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

BULLETIN NUMBER 176 MAY 17, 1937.

1. RULES CONCERNING LICENSEES AND THE USE OF LICENSED PREMISES - UNDESIRABLES - HEREIN OF DENIZENS FERAE NATURAE

May 11, 1937.

Dear Sir:

I represent the Township of Ocean and should appreciate your advising me if it is permissible, under the rulings of your department, for the holder of a liquor license to maintain and keep on his premises an uncaged bear.

Thanking you, I am,

Yours very truly,

HENRY H. PATTERSON

May 13, 1937.

Henry H. Patterson, Esq.,
Asbury Park, N. J.

Dear Mr. Patterson:

I have yours of the 11th.

I shall have to rule out all four-legged bears unless, at least, they be securely caged.

To be sure the uncaged one might serve well in the maintenance of order on licensed premises as a deterrent to parkers and prowlers within the ambit of his beat. Conceivably, too, as a temperance measure, particularly in the dark of the moon and if the surprise factor were well-timed, he might have a temporary value in paving the way for devout and presently well-meant pledges of future total abstinence. I fear, however, that the ursine attraction will eventually result in mortification, if not downright disaster, to some of the patrons who are prone to vaunt their pluck or prowess with less provocation. The furry one has too much advantage in any ordeal designed for the settlement of barroom debates or in catch-as-catch-can scrimmages.

Sooner or later someone is going to get hurt. Bears at large are, therefore, ruled out from licensed premises along with the other undesirables.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SOLICITOR'S PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

May 10th, 1937.

IN RE: Case No. 50

Applicant admitted that he had been convicted, in 1932, for transporting two cases of liquor.

At a hearing duly held, applicant testified that, at the time of his arrest, he was transporting, in a passenger automobile, forty-eight pints of liquor which he had purchased for his own use. Subsequently, on advice of counsel, he pleaded guilty to possession and transportation of illicit liquor and was fined $48.00, which he paid. He testified that for many years prior to his arrest he was engaged in the real estate business and was not a "bootlegger."

There appear to be no aggravating circumstances and, hence, the conviction does not involve moral turpitude.

It is recommended that the permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

3. LICENSES - PRORATION - REFUND IN RESPECT TO TIME WHEN LICENSE BECAME EFFECTIVE.

Gentlemen:

Under date of February 6th, 1937, an application was filed for a Plenary Retail Distribution license with the Board of Commissioners of the Town of Belleville. Because of the absence of one of the Commissioners and the fact that ordinances were being amended the matter was not acted upon until April 19th, 1937, when resolution granting the license effective April 29th, 1937 was adopted. When the application was made the pro-rated fee from February 6th, 1937 to July 1, 1937 accompanied it. Now the licensee, because his license is not effective until April 29th, 1937 is asking for a pro-rated refund from the date February 6th, 1937 to April 29th, 1937.

I would appreciate suggestions from you as to the proper manner in handling this request for a refund.

Very truly yours,

LAWRENCE E. KEENAN

May 10th, 1937.

Lawrence E. Keenan, Esq.,
Town Attorney,
Belleville, N. J.

Dear Mr. Keenan:

The licensee is correct in his request. Section 23 of the Control Act provides that the respective fees for

any such license shall be prorated according to the effective date of such license and where the license fee deposited with the application exceeds such prorated fee, a refund of the excess shall be made to the licensee. Therefore, because the license in the instant case did not become effective until April 29th, the licensee is required to pay only the prorated fee from that date through June 30th. Hence, the prorated fee from the date application was filed to the effective date of the license should be refunded to him.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - ADVERTISING OF PRICE OF ALCOHOLIC BEVERAGES BEING SOLD FOR ON-PREMISES CONSUMPTION ON EXTERIOR OF LICENSED PREMISES OR ON INTERIOR WHEN VISIBLE FROM THE STREET IS PROHIBITED.

May 12, 1937.

Marconi Spaghetti Place, Inc.
Newark, N. J.

Gentlemen:

You inquire if you may display a sign approximately 12 by 24 inches in size and reading "Marconi Special - Full course dinner with bottle wine - 75¢" on the inside of your show window.

Such signs are not allowed.

The State Rules Governing Signs and Other Advertising Matter (copy enclosed) prohibit retail licensees from directly or indirectly advertising the price of any alcoholic beverage on the exterior of the licensed premises or on the interior when visible from the street. They do allow 1½" x 1½" cards advertising prices of alcoholic beverages being sold in original containers provided they are for off-premises consumption. See Rule 3.

