

Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 112

March 27, 1936.

1. LICENSED PREMISES - PICTURES - PICTURES ARE NOT IMPROPER UNLESS OBSCENE OR INDECENT - OBSCENITY IS THAT AT WHICH WE ALL INSTINCTIVELY REVOLT AND WHICH COMMON DECENCY FORBIDS.

March 18, 1936.

My dear Mrs. _____:

Kindly refer to your letter complaining of a picture in a certain saloon of a woman in the nude, and my promise to pass on it. (Bulletin #108, Item 3).

The painting is mediocre, the color flat, the style eclectic and the subject trite. I am not concerned, however, with artistry or the lack of it. Nor with questions of taste, appropriateness or motive. There is no reason why places for the consumption of liquor should not be made comfortable and decorative. The live problems that confront us are the actions of human beings, not inert paintings. So long as these places are decent self-respecting and obey the law, there will be no interference with individual initiative in furnishings or appointments. Pictures, as well as flowers, may brighten a corner. "Obscene" should not be an execration lightly to be hurled at a painting merely because it does not conform to one's own viewpoint. It is not to be determined by considering its effect on somebody else. Obscenity is something at which we all instinctively revolt and which common decency forbids. It is instantly determinable by inspection. The more argument necessary to prove it, the less it is.

This picture is not obscene. Therefore I shall not order its removal.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. TRANSFERS - LICENSE MAY NOT BE TRANSFERRED WITHOUT CONSENT OF LICENSEE, EVEN THOUGH LICENSEE HAS DISAPPEARED AND BUSINESS IS BEING CONDUCTED BY HIS WIFE ON HIS BEHALF.

March 7, 1936.

Dear Sir:

I have recently been retained by the wife of the holder of a Trenton liquor license to attempt to effectuate the transfer of the license.

The facts disclose that the holder of the license left Trenton several months ago, apparently deserting his wife and family. Thereafter he was contacted and signed a Power-of-Attorney for his wife to sign the Tax reports. Since that time he has disappeared and cannot be found. Meanwhile the wife has

New Jersey State Library

been carrying on the business but cannot make a go of it, and has now found a prospective purchaser. Of course, the statute requiring the transferor to consent in writing to a transfer now prevents my client from selling the license, etc.

The facts further disclose that the wife contributed toward the license fee and the payment of all the personal property on the premises; that the real estate is in their joint names; that the licensee left Trenton after taking all the joint funds; and that the wife is actually the equitable owner of at least an undivided interest in the property.

My question, of course, is as to the possibility of securing the commissioner's decision on the chance of foregoing the statutory requirement.

Yours very truly,

HENRY C. SCHRAGGER.

March 13, 1936.

Henry C. Schragger, Esq.,
Trenton, N. J.

Dear Sir:

I have your letter of March 7th.

Section 23 of the Control Act provides that application for transfer of a license must bear the consent in writing of the licensee to such transfer. The propriety of this requirement is evident since otherwise there would be no assurance that the licensee has authorized the transfer.

Since a license is a personal privilege it would seem clear that no person other than the licensee can lawfully have any interest therein except as otherwise expressly permitted by the Act. Consequently, the doctrine of resulting trusts applicable where one person pays for property taken in the name of another has no relation to liquor licenses.

Aside from the foregoing, any determination with respect to the respective rights of husband and wife must rest with the Courts and would be beyond the jurisdiction of the Commissioner.

It may be that by a proper judicial proceeding a devolution of the business conducted by the licensee to a person other than the licensee, for example, a receiver, can be effected. In such event, the license can be extended under section 23 to the person upon whom the business has devolved and thereafter transferred in accordance with law with the consent of such person. Otherwise, however, the application for transfer must bear the consent of the licensee.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

3. TRANSFERS - WHERE GUARDIAN HAS BEEN APPOINTED FOR LEGALLY INCOMPETENT LICENSEE, LICENSE MAY BE EXTENDED TO GUARDIAN AND THEREAFTER TRANSFERRED WITH HIS CONSENT - WHERE NO ADJUDICATION OF INCOMPETENCY HAS BEEN MADE, LICENSE MAY NOT BE TRANSFERRED WITHOUT CONSENT OF LICENSEE.

