Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 156. JANUARY 5, 1937

1. APPELLATE DECISIONS - BALANIZ vs. EAST NEWARK

JOHN BALANIZ,)
Appellant,)
-vs-) ON APPEAL
MAYOR AND COUNCIL OF THE BOROUGH OF EAST NEWARK, HUDSON COUNTY, NEW JERSEY.) CONCLUSIONS
Respondent.)
. . . . .)

Russel E. Greco, Esq., Attorney for Appellant.
Leo S. Carney, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a renewal of plenary retail consumption license for premises located at 224 Grant Avenue, East Newark.

In December, 1935, a fire occurred in the premises in question which damaged the adjacent building of John Miliski, another plenary retail consumption licensee. The two buildings are separated by a narrow alleyway owned by appellant. Appellant refused to permit Miliski, his neighbor (and competitor) to use the alleyway for the purpose of repairing the damage to the latter's building. The present unrepaired condition of the Miliski building creates a fire hazard and is a menace to the health of the occupants.

Respondent denied the renewal application of appellant except on condition that he would agree to allow his property to be used in making the needed repairs on the Miliski building. Hence this appeal.

Briefs were submitted and, after examining the authorities cited, I had the benefit of able oral argument. As a result of that argument, further briefs have been submitted and examined. The case is one of first impression. Because of the underlying principles involved and their ensuing consequences, I have studied the situation most carefully. Without pausing now to analyze or discuss the many cases briefed, I believe I can state the issue and the decision in narrow compass.

The worthy purpose which the respondent seeks to accomplish by imposing the aforesaid condition to the renewal of appellant's license, coupled with his dog-in-the-manger attitude in refusing the use of his alleyway to facilitate the repairs to his neighbor's building, create a natural equity in support of respondent's position. If this were a matter of fairness or reasonableness or discretion or policy, I should unhesitatingly decide in favor of respondent. The real question, however, under review is whether the power to impose any such condition exists and not the propriety of its exercise.

Respondent seeks to ground such power on the general police power lodged in municipalities to act for the preservation of the public health, safety and prosperity of the municipality and its inhabitants. The general words of delegation under the Municipalities Act (Art. 14, Sec. 2) must, however, give way to and be read in the light of Section 29 of the Control Act which confers the power upon each issuing authority by resolution first approved by the State Commissioner to impose any condition to the issuance of any license "deemed necessary and proper to accomplish the objects of this act and secure compliance with the provisions hereof". The objects of the Alcoholic Beverage Control Act are to govern the alcoholic beverage industry in all its branches and to prevent everybody else from doing that which licensees may lawfully do. The prevention of a fire hazard on property other than licensed premises is wholly unrelated to the problem of liquor control. However laudable the condition, I cannot approve it because it requires the performance of an act which is not connected with the conduct and character of the premises for which the license is sought, and which neither accomplishes the objects of the Control Act nor secures compliance with its provisions.

The accident that the adjoining premises happens also to have a liquor license does not confer a power which otherwise would not exist. If a condition were imposed on the adjoining owner that his license should not be issued until he removed a fire trap on it, or otherwise eliminated a fire hazard from it, such condition might well be justified on the ground that those premises were unsuitable for a license, unless the trap or hazard is removed.

In the instant case, however, the appellant's premises are admittedly suitable, but the municipality is seeking to utilize the licensing function as a leverage to shift the burden in part from the person on whom it wholly rests over to the shoulders of another.

Hence, I disapprove the condition.

Accordingly, the action of respondent is reversed. Respondent is ordered to issue the license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: December 28, 1936.

2. APPELLATE DECISIONS - PELOS vs. PASSAIC TOWNSHIP.

PETER F. PELOS and JOSEPH McNAMARA,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PASSAIC (MORRIS COUNTY),

Respondent.

ON APPEAL

CONCLUSIONS

Connolly & Hueston, Esqs., by John R. Connolly, Esq., Attorneys for Appellants.

Gilbert M. Cornish, Esq., Attorney for Respondent,

BY THE COMMISSIONER:

Appellants appeal from the denial of a plenary retail consumption license for premises known as "Log Cabin", on the northerly side of Valley Road, Township of Passaic.

