

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

BULLETIN NUMBER 137

August 26, 1936.

1. LICENSES - ISSUANCE - SALE OF LICENSED PREMISES FOR NON-PAYMENT OF REALTY TAXES IS NOT PROPER GROUND FOR REFUSAL OF LIQUOR LICENSE.

Dear Sir:

I should like to be informed as to your attitude in the matter involving the contemplated refusal of a Municipality to grant a liquor license to a present licensee, who is owner of premises where the licensed business is conducted and which premises have been sold for non-payment of real taxes.

I appreciate that one subject does not relate to the other, but the administration is inclined to require an opinion as to whether or not there will be some inclination on your part to sustain them in the event they refuse a renewal of the license in the year 1936.

Very truly yours,
CHARLES SCHMIDT,
BOROUGH ATTORNEY
BOROUGH OF MONTVALE.

July 30, 1936

Charles Schmidt, Esq.,
Attorney for Montvale Borough,
Hackensack, New Jersey.

Dear Mr. Schmidt:

In re Denville, Bulletin #28, Item #1, a municipal ordinance, purporting to forbid issuance of licenses for premises on which realty taxes were not paid in full, was disapproved, not for lack of sympathy with the natural desire of every governing body to use every proper means to enforce the payment of taxes but simply because the statute having expressly stated just what back taxes an applicant must pay to be entitled to a license, viz.: taxes on sales of alcoholic beverages, the power to insist upon payment of arrears of other kinds of taxes, was, by implication, excluded. The incidence of that ordinance was obviously the collection of real estate taxes and had no relation to accomplishing the objects of the Control Act. Such an ordinance would have prevented a licensee who rented his premises from getting a license if his landlord had failed to pay the real estate taxes and this without any fault on the part of the licensee.

The picture you present is of a licensee who is the owner himself and whose realty taxes are not only in arrears but who has also suffered the premises to be sold for non-payment of taxes. At first blush, it might be argued that such a situation may well give pause to an issuing authority whether the applicant's interest in the licensed premises is so small that revocation for violation of the law or the rules would hold but little terror; that an order rendering licensed premises ineligible for two years is not an altogether effective threat to the licensee-owner who has already permitted his property to be sold for taxes; that greater the stake a licensee has in the licensed premises, the stronger the urge to obey the law; that the less he has in it, the less likely to live up to the law; hence that one who suffered his property to be sold for non-payment of taxes may properly be deprived of his license.

The fallacy of this line of argument becomes demonstrable when the ultimate proposition is stated, viz.: that the less legal interest one has in the licensed premises the less likely he is to live up to the law. If that were so, tenants might be deprived of licenses because worse risks than landlords, in that tenants would not suffer as a landlord would if the premises were padlocked. If so, then an owner with a mortgage on the premises, could be deprived of his license because a worse risk than an owner whose property was free and clear and so it would wind up that the less one has of worldly goods, the less his chance to get more; that the rich get the prizes and the poor go without.

The fallacy lies in losing sight that character is not to be evaluated by the possession of tangibles. An honest licensee may prize his name beyond any temptation. We cannot therefore declare that because a licensee has but little interest in the licensed premises, he therefore is a potential wrongdoer. So the licensee-owner who has had the misfortune to have had his premises sold for non-payment of taxes may still be wholly worthy. How is he ever to climb out of his financial difficulties if he is deprived of the very thing through which he earns his livelihood? Many a person of the utmost worth as a citizen is seriously distressed in these times by sheer inability to pay his taxes.

So long, therefore, as the licensee-owner has possession of the premises and a right to redeem the tax sale, no issuing authority may refuse to renew a license solely on the ground that his premises have been sold for non-payment of taxes.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. SEIZURE PROCEEDINGS - JOSEPH GALAIDA - CONCLUSIONS.

#3122

In the Matter of the Seizure on)	
June 24, 1936, of alcoholic bev-	
erages, on premises of Joseph)	
Galaida, known as Nos. 122 and)	On Hearing
124 Main Street, Township of)	
Woodbridge, County of Middlesex)	CONCLUSIONS, DETERMINATION
and State of New Jersey.)	AND ORDER

-----)

Appearances:

Henry St. C. Lavin, Esq., for Joseph Galaida.

BY THE COMMISSIONER:

This matter comes before me for determination in accordance with the provisions of the Alcoholic Beverage Control Act to decide whether the property described below constitutes unlawful property.