Your sign is an advertisement of the price of alcoholic beverages being sold for on-premises consumption and hence, whatever the size, is in violation of the rules. To display it in your window will be cause for the suspension or revocation of your license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. LICENSES - TRANSFERS - FAILURE OF TRANSFEROR TO PAY DEBTS IS NOT CAUSE FOR DENIAL OF TRANSFER.

Dear Sir:

If a restaurant and grill is put up for sale having a type "C" license and is sold for less than the amount that the person selling owes, can the people that he owes money to appear before the Commissioners and stop the Commissioners from transferring the license. In other words, if he owes $3500 in bills and only gets $2500 for the place of business, can the people he is unable to pay stop the transfer?

Yours very truly,

Raymond Rhodes

May 12, 1937.

Mr. Raymond Rhodes,
Hawthorne, New Jersey.

My dear Mr. Rhodes:

Transfers may not be denied just because a licensee owes money. That, of itself, is no ignominy, in fact, it's quite a common affliction in these days. If he were not financially embarrassed, he would probably be holding on to his license.

Transfers of liquor licenses may be denied if the liquor law or regulations have been violated, or if the person to whom the license is to be transferred is disqualified or the premises unsuitable - in short, only because of the public welfare and not in aid of private creditors.

If a licensee owes money, he may be sued like any other debtor in the law courts which is the only forum where cases of that kind are properly heard. The Alcoholic Beverage Control Act cannot be used as a club over his head to collect private debts.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. SPECIAL PERMITS - PRINCETON REUNIONS - UNNECESSARY WHERE BEER BOUGHT FROM A RETAILER IS GIVEN AWAY ABSOLUTELY GRATUITOUSLY - BUT NECESSARY IF ANY CLASS DESIRES TO BUY FROM A BREWERY OR A WHOLESALE LICENSEE.

My dear Mr. Burnett:

I am writing to you both as Associate Counsel of Princeton University and as Attorney for the Borough of Princeton in relation to the question as to whether or not special licenses are required for the various Class Reunions which are held in Princeton at the time of the University Commencement in June.

As you know, it is the custom for large groups of the Alumni of Princeton University to return to Princeton during the Commencement period. These Alumni usually assemble in what are known as "Class Reunions." Some classes have what are known as off-year Reunions which are usually held annually, but the larger Reunions are held by the classes every five years. The Reunions themselves depend upon the arrangements made by the Reunion Committee of the Class, but in general the Class rents some property for the Reunion period and usually erects a tent in the grounds. It is an almost universal custom for the Class to furnish beer to its members and to the friends of the members. This beer is purchased by the Class and no charge whatsoever is made for it; it being dispensed entirely without payment to any person who is entitled to be at the Reunion.

The Reunions are financed by the members of the Class; the customary procedure being for an appeal to be sent out to the members with the request that they contribute whatever they are able. In some cases the amounts contributed are extremely small, in other cases extremely large and many members of the Class who attend the Reunions make no contribution whatsoever. As a matter of fact, at the so-called large Reunions it is quite customary, particularly in the cases of members of the Class who reside a long distance from Princeton and who are unable financially to make the trip, for the class to pay their expenses to the Reunion.

In the case of some of the younger classes, the circular which goes out suggests a flat sum for Reunion expenses, but in no case need anything be paid if the person attending the Reunion does not wish to do so. As a matter of fact, at every Reunion there is always a large percentage of the members attending who make no contributions whatsoever. These individuals are entitled to exactly the same privileges and are treated in exactly the same manner as are the members of the class who contribute.

These Reunions have been going on in Princeton for a period of at least forty years, and, to the best of my knowledge, no application for a license has been made, or a special license issued, except in one case which was, as I understand it, required because of the fact that the Class had hired the premises occupied by a licensed Club and wished to purchase their supplies through this Club.

So that there may be no misunderstanding in relation to the situation, I would greatly appreciate your ruling on this subject and would further appreciate it if this ruling could be made at the earliest possible time so that should applications for licenses be required, the Chairmen of the various Reunion Committees may be notified.

Yours very truly,

WM. C. VANDEWATER

May 13th, 1937.

William C. Vandewater, Esq.,
Princeton, New Jersey.