March 10th, 1936.

Dear Sir:

Will you advise me at once how you would handle the following set of facts: The holder of a license plenary consumption granted by a municipality in New Jersey was committed to the State Hospital for the Insane at Trenton, he is not insane but is suffering with paresis and the likelihood of his being able to take care of his business again is very remote. Is it possible to transfer his license under the above circumstances to his wife with the consent of the issuing municipality?

Respectfully yours,

HOWARD TENENBAUM

March 12th, 1936.

Howard Tenenbaum, Esq.,
Cape May, N. J.

Dear Sir:

I have your letter of March 10th.

Section 23 of the Control Act provides that in case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the issuing authority may extend the license for a limited time not exceeding its term to the executor, administrator, trustee, receiver or other person upon whom the same has devolved. Under the foregoing section, a license may be extended to a guardian duly appointed for a licensee committed to an insane asylum or similar institution. Furthermore, where the license has been so extended, the guardian may consent to a transfer in lieu of the incompetent licensee.

In the absence of a proper appointment of guardian for the licensee alleged to be incompetent, the license may not be transferred without the licensee's consent. Neither the Commissioner nor any municipal issuing authority is empowered to make any determination with respect to the licensee's legal ability to continue the conduct of his affairs.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

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

March 20th, 1936.

4. REVOCATION PROCEEDINGS - MITIGATION OF PENALTY - POWERS AND
POLICIES

March 13, 1936.

My dear Commissioner:

I am attorney for the Borough of Hawthorne, New Jersey, and at its last meeting, held Wednesday, March 11, 1936, a verified petition was submitted by one Albert Bader who, prior to November 24, 1935, held a plenary retail consumption license on premises in the Borough of Hawthorne, and on the date above-mentioned, said license was revoked by the municipal body for a violation of the Act, in that he did sell alcoholic beverages to minors. His petition now sets forth that he desires the Borough of Hawthorne to change the penalty from revocation to suspension, in order that he may find employment, which is now denied him by reason of said revocation.

The Commissioners of the Borough of Hawthorne desire to know if such a change could be made, and I find nothing in the Act which gives a municipal body this right. Under Section 36 of the Alcoholic Beverage Control Act, you have the right to make such general rules or regulations as may be necessary to carry out a fair, impartial administration of this Act. The Commissioners have taken the position that in the event they can change this penalty, then they would like to impose the condition that such change be made with your consent.

Respectfully,

ALEXANDER MACLEOD
Borough Attorney of Hawthorne,
New Jersey

March 20, 1936.

Alexander M. Macleod, Esq.,
Borough Attorney of Hawthorne,
Paterson, N. J.

Dear Mr. Macleod:

I have yours of the 13th re Albert Bader.

It is true that because of the revocation Bader is under a two year disqualification, not only from receiving a license of any kind under the Control Act, but also from being

employed or connected in any business capacity with a licensee. Re Bader, Bulletin #103, Item 6.

I have heretofore ruled that while for the sake of finality of decision and affording terminal facilities to repeated litigation, no rehearing may be held by a municipal governing body or local excise board after it has once adjudicated facts, or guilt, or innocence, there is nothing to prevent the mitigation of a penalty or punishment previously inflicted. Re Bischoff, Bulletin #53, Item #5; Robinson v. Newark, Bulletin #54, Item #2.

In the Bischoff case, I said:

"It often lends to the cause of enforcement to remit a part of the penalty after the violator has been sufficiently punished and has shown genuine repentance and convinces the issuing authority by his acts as well as his words of his sincere determination thenceforth to comply with the law in all respects. Of course, if mercy is overplayed it may generate disrespect for the law and a belief that penalties imposed are mere gestures to be remitted after nominal punishment. On the other hand, justice is often accomplished by a wise and kindly mercy to first offenders, especially after partial atonement."

