recess was prohibited in Re Luthenauer, Bulletin 207, Item 5.

As to the lottery charge: The distribution of door prizes by means of a drawing is a lottery and is, therefore, prohibited on licensed premises. In Re Kohn, Bulletin 233, Item 1; In Re Tartar, Bulletin 233, Item 3. Cf. Re Alpine Village Tavern, Bulletin 252, Item 1.

I find the licensee guilty of the fourth charge.

Since the sales to both Investigators were made at one time, I shall fix one penalty for both charges, namely, a suspension of two weeks; for permitting Bingo to be played in a bar room, I shall suspend the license for five additional days; for serving alcoholic beverages in the room where Bingo was being played before the games were ended, an additional five days; and for permitting the lottery, an additional five days, making a total suspension of twenty-nine days.

Accordingly, it is on this 8th day of June, 1938 ORDERED that, effective 3:00 A. M. (Daylight Saving Time) on June 11, 1938, Club License No. CB-50, issued to Club Windsor, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for the balance of its term, and it is further

ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R.S. 33, Ch. 1) be issued to said Club Windsor, Inc. before the 9th day of July, 1938.

D. FREDERICK BURNETT
Commissioner

3. ADVERTISING - POKER HANDS - HEREIN OF LABELGRAMS.

May 3, 1938.

Dear Commissioner:

We hereby make formal application for permission to use what we understand is called "labelgram" in connection with the sale of our bottle beer and malt products.

We are enclosing a few samples of this device for your further inspection. You will notice the idea consists of a combination of an illustrated slogan, for example: "Pfeiffer's beer fits any hand," or "Krueger's beer fits any hand," and data of an educational, historical and amusing nature, of interest to the consumer printed on the reverse face of the label, and contained in a perforated panel, so that the same may be easily removed by the consumer. We assure you that nothing of a religious, political, or obscene nature will be used nor will we sponsor any premium in connection with the same.

G. KRUEGER BREWING COMPANY

May 13, 1938.

Dear Commissioner:

Pursuant to our letter to you of May 3rd, enclosing for your approval the sample of the labelgram label, I thought you might be interested in knowing that we have just received the approval of this label merchandising idea from Administrator Alexander of the Federal Alcohol Administration of Washington, D.C.

Yours very truly,

G. KRUEGER BREWING COMPANY

May 26, 1938.

Dear Commissioner:

Pursuant to our letters of May 3rd and May 13th, requesting your approval of the label merchandising idea known as the "Labelgram", thought you might be interested in knowing that we have the approval of the following States:

New York State; Georgia; Connecticut; Alabama; West Virginia; Rhode Island and Providence Plantations; and Maine.

G. KRUEGER BREWING COMPANY

June 6th, 1938.

G. Krueger Brewing Company,
Newark, N. J.

Gentlemen:

I have before me your letters of May 3rd, 13th and 26th, submitting samples of proposed bottle labels containing perforated panels and on the reverse, advertising slogans, poker hands, and statements of educational, historical or amusing nature.

There is no objection to the advertising slogans or the statements.

But the poker hands are not permissible.

It doesn't take much imagination to know exactly what is going to happen. Precious few will be interested in the educational data. The big thing will be the poker hands by means of which the "low" man will pay for the drinks. In fact, since my interview with you I stumbled into a Liquor Trade Journal which detailed this very objective and how customers would soon get wise to the "stunt."

Retailers may not permit gambling on their premises. It is prohibited by State regulations, for violation of which the license may be suspended or revoked. It is for the same reason that manufacturers and wholesalers are prohibited from furnishing advertising matter or devices that would encourage or aid retailers to violate the rule. See Re Ballantine, Bulletin 86, Item 12, copy enclosed.

The labels, therefore, are disapproved.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

4. REGULATIONS 17 - RULES GOVERNING TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO NEW JERSEY - REVISION.

MEMO TO: COMMISSIONER BURNETT

FROM: N. L. JACOBS June 6th, 1938.