Notice of the hearing was duly published and mailed as provided by said Act, and a hearing was held on July 30, 1936. The facts and circumstances as disclosed at said hearing are substantially as follows:

On June 24, 1936, investigators of this Department seized certain alcoholic beverages on premises occupied by Joseph Galaida at 122-124 Main Street, Township of Woodbridge, County of Middlesex, and State of New Jersey. The seized property included the following:

- 1 - 4/5 qt. bottle of alcoholic beverage bearing label "Campbell's Scotch"
- 1 - qt. bottle of alcoholic beverage labeled "Chartreux"
- 1 - 1/5 gal. bottle of alcoholic beverage bearing label "Old Tom Gin"
- 1 - qt. bottle of alcoholic beverage labeled "Chartreux"
- 1 - 1/5 gallon bottle of alcoholic beverage labeled "Apricot Brandy"
- 1 - pt. bottle of alcoholic beverage labeled "Indian Hill Bourbon"
- 1 - 5 gallon can, 1/10 full of Alcohol
- 1 - 5 gallon Glass Jug, 1/10 full of Gin
- 1 - 5 gallon Stone Jug, 1/2 full of Apple Whiskey
- 1 - 5 gallon Stone Jug, 1/2 full of Rye Whiskey
- 1 - 5 gallon Stone Jug, full of Rye
- 1 - 5 gallon Stone Jug, 1/4 full of Rye
- 1 - 5 gallon Stone Jug, 1/4 full of Rye
- 1 - 5 gallon Stone Jug, full of Port Wine
- 1 - 5 gallon Stone Jug, 3/4 full of Apple Jack
- 1 - 5 gallon Stone Jug, 3/4 full of Scotch Malt
- 1 - 5 gallon Stone Jug, 1/8 full of Apple Jack Whiskey
- 1 - 5 gallon Stone Jug, 3/4 full of Sherry Wine
- 1 - 5 gallon Stone Jug, full of Rye Whiskey
- 1 - 5 gallon Glass Jug, 1/10 full of Wine
- 1 - 5 gallon Glass Jug, 1/10 full of Wine
- 1 - 5 gallon Glass Jug, 1/3 full of Alcohol
- 1 - 1 gallon Stone Jug, 1/4 full of Alcohol
- 1 - 1 gallon Glass Jug, 1/4 full of Alcohol
- 1 - 1 gallon Glass Jug, full of Wine

- 1 - 1 gallon Glass Jug, 1/4 full of Alcohol
- 1 - 3 gallon Stone Jug, 1/2 full of Rye Whiskey
- 1 - 2 gallon Stone Jug, full of Wine
- 1 - 3 gallon Stone Jug, 1/3 full of Kummel
- 1 Box containing 7-bottles of Assorted Alcoholic Beverages
- 1 - 1 gallon Glass Jug, 3/4 full of Wine
- 1 - Butter Tub containing 7-bottles of Assorted Alcoholic Beverages
- 1 - Box containing 7-bottles of Assorted Alcoholic Beverages
- 1 - Bunch of Filter Papers

A hotel and tavern are conducted on the premises by Joseph Galaida, the holder of a plenary retail consumption license, and the seizure was made during the course of a routine inspection of the licensed premises. Accompanied by the licensee, the investigators discovered six (6) bottles of the alcoholic beverages in a closet of a bedroom occupied by either the licensee or his son.

The investigators continued their search and discovered nothing further at the moment. Their observation of the exterior of the building convinced them that there was a space under the roof not examined by them. Further investigation led them to a locked door which, when opened at their request, disclosed a storage room. This room was searched, but no entrance to the attic was revealed. Undaunted, they continued their investigation, once more came back to the locked storage room, which this time was reluctantly re-opened. The investigators upon removing some items of clothes from a shelf, discovered a draw-string which they pulled, whereupon a secret panel opened leading to another door, which, in turn, led to the attic. There the balance of the seized alcoholic beverages was found, as well as a syphon hose hanging over a rafter, from which an alcoholic beverage was then dripping.

At the hearing appearance was entered by counsel for Joseph Galaida, and application made by him for the return of the alcoholic beverages. Galaida asserts that such beverages had been in his possession for many years, kept for his personal use, and not for sale, and claims that if storage of such beverages on the licensed premises was a violation of the "Act Concerning Alcoholic Beverages", that it was an unwitting one.

Galaida does not dispute the fact that the containers of all of the alcoholic beverages, with the exception of two bottles hereinafter referred to, bore no evidence or indication of the payment of tax imposed thereon. Prima facie, such alcoholic beverages would, therefore, appear illicit.

Licensees are to control their own premises so that there is no need of any explanation for the presence of illicit alcoholic beverages. Bulletin #112, Item #11. Furthermore, the licensee is responsible for the presence of illicit beverages on the licensed premises. Bulletin #128, Item #3.

