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

BULLETIN NUMBER 169. APRIL 6, 1937.

1. APPELLATE DECISIONS - KRISTEN vs. PEQUANNOCK TOWNSHIP.

WILLIAM J. KRISTEN, Appellant,)	
-vs-)	ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PEQUANNOCK, Respondent.)	CONCLUSIONS

Arthur A. Werthmann, Esq., Attorney for Appellant.
David Young, 3rd, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises located at Old Route 23 and Oak Avenue, Pequannock.

Appellant has never held a license. Respondent, however, issued consumption licenses for the premises in question to one Gropp from the time Repeal became effective down to June 30, 1936. A new Route 23 has been constructed, causing diversion of traffic, and instead of renewing his license at the premises in question for the current fiscal year, Gropp obtained a license for premises on New Route 23, about three-quarters of a mile away. Appellant obtained possession of his premises about August 11, 1936, but made no application for a license at that time because he was trying to raise sufficient money to pay the license fee.

At its meeting held on September 10, 1936, respondent revoked a license it had issued to a place known as "Boots and Saddles" because of fraud in the application filed by the then owner of said premises. At the same meeting respondent adopted a resolution authorizing its attorney to draw an ordinance limiting the number of consumption licenses to seven. Respondent's action in revoking the "Boots and Saddles" license had reduced the number of consumption licenses to six and there were no other applications on file at that time.

On October 7, 1936, another applicant, who presumably was fully qualified, filed an application for premises known as "Boots and Saddles". Five days later appellant filed his application. On the following evening the ordinance limiting the number of consumption licenses to seven was introduced and passed on first reading. At its meeting held on November 10, 1936, respondent considered the two pending applications; denied appellant's application, granted the application for "Boots and Saddles"; adopted the limiting ordinance at final reading.

The reasonableness of the ordinance limiting the number of consumption licenses is not questioned. In the absence of some strong evidence showing need for a greater number, it

New Jersey State Library

would appear that seven consumption licenses in a township with a population of about twenty-eight hundred (2800) is sufficient.

The question is thus narrowed to this: Did respondent make a proper choice between appellant and "Boots and Saddles". The mere fact that "Boots and Saddles" application was filed first is not dispositive of that question. Giberti vs. Franklin, Bulletin #150, Item 3. The evidence in this case, however, shows that the choice was based on other grounds. "Boots and Saddles" is about a mile and a half away from the premises in question; there are only two licensed places in that end of the Town, the other place being about three-quarters of a mile distant from "Boots and Saddles". In the vicinity of appellant's premises there is a licensed place about five hundred feet northwest thereof, a second licensed place about fifteen hundred feet southeast thereof and a third licensed place about twenty-five hundred feet southeast thereof. Respondent determined that the three licensed places in the vicinity of the premises in question were sufficient, especially in view of the fact that all of these places depended to some extent on transient trade. It is clear that the new highway has diverted traffic from Old Route 23. Considering the changed condition on Old Route 23 caused by the opening of the new highway, it cannot be said that the mere fact that five licenses were outstanding at one time in the vicinity of appellant's premises shows that three licensed places are not sufficient in that section under the changed conditions. The choice made by respondent in issuing its seventh license seems to have been based on reasonable grounds.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: March 25, 1937.

2. DISCIPLINARY PROCEEDINGS - LOTTERY - THIRTY DAYS SUSPENSION.

March 20, 1937.

John F. Boyce, Esq.,
City Clerk,
New Brunswick, N. J.

Dear Mr. Boyce:

I have staff report and your certification of proceedings before the Board of Commissioners of New Brunswick against Anna Varga, and note that her license was suspended for thirty days for conducting a lottery on the licensed premises.

My investigators report the very thorough and efficient manner in which the hearing was conducted. Please, therefore, express to the Mayor and the Commissioners and also the City Attorney, Thomas Hagerty, Esq., my sincere appreciation for their prompt and salutary action. Honest and law-abiding liquor licensees in New Brunswick have every reason to feel encouraged in the belief, not only by reason of this case, but by the action of the Board in prior hearings, that the law will be enforced rigidly and impartially.