My dear Mr. Vandewater:

In view of the facts stated in your letter, no Special Permits will be necessary for the Class Reunions because it clearly appears therefrom that the beer is to be given away absolutely gratuitously.

There is one point not touched upon in your letter which requires care, viz.: if no Special Permit is obtained, then the beer to be dispensed at such Class Reunions may be purchased only from retail licensees. If, to cut expense, any of the Classes desire to obtain the beer from a brewery or wholesale licensee, it will be necessary to obtain a Special Permit as neither brewers nor wholesalers may sell to anybody except a person holding a license or a Special Permit which, in nature, is a temporary license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. LABELING - FAIR TRADE ACT - FEDERAL LABELING REGULATIONS ARE APPLICABLE TO ALCOHOLIC BEVERAGES POSSESSED BY LICENSEES WITHIN NEW JERSEY - LICENSED RETAILER MAY NOT, UNDER ANY CIRCUMSTANCES, ALTER OR EFFACE ANY MARK, BRAND OR LABEL UPON ALCOHOLIC BEVERAGES IN HIS POSSESSION EXCEPT PURSUANT TO SPECIAL PERMIT FIRST OBTAINED.

May 13, 1937

Louis B. Englander, Esq.,
Newark, N. J.

Dear Sir:

Receipt is acknowledged of your letter of May 12th, inquiring whether retail licensees may remove or alter labels on containers of alcoholic beverages possessed by them in this State. I understand that the question has arisen in the course of a judicial proceeding relating to the New Jersey Fair Trade Act. P.L. 1935, c. 58; Johnson & Johnson v. Weissbard, 120 N. J. Eq. 314 (Ch.1936), rev'd 60 N.J.L.J 137 (issue of May 6, 1937).

The United States Supreme Court's decision in Old Dearborn Distributing Company v. Seagram-Distillers Corporation, 299 U. S. 183 (1936) sustaining the Illinois Fair Trade Act, involved contracts between wholesale liquor distributors and retail liquor dealers fixing the resale price of liquor bearing special brands or trade marks. In the course of its opinion the court stated that there was nothing in the Fair Trade Act of Illinois "to preclude the purchaser from removing the mark or brand of the commodity." It is evident, however, that the court did not consider or purport to express any opinion as to whether such conduct was permissible under admittedly valid and governing liquor control acts and regulations.

Since the label generally furnishes the means for detecting whether the contents are illicit (see Great Notch Villa v. Clifton, Bulletin 91, Item 11), liquor dealers must, in the interests of control, be restricted from in anywise interfering with labels on containers of alcoholic beverages. Section 5(e) of the Federal Alcohol Administration Act (49 Stat. 977) imposes such restriction with respect to interstate transactions and appropriate regulations pursuant thereto have been adopted by the Federal Alcohol Administrator. See Section 30(b) of Regulations No. 5 Relating to Labeling and Advertising of Distilled Spirits, approved by the Secretary of the Treasury on January 18, 1936, which provides as follows:

> "It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon distilled spirits held for sale in interstate or foreign commerce or after shipment therein, except as authorized by Federal law; Provided, That the Administrator may, upon written application, permit additional labeling or relabeling of bottled distilled spirits if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this article or of State law."

The regulations relating to the labeling and advertising of wine and malt beverages contain similar provisions. See Section 30(b) of Regulations No. 4 Relating to Labeling and Advertising of Wine, approved by the Secretary of the Treasury on December 30, 1935, and Section 20(c) of Regulations No. 7 Relating to Labeling and Advertising of Malt Beverages, approved by the Acting Secretary of the Treasury on November 19, 1936.

The Federal labeling requirements were rendered applicable to intrastate transactions within New Jersey by regulations promulgated by the Commissioner. Regulation dealing with distilled spirits was promulgated, effective August 21, 1936, and provides as follows:

> "Regulations heretofore announced by the Federal Alcohol Administration, relating to labeling of distilled spirits packaged for shipment in interstate or foreign commerce, are made a part hereof as though fully set forth and are hereby promulgated with respect to the State of New Jersey; the aforesaid regulations shall apply to distilled spirits packaged purely for intrastate shipment within New Jersey to the same extent as though intended for interstate or foreign shipment." See Bulletin 137, Item 9.

Similar regulations dealing with wine and malt beverages were promulgated, effective December 15, 1936. See Bulletin 149, Item 7, and Bulletin 151, Item 3.