The Log Cabin was built about 1925, on a wooded plot of ground about fifty feet wide by one hundred eighty-five feet deep. It is a one-story building which is set back about forty feet from Valley Road, and was built for the purpose of being used as a tearoom and eating place. At the present time it has a bar room, kitchen and two dining rooms. The Log Cabin has had a liquor license continuously since Repeal, although the last licensee abandoned his business about January 1936 because of his ill health, and the place has not been operated since that time.

Directly opposite Log Cabin, on Valley Road, is a large farm which has a frontage of four or five hundred feet along the road. The farm has a garage where gas is sold, and a clay-pit from which clay is sold to the public. Immediately adjoining Log Cabin on the east is a baseball field, extending about eight hundred feet along the road, and beyond that are small homes and business places. Immediately to the west of the grounds on which Log Cabin is located, there is a small brook along which grows a hedge.

The Township has a resolution limiting the number of consumption licenses to eleven, of which eight are now outstanding.

This case has been well tried and fairly presented. I find that the Township Committee sincerely believes that there are a sufficient number of consumption licenses outstanding to take care of the needs of the community, as well as transient travel. If they had cut down the number of licenses, by ordinance or by resolution, from eleven to eight, I should have had no difficulty in holding that a limitation of eight consumption licenses was reasonable. The trouble is that they have not enacted any ordinance fixing a lesser number nor changed their resolution which fixed the number at eleven. So long as that resolution stands, vacancies exist. Hence, under Eisen vs. Plainfield, Bulletin #68, Item 12, and Sosnow vs. Freehold, Bulletin #68, Item 13, since a vacancy exists, the license should be issued unless there is reasonable objection to the person or place of the particular applicant.

It is admitted that both appellants have been licensees in the City of Summit for more than two years, and that they were personally qualified. As regards their place, the evidence shows that the nearest licensed premises to the east are seven-tenths of a mile away, and that there are no licensed premises along Valley Road to the west for a distance of two miles. The fact that the Log Cabin has been licensed ever since Repeal, down to the present year, shows that the place is not ill-chosen.

As regards the objections of residents in the Township: I find that the home of the objector who resides closest to the Log Cabin is about 400 feet away, and on the other side of the hedge bounding the brook; that most of the other objectors reside still further west on Valley Road; that Valley Road is a through highway, used by traffic of all kinds; that while the section of the Road on which the objectors reside is purely residential, the immediate vicinity of the Log Cabin is not devoted to residential purposes; that the section of the Road to the east of the Log Cabin is a mixture of homes and business places. I do not see how the nearest objector, who resides 400 feet away, can suffer through the issuance of this license, if the place is properly conducted. If it is not, the Township Committee have it within their power at all

times to revoke or suspend.

The action of respondent is, therefore, reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT
Dated: December 27, 1936. Commissioner.

3. APPELLATE DECISIONS - MERRITT vs. TABERNACLE TOWNSHIP.

HANNAH MERRITT,
Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF TABERNACLE, BURLINGTON COUNTY,
Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Worth & Worth, Esqs., by Isadore S. Worth, Esq., Attorneys for Appellant.

Richard B. Eckman, 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 #39, Township of Tabernacle.

When respondent considered the application, the stated reason for denial was that an ordinance was then in effect which read as follows:

> "An ordinance to limit the number of licenses to sell Alcoholic beverages at retail.
>
> "Be it ordained by the Township Committee of the Township of Tabernacle, in the County of Burlington:
>
> 1. The number of licenses to sell alcoholic beverages at retail is hereby limited to one such license within the territory comprising the Village of Tabernacle and lying within a radius of three miles therefrom in the Township of Tabernacle aforesaid;*********"

Appellant attacks the ordinance as unreasonable and discriminatory.

The ordinance affects appellant because respondent has issued a license to a small place within the Village of Tabernacle, and the circle described in the ordinance includes every part of Highway #39, which runs five miles through the northwestern part of the Township, but is more than a mile west of the Village. Thus, if the ordinance is valid, no license can be issued for appellant's premises or for any other premises upon said Highway.

