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

BULLETIN NUMBER 134 July 29, 1936

1. ADDRESS OF
JAMES R. NICHOLSON,
PRESIDENT OF CROFT BREWING CO. OF BOSTON, MASS.

-at-

NATIONAL CONFERENCE OF STATE LIQUOR ADMINISTRATORS

July 18, 1936

THE BREWING INDUSTRY

MR. CHAIRMAN AND MEMBERS OF THE CONFERENCE: In accepting your invitation to speak on the subject of "The Brewing Industry", I have assumed that you desire me to treat of that industry not in its broad aspects, but in respect to its contacts with the Administrators of the state laws and regulations.

I am here in an individual capacity, not representing the organized industry, and such opinions as I express properly may be regarded as my individual opinions.

However, during the almost forty years that I have spent in the brewing business, I have become well acquainted with brewers from all sections of the country and, having kept up my contacts with them, I feel that I have a very good idea of what they are thinking about and what their attitude is with respect to the problems of the industry.

Furthermore, in anticipation of this meeting with you today, I have communicated with outstanding leaders of the industry in various states, asking for expressions from them relative to the matters that I shall discuss.

I, therefore, feel that my expressions today will be fairly representative of those thoughts and convictions entertained by the leading members of our industry wherever located.

From the days of William Penn in Philadelphia and Samuel Adams in Boston up to the enactment of the Eighteenth Amendment, the brewing industry in this country was in the hands very generally of men of high character and sound business methods and standards.

During the fourteen years of Prohibition those men either closed their plants, undertook to subsist on the production of near-beer, or endeavored to convert their breweries, a difficult thing to do, to other uses.

Unscrupulous men, however, were willing to engage in an illegal business, and the brewing of beer continued in large volume, notwithstanding the laws that had been enacted. Such lawbreakers could not have continued their activities without the protection of men holding political office, willing, for a monetary return, to violate their oaths of office and be unfaithful to their trusts.

When beer was relegalized, the element of the law-breaker and the unscrupulous politician was still with us, a menace to the legal and proper conduct of the business.

It was indeed fortunate for the brewing industry that it had at such a critical hour in its history the protection of the N. R. A. and the Code for the Brewing Industry, established thereunder.

The brewers are grateful that for a period of eighteen months, in the formative stages of the new industry, we did have such protection from the practices of which the unscrupulous men inherited by the industry from Prohibition days were capable.

It was also fortunate for the industry that in most states governing bodies such as you represent were created and entrusted with the responsibilities of administering the laws relating to the activities of the industry.

I say that these things were of great value to the legitimate brewer, for the reason that a very large percentage of the known law violators who applied for Federal permits and state licenses to brew beer found it possible to secure such permits and such licenses.

The explanation that will be made by those who granted licenses to such law-breakers and undesirables will be that the names of these individuals did not appear, but that dummies were used in their stead.

I believe that it would have been possible in practically every instance to determine the true ownership of the breweries in question and I believe that it was sinister political influence that was responsible for such licenses being granted.

However, I am not here for the purpose of discussing the past, excepting so far as it affects the present and the future. I am glad to say that in most instances, even though men who should not be permitted to enter into competition with legitimate brewers were so permitted by the Federal and state governments in many instances, it is true also that laws and regulations governing the industry generally were enforced against such individuals as well as the legitimate brewer. That this is not so in certain states and in certain cases constitutes one of the most serious criticisms that can be offered of the state administration of the liquor laws today.

Your Constitution indicates that you have two outstanding purposes: (1) To devise and promote the enactment of the most effective and equitable types of state liquor laws; (2) To devise and promote the use of such methods and devices of administration and interstate cooperation as will serve to enforce and to make effective the particular liquor laws of each state.

Since, under the laws of many states, you have the power to review in respect to the granting, refusing, suspension or revocation of licenses, it properly might be said that you exercise judicial functions also.

Great power and great responsibility have been entrusted to you. That power should be exercised and that responsibility met with a keen sense of public duty, deep appreciation of the trust imposed in you and with the broad vision and the judicial attitude that properly is expected from members of the Bench.

The brewers welcome strict regulations. The brewer who conducts his business honestly and on a high ethical plane has nothing to fear from strict regulations, honestly enforced, and the dishonest brewer of low standards requires such regulations.

We ask only that the laws and regulations under which we operate be reasonable in character and be honestly, fairly and equitably administered, with the fullest measure of plain common sense and the least useless red tape.

TAXES - This industry is carrying a heavy burden of taxes; a burden that is restricting its growth.

Based on the Pre-War consumption of beer and ale in this country, we should be doing a business annually of 100,000,000 barrels instead of the less than 50,000,000 barrels that we are doing at this time.

Today we are paying the Federal Government $5 per barrel, or 37½¢ per case, in Internal Revenue taxes, as compared with the tax of $1 per barrel or 7½¢ per case paid before the Prohibition period.

In addition to that almost all states have resorted to a tax on beer sales as an easy means of revenue and now, in addition to the Federal taxes, we have state taxes running from 62¢ per barrel to $3.00 per barrel. This means that in some states the tax burden runs as high as $8.00 per barrel.

There are many who believe that a material reduction in the per barrel tax on beer would so increase the volume that there actually would be no reduction in the revenue to the Federal and state governments from this source.