The present inquiry calls for a special interpretation of the effect of the foregoing regulations upon a retail licensee's authority to remove or efface the label on a container of alcoholic beverages in his possession. The Commissioner's authority to render such interpretation is unquestioned. See Section 36 of the Control Act (P. L. 1933, c. 436). See also Norwegian Nitrogen Products Co. v. United States, 288 U. S. 294, 325 (1933), where the court summarily

pronounced that the Tariff Commission had power to "interpret its own rules and any phrase contained in them."

Accordingly, the Commissioner has ruled that pursuant to the labeling regulations heretofore promulgated, no retail licensee within New Jersey may alter, mutilate, destroy, obliterate or remove any mark, brand or label upon alcoholic beverages in his possession except pursuant to special permit from the Commissioner which will be granted only for special cause and upon a showing that the interests of strict control will not be adversely affected.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

8. LICENSEES - MANAGERS - LICENSEES MAY EMPLOY MANAGERS BUT THE LICENSEE MUST BE THE ACTUAL OWNER AND IS FULLY RESPONSIBLE FOR ALL ACTS OF EMPLOYEES OR VIOLATIONS WHICH MAY OCCUR ON HIS PREMISES.

LICENSEES - TIED HOUSES - AN EMPLOYEE OF A WHOLESALER BEFORE BECOMING MANAGER FOR A RETAILER MUST FIRST SEVER ALL OF HIS CONNECTIONS WITH THE WHOLESALER.

Dear Sir:

There has been filed with me an application for transfer of Borough of Madison Plenary Retail Distribution Liquor License #11.

Applicant states the business will be managed by his father, who is at the present time salesman for a liquor distributing house. It is his purpose, however, to resign this position on May 1st. The transfer, if granted, will be as of May 10th.

Will the above facts serve in any way to prevent issuance of this transfer to the applicant?

Very truly yours,

J. H. Talmadge, Clerk

May 7, 1937.

John H. Talmadge
Borough Clerk,
Madison, New Jersey

My dear Mr. Talmadge:

I understand that the person to whom the license will be transferred wishes to employ his father, now salesman for a liquor wholesaler, as manager.

There is no objection to a retail licensee employing a manager provided the manager is fully qualified to hold a license in his own right. The licensee himself, however, must be the real party in interest, the actual proprietor of the business, and not merely a front for the so-called manager. If the manager is the real owner, then the manager, not the present applicant, should hold the license. Re Scudder, Bulletin 67, item 12.

The employment of a manager does not relieve the licensee of any responsibility. A licensee is fully accountable for all of the acts or omissions of his employees or agents or for any violations which may occur on his premises whether with his knowledge or in his presence or not. See Grant Lunch Corporation v. Newark, Bulletin 170, item 10 and the items cited therein. So, a licensee is responsible for the illegal acts he may commit even though he may be personally ignorant of the law and innocent of any actual intention to violate it and even though he acted pursuant to legal advice. Re Carabelli, Bulletin 174, Item 15, an advance copy of which is enclosed. As stated in the last mentioned case: "Erroneous legal advice is not an insulator from legal responsibility. Any contrary ruling would provide an obvious alibi and easy escape to every defendant and eventually breed legal specialists on 'taking the rap' or posing as 'fall guys' for offending licensees. Strict enforcement will go a long way to save the liquor industry from annihilation. It is the only fair thing to other licensees who refuse to take chances. Those vested with special privileges under the law are charged to be personally conscious of what the law requires. When licensees or their lawyers do not know, the simple recourse is to ask for an official ruling."

As the person who is to be the manager is presently employed by a wholesaler, before he may be employed by the retailer he must sever all of his connections with the wholesaler. Section 40 of the Control Act makes it unlawful for anyone connected with the wholesaling of alcoholic beverages to be interested directly or indirectly in the retailing of alcoholic beverages.

I give you the foregoing by way of illustration of the particular points involved in the case you have before you. If the applicant and the manager comply in these respects with the requirements of the law, unless some other disqualification exists, there appears to be nothing which would prevent the issuance of the transfer or the employment of the manager.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - MILANO vs. RED BANK

MILANO RESTAURANT, INC., a Body Corporate of the State of New Jersey,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF RED BANK,

Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Solomon Tepper, Esq., Attorney for Appellant.
John S. Applegate, Esq., by Harvey G. Hartman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's order revoking appellant's plenary retail consumption license on three charges: (1) that appellant did make or cause to be made misrepresentations, false statements, misleading statements, evasions, and caused the suppression of material facts in its application for the license; (2) that appellant did knowingly employ or have connected with it in a business capacity one Elsie Milano and one Salvatore Milano, they being persons who would fail to qualify as a licensee by reason of their non-residence; (3) that appellant hindered or delayed, or cause the hinderance or delay of an investigation conducted by this Department.