In view of the recent statutory amendment increasing to one gallon the amount of hard liquor which may be imported for personal consumption (P.L. 1938, c.79; Bulletin 239, Item 10), the Rules Governing the Transportation of Alcoholic Beverages into New Jersey (Regulations No. 17) should be correspondingly amended. In addition, the rules should be somewhat clarified, in particular, rule 4 should provide expressly that importations for personal consumption by individuals, without permit, within the allowable amounts should be "on their persons or in vehicles under their control", thus excluding such importations by licensed transporters generally. The same result has heretofore been reached by consistent interpretation and practice.

It is, therefore, recommended that Regulations No. 17 be amended to read as follows, effective immediately:

"REGULATIONS No. 17

"Rules Governing the Transportation of Alcoholic Beverages into New Jersey

"No alcoholic beverages shall be brought or carried into this State except as follows:

"1. Alcoholic beverages owned by or sold to the holder of a New Jersey Manufacturer's or Wholesaler's license, may be brought into this State by a licensed transporter, or in the licensee's vehicle bearing a proper transportation insignia.

"2. Alcoholic beverages not intended for sale or use in New Jersey may be transported through this State in any vehicle, provided no delivery is made in New Jersey.

"3. Alcoholic beverages may be brought into New Jersey by a licensed transporter where they are being delivered to a licensed public warehouse for temporary storage, and awaiting ultimate delivery without this State, or within this State to licensed manufacturers and wholesalers.

"4. Alcoholic beverages intended for personal consumption and not for sale may be brought into this State by any individuals on their persons or in vehicles under their control to the following extent, viz.: Not exceeding 1/4 barrel (or one case containing not in excess of 12 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 24 hours.

"5. Alcoholic beverages may be brought or carried into New Jersey by a person having a special permit issued by the State Commissioner of Alcoholic Beverage Control in any vehicle to the extent and subject to the conditions of such special permit, without any transportation insignia.

"6. Retail transit licensees may continue to bring alcoholic beverages into this State in connection with their licenses, as heretofore."

APPROVED:

Regulations 17 are hereby revised and amended to read as above recommended effective immediately

D. FREDERICK BURNETT
Commissioner

June 7, 1938.

5. NAMES - APPLICATION, ADVERTISEMENT AND THE LICENSE ITSELF MUST DISCLOSE THE TRUE NAME OF THE APPLICANT FOR A LIQUOR LICENSE. HEREIN OF ANGLICIZED AND SYNCOPATED NAMES.

Dear Commissioner:

I am applying to the City Council of the City of Trenton, New Jersey for a plenary retail consumption license under the name of Bert Sykes. I was born Benjamin Sikovitz, but have been known as Bert Sykes for over twenty years. I have used that name in business. Even my driver's license is under the name of Bert Sykes. All my friends and business acquaintances know me under no other name.

Very truly yours,

BERT SYKES

June 8th, 1938.

Mr. Bert Sykes,
Trenton, N. J.

Dear Mr. Sykes:

While your natal name is more euphonious, there is no objection to your anglicized version.

Your application for liquor license will, however, have to be made out in your true name. It is hard enough to trace records without adding to the work by permitting coined names as fancy dictates. How are licensing authorities to identify successive applicants? Names have no fingerprints. If you were allowed to adopt a nom de plume because you had enjoyed it for twenty years, someone else would trump up a nom de guerre, which he had used on more or less frequent occasion, if not with such telling syncopation, and soon I would be flooded with requests to pass on all kinds of pseudonyms. All this is avoided by the simple requirement that each applicant use his own name.

You may make your application, if you wish, in the name of "Benjamin Sikovitz trading as Bert Sykes". There is no objection to a licensee adopting a trade name. Thus, there is no barrier to an Italian licensee naming his place Muldoon's", Bulletin 129, Item 2, or to calling a restaurant in Union City the "Alpine Tavern", Bulletin 206, Item 6. So, a licensee may advertise its manager's nickname, Bulletin 203, Item 9. The

State Rules Concerning Misleading Trade Names refer only to those which convey the impression that the licensee is operated by or enjoys official sanction from Federal, State or municipal government and to names which mislead as to the kind of business conducted. Remember, however, the "Act to Regulate Use of Business Names" which provides that no person shall transact business under any assumed name unless he file a certificate in the County Clerk's Office. Re Chessman, Bulletin 200, Item 10.