Admittedly, respondent has the power to limit the number of licenses within the Township, and such limitation, while subject to appeal, will not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. Ryman vs. Branchburg, Bulletin #37, Item 18. This ordinance, however, goes beyond mere limitation. It attempts to limit licenses only in certain portions of

the Township. A circle with a radius of three miles, having its center at the Village, would not cover the entire Township, which is about fourteen miles long and about five miles wide. The ordinance does not purport to affect the sections of the Township outside the circle. It prevents the issuance of a license in the settlement known as Friendship, which is within the circle, but permits the issuance of a license in the settlement known as Apple Pie Hill, which is without the circle.

The Chairman of the Township Committee testified that the ordinance was adopted at the request of the church people, and that it was limited to three miles at their request. The two churches and one school are located within the Village, in close proximity to the present licensee; and there are no churches or schools in the vicinity of Highway #39. There appears to be no connection between the ordinance as adopted and the purpose for which it is alleged to have been adopted, namely, the protection of the churches. It is difficult to see how the licensing of a place on the State Highway (one and one-quarter miles from the Village) could have any injurious effect upon the churches which the ordinance was intended to protect.

The evidence further shows that between one hundred and two hundred people live in the northwestern section of the Township on or near Highway #39; that the roads from this section of the Township to the Village are in poor condition; that the trend of the population is towards the northwestern section; that the traffic on Highway #39 is heavy, and that appellant's place is well equipped for the operation of a restaurant catering to the needs of residents and transients.

Since, under the ordinance, licenses can be issued in other parts of the Township, the establishment of this six-mile "dry zone", including all of the Highway within the Township lines, is arbitrary and unreasonable. Hence, I conclude that appellant has shown that this section of the ordinance is unreasonable as applied to her.

The mere finding that the ordinance is unreasonable as it applies to appellant does not of necessity mean that the appellant is entitled to a license. If there had been no ordinance, it would have been the duty of respondent to determine whether, under the circumstances of this case, a license should be issued.

In disposing of the matter below, respondent gave no consideration to the question as to whether or not an additional license is necessary to take care of the needs of the inhabitants residing in the northwestern part of the Township, or of transients passing along the Highway. I express no opinion on that issue because that is a matter committed, in the first instance, to the sound discretion of the issuing authority. Respondent had no occasion to consider objections, if any objections there be, to the issuance of this license. While no objections were filed, it may well be that no objectors appeared because, as the Chairman of the Township Committee testified, "they took it for granted the ordinance would hold." Appellant did not have an opportunity below to show the necessity for a license, or the fact that local sentiment supported the issuance of the license to her. The only matter considered at the hearing before the Township Committee was the ordinance which, by its terms, barred the issuance of the license.

This case is therefore remanded to respondent for determination of the other issues as set forth herein, viz.: Whether, irrespective of the aforesaid ordinance, a license should be issued to appellant or not.

D. FREDERICK BURNETT
Commissioner

Dated: December 27, 1936.

4. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 22, 1936.

Re: Application for Solicitor's Permits - Case No. 42

In his application for a solicitor's permit, applicant denied that he had ever been convicted of a crime. As a result of fingerprinting, it was disclosed that he had been arrested on a charge of "larceny and receiving." Notice was thereupon served upon him to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude, and a hearing was duly held.

At the hearing applicant admitted that he had been arrested in the latter part of 1934. He testified that he was twenty-two years of age at the time and was out of work. Concerning the arrest, he testified that about two months prior thereto a youthful companion had asked "if I would get a radio with him." On the following night, after a similar request, applicant went with his companion. The companion entered a garage and stole a radio from a car, while applicant waited outside the garage. His companion then took a hedge clipper which had been left on the lawn, and applicant brought both the radio and hedge clipper to his home and stored them in an attic. The radio and clipper were worth about $40.00 and $50.00 respectively, but applicant apparently made no attempt to sell them. They remained about two months in the attic until the police called on applicant at his home as a result of facts which came to their knowledge through a confession received from said companion following the latter's arrest on another criminal charge in which the applicant was not involved. The stolen articles were turned over to the police at the time of the arrest, and were returned to the rightful owners. Subsequently, applicant was found guilty in a Court of Special Sessions, and was placed on probation for one year to make restitution. He has presented a letter from the chief probation officer of his county stating that he has made full restitution amounting to $18.75, and has adjusted himself properly.