Cordially yours,
D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - KATZ vs. PLAINFIELD

MEYER KATZ, Appellant, -vs- THE COMMON COUNCIL OF THE CITY OF PLAINFIELD, Respondent.	ON APPEAL CONCLUSIONS

John P. Owens, Esq., Attorney for Appellant

William Newcorn, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's order revoking appellant's plenary retail consumption license upon two grounds: (1) That appellant violated the provisions of respondent's ordinance prohibiting licensees from permitting gaming and betting on the licensed premises; and (2) That appellant violated the provisions of the Alcoholic Beverage Control Act and respondent's ordinance prohibiting the sale of alcoholic beverages to minors.

In support of the charge that gambling was permitted on the licensed premises, respondent produced at the hearing on appeal Henry Johnson, a paid detective, who testified that on December 8, 9, 11, 15 and 17 he was in the bar room on appellant's licensed premises, and on those dates saw money passed by several persons to one Britten for the purpose of placing bets on horse races. He stated that one of those placing bets was a man by the name of Dillinger, and that he himself had placed a bet with Britten through Dillinger. He said that on December 15, 1936, he gave one Charlie Hill money to place a bet with Britten and that on this occasion, by looking in the mirror, he observed Katz, the licensee nudge Britten not to take the bet. He said that Britten and Hill had "form" sheets which they were looking over. Altogether, he saw Britten twenty or twenty-five times on the licensed premises, sometimes three or four times in the afternoon.

Johnson's testimony was corroborated by that of Chief of Police Charles A. Flynn, who testified that Britten was a known gambler and had been caught with his brother in a raid in a place they were running for gambling on horse races; and that a number of complaints had been received by the Police Department complaining about gambling on appellant's premises.

William Lawler testified that he played the races quite often with different "bookies", sometimes with Britten, whom he called on the telephone. He said he might have called Britten at appellant's premises; and that Britten paid off the bets.

Appellant denied that gambling ever occurred on his premises, as did Charlie Hill, and appellant's bartender, Francis Byrne. Appellant denied that he had any racing forms on the premises, but admitted that Britten came to his place

once or twice a day. Appellant further denied he knew any person by the name of Dillinger.

His bartender, Byrne, stated, however, that he introduced Dillinger to the appellant on the Friday prior to the hearing. The bartender further contradicted appellant by stating that there were racing forms in the bar room, although he claimed that Hill and Johnson had them. Hill's story was that Johnson had them. Hill did not contradict Johnson's statement that on December 15th Katz motioned Britten not to take the bet. He was not looking at Katz at the time.

There is sufficient evidence to sustain the finding of guilt on the first charge. The testimony of Johnson, although it should be subjected to careful scrutiny, is not necessarily to be disbelieved because he was a paid operative employed by the City. State v. Middleton, 5 N. J. Misc. 1022 (Sup. Ct. 1927); aff'd 105 N. J. L. 252 (E. & A. 1928). I am satisfied that he was telling the truth and that the respondent was justified, in the light of the other evidence, in crediting his testimony.

The charge of selling to a minor is amply supported by the evidence. Francis Sharp, a boy of eight years and four months testified that he purchased three cans of beer from appellant at appellant's saloon on December 19, 1936. In this he was corroborated by the testimony of Chief Flynn and Lieutenant Saffron, who saw him go in the side door of appellant's premises without any package, and come out with the three cans of beer, which they confiscated.

Permitting commercialized gambling on the licensed premises and the sale of alcoholic beverages to minors are grave offenses and constitute violations of the Control Act and the State rules concerning conduct of licensees and use of licensed premises. Control Act, Sections 28, 77; Rules #1, 7. I have already had occasion to point out that commercialized gambling leads to racketeering and other evils which may quickly get out of hand if not dealt with severely. Bulletin #102, Item 8. It constitutes ample ground for revocation. See Bulletin #57, Item 15; Bressler v. Conover Bulletin #45, Item 1.

The sale of alcoholic beverages to a minor is a misdemeanor. Control Act, Section 77. The fact that the sale in the present case is limited to beer in cans does not alter the result. The statute does not differentiate between degrees of wrong. In this case, the sale of beer to a child of less than nine years constitutes a flagrant violation of the Act and fully warrants respondent's action. Price v. West Windsor, Bulletin #127, Item 2.