But all this is beside the point that in order to use a trade name in respect to a liquor license, your true name must be set forth in the application, advertisement and license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - MASAR vs. MONTVILLE TOWNSHIP.

MARTIN MASAR,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF MONTVILLE TOWNSHIP,) CONCLUSIONS
Respondent.)

. . . . . .

Martin Masar, Appellant, Pro Se.
Hillery and Young, Esqs., by David Young, 3rd, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to transfer appellant's plenary retail consumption license from premises on the southerly side of Boonton Avenue, east of its intersection with Taylortown Road, to premises at the southeasterly corner of that intersection, Taylortown, Montville Township.

Respondent's 3 Committeemen based their unanimous denial of appellant's application upon the ground, inter alia, that local sentiment in Taylortown is against his application.

Taylortown is an unofficial village which centers about the intersection of Boonton Avenue (a fairly trafficked highway) and Taylortown Road (a little-used dirt road). The community consists of some 40 or 50 scattered homes; no stores; and a small church or chapel and a small grammar school on Boonton Avenue some 250 feet and 500 feet, respectively, above the intersection. There are 3 business premises: 2 gasoline stations at the intersection (one being at appellant's proposed site), and appellant's present liquor establishment which, 500 feet above the intersection, is also set back 340 feet from Boonton Avenue, on a hill, and is partially screened by a cluster of trees.

Strong local sentiment exists against the proposed transfer. A protesting petition was filed with respondent con-

taining the signatures of some 40 residents in the community. A favoring petition, estimated to contain the signatures of about a dozen residents, was also filed. At the hearing on appeal, residents of 10 households in the community appeared in protest; 2 residents of different households appeared and testified on behalf of appellant.

The chief protest of objectors is that appellant's new site (at the intersection of Boonton Avenue and Taylortown Road) is at the center of the village and on a corner where the local bus picks up and discharges the children who attend high school in Boonton (apparently 8 or 10 in number). There are the further protests that children in the community have made a practice of playing on appellant's land adjoining the proposed site, and that this new site is within closer view and earshot of the chapel than appellant's present place and will therefore disturb services at the chapel.

This local antipathy against a liquor establishment at the intersection is not new in the village. When appellant first obtained a license for his present place of business (August, 1935), he represented to residents in the community, who otherwise were prepared to protest, that he would never seek to transfer his license to the intersection. He asserts that he now seeks the transfer, despite this representation, in order to take advantage of the better business site at the intersection.

The village is a type of rural and scattered residential community familiar in various parts of New Jersey. Cf. Dries vs. Hainesport, Bulletin 191, Item 6. Its inhabitants are not unreasonable in objecting to the location of a liquor place at the center of their community and at a corner where their school children congregate for transportation to high school. Appellant's present place, substantially distant from that corner and deeply receded and partially screened from the road, avoids these objectionable features.

Respondent did not err in respecting the local sentiment in the village against appellant's application for transfer.

Its action is, therefore, affirmed.

Dated: June 7, 1938.

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - BOOTLEGGING - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings Against	)	
JOSEPH SIESS (also known as Joseph Sauis) 15 Clover Street Newark, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License #C-221	)	

. . . . . .

Jerome B. McKenna, Esq., For the Department
Walter H. Flaherty, Esq., and John J. Meehan, Esq., Attorneys for the Licensee.

BY THE COMMISSIONER:

The defendant, a Newark licensee, is charged with possessing and transporting a 5-gallon can of untaxed alcohol fit for beverage purposes, in violation of R.S. 33:1-50 (Control Act, Sec. 48).

On behalf of the Department, 3 Elizabeth police officers testified that, on the evening of March 4, 1938, they stationed themselves near Front and Bond Streets, Elizabeth, under advice that an illicit sale of alcohol would occur there at 9 p. m.; that at about that hour the defendant parked his car at that intersection and there met and conversed with one William Butynski (whose house and barber shop are located nearby); that Butynski then crossed over to the diagonally opposite corner and the defendant followed in his car; that the policemen followed and came upon the defendant's car parked alongside another automobile on Bond Street just below Front Street, with the defendant at the wheel and Butynski reaching into the rear seat; that they immediately investigated and discovered on the rear floor of the defendant's car a 5-gallon can of untaxed alcohol, later found to be fit for alcoholic beverage purposes; that they arrested the defendant and Butynski, and investigated the car parked nearby but found no one in it.