Ordinarily, larceny and receiving stolen goods are crimes involving moral turpitude. In re Bergenfield, Bulletin #70 Item 2; in re Application for A.R.C. Permit, Case No. 9, Bulletin #94, Item 1 and cases therein cited. This is a hard case. Far from being a hardened criminal, applicant has a clean record aside from this single misstep. It does not appear that he profited in any way from the theft. The facts show, however, that he participated in the theft and that he received the goods knowing them to have been stolen. Under these circumstances, the crime involved moral turpitude. Applicant cannot be given the benefit of the doubt under the strict construction rule set forth in Case No. 36, Bulletin #149, Item 1, because he was well above the age of eighteen at the time the crime was committed.

An attempt was made to explain the false affidavit by a statement that applicant construed the question to mean had he ever "served time." In view of the conclusion reached above, it is unnecessary to consider the affidavit.

It is recommended that the permit be denied.

EDWARD J. DORTON
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

5. ADVERTISING - NO LAW AGAINST WORD CONTEST WITH PRIZES - BUT NO DISPLAYS MAY BE MADE ON LICENSED PREMISES.

December 22, 1936.

Gentlemen:

We are considering sponsoring a nation-wide contest in which the contestants will submit words beginning with the letters G and W i.e. Good Wishes, Good Whiskey, etc. We intend conducting the contest on a basis whereby the parties submitting the ten best lists of words will receive prizes of substantial value, such as a watch or something similar. The object of the contest, of course, is to obtain words which may be effectively used by us in advertising Gooderham and Worts whiskey.

While I do not regard a contest of this type as being contrary to the Liquor Control Laws and Regulations of your State, I thought it advisable to first obtain a ruling from you on the legality of this program in your State before proceeding. We would like to start the contest the first of the year, and I would therefore greatly appreciate it if you could advise me at your early convenience as to whether this program would meet with any objection in your State.

Very truly yours,

GOODERHAM & WORTS LIMITED

December 28, 1936.

Gooderham & Worts Limited
Detroit, Michigan.

Gentlemen:

I have yours of December 22nd. I am not aware of anything in the law or in the present Rules and Regulations that would prohibit your advertising in the newspapers such a contest as you describe.

Approval, however, is expressly withheld. Contests of this kind, whether words or limericks, are not conducive to sound control. They tend unduly to increase the consumption of liquor, especially if conditioned upon contestants mailing in answers accompanied by your labels. Irrespective of whether the contest is so hooked up or not, displays of the advertisement of such contest will not be permitted to be made on licensed premises in New Jersey. If you can do it, so can all other manufacturers. I see no reason for inducing the public to become whiskey-minded.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. GAMBLING - LOTTERIES - USE OF CASH REGISTER RECEIPTS AS PARTICIPATION TICKETS - HEREIN OF THE UTILIZATION OF CUSTOMERS AS HOUSE DETECTIVES.

Dear Mr. Burnett:

A client has asked me to obtain your interpretation with reference to the following situation:

Since the advent of licensed distribution in New Jersey, he has been using a cash register which discharges receipts in the form enclosed herein. You will notice that these are the ordinary cash register slips, with the name of the vendor, and the date, and the amount of the sale, as well as the salesman's initial. The only object of this receipt is to check on the bartenders and to make certain that the money is deposited in the cash register.

During this period of time, in order to habituate the customer to ask for the cash register receipt on each purchase, my client has permitted his customers to sign their names on the back of these slips and deposit them in a receptacle near the exit of the premises. Once each week these slips are drawn from the container and prizes are given to the depositors of the three slips drawn. These prizes are a hat, a quart of whiskey and a fifth of gin. The customer pays nothing additional for his slip; he receives the same glass of beer, whether or not his slip is deposited in the receptacle.

There certainly has been no evil motive on the part of my client, since he had only one object, as above stated. The only way this could be assured was by inducing the customer to ask for the slips discharged from the cash register. As a matter of fact, my client went to considerable additional expense in the installation of these cash registers, solely to accomplish this object.

My client is very anxious to comply to the fullest extent with the statute and the rulings of the Department in relation thereto. In view of these circumstances, I am wondering whether you would be so kind as to favor me with an official ruling as to whether or not the practice comes within the proscription of the statute.

Very truly yours,

JULIUS KASS

December 29, 1936.