The appeal was submitted by stipulation upon the transcript of the proceedings before the Borough Council.

Examination of the transcript discloses that prior to August, 1935, Elsie Milano and Salvatore Milano, her husband, resided in New Haven, Connecticut. At or about that time they came to Red Bank and took up their residence there. Shortly thereafter they met one Milton Berk, a real estate agent, and purchased, through him, the licensed premises, investing $1,500.00, taking title in their names and giving back to a building and loan association a purchase money mortgage for $4,500.00. Berk testified that he loaned the Milanos approximately $3,500.00 between August 1935 and February 1936 for repairs to the premises and for equipment. Neither of the Milanos was eligible to obtain a liquor license in New Jersey at that time, nor are they eligible today, because they have not been residents of New Jersey for five years. Section 22 of the Control Act. Nor is either of them presently eligible to be employed by a licensee for the same reason. Section 23 of the Control Act.

Milano Restaurant, Inc. was incorporated December 19, 1935, the incorporators being Solomon Tepper, Sydney Reinhart, of Mr. Tepper's office, and Salvatore Milano, each holding ten shares of stock. At the first meeting of the corporation, held on January 10, 1936, original shares of stock were issued as follows:

49 shares to Milton Berk
25 shares to Sylvia Schwartz
25 shares to Joseph Schwartz
1 share to Elsie Milano.

Sylvia Schwartz is a sister of Milton Berk, and Joseph Schwartz, her husband, is a partner of Berk in his real estate business. There has been no change in stockholders on the books of the corporation since the time of the first meeting. According to Berk's testimony, the certificates for the ninety-nine shares issued to him and Mr. and Mrs. Schwartz are in his possession. It has also been stipulated that the real estate was conveyed by the Milanos to the corporation, but there is nothing in the record to show that any consideration passed to the Milanos for such transfer.

As to the actual operation of the business, it appears from the evidence that when our investigators called at the licensed premises on July 20, 1936, Salvatore Milano was tending bar and Elsie Milano was working in the kitchen. It does not appear that the corporation kept any records of its receipts or disbursements or made any report to its stockholders, but there is evidence that all bills were paid by the Milanos. As Mr. Berk frankly testified neither he nor Mr. Schwartz had any time to devote to the restaurant business. The ninety-nine shares of stock which Berk has in his possession are being held by him as security for his loan of $3,500.00, but, as he says, "In a sense, this stock represents the complete property and business at 85 Riverside Avenue, which has a value of four times the amount I put in." Aside from being security for Berk's loan, I find that the beneficial interest in the whole hundred shares of this stock was and is owned by Salvatore Milano and Elsie Milano. Thus, despite the fact that the licensee is a corporation, the parties owning the beneficial interest in the stock thereof and actually conducting the business are persons who are disqualified to hold a license in this State. Cf. Hudson County Retail Liquor Stores Assn. vs. Terminal Wine & Liquors, Inc. and Jersey City, Bulletin #127, Item 1.

The application sets forth the names of the stockholders and the amount of stock held by each in exact accordance with the records of the corporation. Appellant argues that the first charge has not been sustained because of this fact despite the failure to disclose the beneficial interest of Salvatore Milano. It will be unnecessary, however, either to decide this question, or to determine whether the third charge has been sustained, because the evidence clearly shows that appellant is guilty upon the second charge. The evidence that on July 20, 1936 Salvatore Milano was tending bar and Elsie Milano was employed on the premises, plus the admission made by Mr. Milano that he and his wife were employed by the corporation at a salary of $25.00 a week, is sufficient to sustain the second charge upon which appellant was found guilty. Barkeepers attain no immunity from statutory disqualification through corporate devices.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 13, 1937

10. APPELLATE DECISIONS - BOBYOCK vs. NEWARK

HARRY BOBYOCK,	)	
Appellant,	)	
-vs-	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,	)	CONCLUSIONS
Respondent.	)	

. . . . . .