The thoughtfulness of your Board of Commissioners in offering, in the event that they should decide to mitigate the penalty, to impose a condition that such change be made with my consent, is appreciated. Nevertheless, I prefer that they do not annex such condition. The question of whether or not the punishment should be mitigated is a matter which rests in the sound discretion of the issuing authority. It is they who inflicted the penalty and it is their sole responsibility to decide if it should be moderated. It is they who have first-hand knowledge of the facts necessary to such a decision. On the other hand, I know none of these facts, for the case has not come before me on appeal. I could not reach any proper conclusion until I had personally retried the whole charge and heard the aggravating circumstances, if any, as well as weigh the alleged mitigating matters urged. That would obviously be a useless duplication.

Once such a practice is started, the probable result would be that all these local questions of mitigation would gravitate upon my shoulders.

Hence, while I appreciate personally the courtesy your Commission intended to confer, I deem it sound policy to decline.

Very truly yours,

D. FREDERICK BURNETT

Commissioner

5. REVOCATION PROCEEDINGS - "FRONTS" - REVOCATION AND NOT SUSPENSION IS THE PENALTY WHERE A BUSINESS ALTHOUGH LICENSED IN ONE NAME IS IN REALITY OWNED AND OPERATED BY A PERSON WHO HAD PREVIOUSLY BEEN DENIED A LICENSE.

March 21, 1936.

Frank A. Brazo, City Clerk,
Long Branch, N. J.

Dear Mr. Brazo:

I have staff report of the proceedings before your Board of Commissioners in the matter of the charges against Nicholas Di Caprio for possession of whiskey in undersized containers and misrepresentation in securing license.

I note that he pleaded guilty and the license was revoked effective immediately.

The report to me states:

"Information had been received by the Department indicating that the above licensee was a 'front' for one Anthony Lagana. On January 15, 1936 a visit was made to the licensed premises by Inspector Murray and Investigators Flynn and Wagi. Lagana was in charge. Subsequent investigation and questioning verified the truth of the complaint. On February 28, 1936, the licensee and Lagana appeared at this Department by request and were interviewed by Senior Inspector Carr and Investigator Bianco. Each made statements to the effect that, although licensed in the name of Di Caprio, the business was in reality owned and operated by Lagana who had been previously denied a license by Long Branch."

Your Board of Commissioners were wholly right in imposing no less a penalty than revocation. Suspension in such a case is improper because the license would never have been issued at all had the truth been known.

I am glad that your Board of Commissioners did their full duty.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

6. REVOCATION PROCEEDINGS - FALSE ANSWERS - PENALTIES DISCUSSED.
APPEALS - STAY - WHEN STAY OF SUSPENSION PENDING DETERMINATION OF APPEAL WILL BE REFUSED.

March 21, 1936.

Edward Du Pree, City Clerk,
Paterson, N. J.

Dear Mr. Du Pree:

I have staff report of the proceedings before your Board of Aldermen in the matter of proceedings against William Eckert, 79 North Main Street, on a charge of making a false answer in his application for license.

The report states:

"Inspector Basile testified in effect as follows:

"That an investigation by this Department revealed the licensee had been convicted twenty years ago in Philadelphia on two charges (a) theft of an automobile and (b) carrying concealed weapons; that these convictions were not set forth in his application for a license; that as a matter of fact he had stated that he had never been convicted of a crime in answer to a question on the application requesting this information. When called to this office Eckert admitted to him (Basile) that he had been convicted. He stated that he and another young man had taken an automobile for a 'joy ride'; that when arrested a revolver had been found in a suit case in the car; that he had sought advice at the time the application was filed and was informed by someone that his offense had been outlawed.

"Eckert testified and in substance admitted the truth of the charge. He stated he had sought advice and was informed that his charge had been outlawed. One of the Aldermen asked him if he had received that advice from anyone connected with the City administration. Eckert answered he had not. He would not state from whom he had received the advice."

I note that the licensee was found guilty and his license was suspended for the balance of the fiscal year.