Julius Kass, Esq.,
Perth Amboy, New Jersey

Dear Mr. Kass:

The practice which you describe constitutes a lottery. The fact that the cash register slips do not cost the customer any money and that the scheme is motivated, as you believe, by your client's endeavor to insure his bartender's honesty, does not change the law. Once the customer senses that every receipt is a potential prize and the more he procures the better his chances, your client is apt to value him in his capacity as customer rather than as house detective.

The situation is governed by re Pelous, Bulletin 43, Item 16. See also re Hutchins, Bulletin 56, Item 11, re Woodruff, Bulletin 143, Item 16, and re Hartlieb, Bulletin 155, Item 3.

To conduct a lottery on licensed premises is a violation of Rule 6 of the State Rules Concerning Conduct of Licensees, and, hence, cause for suspension or revocation of license.

Advise your client to desist forthwith.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. GAMBLING - LOTTERIES - BANK NIGHT BANNED ON LICENSED PREMISES.

Dear Sir:

A number of my customers have told me about Moving Picture Theatres that have what they call "Bank Night" at which time they give a cash prize to the person holding an entrance ticket with the winning number. Apparently they do not buy a separate ticket for an opportunity to win this prize and therefore, I suppose, it cannot be called a lottery or gambling.

I have carefully looked over your instructions, as set forth in the Department's Rules, Regulations and Instructions and have come to the conclusion that you do not forbid such practices in Taverns, etc. I may be wrong in my conclusion and naturally being anxious to abide by the Department's Instructions and to cooperate with you to the fullest extent of my ability, I would appreciate a personal opinion on the subject.

If you did allow me to run a "Bank Night", I would do so in the following manner:

When a customer makes a purchase, it is rung up on the Cash Register. The Register throws out a receipt, which the customer would sign. The receipt would be put in a padlocked box and on a certain night, the box would be opened and a winning ticket withdrawn. The customer would have to be on the premises in order to claim the prize, otherwise the prize money would be added to the amount for the next week's prize. The customer does not buy a separate ticket or lay out any additional money. He simply pays for what he orders.

Assuring you of my complete cooperation now and in the future, I am,

Yours truly,

JOHN COUDERT

December 29, 1936.

Mr. John Coudert,
The Dutch House,
Fair Lawn, New Jersey.

Dear Mr. Coudert:

I note with interest your statement that the customer would have to be present to claim the prize. I under-

stand full well the stimulus to trade throughout the week and the grand and thirsty concourse that would occur on "Bank Night" and the ensuing profits, but the distribution of prizes in the manner that you propose constitutes a lottery, is in violation of the State law as well as Rule 6 of the State Rules Concerning Conduct of Licensees and is, therefore, prohibited.

It is not my concern what theatres do. They are entirely outside of my jurisdiction. But licensees and licensed premises are within it.

Bank Nights are not legal on licensed premises.

Incidentally, I note that Bank Night, which became a million dollar business, has just been outlawed in all Chicago theatres.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. GAMBLING - LOTTERIES - ESTIMATING NUMBER OF CASH REGISTER TRANSACTIONS FOR PRIZES PROHIBITED AS WELL AS BEAN GUESSING - HEREIN OF CASH REGISTER CONSCIOUSNESS.

Dear Sir:

We are about to institute a daily prize drawing or award based upon the ability of our customers to approximate the number of cash register transactions daily.

As liquor comprises a part of our business would you not advise us if this plan meets with your approval?

Respectfully,

SINDER'S CUT RATE STORES INC.

December 30, 1936.

Sinder's Cut Rate Stores, Inc.,
Jersey City, New Jersey.

Gentlemen:

A distribution of prizes by chance constitutes a lottery. Re Hutchins, Bulletin 56, Item 11. This is true whether the tickets are sold or the participation privilege is afforded by the purchase of other merchandise.

I have already ruled against guessing the number of beans in a bottle. Re Shipp, Bulletin 100, Item 1. So with the number of cash register transactions. I hope you didn't think it was beans that I am against! It is rather that I am opposed to cash register consciousness which seeks by lotteries unduly to increase the consumption of liquor.

Don't do it.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - PETITION FOR REOPENING DENIED - HEREIN OF FALSE AFFIDAVITS.