It is apparent that this large store of liquors in the attic, of doubtful origin, secreted in the manner that they were, require considerable explanation.

The licensee testified that he has been in the saloon business for approximately thirty (30) years; that about twelve years ago he purchased the hotel, took up his place of residence in a dwelling near the hotel, and moved some of the seized alcoholic beverages into such residence. These beverages are claimed to have been survivors of the licensee's Pre-Prohibition saloon stock, to which from time to time, he added liquor purchased during Prohibition, until September, 1932, when he moved his home from the private dwelling to the hotel property, and stored the seized alcoholic beverages in the attic, where they were found.

He cannot now distinguish those liquors which he claims to have had in the days of Pre-Prohibition, and those which he claims to have bought during Prohibition; he asserts that he used very little of these beverages from September, 1932 until Repeal; that he did not visit the attic for the last two or three years; and promptly upon the Repeal of the National Prohibition Act, procured license to sell alcoholic beverages at the hotel, and thereafter completely ignored the alcoholic beverages stored in the attic, and gave no thought to the desirability of destroying them.

Licensee's attention was called to two of the bottles found in the attic and heretofore referred to, which bore Federal strip stamps issued after Repeal, and to the dripping hose, indicating that somebody had visited the attic recently. One bottle was labeled "whiskey" and contained creme de menthe, and one bottle was labeled "whiskey" and was half full. He could not account for the presence of these bottles, and hazarded a guess that they had been placed there by his son. The son has been and is still employed in the hotel as a bartender, and licensee stated that he instructed his son to use the alcoholic beverages in the attic rather than the beverages in the bar, for his personal consumption; that the son, being addicted to the use of alcoholic beverages to an extent not meeting with the approval of the licensee, might have concealed these two bottles in the attic. The son was not produced at the hearing. The father was unable to account for the dripping hose.

The licensee's explanation as to the presence of the seized alcoholic beverages on the licensed premises is not convincing, and does not rebut the prima facie showing that said beverages were illicit. His reluctance to disclose his cache of

with the police and, except in the one instance noted, succeeded in clearing his saloon before they arrived. Several residents testified that the premises in question were properly conducted and that they had never observed any brawls or unnecessary noises. At no time had any neighbors made a complaint to the appellant about the manner in which he was conducting his saloon. Under these circumstances, the first point cannot be sustained.

On the second charge, one witness for the respondent testified that on several occasions he bought whiskey from a person known to him as "Butch" in a public room of the saloon; that on each occasion, such whiskey was purchased in an unsealed pint bottle with the label defaced and with only parts of a revenue stamp affixed; that the cost was 25¢ per bottle. The witness expressed the belief that "Butch" cleaned up the licensed premises each morning, and that he had once served him from behind the bar. Regular patrons, however, knew of no such person. The appellant was at no time present when these alleged purchases were made, nor did the witness at any time ever have any conversation with the appellant concerning them. A second witness for respondent also testified to making similar purchases. His, however, were made in an alley adjoining the licensed premises from a boy whom he did not know. While the saloon has a door leading to the alley in question, there are some 15 other buildings which also open upon it.

The evidence fails to connect the appellant with the alleged sales of illicit liquor. The record is barren of either any sales of illicit liquor or any possession thereof by him or by anyone for whom he is responsible. No charges were ever preferred against him. The issuing authority denied the application without affording the appellant a hearing.

The denial of a renewal must be founded upon substantial evidence. Pingitore v. Red Bank, Bulletin #133, Item #3. Ford v. Knowlton, Bulletin #84, Item #5; Yole v. Trenton, Bulletin #45, Item #2. The evidence in the instant case fails to substantiate the action of the issuing authority.

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

D. FREDERICK BURNETT,
Commissioner.

Dated: July 31, 1936.

4. APPELLATE DECISIONS - KARPf v. SOMERS POINT.

SAM KARPf CO.,)	
	Appellant,)
-vs-)	ON APPEAL
)	CONCLUSIONS
COMMON COUNCIL OF THE CITY OF)	
SOMERS POINT,)	
	Respondent	

Augustus S. Goetz, Esq. and Meyer L. Sakin, Esq.,
Attorneys for Appellant.
Enoch A. Higbee, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail distribution license for premises to be

constructed on the Scull property on High Bank, on the southerly side of the Mays Landing-Ocean City Road, Somers Point.

Last year appellant applied for a plenary retail consumption license for these premises. His application was denied and the denial affirmed on appeal. See Sam Karpf Co. v. Somers Point, Bulletin #81, Item #6.