I presume this penalty was imposed rather than outright revocation because of the testimony above set forth.

Mr. Eckert has appealed this decision and I shall hear it shortly on the merits to determine if he was properly adjudicated guilty. I have no opinion therefore on that phase of the case at present.

This morning his application for an order staying the suspension pending determination of the appeal was refused on the ground that he had denied in his application for a license that he had been convicted of any crime, although the fact was that he had been convicted for larceny in the State of Pennsylvania. On these facts appearing, it would have been improper to have stayed the suspension.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

7. REVOCATION PROCEEDINGS - PROSTITUTION AND VICE - REVOCATION IS THE PROPER PENALTY - VICE WILL NOT BE TOLERATED IN LICENSED PLACES.

March 23, 1936.

Edward DuPree,
City Clerk,
Paterson, N. J.

Dear Mr. DuPree:

I note the proceedings before your Board of Aldermen initiated by John A. Murphy, Chief of Police, resulting in the

revocation of the license of Max Grossfield and Louis Lottenberg trading as Max's Grill.

No opinion is expressed as to whether or not these licensees were properly adjudicated guilty because that question, perchance, may come before me by way of appeal and my mind, therefore, is entirely open on that score.

If they were, these men are unfit to be licensees on the facts presented by Chief Murphy. He reports that on March 1st: "Officers Dressen, Rodgers and Hogan of this Department visited this place with the result that they placed under arrest one Martha Hawley and Loretta Passaro, both prostitutes who were habiting this place and soliciting men from there. It was further learned that these proprietors permitted an immoral dance to be performed in this cafe by a man named Dewey Mar and one Martha Hawley, one of the girls arrested. It was reported the dance was of the most filthy nature and unfit for any decent person to witness.

"Both girls were charged with prostitution and are now awaiting dispositions of their cases in the upper court.

"The officers then learned that a woman, known to the police as Sue James was acting as a hostess in this place for the purpose of drinking with the customers and also was aiding the prostitutes in their solicitation of men.

"I presented these facts before the Board of Aldermen at their meeting on Monday, March 16th, 1936, and they found the proprietors guilty as charged and revoked their license."

Suspension in these cases is too feeble a penalty. Revocation is plainly indicated. Decent, self-respecting licensees need no warning against what they know instinctively is wrong. Vice will not be tolerated in licensed places.

Please convey to your Board my grateful appreciation, not only for duty done, but also for the speed with which it was done, and to Chief Murphy my deep respect for his splendid initiative and effective action, and to Officers Dressen, Rodgers and Hogan, my thanks for their cooperation.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

8. REVOCATION PROCEEDINGS - PROSTITUTION AND VICE - REQUEST TO ALL ISSUING AUTHORITIES TO REVOKE OUTRIGHT ALL LICENSES WHERE VICE IS RAMPANT.

March 23, 1936.

Frank Priest, Clerk,
Hamilton Township, Mercer County,
P.O. Trenton, N. J.

Dear Mr. Priest:

On February 12th I duly received staff report of the proceedings before your Township Committee against

Molly Coleman, charged by Chief of Police Richard P. Bretell with conducting a disorderly house and permitting prostitution. The license was revoked and the premises rendered ineligible for two years.

I intended to express appreciation to your Chief of Police for his initiative and to your Township Committee for its virile penalty. This revocation in Hamilton Township for prostitution was the first of its kind in the State. Unfortunately, in the constant pressure of work I did not get to it until today when I had occasion to write the Paterson Board on a similar matter which reminded me of the earlier case.

Enclosed is a copy of my letter in the Paterson case, the comments of which apply equally to the Hamilton Township precedent. I hope that issuing authorities all along the line revoke outright all licenses where vice is rampant.

My respects to your Township Committee and Chief of Police are as sincere as they are tardy.

Cordially yours,
D. FREDERICK BURNETT
Commissioner.