Since the evidence discloses a violation of the provisions of the Control Act and the regulations issued pursuant thereto, and that such violation was adequately set forth in the charges served upon appellant, no necessity arises to determine appellant's contentions concerning the local ordinance. The record discloses that the statutory procedure was fully complied with.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: March 25, 1937.

4. APPELLATE DECISIONS - LEVITT vs. LIBERTY TOWNSHIP.

JOHN LEVITT,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LIBERTY (WARREN COUNTY),) CONCLUSIONS
Respondent.)

. . . .

Charles S. Silberman, Esq., Attorney for Appellant.
Clark C. Bowers, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located on State Highway Route #6 in Liberty Township.

The respondent contends, inter alia, that the application was properly denied because there are sufficient licensed premises in the locality to take care of the needs of the community. The population of Liberty Township is 419. It is essentially a rural farming community through which the State Highway passes for two and one-half miles. By ordinance the number of licenses in the Township is limited to six. This number was at one time outstanding but has since been decreased to five through the abandonment by one licensee of his license for premises located in a section of the Township called Mountain Lakes. Three of the five licenses now outstanding are for premises located on the highway. Within a distance of five miles in either direction along the same highway from Liberty Township there are eight additional licensed premises.

The right of a municipality to deny an application where the granting thereof would result in the existence of too many licensed premises in a particular vicinity is well settled. Bumball v. Burnett, 115 N. J. Law 254 (Sup. Ct. 1935), Voos v. Union, Bulletin 73, Item 1; Snyder v. Middletown, Bulletin 56, Item 2; Bader v. Camden, Bulletin 44, Item 8; Faccidomo v. Union Beach, Bulletin 55, Item 8; Henry v. Way, Bulletin 90, Item 9; Dunster v. Bernards, Bulletin 121, Item 11; Moran v. West Orange, Bulletin 143, Item 8. Considering the fact that there are already five licensed premises in a Township having a total population of only 419 and that three of these are along the highway upon which is located appellant's premises, and the further fact that the surrounding municipalities seem liberally supplied with licensed places, it cannot be said that a refusal to issue another license in this vicinity is unreasonable. See Palmer v. Englishtown, Bulletin 116, item 4.

Appellant contends, however, that a license should be issued to him because he expects to obtain most of his trade from transients passing along the highway. There is some evidence that this highway carries a considerable amount of traffic. It is well settled, however, that the need of such transients is only one of the factors to be considered in deciding whether the granting of an application would result in the existence of too many licenses in a particular locality. Voos v. Union, supra;

Connolly v. Middletown, Bulletin 81, Item 11; Lisi v. Newfield, Bulletin 121, Item 9. Under the circumstances it seems that there are an ample number of licensed places along this highway to care for the transient trade.

The fact that the full number of licenses authorized by respondent's ordinance has not been issued and that a vacancy now exists does not thereby entitle appellant to a license. I have already determined that a limitation in mere numbers must give way to a municipality's determination to restrict the number of licenses in a particular area. Sadovsky v. Millstone, Bulletin 120, Item 4, and cases there cited. In the instant case appellant was informed that if he applied for a license in the Mountain Lakes area it would be granted, but he refused to apply for a license in that section. Respondent's willingness to grant a license for premises in the area where the vacancy exists is an indication if its good faith in limiting the number of licenses to be issued in other parts of the Township.

However, appellant contends that the exercise of discretion by the Township Committee was not honest, but on the contrary, was prejudiced, due to their desire to protect a licensee who is the husband of the Township Clerk. Such a charge is most serious and must be proved by clear and convincing evidence. Schulte Inc. v. Perth Amboy, Bulletin 58, Item 13; Karpf v. Somers Point, Bulletin 81, Item 6; Briggs v. Oakland, Bulletin 160, Item 9. Appellant testified that after the Committee meeting Hopkins, one of the members of the Committee, told him he would never get a license. Hopkins denied this. He also denied that he intended to protect anybody when he voted to reject the application. Appellant testified further that Cummins, another member of the Committee, said he was protecting someone on the highway, and, as far as he was concerned, he had no objection to appellant's getting a license through the Commissioner. Cummins stated that the reason he had voted to reject the application was that he thought there were plenty to take care of the traffic; that at first there had been several licensed premises on the highway but that all but three had dropped out and that those three would be protected -- i.e., that he "didn't want another on Route No. 6." He denied he was protecting anybody.