JOSEPH SZANGER,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK and AMEDEO STANCO, trading as WHITEY'S TAVERN,) ON APPEAL ON PETITION FOR REHEARING CONCLUSIONS
Respondent.)

. . . . . .

Leon J. Lavigne, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On October 27, 1936, Conclusions were filed (Bulletin #145, Item 4) imposing upon petitioner, the respondent licensee, Amedeo Stanco, certain special conditions hereinafter mentioned. On the same date Conclusions were also filed in Szanger vs. Waverly Tavern, Bulletin #145, Item 5. The Waverly Tavern and Stanco's premises are located in the same vicinity. In each case appellant sought to impose restrictions. Similar questions were involved and both cases were tried the same day. For reasons fully set forth in Szanger vs. Waverly Tavern, supra, no special conditions were imposed in that case.

The petitioner now seeks a rehearing to the end that the conditions imposed upon him may be removed. He points out the disadvantage under which he operates in competition with the Waverly Tavern.

The petition alleges that the Municipal Board, after hearing the testimony of neighbors who were opposed to an unrestricted renewal of his license, found that the objections were made in bad faith. I doubt if this is so, for the answer of the Municipal Board, filed in the original appeal declares that this license was renewed "expressly on condition that the licensee remove the objections of neighbors". The license as actually issued, however, contained no condition, which omission was the cause of the appeal. The result of the appeal, so far from being inconsistent with the findings of the Newark Board, were wholly consonant with its declaration aforesaid. All the appeal did was to make concrete and definite the indefinite generality it expressed, but did not embody in the license it issued.

I imposed the conditions for the reason:

"The preponderance of the evidence shows that residents in the vicinityof the licensed premises have been subjected to annoyance and distress of a character which is wholly unnecessary and out of keeping with decent, orderly maintenance of a tavern.

"The respondent licensee stressed the fact that there are in the immediate neighborhood, another tavern, a factory, and railroad tracks. This does not alter the circumstances that there are still many people whose

homes are in this vicinity, who work hard during the day and who are entitled to rest and quiet during the sleeping hours of the night. These folk do not seek to terminate the license. They are willing to live and let live. They ask merely that the music and disturbances in the tavern shall cease at a reasonable hour. The fairness of such a request makes a strong appeal.

"The license of respondent Amedeo Stanco is hereby modified by subjecting it to the following special conditions, hereby imposed, viz.:

1. That the licensee shall forthwith remove all sound amplifying devices from the licensed premises and thereafter desist from their use.

2. That all music, singing and other form of entertainment whatsoever shall cease at twelve o'clock midnight, except that on Sunday mornings such music, singing and entertainment may continue until two o'clock A. M."

The petition further sets forth that on the date of the hearing on appeal, the licensee had a conversation with Harry Szanger, son of appellant, who was counsel for the objectors and a witness against the licensee, in which Szanger is alleged to have said "that he had no complaint to make about your petitioner, but that he had to because he was out to get the other guy", (meaning the Waverly Tavern).

Petitioner's own affidavit declares that this conversation took place in an anteroom in this Department, and that he asked Szanger why Szanger brought him into it when all he had was a complaint against the Waverly Tavern, to which Szanger, according to the affidavit, is said to have replied that the Jews of the neighborhood would think very badly of him if he brought action against a Jew and did not include Stanco. Yet Stanco did not think it of sufficient importance to relate this conversation in the hearing room. In possession of this choice defensive ammunition, he did not take the stand in his own defense. The disclosure, withheld until after the determination of the case, comes too late. It is also alleged in one of the affidavits that a similar conversation took place between Harry Szanger and a police officer. The date of this conversation, however, is omitted and no explanation is offered of petitioner's failure to produce the officer's testimony at the hearing on the appeal. The only explanation vouchsafed by Stanco as to why he did not testify was because "He was under the mistaken notion that Szanger's testimony would be of the same nature as that presented before the Municipal Board and that a ruling on appeal would be the same and thus he brought no one to testify for him on the appeal". Without pausing to evaluate the doubtful compliment that decisions on these appeals are expected to be rubber-stamped approvals, suffice it to say that petitioner was represented on the appeal and personally attended at the hearing by William V. Azoli, Esq., a competent counsellor of more than fifteen years standing at the Bar.