2. REVOCATION PROCEEDINGS - POISONOUS LIQUOR - REVOCATION AND NOT MERE SUSPENSION THE ONLY PROPER PENALTY - HEREIN OF THE RELATION OF THE REVOCATION OF CIVIL PRIVILEGES TO CRIMINAL PUNISHMENT FOR THE SAME OFFENSE.

March 24, 1936.

Hon. Thomas J. Wolfe,
Commissioner of Public Safety,
Jersey City, N. J.

My dear Commissioner:

I have staff report of the proceedings against Vito Vuocolo for possession of illicit alcoholic beverages containing poisonous denaturants and note that he was found guilty and his license revoked.

The report states:

"On January 29, 1936, at about 2 P. M. Investigators Miskovsky and Joret accompanied by Sergeant Steinle and Detective Elkin of the Jersey City Police Department inspected the licensed premises. On the first floor of the building in the rear they found a five gallon can of alcohol, partly full; in the kitchen tub they found a quart bottle of alcohol. An analysis of the alcohol disclosed that it consisted of partially cleaned denatured alcohol containing Isopropyl and Acetone - denaturants. As a result of this finding a complaint was made against the licensee for violation of P. L. 1935, Chapter 138 (Supplement to Crimes Act) charging him with possession of alcohol containing poisonous ingredients."

No opinion is expressed as to whether or not this licensee was properly adjudicated guilty because that question perchance, may come up by way of appeal and my mind, therefore, is entirely open on that score.

If he was, the man is unfit to be a licensee. The law makes it a crime to possess any liquor containing any poisonous ingredients. We cannot temporize with cheating licensees who dispense to trusting patrons liquor "cracked" from poisoned denaturants. Their bottles bear no skull and crossbones to warn of blindness, paralysis and creeping death. Outright revocation is imperative in such cases.

The salutary action of your Board in revoking the civil privileges without waiting for the courts to administer criminal punishment illustrates the ruling made in re DuPree, Bulletin 108, Item 8. It is against sound public policy to permit a licensee to exercise his special privileges until formally adjudicated guilty of a crime. Summary revocation proceedings, while supplementary to criminal action, are independent thereof. The latter is designed to punish the offender; the former to protect the public.

My grateful appreciation to you, your fellow Commissioners and your men.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. EGG NOG - SPECIAL PERMISSION - PERIODS DEFINED

March 25, 1936.

TO ALL LICENSEES PERMITTED TO SELL FOR CONSUMPTION ON THE PREMISES:

The experimental permission granted for a limited time last Easter permitting the mixing of a bowl of egg-nog and its dispensation, having caused no complaints and no abuses having been brought to my notice, the permission is now conferred, good till cancelled, during the following periods, viz.:

- (1) Beginning three (3) days before Easter and ending one (1) day thereafter at midnight.
- (2) Beginning one (1) day before Christmas and ending on New Year's day at midnight.

I hope experience will continue to justify this permission.

D. FREDERICK BURNETT
Commissioner

11. REVOCATION PROCEEDINGS - PENALTIES - THE PENALTY FOR POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES BY STATE LICENSEES WHO SHOULD SET AN EXAMPLE TO RETAILERS THAT BOOTLEG LIQUOR IS OUT OF STYLE WILL BE TWICE THE MINIMUM PENALTY AGAINST RETAILERS .

In the Matter of Revocation)
Proceedings against Michael Singer,)
holder of State Beverage Distributor's)
License #SBD-136 and Limited Winery)
License #VL -29, issued for premises)
located at 5-6 Van Houten Street,)
Paterson, N.J.)

CONCLUSIONS
AND ORDER

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Appearances:

Michael Shershin, Esq., Attorney for Michael Singer
Jerome B. McKenna, Esq., Attorney for Department

BY THE COMMISSIONER:

Charges and Notice to Show Cause why State Beverage Distributor's License #SBD-136 and Limited Winery License #VL-29 issued to Michael Singer for premises 5-6 Van Houten Street, Paterson, New Jersey, should not be revoked, were duly served upon the licensee. A hearing was held and the licensee appeared by counsel and was afforded full opportunity to be heard.