This evidence falls short of establishing that the Township Committee was influenced in its determination by the fact that the husband of the Township Clerk was the holder of a license. It equally warrants the inference that the members of the Committee felt there was no need for another license on the highway inasmuch as the other licensees had been unable to make a success of their businesses. While the circumstances have led me to scrutinize the testimony of these Committeemen with great care to see whether their opinion was honest and sincere, I find that appellant has not sustained the burden of proof on this issue.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 25, 1937.

5. WHOLESALERS - "WASH" SALES ARE ILLEGAL AND CAUSE FOR REVOCATION OF LICENSE.

March 25, 1937

NOTICE TO WHOLESALERS:

Complaints have been received that wholesalers have been accepting orders directly from consumers, billing such sales,

however, to retailers who sometimes receive commissions for their participation in the transactions.

The Control Act permits wholesalers to sell to retailers, but does not permit them to sell directly to consumers. The solicitation or acceptance of an order by a wholesaler from a consumer is prohibited, notwithstanding that the transaction is formally recorded as a sale from a wholesaler to a retailer. Such "Wash" transactions or similar subterfuges will not be tolerated. Cf. Bulletin 119, Item 16.

Hereafter, evidence of such transactions will result in revocation proceedings against the participating wholesalers and retailers.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

6. APPELLATE DECISIONS - BLUMENTHAL v. WALL TOWNSHIP.

HERMAN BLUMENTHAL,
Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WALL (MONMOUTH COUNTY),
Respondent

ON APPEAL
CONCLUSIONS

Simon Dimond, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for the transfer of a plenary retail consumption license.

Respondent filed no answer to appellant's petition of appeal and no one appeared on its behalf at the hearing on appeal. Appellant's testimony establishes that he is a proper person to hold a license and that he has complied with all the formal statutory prerequisites. No reason was given by the respondent for the denial of appellant's application and there is nothing in the record which would in any way indicate either that the premises sought to be licensed were unfit or that the appellant was an improper person to hold a license.

The action of respondent is accordingly reversed. Respondent is directed to issue the transfer as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 29, 1937.

7. APPELLATE DECISIONS - THORMAN v. MT. EPHRAIM.

APPELLATE DECISIONS - JACKSON v. MT. EPHRAIM.

GEORGE E. THORMAN, Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF MT. EPHRAIM (CAMDEN COUNTY), Respondent

ROSETTA THERESA JACKSON, Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF MT. EPHRAIM (CAMDEN COUNTY), Respondent

ON APPEAL CONCLUSIONS

Harry M. Mendell, Esq., Attorney for Appellants.
George D. Rothermel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appeals in these cases were heard together. The first is an appeal in the name of George E. Thorman from the action of respondent in revoking his license for failure to make repairs to the licensed premises and for failure to file beverage tax report with the State Tax Commissioner. The second is an appeal by Rosetta T. Jackson from the refusal of respondent to transfer to her the license issued to Thorman.

At the hearing on appeal it appeared that prior to the institution of the revocation proceedings by respondent Thorman disappeared from the licensed premises and has not been seen since. Although a notice of the hearing was left at his licensed premises he failed to appear at the hearing on December 30, 1936. Harry Mendell, his attorney of record, stated that in August, 1936 he loaned Thorman a sum of money and in return therefor received a chattel mortgage on property in the licensed premises. At the same time the licensee executed a power of attorney authorizing Mendell to take over the premises together with the license and to transfer the license to any person Mendell designated. Thorman did not specifically authorize Mendell to prosecute the appeal in his name and Mendell has never advised Thorman that an appeal was being taken. Mendell frankly states that it is to protect his own interest that he is prosecuting this appeal.