One of these police officers also identified a statement made and signed by the defendant at police headquarters on the night of his arrest. In this statement, the defendant declares that he was at Butynski's place at about 8:30 on the night in question, when a colored man entered and asked to buy 5 gallons of alcohol; that Butynski told this colored man he would sell him the alcohol for $8.50 and that it would be delivered to him at his car at 9 p.m. at the corner of Front and Bond Streets; that Butynski asked the defendant to make this delivery; that accordingly, shortly before 9 p. m., the defendant took a 5-gallon can of alcohol from Butynski's home, placed it in his car, and drove over Pine Street to Front Street and along Front Street to Bond Street and there parked; that Butynski, as pre-arranged, had walked directly from his place to the intersection; that when the defendant parked his car at the corner, Butynski came over and informed him that the colored man was present, and requested the defendant to drive his car into Bond Street alongside the car of the colored man; that as the defendant stopped his car alongside the other automobile, Butynski opened one of the rear doors of the defendant's car and reached in to take the 5-gallon can of alcohol; that as he was doing this, the policeman drove up and placed them under arrest.

The defendant, pleading not guilty, rests his defense upon the contention that he obtained and transported the alcohol for innocent purposes and was unaware that it was illicit. To this end, he repudiated the signed statement which he had given to the police, and asserted that the correct story (similar to his testimony detailed below) appears in a statement which he gave to investigators of this Department 3 days after his arrest.

He testified that he purchased the alcohol at a gasoline station in Linden at about 4 p.m. on the day in question, as he was driving en route from that city to Elizabeth; that he had stopped at the station and had there purchased some gasoline and oil, when a young attendant in overalls offered to sell him a 5-gallon can of alcohol for use in his car; that although the young man wanted $3.50, the sale was finally executed for $2.50;

that he, the defendant, bought the alcohol, believing it was denatured and actually intending it for use in his two automobiles during the cold weather. He further testified that, after reaching Elizabeth, he remained in a tavern from 5 p.m. until around 9 p.m.; that he then drove to Front and Bond Streets to visit his sick brother who resides there; that after having stopped his car at the intersection and while momentarily sitting in it, Butynski came over and asked him to help push an automobile which was stalled across the street; that he therefore drove his car over and had just reached the other automobile when the police came and arrested both him and Butynski; that Butynski was not reaching into the rear of the defendant's car at the time but was pushing the other automobile; that there was no arrangement between him and Butynski to meet at that place.

Butynski testified, on behalf of the defendant, that he had closed his barber shop at 8:30 on the night in question, and was walking to a tavern located at Front and Bond Streets; that 2 colored men whose automobile was stalled at the corner asked for his help in pushing their car; that he was lending a hand to this endeavor when he noticed the defendant parked in his automobile at the intersection on Front Street, and asked for his help; that he never reached into the back of the defendant's car; that he knew nothing about the alcohol located there; that he had made no arrangement to meet the defendant at the corner.

I am not at all impressed with the defendant's present story as to how he obtained the alcohol. Passing over the strangeness of his purchasing 5 gallons of alcohol on a day in March for use in his automobile against further freezing weather, and the egregious story of a gasoline station selling undenatured alcohol for such purpose, there is the more telling fact that the defendant cannot name or identify the gasoline station where he made the purchase or give any clue as to its location. He explains that he was too "dizzy" with beer at the time he made the purchase now to be able to remember. Yet, at the hearing he remembered in surprising detail a very complicated day of events in Newark, Linden, and Elizabeth -- everything, except the location or name of the gasoline station where he allegedly purchased the alcohol. The only reasonable inference is that the sale at the gasoline station is a myth of the moment or that, if an actual occurrence, it was a sale for illicit purposes and that the defendant now finds it unwise to remember.