The charge was the possession of illicit alcoholic beverages, to wit - two five gallon tin cans of alcohol and a five gallon barrel of alcohol containing cherries. The testimony disclosed that Investigators Griffith and Creveling proceeded to the licensed premises of Michael Singer, 5-6 Van Houten Street, Paterson, to make an inspection. At these premises, the licensee operated a winery and soft-drink bottling plant and also his State Beverage Distributor's business.

Due to reluctance by the wife of the licensee to allow the inspection, Officer Schielke of the Paterson Police Department was called in to join the Investigators in their inspection. Accompanied by the licensee, Michael Singer, they inspected the entire building and plant in the rear. In a bedroom on the second floor of the house and above the office, Investigator Creveling and Officer Schielke discovered two five gallon tin cans of alcohol covered over by a dress. The cans bore no tax stamps or labels of any kind. Investigator Creveling testified that in response to a question put by him to the licensee the reply was given that this alcohol was to be used in connection with making syrups for the soft-drink bottling business. The licensee, when he testified, denied that he had made this statement.

In the cellar where the winery was located a wooden barrel was discovered. It contained alcohol and cherries and bore no tax stamps. In the kitchen on the first floor two gallon jugs were found. The Investigators testified that these jugs smelled of alcohol.

At an adjourned day of the hearing a plea of non vult was entered by the licensee to the charge of possession of illicit alcoholic beverages. Permission was requested and granted to allow an explanation as to the presence of the alcohol. Briefly it is as follows:

That the alcohol found in the bedroom had been purchased by Mrs. Singer, wife of the licensee, some time in July or August 1935 to be used for rubbing purposes both by a son Sidney who is a prizefighter and another son Jacob who has a crippled arm. Mrs. Singer testified that she had purchased this alcohol from a man who happened to be passing her place when she was out in front; that he was on a truck and asked her if she wanted to buy some rubbing alcohol; that she replied she did and bought the two cans for \$12 or \$13. The explanation relative to the barrel containing the cherries was that the alcohol therein contained had been purchased by Mrs. Singer three or four years ago and the cherries put in to make a drink for family use.

Cans of alcohol, although festooned with a lady's dress, seem out of place in any bedroom - the more so of a licensee. Wholesale rubbing is wholly inexpedient on licensed premises. So, too, the cherries in alcohol of which the family were so fond, and carefully dated back to a vintage two years before Repeal, have lasted altogether too long. They are very unhealthful to the life of a licensee, if not to the licensee himself.

Licensees are to control their own premises so that there is no need for any explanation of the presence of illicit alcoholic beverages. Misdemeanors are not cured by explanations.

The charge of possession of illicit alcoholic beverages is admitted by the plea, as well as abundantly proved. It is necessary, therefore, to impose a suitably deterrent penalty. If this were a retail licensee, the minimum penalty for first offence would be suspension for thirty days. Re Morris, Bulletin 98, item 10. Re Stein, Bulletin 106, item 6. The respondent, however, holds State licenses. Such licenses confer state-wide power. The privileged holders thereof are required to set an example to retailers that bootleg liquor went out of style upon Repeal. To that end, the minimum penalty for its possession by State licensees is hereby fixed at sixty days, which, if it does not prove sufficient, will be stepped up appropriately.

It is therefore on this 25th day of March, 1936,

ORDERED that the State Beverage Distributor's License #SBD-136 and the Limited Winery License #VL-29 heretofore issued to Michael Singer be and they are each hereby suspended for a period of sixty (60) days commencing April 1, 1936.

D. FREDERICK BURNETT,
Commissioner

12. LICENSES - NO POWER IN MUNICIPALITIES TO ISSUE OTHER CLASSES OF LICENSES THAN PRESCRIBED BY STATUTE.

MUNICIPAL ORDINANCES - CLUB LICENSES - MUST BE ISSUED, IF AT ALL, TO ALL TYPES OF ORGANIZATIONS FOR WHICH THE STATUTE PROVIDES.