Without considering the case on the merits, i.e., whether the grounds upon which the revocation proceedings were based were valid or whether there was sufficient evidence to support the respondent's determination, it is clear that the appeal prosecuted in the name of George E. Thorman should be dismissed. The right to appeal to the Commissioner is a statutory one and exists solely by virtue of the provisions of the Control Act. Section 28 of that Act confers upon the licensee the right of appeal to the Commissioner when his license is revoked or suspended. This provision is designed to protect licensees from arbitrary or improper action on the part of municipal authorities. It was manifestly not intended to provide a means by which creditors of licensees might prosecute appeals in the name of licensees for the purpose of furthering their own financial interests. The licensee in whose name this appeal is prosecuted has no interest in the appeal and it should therefore be dismissed. See <u>Gresham v.Chantry,</u>

69 Ia. 728, 27 N. W. 752 (1886). In that case an attorney prosecuted an action on appeal in the name of a person who had no real interest in the controversy. The court said:

> "it is apparent that John Gresham (the plaintiff) has no interest in this claim, only as his name has been used by H. E. Long or Fogg, Long & Neal (the attorneys). He is the mere instrument used by Fogg, Long & Neal to carry on this speculative litigation. * * * It can hardly be expected that this court will entertain actions and appeals which are not authorized by the alleged plaintiff therein. * * * the cause will be dismissed as not being prosecuted by the party in interest."

The appeal of Thorman must be dismissed for the further reason that the agreement purporting to authorize Mendell to transfer the license is void as against public policy. In Walsh v. Bradley, Bulletin 166, Item 4 (Chancery 1937), Vice Chancellor Bigelow held that a pledge of a liquor license or agreement that the purchaser of the licensee's chattels under stress or execution should have an option to buy the license, was void. The court said:

> "This scheme is contrary to the policy of the law. The purpose of the Legislature is clear that licensees should hold their licenses free from any device which would subject the licenses to control of other persons."

The agreement under consideration in Walsh v. Bradley, supra, differs in no substantial respect from that here involved. The agreement being void, the appeal predicated upon it must fall with it. The respondent's order revoking Thorman's license therefore remains undisturbed. It necessarily follows that there now exists no license which may be transferred. For this reason the appeal of appellant Jackson must likewise fail.

Appellant Jackson's appeal must be dismissed for the further reason that she has failed to comply with the requirements of the Control Act. Section 23 of the Act requires that the application for transfer shall bear the consent in writing of the licensee to such transfer. In the present case no such consent is endorsed upon the application. The provisions of this section have therefore not been complied with.

Appellant Jackson has also failed to comply with other provisions of Section 23 of the Control Act. Section 23 provides, inter alia, that upon an application to transfer a license the application and the applicant shall comply with all the requirements pertaining to an original application for a license. Section 22 of the Control Act provides:

> "A photostatic copy of all federal licenses, permits and/or stamps necessary to the lawful conduct of the business for which a State license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the commissioner, must accompany the license application.* * *"

Appellant admitted that when she presented the application to the respondent's Borough Clerk on December 23, 1936, a Federal tax stamp did not accompany the application. The Clerk advised her of this defect, but neither the stamp nor a photostatic copy thereof was supplied. During the same day the Borough Clerk returned all the papers to appellant's son, stating that the application was

insufficient because the statutory requisites had not been complied with. Appellant did not file the application again; nor did she purchase a Federal tax stamp until January 16, 1937.

It is clear that appellant has not complied with the provisions of Sections 23 and 22. These provisions are mandatory and may not be waived. Subsequent presentation of the tax stamp on this appeal will not suffice. The stamp must accompany the application. Andreach v. Keansburg, Bulletin 73, Item 14.

Furthermore, it appears that the application was returned by the Borough Clerk to appellant before it was ever presented to the respondent. Without regard to the obvious impropriety of returning the application (see Principles and Rules Concerning Refund of License Fees, Bulletin 11, Item 4), there now remains nothing before respondent to support the issuance of a license. See Andreach v. Keansburg, supra.

Appellant's contention that she was denied a hearing and was never given an opportunity to comply with the statutory prerequisites is frivolous. No hearing was necessary to advise her that her application must be in conformity with the statutory requirements. There is no obligation to conduct a hearing where, as here, the issuing authority decides that the application should be denied. See Bulletin 10, Sheet 5; Rule 8 of State Rules, Regulations and Instructions Concerning Municipal Retail Licenses.

Both appeals are accordingly dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 30, 1937.

8. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT LIQUOR - TWO LITTLE "BLUE MONDAYS" ARE A WHOLLY INADEQUATE PENALTY.