The other affidavits annexed to the petition add substantially nothing to the record. They are, for the most part, perfunctory statements, identical in content, by policemen whose observations of the premises have been only casual. Two of them testified at the hearing; their visits to the tavern were made after the filing of the neighborhood objections, when the conduct of the licensee and his place would, quite naturally, be guarded.

Finally, there is attached to the petition for rehearing a statement, purporting to be signed by many of the neighborhood residents, to the effect that the licensee causes them no annoyance and requesting that the restrictions upon his tavern should be lifted. I am not unmindful of the value which such a group request may have as an expression of the views of those living in the vicinity. On the other hand, such requests are frequently signed as friendly accommodation, without any considered thought of contents or effect. In re Powell, Bulletin #59, Item 15; Dunster vs. Bernards, Bulletin #99, Item 1; Lackowitz vs. Waterford, Bulletin #125, Item 12. In fact, petitioner realizes this himself for his petition states that a number of people signing the request attached to his petition had also signed the previous protest of Szanger "not realizing the import of what they had signed".

Consideration of this request introduces new and grave questions. Three of the persons whose signatures purport to be affixed to the request are: Paul Karpf and "Jack Lerhfield", of 213 Waverly Avenue, and Jenney Silberg, of 219 Waverly Avenue. The testimony of Paul Karpf before the local excise board which was made a part of the record on appeal constituted one of the principal reasons for the determination to impose conditions in this case. He graphically described the conditions which gave rise to the neighborhood objections and exonerated the neighboring Waverly Tavern from any contribution thereto. He appeared to be in every respect a disinterested and credible witness. When it appeared that he had made an affidavit wholly at variance with his previous testimony, investigation was directed to ascertain what was the truth with a view to reopening this case if the witness on whose testimony I relied had misled me. I am happy to say he did not.

The investigation has resulted in sworn affidavits, viz.: 1. By Paul Karpf that he did not sign the request attached to the petition although his signature purports to be attached thereto and sworn to before a notary public; that he has lived for the past twelve years at 213 Waverly Avenue, and that he is the only person bearing that name who lives at that address; that the signature on the paper is not his signature nor has he ever authorized any person to sign it for him; that he had never before seen that paper; that he would not have signed it if it had been offered to him; that he never has been nor is he now in favor of removing the present restrictions which have been imposed on Whitey's Tavern.

2. By Jacob Lehrfeld that he did not sign the request attached to the petition although his signature purports to be attached thereto and sworn to before said notary public; that he has lived for the past sixteen years at 213 Waverly Avenue and that he is popularly known as "Jack" Lehrfeld; that he is the only person bearing the name of Jacob Lehrfeld at that address; that he knows that there is no person living there who bears the name of "Jack Lerhfield"; that the signature on the paper is not his signature nor has he ever authorized any person to sign it for him; that he had never before seen that paper.

3. By Jennie Silberg that she did not sign the request attached to the petition although her signature purports to be attached thereto and sworn to before said notary public; that she has lived for the past seventeen years at 219 Waverly Avenue, and that she is the only person bearing that name who lives at that address; that the signature on the paper is not her signature nor

has she ever authorized any person to sign it for her; that she had never before seen that paper.

The petition for rehearing is denied.

The petition and all affidavits are directed to be transmitted to the Prosecutor forthwith.

D. FREDERICK BURNETT
Dated: December 30, 1936. Commissioner.

10. MINORS - ALCOHOLIC BEVERAGES - CONSUMPTION BY MINORS ON LICENSED PREMISES OF ALCOHOLIC BEVERAGES PURCHASED BY ADULTS PROHIBITED - KNOWLEDGE ON PART OF LICENSEE NOT NECESSARY TO CONSTITUTE A VIOLATION.

Dear Sir:

A man and his wife and two minor children patronize a restaurant operated by an owner licensed to sell alcoholic beverages for consumption on the premises. The husband orders hard liquor, presumably for himself, and beer for his wife. During the course of the meal, the wife allows the younger of the two minor children to drink some of her beer from her glass, and the husband allows the older of the two minor children (age approximately 20) to drink some of his hard liquor.