MUNICIPAL ORDINANCES - CLUB LICENSES - MUNICIPAL REQUIREMENTS APPROVED ALTHOUGH MORE STRINGENT THAN THE STATUTE OR THE STATE RULES.

March 23, 1936.

Harold J. Landshof
Borough Clerk,
Rutherford, New Jersey.

Dear Sir:

I have before me Ordinance #1377 to license and regulate the sale of alcoholic beverages in the Borough of Rutherford which was adopted by the Mayor and Council on February 4, 1936. It is approved as submitted subject to the following comments and exceptions:

* * * * *

Section 2 (a) provides for a class of license to be issued to clubs or fraternal organizations which shall have been in existence in the Borough of Rutherford for at least two years continuously immediately preceding the filing of the application, permitting sales only for consumption on the licensed premises to members of the club or fraternal organization. Section 2 (b) fixes the license fee at \$50.00 per annum.

Now, Sections 2 (a) and (b) repeat substantially (with the exception of the fee which is in different amount) the provisions of Sections 3 (a) and (b) of the resolution adopted by the Borough Council on December 12, 1933. These sections 3 (a) and (b) of the December 12, 1933 resolution, were disapproved by me in my letter of December 22, 1933 addressed to Mr. F. A. Stedman, the then Borough Clerk, on the ground that they unlawfully purported to create a new class of license not provided for by statute which municipalities had no authority to do. As a result, on December 26, 1933 the Borough Council amended Sections 3 (a) and (b) by resolution passed and approved by the Mayor on that date. The amendment of December 26, 1933 provided for the issuance of and fixed the fee for plenary retail consumption licenses

* * * * *

Sections 2 (a) and (b) of the ordinance do not, in fact, provide for the issuance of and fix the annual fee for club licenses. Instead, they provide for a license, conditioned as aforesaid, to be issued to clubs or fraternal organizations which comply with the stipulated requirements. Club licenses, on the other hand, if issued at all, must be issued to all those who come within the provisions of the statute. That means that club licenses are issuable not only to clubs and fraternal organizations but also to such corporations, associations and organizations as are operated for benevolent, charitable, social, religious,

recreational, athletic or similar purposes and not for private gain and comply with all conditions which, subject to rules and regulations, may be imposed by the State Commissioner. Re Atlantic City, Bulletin 71, item 1. Furthermore, the statute permits sales of alcoholic beverages under Club Licenses to bona fide club members and their guests. See Bulletin 21, item 25.

I suggest that Sections 2 (a) and (b) be amended so that they authorize the issuance of and fix the yearly license fee for Club Licenses. Suffice to say, in Section 2 (a), that Club Licenses may be issued in the Borough of Rutherford subject to the rules and regulations therein set forth or which from time to time may be adopted. It is not necessary to set forth the privileges conferred by the license for that is controlled entirely by statute. Section 2 (b), if the Council wishes the fee to be \$50.00 per annum, may remain as it is. The further requirement presently included in Section 2 (a) to the effect that the applicant shall have been in existence in the Borough of Rutherford for at least two years continuously immediately preceding the filing of the application may then be added. I shall tentatively approve this additional requirement, even though Rule 5 of the State rules governing Club Licenses, Bulletin 25, item 1, requires merely that applicants for Club Licenses shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the filing of the application, because experience has shown that many undesirable and undeserving organizations have been able to obtain club licenses and a tightening of the rules as you propose may be entirely reasonable and warranted. I shall reserve final decision in the matter until such time as we have had the opportunity of seeing how it works out in actual cases. Re Orange, Bulletin 102, item 4.

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Very truly yours,
D. FREDERICK BURNETT
Commissioner

13. LICENSEES - MAINTAINING ORDER ON LICENSED PREMISES - USE OF TEAR GAS DEPRECATED.

March 20, 1936.

Gentlemen:

I would like to know if a man in the Alcoholic Business is permitted to have a gas gun in his place.

I am referring to the tear gas guns that look like a pencil. Kindly let me know.