March 31, 1937

Jacob W. Schmidt, President,
Municipal Board of Alcoholic Beverage Control,
Rahway, N. J.

Dear Mr. Schmidt:

I have your letter re proceedings before the Municipal Board of Alcoholic Beverage Control of Rahway against Julius Horneck, charged with possession of illicit alcoholic beverages - three refilled bottles - to which he pleaded guilty.

I note that his license was suspended for two days and that your Board selected Monday, March 29th, and Monday, April 5th, as the days on which he should do penance.

Those are the days, of course, on which he would feel the punishment the least. Two little "blue Mondays" are wholly inadequate. Possession of illicit liquor strikes at the very fountainhead of control. Strong measures are indicated against cheating licensees.

In future cases of possession of illicit beverages I ask that your Board inflict a minimum penalty of at least thirty days in accordance with the state-wide policy established a year ago or more in Re Morris, Bulletin 98, Item 10, and Re Wieser, Bulletin 132, Item 7. Even that is not commensurate with the offense. I am considering stepping the penalty up to a minimum of sixty days. There is no excuse for illicit liquor.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

9. ENFORCEMENT DIVISION ACTIVITY REPORT FOR MARCH 1 TO 31, 1937 INCLUSIVE.

To: D. Frederick Burnett, Commissioner.

ARRESTS: Total number of persons . . . 109
Licensees . . . 6 Non-Licensees . . . 103

SEIZURES: Stills - Total number - 145
Seized by this Dept. - 24 Adopted - 121

1 to 50 gal. capacity -
Total number - 78
Seized by this Dept. - 12 Adopted - 66

Over 50 gal. capacity -
Total number - 67
Seized by this Dept. - 12 Adopted - 55

Motor Vehicles - Total number seized - 12
Trucks - 3 Pleasure cars - 9

Alcohol
Beverage alcohol- Total number of gallons - 989
Seized by this Dept.- 315 Gals. Adopted - 674 Gals.
Denatured alcohol - Total number of gallons - 3

Mash - Total number of gallons - 21,345

Alcoholic Beverages
Beer, Ale, etc.- Total number of bottles - 923
Seized by this Dept.- 135 Adopted - 788
Total number of barrels - 2-1/4
Wine - Total number of Gallons - 165
Seized by this Dept.- 123 Gals. Adopted 42 Gals.
Whiskies and other hard liquors -
Total number of gallons - 908
Seized by this Dept. - 385 Gals. Adopted - 523 Gals.

RETAIL INSPECTIONS:
Licensed premises inspected 2322

Illicit (Bootleg) liquor 8
Gambling violations 83
Sign violations 40
Unqualified employees 97
Other violations 50

Total violations found 278

Total number of bottles gauged 12,831

COMPLAINTS:
Investigated and closed 347
Investigated, pending completion 502

LABORATORY:
Number of samples submitted 165
Number of analyses made 174
Number of poison liquor cases 2
Number of cases of alcohol, water and artificial coloring 19
Number of cases of moonshine (Home-made finished product of illicit still) 30

Respectfully submitted,

E. W. Garrett,
Deputy Commissioner.

10. LICENSEES - QUESTION OF ADVISABILITY OF SUGGESTED RULE PROHIBITING MEMBERS OF THE LIQUOR INDUSTRY FROM PURCHASING TICKETS TO SOCIAL AFFAIRS SPONSORED BY RETAIL ORGANIZATIONS OR PLACING ADVERTISING IN THEIR PUBLICATIONS - REACTIONS SOLICITED.

April 2, 1937.

TO THE LIQUOR TRADE:

Gentlemen:

I have letter today from one of our State licensees reading:

"Recently we read of a rumor that the New York State Liquor Authority had ruled that members of the liquor industry cannot purchase tickets to social affairs sponsored by retail organizations, nor can they place advertising in publications, year-books, or souvenir journals of trade groups.

"The promulgation of such a rule in the State of New Jersey would, we think, be instrumental and helpful in curtailing any possible interference by groups within the industry for selfish interests."

What are your reactions?

I am asking this question of all the trade organizations in New Jersey so far as I know them and also of the trade journals that have circulation within this State.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. NIPS - PROHIBITED AFTER MAY 1st - THE RULE MEANS JUST WHAT IT SAYS.