Nor am I impressed with the defendant's testimony as to how he happened to be present at Front and Bond Streets on the night in question, and what occurred there. I find no evidence of sufficient merit to impeach the defendant's signed statement to the police which explains how he got the alcohol and what he did with it.

I find the defendant guilty as charged, and further find as fact, and in aggravation of his offense, that he was transporting the illicit alcohol on the occasion in question in aid of bootlegging activities.

The era of the tolerated bootlegger passed out of this State with Repeal. Licensees who now dabble in bootlegging, either on their own or as auxiliaries to other, are a dangerous menace to the alcoholic beverage industry. They stamp themselves as unfit to engage in that business and must be eliminated.

Accordingly, it is on this 9th day of June, 1938, ORDERED that plenary retail consumption license C-221, heretofore issued to Joseph Siess (also known as Joseph Sauis) by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective June 11, 1938, at midnight (Daylight Saving Time).

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - SANTORIELLO vs. HOWELL TOWNSHIP.

ANTHONY SANTORIELLO,)
Appellant,)
-vs-) On Appeal
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HOWELL,) CONCLUSIONS
Respondent)

. . . . . .

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for the Appellant
Max Finegold, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located on the northerly side of State Highway #33, Rural Delivery #2, Howell Township.

Respondent's three Committeemen unanimously denied appellant's application on the ground, inter alia, that there are sufficient liquor places in the general vicinity of appellant's premises.

Howell Township is 10 miles long and 7-8 miles wide, and has a population estimated at 4,000-5,000 persons. State Highway #33 runs for 5.7 miles through the municipality, with 5 consumption establishments in present eixstence upon it. On appellant's side of the road, approximately 2-1/10 miles to the east, there is the "Quaker Rest". On the opposite side, directly across from appellant's premises, is "Jim's White Pole"; 3/10 of a mile to the west is the "Village Inn", and 3-1/10 and 3-2/10 miles to the east are the "Park Inn Grove" and the "Blue Jay" respectively.

There is no substantial evidence that, despite the proximity of "Jim's White Pole" and the "Village Inn", an additional consumption establishment is necessary in appellant's vicinity in order to service either the local residents or the travelling public. The neighborhood is distinctly rural and very sparsely settled.

Stress is laid upon the fact that appellant's place is a public restaurant. However, meals are also served at "Jim's White Pole" (across the way) and at the "Village Inn", and light lunches (and meals on special order) are served at the remaining three establishments on the highway. There is no indication that members of the public, in quest of liquor with their meals, will be substantially inconvenienced by resorting to those victualers instead of appellant. The mere fact that issuance of a license to appellant may attract such customers to him and thereby benefit his business, is not a sufficient reason for issuance of the license. Rainbow Grill of Bordentown vs. Bordentown, Bulletin 245, Item 4.

In November, 1936, in Van Schoick vs. Howell, Bulletin 150, Item 7, I directed the then Township Committee of Howell Township to issue a consumption license to one Van Schoick for the "Village Inn" on State Highway #33 (thus bringing the consumption establishments along that road to the present number of 5), and disregarded the contention of the Township Committee, inter alia, that sufficient consumption places existed along the highway. That action, however, resulted from the fact that the Township Committee, after having denied Van Schoick's application on such ground, immediately thereafter issued 4 additional licenses in the Township, one being for the "Quaker Rest" on State Highway 33. The present Township Committeemen, two of whom were not in office at that time, unanimously declare that in their opinion no further licenses are necessary along the highway or in the vicinity in question. I see no reason for questioning their good faith.

Although 8 consumption licenses are presently outstanding on State Highway #4 in contradistinction to the 8 along State Highway #33, this fact reflects no discrimination against the latter road; for it is clear that State Highway #4 is much more used than State Highway #33, it being estimated that the proportion of traffic upon them is as high as 5 to 1.

Determination of the number of liquor licenses which shall be issued in any particular area is a matter confided to the sound discretion of the issuing authority. Lysaght vs. Denville, Bulletin 163, Item 13; Levitt vs. Liberty, Bulletin 169, Item 4; Grieb vs. Metuchen, Bulletin 217, Item 3. Appellant fails to prove any abuse in that discretion.