Minturn & Weinberger, Esqs., by Hyman Halpern, Esq., Attorneys for Appellant.
Frank A. Boettner, Esq., by Raymond Schroeder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

After hearing duly held, respondent adjudged appellant guilty on a charge of possessing illicit alcoholic beverages and suspended his license for a period of thirty days beginning March 8th, 1937. Appellant appeals from said suspension.

The licensed premises are located at 133 Howard Street, Newark. The building in which the licensed premises are located is a three-story brick structure, carried on the tax records of Newark as 131-133 Howard Street. There are two stores on the ground floor of the building; one the licensed premises, the other a store which was vacant at the time of the investigation. These stores are separated by a hallway containing stairs leading to the upper apartments. The entire building is owned by appellant. In the rear of the licensed premises is a kitchen extending beyond the rest of the building, with a side door entering into an area-way from which one may enter the vacant store through the rear door thereof. Appellant and his family reside above the licensed premises.

On September 14, 1936, Investigators Beck and Wierenga of this Department inspected the licensed premises. After passing through the kitchen in the rear of the licensed premises, Investigator Beck entered the area-way and, seeing that the rear windows of the vacant store were open, requested appellant to furnish him with a key for the rear door of the vacant store. Appellant said that he had given the key to a Mr. Busie or Bosick or Basick, who had rented the store a few days prior thereto. Returning to the kitchen, Investigator Beck found a ring with a number of keys, one of which opened said door, and Beck, together with appellant's wife, entered the vacant store. Upon lifting the lid of a stationary washtub in that store, there was found a hydrometer and a cup for gauging alcohol, a bottle of caromel flavoring, a quart bottle containing a liquid labeled "Seagram's" and gallon jugs. In the front part of the vacant store in an alcove behind a partition there werefound two one-gallon jugs of a liquid which bore no tax stamps or labels. Subsequent analysis disclosed that the bottle bearing the Seagram's label contained a blended whiskey fit for beverage purposes, which was slightly off-proof, and that the two one-gallon jugs contained alcohol fit for beverage purposes when diluted.

In the meantime, Investigator Wierenga, in testing bottles of liquor on the back bar of the licensed premises, found a bottle of "Three Feathers Blue Label Blended Whiskey 90% proof", which was slightly off-proof and which subsequent analysis showed was a natural colored whiskey and not a blended whiskey as represented by the label.

Bobyock and his wife denied all knowledge of the paraphernalia and liquor found in the vacant store, and said that they would have to take up the matter with the man who had rented the store. Bobyock claimed that the "Three Feathers" had been bought from a reputable wholesaler and had not been tampered with by him or his wife. The Investigators telephoned to the Newark Police, and Bobyock was placed under arrest.

Appellant strenuously contends that he cannot be held responsible for the paraphernalia and illicit liquor found in the vacant store because they were not found upon the licensed premises. Unless control of the vacant store had passed out of the hands of appellant, however, the evidence of

his ownership of the entire building, plus the fact that he had ready access to all parts thereof, would be sufficient to sustain the finding that the paraphernalia and illicit liquor were found in his possession and under his control. Mackiewicz vs. Jersey City, Bulletin #83, Item 5.

It is material, therefore, to determine whether control of the vacant store had passed to some other person at the time of the investigation. Appellant and his daughter testified that a man by the name of Busie had called at the licensed premises on September 10, 1936 and agreed to rent the vacant store as a restaurant at a rental of $20.00 per month. Both testified that Busie had made a Five Dollar deposit and had been given a receipt therefor signed by the daughter in her father's name. Neither of them knew where Busie lived, nor did they inquire of him as to his previous experience in the restaurant business, nor did they attempt to clean up the vacant store or make any alterations or repairs thereto. Appellant testified that Busie was to take possession on the 15th or 16th; that Busie returned after the investigation had been made; that appellant returned the Five Dollar deposit and obtained his receipt therefor, which receipt, however, he threw away and told Busie he would have nothing further to do with him because "you put me in a jam." Although Busie's alleged return took place after appellant's arrest, appellant seems to have permitted this very important witness to depart without even ascertaining his address. Busie was not produced at the hearing before respondent, nor at the hearing on the appeal. An attempt by an imaginative licensee to cast the blame upon such a ghostly personage will not succeed. Karas vs. Paterson, Bulletin #120, Item 7.