March 31, 1937.

Dear Mr. Burnett:

We understand the state regulations prohibit the sale of nips after May 1st.

Will the retailer be permitted to sell what nips he has on hand after May 1st.

Yours truly,

PENN BEVERAGE CO.,
Benjamin Stone.

April 2, 1937.

Penn Beverage Co.,
Atlantic City, N. J.

Gentlemen:

I have yours of the 31st ult.

Your first paragraph answers your second.

The object of making the Rule effective May 1st was to afford the trade a reasonable adjustment period.

After that date, NIPS don't go. The rule means what it says.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - CLUB LICENSEES - SLOT MACHINES AND SALES TO NON-MEMBERS.

April 3, 1937.

Patrick F. Keelan, Esq.,
Clerk, Municipal Board of Alcoholic Beverage Control,
City Hall,
Elizabeth, New Jersey.

Dear Mr. Keelan:

I have staff report and your certification of the proceedings before the Municipal Board of Alcoholic Beverage Control of Elizabeth against Union Pleasure Circle, holder of Club license CB-3, charged with (a) having sold alcoholic beverages to non-members; and (b) having possessed slot machines on the licensed premises.

I note the licensee pleaded guilty and that the license was suspended for ten days, commencing April 1, 1937.

Club licensees must be brought to the realization that the privilege accorded them to sell liquor under a license obtained at a much lower fee than other licenses does not give them any right to violate the law or the rules and regulations governing all licensees. As a matter of fact they should be out in front as upholders of the law. When they abuse the special privilege granted them, sympathy is wasted.

Please convey to the members of the Board my appreciation for their effective and salutary action.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. LICENSES - DENIAL ON ALLEGED GROUND OF PERSONAL ANIMOSITY TO APPLICANT - PROCEDURE INDICATED - HEREIN OF THE FUTILITY OF PRIVATE CONFERENCE IN LIEU OF FORMAL APPEAL.

April 3rd, 1937.

Mr. Irving Wiener,
Atlantic City, New Jersey.

Dear Sir:

While I will be glad to arrange my crowded schedule to

meet Mr. Dickerson and Mrs. Grace as you suggest, I believe that such conference would accomplish nothing that cannot be effected by correspondence.

For, even if it plausibly appeared on their *ex parte* say-so that the Township Council had denied a license to Mrs. Grace because of personal animosity, I would have neither power nor inclination to order the issuance of a license to her unless and until the municipal authorities were given full opportunity to present their side of the case and to cross-examine the witnesses on the other side. Of course, I would not at any such conference express any opinion one way or the other as to the outcome of the case.

Under the Control Act, my power in such cases is to review on appeal the action of the local issuing authority and to reverse their action if proper cause is shown on appeal. If Mrs. Grace has made formal application for a license and Council has denied her application, the proper procedure is that Mrs. Grace file a formal appeal with me within thirty (30) days from the date of denial, and at the hearing upon said appeal all parties will have an opportunity to fully present their evidence. The appeal will be decided upon the evidence presented at that hearing.

If you will advise me when and if Mrs. Grace decides to file an appeal, I shall be glad to forward to you a copy of the rules concerning appeals and the necessary forms.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

14. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 31, 1937.

IN RE: Case No. 45.

Applicant obtained a solicitor's permit on July 1, 1936. Fingerprinting disclosed that he had been arrested in January 1935 on charges of attempted larceny and breaking, entry and larceny. Subsequent investigation showed that he was accused of having entered a gasoline station, stealing some tools and small change to the value of $4.25 from the gasoline station and some small change from a telephone coin box on the same premises; also of entering a ladies' dress shop and stealing $10.00 cash.

It appeared that he had later been convicted on these charges. Applicant was notified to show cause on September 11, 1936 why his permit should not be revoked because of said conviction. He failed to appear and his permit was revoked on September 18, 1936. Thereupon he was discharged by his employer.

Applicant recently applied to the Commissioner for a hearing to determine his eligibility for employment. An opportunity was afforded him to present his testimony so that a final determination, as distinguished from the former ex parte determination, might be made upon the merits of the case. Cf. Bulletin #43, Item 12.