As in the previous case, respondent sets up in its answer that one of the reasons for denying the application is that there is no building now erected which can be the subject of a license. The legal validity of this defense was not passed upon in the earlier case because not necessary to a decision. Likewise, since the denial of appellant's application in the instant case must be affirmed for the reasons hereinafter stated, it is unnecessary to consider the issue here.

Respondent contends that the application was properly denied because the number of plenary retail consumption licenses which have been issued and are now outstanding in Somers Point are adequate to supply the needs of the community and of the transient trade therein, and that there is therefore no necessity for the issuance of a distribution license; and furthermore, that the proposed location of appellant's place of business is on the outskirts of the city and would therefore not serve the convenience of the residents.

There are now 17 consumption licenses and 1 club license issued and outstanding in Somers Point, which has a population of slightly more than 2,000. There have been no distribution licenses issued. The evidence shows that the existing places get 90% to 95% of their business from transient and out-of-town trade, including residents of the adjoining "dry" city of Ocean City. One of appellant's witnesses admitted that so far as the local residents were concerned a single licensed place would be sufficient.

Appellant does not question the fact that the existing licensed places are adequate to supply the needs of the community, but argues that a package store devoted solely to sales of bottled goods for off-premises consumption would be a convenience to the residents, particularly the women, who would thereby be able to purchase liquor without going into a saloon or tavern.

Practically all of appellant's witnesses, consisting mainly of the members of the City Council who voted in favor of granting the application, admitted, however, that the sole benefit conferred upon the City of Somers Point by the issuance of appellant's application would be the financial gain derived from the receipt of the license fee of \$1,000.00. They further admitted that, even if there were any demand for a package store, the location of appellant's proposed premises on the outskirts of the municipality and fronting upon a heavily traveled traffic circle would not be convenient to the residents of the municipality unless they came by automobile. It is obvious that appellant's place is designed more for the convenience of the residents of Ocean City, with a summer population of approximately 100,000, than for the convenience of the residents of Somers Point. A municipality cannot be compelled, either for the sake of revenue or out of consideration for an adjoining municipality, to overburden itself with retail liquor dispensaries.

Appellant has not sustained the burden of proof requisite to demonstrate that the residents of Somers Point need or will be more properly serviced by the issuance of a distribution license to him for his presently proposed location.

Appellant further argues that respondent has not consistently followed its alleged policy of restricting the issuance of number of liquor licenses issued in order to reduce the number outstanding. The facts do not sustain this contention. All the licenses issued in the City for the current period, except two, were renewals. These two were issued to new applicants for old places - one licensee having died, and the second having been financially unable to pay the license fee. The new licenses did not increase the number of licensed places in the municipality and their issuance is not inconsistent with a general policy to reduce the number of licenses outstanding. Thorman v. Haddon, Bulletin #82, Item #5.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 31, 1936.

5. APPELLATE DECISIONS - ZEICHNER v. ORANGE.

JACOB ZEICHNER,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF ORANGE,)
)
 Respondent.)
 - - - - -)

ON APPEAL
CONCLUSIONS.

Ralph E. Giordano, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent.

This is an appeal from the denial of an application for a plenary retail distribution license for premises located at 179 Main Street, Orange.

Appellant was the holder of a limited retail distribution license for the same premises for the period expiring June 30, 1936. Respondent advised appellant in the month of June, 1936 that no limited retail distribution licenses would be issued for the license period commencing July 1, 1936, and suggested that he might make application for a plenary retail distribution license. Such application was made, and all the statutory prerequisites were complied with. Thereafter respondent denied the application on the ground that there were a sufficient number of licenses in the City of Orange to take care of the wants of the public.

At the hearing, respondent introduced copy of a resolution, dated July 27, 1936, disclosing that respondent has reconsidered the matter and has determined that the issuance of the license sought by appellant would not unduly increase the number of licenses issued in Orange. This determination was apparently reached because a plenary retail distribution license issued for nearby premises located at 187 Main Street, Orange, had not been renewed. The resolution requests that the answer filed herein be withdrawn, and states that respondent "desires to withdraw its objection to the issuance of a Plenary Retail Distribution License to the said Jacob Zeichner for the premises at #179 Main Street, Orange, New Jersey". This procedure follows that set forth in Re Sussex, Bulletin #82, Item #11.

At the hearing, appellant testified that his premises are located in the business district of Orange; that the nearest licensed place is about four hundred (400) feet away, and that there is need for an additional licensed business in that neighborhood.