In light of the foregoing, it is unnecessary to consider the additional reasons assigned by respondent as grounds for its denial.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

June 9, 1938.

9. LICENSES - APPLICATION - NOTICE OF APPLICATION - NO OBJECTION TO APPLICANT ADVERTISING MORE THAN ONE LICENSED PREMISES IN THE SAME NOTICE PROVIDED ALL ARE IN THE SAME MUNICIPALITY.

June 8, 1938

John H. Talmadge,
Borough Clerk,
Madison, N. J.

My dear Mr. Talmadge:

I have your letter of June 2nd, enclosing notice of application by the Great Atlantic & Pacific Tea Company for plenary retail distribution licenses for its two stores at 71 Main Street and 21 Waverly Place, Madison.

There is nothing in the Alcoholic Beverage Law or the State Regulations which requires that a separate notice of application be published for each license applied for. Hence, if adequate notice is given and potential objectors are afforded full opportunity to protest, the purpose of advertisement will be served.

An applicant may put in one notice more than

one address, provided, of course, they are all in the same municipality.

I see no objection to the form of notice submitted.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. DARTS - STEEL OR METAL TIPPED DARTS MAY NOT BE USED OR POSSESSED ON LICENSED PREMISES - THE GAME MAY BE PLAYED WITH RUBBER TIPPED DARTS PROVIDING THERE IS NO PAY-OFF BY THE HOUSE.

June 9th, 1938.

A Morris Munyan, Clerk,
Greenwich Township,
Gibbstown, N. J.

Dear Mr. Munyan:

Upon receipt of your letter inquiring whether dartboards were permissible upon licensed premises, I had the game set up and demonstrated and find it is a game in which the players throw pointed arrows, or darts as they are called, at a target on which zones are drawn and numbered for scoring purposes. The object is to throw the darts into the high score zones so to obtain the highest score. No mechanical contrivances control the play. Sheer coordination of eye and arm determines the player's success. The game is clearly one of skill and not a gambling device per se.

I examined the darts themselves. They are tapered wooden billets with rudder-like feathers at the tail to direct the flight and they are weighted with lead at the front end at which is mounted a steel pin an inch long to make the dart stick in the target. I was told that the manner of design was such that the dart would right itself, however thrown, so as to pierce whatever it hit, steel pin foremost. I tried it. It never failed to do so, even as a cat lands on all fours, if it had ten or twelve feet to travel. Each time it struck the board, the point pierced deeply,

This, I thought, is all well and good - so long as it hits the target or at least is thrown in that direction.

But then the question arose - what is to prevent them from being thrown elsewhere and in a different direction and ending up in somebody's eye. The consumption of alcoholic beverages is always attended with a certain amount of conviviality - sometimes with pugnacious argument and active belligerency. A dart of this kind thrown at a person, either in unthinking fun or with malice aforethought, might well produce permanent injuries.

In order to maintain safe conditions in taverns and prevent unnecessary hazard to the public, I rule that darts with steel, iron or other metallic points may not be used or possessed on licensed premises.

There is no objection, however, to playing this game with darts tipped with a rubber cup or disc which, when thrown, adhere to the target by suction. The hazard of such a dart is practically negligible. As thus played, the game is a harmless diversion.

One more thing:- The vendor naively wrote me:

"The dart game is played 4 darts for five cents; 8 for ten cents. It is not very hard for a player to receive a 10¢ glass of beer for 5¢ or a prize of same value but no cash as this is not to be used for gambling."

The permission hereby given in respect to rubber tipped darts is expressly conditioned that there are to be no prizes given or pay-off made by "the house", either in beer, cash or any other thing of value. Approving a game of skill or a harmless diversion is one thing but it may not be coupled up by licensees as a direct stimulation to sales or as an incentive to some kind of a pay-off where the player receives something for nothing, or, more accurately, more for less.

Effective July 1st next, violation of the foregoing ruling or any part thereof is cause for revocation or suspension of license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. RETAIL LICENSES - ISSUANCE - A LICENSE ISSUED BY THE BOROUGH CLERK CONTRARY TO EXPRESS CONDITION IMPOSED BY THE COUNCIL IS SUBJECT TO CANCELLATION UNLESS THE ISSUANCE IS RATIFIED BY THE COUNCIL.