As to the bottle of "Three Feathers" found upon the back bar of the licensed premises, and which is also illicit, the only additional evidence introduced by appellant consisted of a copy of a wholesaler's bill covering the purchase of three bottles of "Three Feathers" and other alcoholic beverages in the month of March 1936. This additional evidence, plus the denial that the bottle had been tampered with, is not sufficient to explain the presence of illicit liquor upon the licensed premises. It is clear from the evidence that illicit liquor was found in the possession of appellant upon his licensed premises, and this alone would be sufficient to sustain the suspension. Grant Lunch Corporation vs. Newark, Bulletin #170, Item 10, and cases therein cited.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 13, 1937.

11. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - CHARGES DISMISSED BECAUSE OF REPUDIATION BY MINORS OF THEIR STATEMENTS.

May 13, 1937.

Harold A. Horowitz, Esq.,
Deerfield Township Attorney,
Bridgeton, N. J.

Dear Mr. Horowitz:

I have staff report of the proceedings before the Township Committee of Deerfield against Ethel P. Brown, trad-

ing as The Georgette, charged with having sold alcoholic beverages to minors.

The report states:

"George Smith, age 16, William Young, Jr., age 20, and Richard Rocap, age 22, were arrested, charged with larceny and breaking and entering. It was ascertained from questioning them that on Saturday, March 27, 1937, they visited several taverns and became intoxicated. Early Sunday morning, March 28, 1937, they stole an automobile and wrecked it. Later that morning, they broke and entered a store. They informed Inspector Middleton that they had been served alcoholic beverages in taverns, among them that of Ethel P. Brown in Deerfield Township. Smith was taken to the licensed premises and stated in the presence of the licensee that he had been served on March 28th by the bartender.

"At the hearing Smith, Young and Rocap went back on their statements and denied having been served at the above licensed premises."

I do not see what you could do under the circumstances except what you did, viz., dismiss the charges.

It is indeed unfortunate that these boys repudiated their former statements for without their testimony no headway could be made with the case, since there were no other witnesses we knew of who saw drinks served to them.

Sale of liquor to minors is a serious offense - in fact, an indictable misdemeanor as well as a violation of the rules. I suggest that your Township Committee keep careful oversight upon all taverns within their jurisdiction, checking up on them unexpectedly from time to time and deal severely with all cases where violations of the law are found.

Please express to the members of the Township Committee of Deerfield my appreciation for their prompt and cooperative action in this matter.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

3. SUPPLEMENTAL LIMITED DISTILLERY LICENSES - PRIVILEGES CONFERRED AND THE LIMITS THEREOF - HEREIN OF THE NECESSITY OF OBTAINING WAREHOUSE RECEIPTS LICENSE FOR SALE OF RECEIPTS FOR LIQUOR IN BOND.

May 13th, 1937.

Hon. J. Lindsay de Valliere, Deputy Commissioner,
State Tax Department, Beverage Tax Division,
Trenton, N. J.

My dear Commissioner:

Read Applejack Distillery holds Supplementary Limited Distillery License SD-4 for the present fiscal year.

This license entitles the holder thereof to bottle and sell not more than 5,000 wine gallons per annum of alcoholic beverages distilled from fruit juices which were manufactured pursuant to either a prior Plenary Distillery or a prior Limited Distillery License. This applies whether the product is sold in bond or not. The license by its terms limits the amount of sales to 5,000 gallons and as soon as that limit is reached, the privileges conferred by the license are automatically terminated and a new license must be obtained for further sales.

Moreover, if the licensee does not sell the alcoholic beverages as such but sells warehouse receipts for the beverages in bond, it must hold a Warehouse Receipts License.

Your letter indicates that the Read Applejack Distillery has violated the Control Act both by exceeding the limits of its Supplementary Limited Distillery License and by the sale of warehouse receipts for which it has no license.

I am, therefore, referring the matter to the Enforcement Division for immediate investigation and report and thank you for splendid cooperation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. BREWERIES - MAY NOT EITHER SELL OR DONATE BEER TO CONSUMERS - DELIVERIES MAY BE MADE TO SOCIAL ORGANIZATIONS ONLY IF THE ORGANIZATION HOLDS A LICENSE OR SPECIAL PERMIT.

Dear Commissioner Burnett:

In order that we may reply to inquiries from members, please advise whether brewers may donate beer to organizations of firemen and policemen for use by them at outings and picnics.

Very truly yours,
New Jersey Brewers' Association,

May 15, 1937

New Jersey Brewers' Association,
Newark, New Jersey.