Appellant has complied with all the statutory requirements requisite to the granting of a license. His character is unquestioned and there is no evidence that the issuance of the license will unduly increase the number of licensed places in the vicinity. Hence, there appears to be no reason why the license should not be granted to appellant. Clarkson v. Sea Girt, Bulletin #133, Item #9.

The action of respondent is, therefore, reversed.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

Dated: August 12, 1936.

6. MORAL TURPITUDE - PERSON CONVICTED OF CRIME INVOLVING MORAL TURPITUDE MAY NOT BE EMPLOYED BY LICENSEE - EVEN IN ABSENCE OF CONVICTION FOR CRIME INVOLVING MORAL TURPITUDE PERSON WHOSE PRESENCE ON LICENSED PREMISES WOULD CONSTITUTE A VIOLATION OF THE RULES CONCERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES MAY NOT BE EMPLOYED AS BARTENDER BY A LICENSEE.

July 20, 1936

D. Frederick Burnett, Esq.,
Alcoholic Beverage Commissioner,
Newark, N. J.

Dear Sir:

I represent _____, who was employed as a barkeeper by John Gross, who conducts a cafe at 941 Main Street, North Bergen, N. J.

A few days ago Mr. _____ was notified by the Police Authorities of North Bergen that he could not retain his position as a barkeeper in North Bergen because of his previous police record, which is as follows:

Arrested	2-26-23	North Bergen	Charge	D.P. (drunk)	Sent. Susp.
"	1-19-25	"	"	Viol. Hobart Act	Grand Jury
				No Bill	1-27-25
"	1-19-25	"	"	Rec. Stolen Goods	Dismissed
"	8-1-25	"	"	Dis. House	Grand Jury
				No Bill	10-23-25
Surr.	2-23-26	Bench War.	J. Kinhead		
			Viol. Hobart Act.	To Co. Jail	Fined \$250.00
					6-10-26
Arrested	12-20-30	North Bergen	Charge	Viol. Hob. Act.	Grand Jury
				No Bill	3-31-31
"	12-20-30	"	"	Material Witness	
"	12-22-30	"	"	Assault with Intent to Kill	
				Grand Jury-No Bill	6-5-31
"	11-30-33	Secaucus	"	A. A. & B. G. Jy. Nolle	
				Pros	

Arrested	11-30-33	Secaucus	Charge	D. Person	G. Jy. Nolle Pros
"	2-26-34	"	"	M. Misc.	Destroying Check
					Complt. withdrawn
"	5-6-34	Pros. Off.	"	Lewdness	
				6-12-34	Jge. Kinhead - Not
					Guilty
"	4-30-35	Union City	"	D. Person	15 days Co. Jail

Chief Simmens of the North Bergen Police Department contends that the employment of Mr. _____ as a barkeeper is in violation of the Alcoholic Bev. Act and has threatened him with arrest should he continue to work as such in North Bergen.

Will you please let me know if the record of Mr. _____ is such as to preclude him from working as a barkeeper under the provisions of the Alcoholic Beverage Act and oblige

Yours very truly,

MAX A. STURM.

July 29, 1936

Max A. Sturm, Esq.,
Teaneck, N. J.

Dear Sir:

I have your letter of July 20th.

Under the provisions of the Control Act, conviction for a crime involving moral turpitude disqualifies the person convicted from holding a license or being employed by a licensee. Your letter indicates that _____ was arrested on numerous occasions and charged with serious offenses, and was convicted on one occasion for violation of the Hobart Act and on two occasions as a disorderly person. The facts resulting in these convictions are not set forth and I am, therefore, not in a position to express any opinion as to whether moral turpitude was involved. Cf. Bulletin #2, Item #8; Bulletin #17, Item #2.

Absence of conviction for a crime involving moral turpitude, however, would not necessitate the conclusion that _____ is entitled to be employed by a licensee. The municipal governing body is charged with the duty of insuring the proper conduct of licensed establishments. It may well reach the conclusion that, in view of _____'s previous Police record, his employment would be inimical to the proper conduct of the licensed establishment and should, therefore, be prohibited. Indeed, Mr. _____'s presence on the licensed premises may well constitute a violation of Rule #4 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises, which reads as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute."