At a hearing held, applicant testified that he had been arrested at about 1:00 A.M. while walking the streets; that shortly prior thereto the police had found his overcoat hanging on a fence near the gasoline station which had been broken into; that at the time of his arrest no tools or money were found in his possession; that he had no recollection of breaking into the gasoline station or the dress shop. His failure to recall entering either of these premises, if in fact he did enter them, may have been due to the fact that he had become so intoxicated during the previous evening that, as he says, "my mind just went blank." Whatever his condition at that time, our investigation shows that after his arrest he was held in jail in the absence of bail, indicted by the Grand Jury, and that later he pleaded guilty in Special Sessions and was placed on probation for one year to make restitution.

A Captain of the Police Department in the city where the arrest occurred testified that he saw applicant at about 9:00 A.M. on the morning following his arrest, and that at that time applicant was still under the influence of liquor. The arresting officer testified that while cruising in a radio car at about 3:00 A.M. on the morning in question, he received a call that a robbery had been committed at the gasoline station; that, upon arriving at the gasoline station, he climbed in a window and found a telephone pay station box had been broken open; that outside of the gasoline station he found a search light and pliers and a coat hanging upon a nearby fence; that shortly thereafter applicant, hatless and without an overcoat, came down the street and the officer placed him under arrest because he knew the coat belonged to applicant. The officer further testified that, at that time, he searched applicant and found no money and no tools in his possession, and that applicant was so drunk "he could hardly stand on his feet."

The officer testified also that at that time he knew nothing of the alleged entry at the dress shop.

The Chief Probation Officer certified that applicant made an ideal probationer, has made restitution in the amount of $11.25 as ordered by the Court, and has been released from probation.

Ordinarily the crime of breaking, entry and larceny involves moral turpitude. All the evidence in this case should be considered, however, in determining whether the crime for which applicant was convicted involved moral turpitude. While it is established that voluntary intoxication does not excuse or palliate a crime, the evidence set forth above should be considered because we are determining not whether a crime has been committed, but whether the crime involved moral turpitude.

The fact that applicant walked away from a gasoline station leaving his overcoat hanging on a nearby fence, and the further fact that at the time of his arrest he was wandering through the streets without hat or overcoat in mid-winter tend to negative the guilty intent in which moral turpitude inheres. These acts are not the ordinary acts of a person who has formed the intent to break and enter premises with intent to steal. They are the acts of a drunk on a rampage, rather than the acts of a criminal. The conviction standing alone does not necessarily show guilty intent, because it appears that applicant, without any legal advice, pleaded guilty in a Court of Special

Sessions and, hence, no inquiry was made in said proceedings as to his guilty intent. The fact that the Judge placed him on probation tends to show an element of doubt as to guilty intent, because ordinarily the crime would deserve a jail sentence.

In Rudolph vs. United States, 6 Fed. (2nd) 487 (App. D.C. 1925) the Court said:

"There is no hard and fast rule as to what constitutes moral turpitude. It cannot be measured by the nature and character of the offense, unless, of course it be an offense, inherently criminal, the very commission of which implies a base and depraved nature. The circumstances attendant upon the commission of the offense usually furnish the best guide. *** Intent, malice, knowledge of the gravity of the offense, and the provocation are all elements to be considered."

Considering all the facts in this case, I believe that the crime for which applicant was convicted does not involve moral turpitude.

It is recommended that applicant be advised that said conviction does not render him ineligible for employment.

EDWARD J. DORTON,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

15. LICENSEES - EMPLOYMENT OF MINORS - MINIMUM AGE LIMIT SET AT FIFTEEN YEARS IN RESPECT TO ALL LICENSEES.

March 30th, 1937.

MEMO. TO: D. Frederick Burnett, Commissioner.
FROM: Erwin B. Hock, Deputy Commissioner.

RE: The Employment of minors by retail licensees.

In Bulletin #96, Item #9, you ruled that "no minor under the age of 15 years may be employed in any manner whatsoever by any consumption licensee."

The above rule applies by its terms only to consumption licensees.

I recommend that the ruling be amended to read:

"No minor under the age of 15 years may be employed in any manner whatsoever by any licensee."

Respectfully submitted,

ERWIN B. HOCK.

Approved:
D. FREDERICK BURNETT,
Commissioner.

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