SPECIAL CONDITIONS - NO NECESSITY FOR A CONDITION REQUIRING THAT A LICENSEE WHO HAS LOST HIS PREMISES SURRENDER THE LICENSE BEFORE ANOTHER LICENSE MAY BE ISSUED FOR THOSE PREMISES UNLESS MUNICIPAL LIMITATION OF THE NUMBER OF LICENSES PREVENTS THE ISSUANCE OF THE NEW LICENSE WITHOUT THE SURRENDER OF THE OLD.

Dear Commissioner:

You will note that the license issued to Joseph Cittadino was subject to the surrender of License C-8 issued to Harry Mallon for the same premises.

Harry Mallon moved and therefore lost all interest in the licensed premises, and further, did not surrender or request for a transfer. Therefore, by virtue of your decision as noted in Bulletin 98, Item 11, I issued the new license after the proper procedure had been carried out, to Joseph Cittadino, who is the owner of the premises in question.

Very truly yours,

ANDREW G. BECKER
Borough Clerk.

June 8, 1938.

Andrew G. Becker,
Borough Clerk,
Eatontown, N. J.

My dear Mr. Becker:

I have before me your letter of June 2nd and enclosures, re Joseph A. Cittadino.

I note that Cittadino's license was granted by the Council subject to the condition that the license of Harry Mallon, outstanding for the same premises, be first surrendered; that Mallon moved and lost all interest in the premises; that Cittadino's license was issued by you on the strength of ruling made in Re Boettiger, Bulletin 98, Item 11, without the surrender of Mallon's license having been made.

I have no record that there is any limitation of the number of plenary retail consumption licenses in the Borough of Eatontown. Of course, if you had such a limitation and the quota was filled, it would be necessary for Mallon to surrender his license before Cittadino's could be issued. See Re Knox, Bulletin 240, Item 1; Re Swensen, Bulletin 235, Item 16; Re Livelli, Bulletin 235, Item 14. But in the absence of a limitation, it is not essential, merely because Mallon has lost his interest in the premises, that his license be surrendered. He still holds the license, although no use of it could be made because of the absence of a licensed premises, and he is entitled to apply to the Council for a transfer to a new premises if he wishes. Having lost his interest in the premises, a new license could lawfully be issued to another person for the premises provided the new applicant is personally qualified, has an enforceable right to possession, and all other prerequisites were met. See Re Potanski, Bulletin 239, Item 9; Re Morrissey, Bulletin 228, Item 7; Re Kappelman, Bulletin 211, Item 1; Re Boettiger, supra.

Your interpretation of the decision in Re Boettiger, Bulletin 98, Item 11; and its application to the Cittadino case, were therefore correct so far as you came to the conclusion that the issuing authority of the Borough of Eatontown might, under the facts in this case, issue a license to Cittadino without the prerequisite of the surrender of the Mallon license. It was, therefore, as you have correctly concluded, unnecessary that the Mayor and Council condition the issuance of the Cittadino license upon the surrender of the previous Mallon license. But the fact is that the Mayor and Council did impose that condition. Thereby they limited your authority. It is they, not you, who are the issuing authority. You have, as the municipal clerk, no right to issue any license except pursuant to express authority conferred upon you by the issuing authority. In the instant case, the resolution deciding to issue the license was made subject to the surrender of the Mallon license. Hence, until that condition was performed, however legally unnecessary the condition may have been, you had no authority to issue the Cittadino license.

In order that the license be legally effective, it is therefore essential that the issuing authority ratify and confirm the erroneous issuance that has been made in the instant case.

As this is a matter wholly within the power of the Mayor and Council to cure if they choose, and they probably will, as the

unnecessary condition was undoubtedly inserted in their effort to make sure of compliance with the law, I shall not institute proceedings to cancel the license, in accordance with the procedure set forth in Re Loeb, Bulletin 206, Item 14, until two weeks from date have elapsed.

Kindly certify to me the action taken by the Council in the matter.

Enclosed is copy of my letter of even date to Mr. Cittadino.

Very truly yours,

L. Frederick Burnett

Commissioner