Assuming that none of _____'s convictions was for a crime involving moral turpitude, no arrest under the Control Act would be warranted because of his employment at licensed premises, nor would the Police authorities, as such, be authorized to direct the termination of the employment. However, if the Police authorities

are acting under direction of the municipal governing body, the licensee will be obliged to terminate the employment under penalty of revocation of his license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

7. IMPORTATIONS - SALES WITHIN THIS STATE OF ALCOHOLIC BEVERAGES IN CUSTOMS BOND OR WAREHOUSE RECEIPTS REPRESENTING SUCH ALCOHOLIC BEVERAGES MAY NOT BE MADE WITHOUT LICENSE - CUSTOMS BROKERS ACTING AS FINANCIAL REPRESENTATIVES BUT NOT SELLING OR SOLICITING THE SALE OF ALCOHOLIC BEVERAGES OR WAREHOUSE RECEIPTS REPRESENTING ALCOHOLIC BEVERAGES OR ACCEPTING ORDERS THEREFOR WITHIN THIS STATE NEED NOT BE LICENSED.

August 19, 1936

H. S. Dorf & Co., Inc.,
1 Broadway,
New York City.

Gentlemen:

I have your letter of July 30th and have reviewed the previous correspondence and our investigators' reports.

The Control Act prohibits the sale within this State of alcoholic beverages or warehouse receipts representing such beverages except pursuant to license. Section 1 defines "sale" to include delivery and "the solicitation or acceptance of an order". There is no express exemption in favor of alcoholic beverages in customs bond and consequently the foregoing statutory provisions apply fully to such beverages unless in conflict with the United States Constitution.

In support of your contention that a State may not require a license for the importation of alcoholic beverages from foreign countries and their sale in the original package, you submit an Opinion to that effect dated July 12, 1935, by the Hon. John J. Bennett, Jr., Attorney General of the State of New York. The Attorney General recognizes that such power may be granted by Congress, but apparently concludes that the Wilson Act, the Webb-Kenyon Act and the Reed Amendment (see Bulletin #102, Item #7) extend the jurisdiction of the States only in so far as interstate shipments of alcoholic beverages are concerned and have no application to importations from foreign countries. With this distinction I cannot agree. In DeBary v. Louisiana, 227 U. S. 108 (1913) the court held that under the Wilson Act a State may require a license upon the sale in the original package of liquor imported from foreign countries. In the course of its opinion the Court said:

"In reason it is certain that the purpose which led to the enactment of the law was to give the several States power to deal with all liquors coming from outside their limits upon arrival and before sale, thus rendering the state police authority more complete and efficacious on the subject; a purpose which would be plainly set at naught by exempting liquors brought into a State from a foreign country from the operation of the statute."

The language of the Webb-Kenyon Act (27 U. S. C. A., section 122) expressly refers to importations from foreign countries as well as interstate transactions and seems to have removed any doubt on the issue under consideration. It reads as follows:

"The shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited." (Italics mine).

See also the Second Section of the 21st Amendment, which provides as follows:

"The transportation or importation into any State, territory or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof is hereby prohibited."

In the light of the foregoing, the conclusion has been reached that no person may import and sell alcoholic beverages, or warehouse receipts representing such beverages, within this State without first obtaining a license under the Control Act, even though the sale is effected while the beverages are in customs bond.

Our investigators' reports indicate that Regal Distributors of New Jersey purchased 767 barrels of Bacardi rum from the Cuban Export Co., Inc., and that you acted as customs brokers in connection with this transaction; that the rum was stored in the Lehigh Warehouse & Transportation Co. of Newark, New Jersey; that Regal Distributors of New Jersey, after making certain withdrawals, did not take up the draft and remaining rum and you were authorized by the shipper to release the remaining rum from time to time to persons desiring to purchase same; that thereafter the purchase of the rum was solicited, orders therefor were taken by you within this State, sales were consummated with various New Jersey wholesalers and payments made to you; and that actual deliveries of the rum were effected in New Jersey from time to time.

From all of the foregoing it is evident that you have, within the meaning of the Control Act, engaged in the sale of alcoholic beverages or warehouse receipts representing such beverages, within this State. It is represented that the foregoing constituted a single isolated transaction; the Commissioner will, therefore, entertain an application for a special permit sanctioning the disposition of the rum originally purchased by Regal Distributors of New Jersey as aforesaid.

The further question remains as to whether a customs broker requires a license in so far as his ordinary relations with alcoholic beverages are concerned. Customs brokers perform various services in clearing importations; in addition, they act as

financial representatives, receiving shipping documents and accompanying drafts for delivery pursuant to sales lawfully effected between the sellers and the purchasers. To the extent of the foregoing conduct, a customs broker does not require a license under the Control Act provided he does not in anywise sell or solicit the sale of alcoholic beverages, or warehouse receipts representing alcoholic beverages or accept orders therefor, within this State.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

8. ADMINISTRATORS AND EXECUTORS - WHERE LICENSE IS LAWFULLY EXTENDED TO AN ADMINISTRATOR OR EXECUTOR, HE MAY ENGAGE IN THE SALE OF ALCOHOLIC BEVERAGES AT THE LICENSED PREMISES DESPITE THE FACT THAT HE IS AN ALIEN OR NON-RESIDENT.