Gentlemen:

Brewers and wholesalers may sell only to licensed wholesalers and retailers. They may not sell to consumers direct. Since the gratuitous delivery or gift by a licensee of any alcoholic beverage is, under the terms of the Control Act, treated the same as a sale, it follows that breweries may not give beer to organizations of firemen or policemen unless the organization has either obtained a license or else taken out a special permit which, in its nature, is a temporary license.

If the organization, however, has first obtained a special permit to sell alcoholic beverages at its outing or picnic, then brewers may sell beer to the holder of such permit,

or give the beer away, as they choose. Even if the beer is given away, the delivery would have to be reported and appear on the monthly report to the State Tax Department.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. REFERENDUM - BARRING ALL RETAIL SALES - EFFECT - THE SAME QUESTION MAY NOT BE RESUBMITTED UNTIL THE THIRD YEAR - OTHER QUESTIONS MAY, HOWEVER, BE SUBMITTED AT ANY TIME.

Honorable Commissioner:

According to the Alcoholic Beverage Control Act, Chapter 436, P. L. 1933 as amended and supplemented, An Act Concerning Alcoholic Beverages, passed December 6, 1933, Section 43, the following question appeared upon the official ballot used at the general election held in the Borough of Collingswood on November 5, 1935:

> "Shall the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes and boats, and the issuance of any retail licenses, except as aforesaid, pursuant to the 'Act concerning alcoholic beverages' be permitted in this municipality?" and the vote recorded showed: Yeas - 774, Nays - 3859.

In view of the above, is the sale of beer or ale in cans, bottles or any package whatsoever, by grocery, delicatessen stores or any other agency legal in the Borough of Collingswood, or could it be made legal by any method?

My understanding of the Act is, that the sale of all alcoholic beverages at retail, except as specified above, is denied until this same question is again voted upon and an affirmative vote cast, which said vote could not be taken until the general election to be held in November, 1938, which is the third year following the referendum of November 5, 1935.

Yours very truly,
R. S. Wigfield,
Borough Clerk.

May 15, 1937

R. S. Wigfield,
Borough Clerk,
Collingswood, New Jersey.

Dear Mr. Wigfield:

Your understanding of the effect of the referendum held in the Borough on November 5, 1935 is correct.

Except for sales on railroad trains, airplanes, and boats, pursuant to plenary retail transit licenses, no retail sales of beer or any other alcoholic beverages, either for on-premises consumption or in original containers for off-premises consumption, may be made in Collingswood at any time by groceries, delicatessen stores, or by anyone else, until such time as the present referendum is superseded by subsequent referendum held in the future.

The referendum of November 5, 1935 was held pursuant to Section 43 of the Act. No subsequent referendum may be held

pursuant to the same section until November 1938. The statute bars submission of the same question until the third year hence.

It does not, however, prevent referenda at any time pursuant to other sections; viz., Sections 41, 42, 44 or Control Act reprint *44A (C. 254, P. L. 1935), since the questions therein provided for are not the same question as that in Section 43. See re Bock, Bulletin 89, Item 6.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. RETAIL LICENSES - EXECUTORS - APPLICATIONS FOR RETAIL LICENSES BY AN EXECUTOR, IF EXECUTOR IS MEMBER OF MUNICIPAL GOVERNING BODY, MUST BE MADE TO THE STATE COMMISSIONER.

Gentlemen:

What is the status of this Municipality in granting either plenary distribution or consumption license if a member of the governing body should be a co-executor of an estate that may make request or rather an application for license as above.

Yours very truly,
F. H. Ludlow,
Clerk of Borough of Peapack and Gladstone.

May 15, 1937

F. H. Ludlow, Clerk,
Borough of Peapack and Gladstone,
Peapack, New Jersey.

My dear Mr. Ludlow:

Municipalities may issue retail licenses to executors or co-executors of estates, either as individuals or as executors. Re Branigan, Bulletin 129, Item 3.

Since an executor has a financial interest in the licensed business because of the commissions which may accrue to him, it follows that any application for retail license made by an executor or co-executors, any one of whom is also a member of the municipal governing body, must pursuant to the terms of Chapter 44, P. L. 1934 (Control Act reprint, Section *18A) be made to me as State Commissioner.

Very truly yours,
D. Frederick Burnett
D. FREDERICK BURNETT,
Commissioner.