Yours truly,

WALTER TOKARSKI

March 26, 1936.

Mr. Walter Tokarski,
Perth Amboy, N. J.

Dear Mr. Tokarski:

I have yours of the 20th.

No occasion has arisen requiring any special ruling by me concerning such weapons. Licensees are to keep order but the use of such extreme measures is ill-advised. A bungstarter, strategically displayed, usually suffices.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. RETAIL LICENSEES - PAST RECORDS - INQUIRIES WELCOMED FROM MUNICIPAL ISSUING AUTHORITIES AS TO PAST RECORDS OF APPLICANTS FOR LICENSES.

March 25, 1936.

T. C. Schepis,
Commissioner of Public Safety,
Rochelle Park,
New Jersey.

My dear Mr. Schepis:

I have your letter of the 23rd inquiring as to a certain party who contemplates establishing a retail liquor business in your Township.

Your inquiry as to his past record and standing is welcomed. It is exactly the kind of service that this Department should give.

I am referring your inquiry to the Deputy Commissioner in Charge of Licensing, who will at earliest moment write you full information as to what our records disclose, both in the Licensing Division and in the Enforcement Division.

We are glad to be of service.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

15. REVOCATION PROCEEDINGS - GAMBLING - PENALTIES.

March 26, 1936.

Sadie A. Carey,
Borough Clerk,
East Newark, N. J.

Dear Miss Carey:

I have staff report of the proceedings before your Mayor and Common Council against Samuel Neger of 348 Second Street, on a charge of violating the State Rule prohibiting bookmaking or gambling of any kind on licensed premises.

The report states:

"On December 30, 1935, Inspector Kenny and Investigator Flynn, on routine inspection, entered the licensed premises at 11:40 A. M. They discovered four cigar boxes containing pink slips used for taking bets on results of horse-racing and also \$8.65 in cash. A private unlisted telephone was also discovered. The licensee later visited this Department and in a statement denied knowledge of the fact that bets had been taken at his licensed premises, stating that his bartender had done so unbeknown to him."

I note that the licensee was adjudicated guilty and his license suspended for five days.

No opinion is expressed as to whether or not this licensee was properly adjudicated guilty because that question, perchance, may come up by way of appeal and my mind, therefore, is entirely open on that score.

If he was, the penalty imposed was appropriate.

I realize that gambling of itself does not constitute moral turpitude; that in many homes contract bridge and pinoche are played for stakes; that wagers are made on golf, on fights, on football games, on elections. While lotteries are forbidden and gambling is by statute made a crime, there does seem to be a disposition on the part of the American public to take a chance, to speculate, to put money stakes on so many things they do. This, admittedly, makes a very difficult situation with which to cope.

I believe that the proper course for us to take is that, so long as the law against gambling remains on our statute books, it is our duty to enforce it as concerns licensed premises. Otherwise, commercialized gambling will get a foothold in such places, leading to racketeering and other evils which will quickly get out of hand if we do not keep the lid on all the time. Let us stop at the source the abuses that brought Prohibition.

I am gratified, therefore, that you have imposed a penalty, even though that penalty be but five days. If this proves a sufficient deterrent, well and good. If, however, your Mayor and Common Council find that the penalty is not enough, then I believe that they will take the initiative in increasing the penalty and giving the increased penalty wide publicity as a deterrent measure so that all licensees will know that we mean business. Honest licensees who scrupulously comply with the law and do not permit gambling on their premises, complain bitterly that they pay high license fees into local municipal treasuries, but, so often, get little or no protection against those cheaters in their own trade who take a chance to reap a major profit if not detected, but if caught, get off with minor penalty. They are prone to jump to the conclusion that a short suspension encourages trifling. If they themselves think so, we, whose duty it is to enforce the law, may well give ear to their desire for strict regulations. They believe, as I have told them, that Repeal is on trial. For the sake of their economic future, they ask for stringent penalties. It is all grist in our mill of law enforcement.

Very truly yours,

New Jersey State Library



Commissioner