August 19, 1936

Mr. William L. Best,
Borough Clerk,
Westwood, N. J.

Dear Sir:

I have your letter of July 21st.

Where a licensee dies, the license may be extended to the licensee's executor or administrator for a period not exceeding the balance of its term, pursuant to provisions of Section 23 of the Control Act. This statutory authority is calculated to protect the estate of the licensee during the period immediately following his death. This protection would, in substantial part, be taken away if the administrator or executor were required to possess qualifications in addition to those necessary under the statutes covering the issuance of Letters of Administration. Accordingly, the Commissioner ruled in Bulletin #79, Item #5, that a license may be extended to an administrator who is an alien, and likewise to an administrator who is a non-resident.

Section 23 provides that:

"No person who would fail to qualify as a licensee under this act shall be knowingly employed by or connected in any business capacity whatsoever with the licensee."

In general, this section prohibits non-residents and aliens not protected by treaty provisions, from being employed by retail licensees. Under its terms, it could have no application to an individual licensee, engaged in the sale of alcoholic beverages at his licensed premises. Similarly it should have no application to an alien or non-resident administrator or executor who has become the licensee by virtue of an extension pursuant to the Act. Any contrary view would result in the unfortunate position that although the administrator or executor-licensee may manage the business and is responsible for the conduct of the licensed premises, he may, nevertheless, not engage in the sale of alcoholic beverages therein. Cf. Bulletin #89, Item #8.

Accordingly, it is the Commissioner's ruling that where a license has properly been extended for a period not exceeding the balance of its term, to an executor or administrator, such executor or administrator may be engaged in the sale of alcoholic beverages at the licensed premises despite the fact that he is an alien or a non-resident.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

9. LABELING REGULATIONS - FEDERAL ALCOHOL ADMINISTRATION'S LABELING REGULATIONS PERTAINING TO DISTILLED SPIRITS ARE ADOPTED WITH RESPECT TO THE STATE OF NEW JERSEY.

August 21, 1936

The public interest requires that sufficient information be furnished on labels to acquaint purchasers of alcoholic beverages with their identity and ingredients. Where the consumer is adequately informed, however, there would be no useful purpose served by the imposition of separate labeling requirements by each State. Uniformity is particularly appropriate in this field.

The distilled spirits labeling regulations of the Federal Alcohol Administration, which pertain solely to alcoholic beverages shipped in interstate or foreign commerce and are now in effect, have been carefully studied; they are calculated to protect fully the consuming public and should be made applicable to all alcoholic beverages within this State, whether or not shipped in interstate or foreign commerce.

Accordingly, the following regulation has been adopted, effective immediately:

"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."

D. FREDERICK BURNETT,
Commissioner.

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

10. BULLETIN ITEMS - BULLETIN ITEM SUPERSEDED.

The rule contained in Bulletin #76, Item #7, adopting the regulations announced by the Federal Alcohol Administration relating to labeling and in force under their terms on May 27, 1935, is hereby superseded by Bulletin #137, Item #9.

11. PROHIBITED INTEREST - WHOLESALERS AND MANUFACTURERS MAY NOT OWN STOCK IN RETAIL LICENSEE - CORPORATE REORGANIZATIONS - OWNERSHIP OF STOCK IN RETAIL LICENSEE BY WHOLESALERS AND MANUFACTURERS PROHIBITED, EVEN THOUGH SUCH OWNERSHIP RESULTS FROM A BONA FIDE REORGANIZATION OF RETAIL LICENSEE.

Hon. D. Frederick Burnett,
Alcoholic Beverage Commissioner,
Newark, N. J.

Dear Mr. Burnett:

The Grant Lunch Corporation, a corporation of the State of New Jersey --- which corporation I represent ---, is in process of reorganization under Section 77B of the Bankruptcy Act. Your view upon the questions implied in the following factual situation would be appreciated:-