The questions asked of me are, under circumstances such as outlined above, (1) would the licensee be deemed to have violated the law or regulations if he had no knowledge of the occurrence, and (2) if he saw the incident taking place should the licensee confiscate the beverages from his patrons or is he justified in permitting such course of conduct? Of course, I understand that if the licensee conducted himself in such a manner as to use the situation as a subterfuge for the purpose of serving the minors in violation of the law and the rules and regulations, he would be subject to the appropriate penalties, but such is not the case in this particular instance.

Respectfully yours,
LOUIS BONDY

December 28, 1936.

Louis Bondy, Esq.,
Newark, New Jersey.

Dear Mr. Bondy:

Rule 1 of the State Rules Concerning Conduct of Licensees, referring to minors, provides in part that no licensee shall "allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises." Its express purpose was to prevent the purchase of alcoholic beverages by adults for service to minors so as to circumvent the law.

Knowledge on the part of the licensee is not necessary to constitute a violation. A liquor license is a special privilege vested with a public interest and licensees must be held fully responsible for what occurs upon their premises. If a licensee finds the rule is being violated either by his employees or by his customers, clearly he must see to it that it is stopped at once.

Knowledge or the lack of it may affect the sentence imposed but has nothing to do with the question of whether or not

a violation occurred.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. LICENSEES - EMPLOYEES - DISQUALIFICATION - PART TIME MARSHAL

Dear Sir:

Is there anything in the law, or in your opinion, that would prevent a man from holding a Plenary Retail Consumption License, with his mother in the City of Paterson and working as a part time Marshal in a borough adjoining the City, for which he receives no regular compensation, just being paid for the occasional periods during which he works?

Very truly yours,
EDW. DU PREE
City Clerk.

December 28, 1936.

Edward DuPree
City Clerk
Paterson, New Jersey

Dear Mr. DuPree:

Rulings already have been made dealing with the question of whether or not a licensee or an employee of a licensee may also be a policeman. In re Scott, Bulletin 109, item 5, I held that a licensee may not also be a policeman. In re Franco, Bulletin 109, item 6, I ruled that a bartender may not also be a policeman. In re Schopis, Bulletin 115, item 3, I determined that a bartender may not also be a constable.

The same underlying principle is behind all of these rulings. Sound public policy demands that those entrusted with the enforcement of the liquor law shall have no personal or financial interest in the liquor trade. Not even a policeman can serve two masters. If the duties of the Marshal of whom you write make him a police officer, he falls within the rule. It makes no difference that he is Marshal in one municipality and licensee in another. Under his license, he can do business throughout the State without regard to the particular place where his store or tavern is located. The licensees in the municipality in which he is Marshal, as well as those where he holds his license, are his competitors. There is potential conflict between his public duty and his private interest. He may not, therefore, occupy both positions. He will have to forego one or the other.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. LICENSEES - DISQUALIFICATION - NO OBJECTION TO LICENSEE BEING FIRE COMMISSIONER - BUT MUST KEEP FIRE LADDIES SOBER

Dear Sir:

I am a Tavern owner and would like to know if I can run for Fire Commissioner. You are elected to this position at an election, and your duties are to purchase and keep up a Fire Department.

There is a salary attached to this office, and an appropriation is voted every year. This money is collected by the Municipality and turned over to the Fire Commissioners who in turn keep up and maintain the Fire Department.

Very truly yours,

JOHN CSIK

December 28, 1936.

Mr. John Csik,
Hopelawn, New Jersey.

Dear Mr. Csik:

The purpose of my rulings prohibiting certain officials from holding liquor licenses or being employed by licensees was to divorce the alcoholic beverage industry from the license issuing function, and from municipal bodies having control of the industry and from any person charged with the enforcement of the laws governing the industry. Sound public policy demands that those entrusted with the administration or the enforcement of the liquor laws shall have no personal or financial interest in the liquor trade. Where there is potential conflict between private interest and public duty, the latter must prevail.

The duties of Fire Commissioner are in no wise related to the administration or enforcement of the liquor laws. Hence, the reason for the rule would not apply. There would, then, be nothing, so far as my rulings were concerned, to prevent your holding a liquor license and being Fire Commissioner at the same time. If elected, I depend on you to keep the fire laddies sober.

Very truly yours,

D. Frederick Burnett

D. FREDERICK BURNETT,
Commissioner.