1. The debtor corporation holds several licenses issued by the City of Newark permitting it to make sale of alcoholic beverages for "consumption on the premises." It is still in business and hopes to continue following reorganization.
2. The debtor corporation (the licensee) is indebted to various manufacturers and distributors of alcoholic beverages. It is insolvent. Liquidation would result in a very substantial loss to all the general creditors, and the stockholders would, of course, be "wiped out."
3. The debtor corporation has proposed a plan of reorganization to the United States District Court for this District. A copy of that plan (together with a copy of the order to show cause made thereon by Judge Clark) is herewith enclosed. You will particularly observe:-
 - a. The general creditors are to receive Class A stock of the reorganized corporation.
 - b. Class A stock is to be redeemed by the debtor, carries no dividends or other earning power and, in substance, is merely an evidence of indebtedness.
 - c. Not even all the general creditors will have sufficient power to control the corporation by the directors whom the holders of Class A stock might elect.
4. The creditors generally have indicated that the suggested plan of reorganization would be approved. The manufacturers and distributors of alcoholic beverages --- as creditors of the debtor corporation --- are also willing to approve, but are fearful of violating Section 8 of Chapter 85, P. L. 1933, which prohibits them from having "any interest" in the retail outlet, particularly as these creditors would want to continue the sale of their products to the debtor corporation after its reorganization.
5. You are, of course, to assume that the plan of reorganization is bona fide and that no subterfuge is even attempted.

Upon the circumstances above outlined, would you rule that the creditors, manufacturers and distributors of alcoholic beverages, may give their approval of the plan of reorganization and accept Class A stock in satisfaction of their indebtednesses and continue to do business with the reorganized retail firm? As the name implies, Grant Lunch Corporation is primarily a lunchroom business; the sale of alcoholic beverages is incidental. If you should wish any further facts in assisting you to arrive at a determination, I will, of course, be glad to submit them.

You are --- to my certain knowledge --- very familiar with the line of cases holding that a corporation, though ordinarily prohibited from doing a certain act (e. g., a banking corporation prohibited from acquiring real estate generally) may nevertheless perform the act usually prohibited, when the latter act is incidental to the collection or enforcement of an obligation. It would seem to me that this principle is here applicable.

Very truly yours,
ELIAS A. KANTER.

August 25, 1936

Kanter and Kanter, Esqs.,
Newark, N.J.

Gentlemen: Re: Grant Lunch Corporation.

One of the recognized objections to the method of distribution of liquor prior to prohibition was the fact that brewers, distillers and wholesalers often controlled the retail trade. See Reichelderfer v. Johnson, 72 F. (2d) 552, 554 (Dist. of Columbia 1934). Section 40 of the Control Act is designed to eliminate this objection by divorcing completely the manufacture and wholesale of alcoholic beverages from their retail sale. See Bulletin #70, Item #6, and Bulletin #78, Item #1. It provides that it shall be unlawful for any person interested in any manufacturer or wholesaler to be directly or indirectly interested in the retailing of alcoholic beverages, and expressly prohibits a stockholder of a corporation interested in the retailing of alcoholic beverages from being interested in a manufacturer or wholesaler. In view of the legislative purpose underlying Section 40, it should be liberally construed and rigidly enforced.

The proposed reorganization of Grant Lunch Corporation, the holder of plenary retail consumption licenses, contemplates the issuance of Class A. stock to its general creditors. The holders of this stock will have the right to elect two of the six directors of the corporation. Although the stock will not pay any dividends and be subject to redemption, its owners will have a direct financial interest in and exercise a substantial measure of control over the business of the retail licensee. Consequently, it is evident that ownership of the stock by manufacturers or wholesalers would be in violation of the express language of the statute.

Your letter suggests, however, that despite its clear language, Section 40 should be construed to be inapplicable to bona fide reorganizations upon the authority of cases holding that a banking corporation prohibited from holding real estate generally may nevertheless hold such property acquired in the course of the enforcement of an obligation. Considered in the light of the policy underlying the banking acts involved, those cases are not apposite. See National Bank v. Matthews, 98 U. S. 621 (1878), where the Court said:

"The object of the restrictions was obviously three-fold. It was to keep the capital of the banks flowing in the daily channels of commerce; to defer them from embarking in hazardous real estate speculations; and to prevent the accumulation of large masses of such property in their hands, to be held, as it were, in mortmain. The intent, not the letter, of the statute constitutes the law."

The social policy involved in Section 40 is quite distinct and if it is to be achieved, ownership of stock in a retail licensee by a wholesaler or manufacturer must be precluded under all circum-

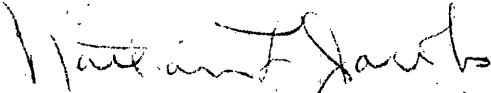
stances. Circumvention of the statutory purpose may not be permitted even though private claims be consequently sacrificed in part.

You are accordingly advised that the ownership by a wholesaler or manufacturer of alcoholic beverages of stock in a retail licensee is prohibited even though such ownership results from a bona fide reorganization of the retail licensee.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By:


Chief Deputy Commissioner
and Counsel.