Whether or not you subscribe to this theory, I feel that we need not doubt that a material reduction would so increase the use of grains, the erection of new buildings, the construction and installation of additional machinery and equipment, the demand for freight and truck haulage, and employment, as materially to stimulate the recovery from our recent depression, now fortunately well under way.

Let us look a little beyond the financial gains, however, and take recognition of the fact that reasonably priced beer is an agency of temperance, or, if you prefer the word, of moderation.

The brewers of this country have always been glad to stand their full share of the cost of government and have hesitated to seek relief in tax burdens when public needs have been great and particularly have they been reluctant to force this issue under the conditions existing during the past three years.

Possibly they have been a little too hesitant and perhaps even in these recent distressful times some relief properly might have been given to them.

It is interesting to note that recently, in connection with the passage of the new Liquor Tax Administration Bill, the wine interests succeeded in securing a reduction of 50% on dry and sweet wines, champagne, artificially carbonated wines, liqueurs, cordials and similar compounds.

The result of this was to reduce the tax on still wines with an alcoholic content of not over 14% to 5¢ per gallon.

The Senate Committee recommended this reduction as being in the interests of light wines as a food and to insure a reasonable return to the wine producer on his investment and activities.

We, therefore, have the interesting situation of beer, a much milder beverage than wine, being taxed at the rate of 16¢ per gallon, while wine with 14% of alcohol is taxed only 5¢ per gallon.

On this basis the alcohol in a 4% beer is taxed $4 per gallon, while the alcohol in wine is taxed only 36¢ per gallon.

Now that the industrial clouds are clearing, however, we properly may begin to give some thought to the relief of the brewer's tax burden and I ask you to begin to give serious consideration to the desirability and the practicability of steps being taken to attain that end.

DISCRIMINATORY LAWS AND REGULATIONS - Possibly that which disturbs most the sound thinking brewers at the present time is the tendency of states to enact laws or establish regulations that discriminate against brewers shipping into that particular state from another.

This is dangerous and is in violation of the spirit of the Constitution of the United States, in which an effort was made to provide for all time for freedom and facility of commerce between the several states.

One enactment of this character leads to retaliatory measures on the part of other states and the logical result is the building up of legislative walls between the states and the stifling of trade.

Let us consider some of the outstanding examples of this tendency towards discrimination.

Indiana had provisions for an entry permit of $1500 to handle out of state beer. The number of these ports of entry was limited by law to 100 and by action of the state commission to 13. Under this law and regulation any brewer from out of the state had to do his business through one of these 13 importers and the wholesale distributors within the state then had to buy of one of these thirteen.

Michigan has a tax of $1 a barrel on beer manufactured within the state and a tax of $1.25 per barrel on beer from outside of the state.

Also, in that state all beer from outside must be consigned to some warehouse designated by the state, the warehouseman charging a warehouse fee and a fee for stamping the beer. This by regulation.

Pennsylvania has provided by law for an importing distributor's license fee of $900, while the distributor of beer brewed in Pennsylvania pays only $400.

California taxes importing distributors $500 and local distributors $100.

New England is not free from this practice and New Hampshire has a provision for a Certificate of Approval of $500 which any brewer from outside of the state desiring to do business in that state must pay.

I have said before that one measure of this kind leads to the adoption of one by another state in retaliation. The Ohio Commission made rulings definitely retaliatory against the regulations existing in Michigan and Indiana. Injunction proceedings in the United States Courts followed.

We may well be disturbed by this tendency to stifle trade between the states.

I am not a shipping brewer in the sense in which the term is usually employed and my selfish interest would best be served by the building of walls around the several states.

The movement is, however, wrong in principle and dangerous in its possibilities.

I desire to stress to you the wisdom and the need of a determined stand and vigorous action on your part against this tendency.

LACK OF UNIFORMITY - The third most disturbing thing to the brewers about the state laws and regulations is their lack of uniformity in the several states.

If you are going to allow discriminating laws and regulations to stifle interstate commerce, then we need not be disturbed about uniformity, but I am confident that you can and will stop that movement.

Again, I am not speaking from a personal standpoint as, my business being confined to New England, New York and New Jersey, I am not a sufferer as the result of the lack of uniformity of state laws and regulations.

Possibly the outstanding lack of uniformity is found in the methods of collecting taxes.

Virginia and Maryland require tax crowns, Utah and North Dakota require tax stamps to be used on each individual bottle, Ohio and Pennsylvania provide for either tax crowns or tax stamps on each individual bottle.

The brewer who will operate successfully in the sale of bottled beer must keep his expenses of bottling to a minimum and have the flow of his product through the bottling house as nearly uninterrupted as possible. Consider the delay and confusion in the bottling department of a brewer shipping into several states when separate tax crowns or stamps must be attached for each of the different states.

I hope that you will give serious consideration to the advisability of endeavoring to secure the elimination of the crown or stamp method of collecting taxes.

I am sure that those of you who are located in states where this requirement obtains, will find upon consultation with such states as Massachusetts, New York, New Jersey and others where taxes are paid upon monthly statements of sales, that this is a simple method of collection and that evasion of the revenue has not resulted from its adoption.

Various provisions relative to labeling cause great confusion and provide a considerable handicap to the shipping brewer.

I am advised that there are perhaps 27 states, each of which has a different requirement for labels insofar as it relates to stating the alcoholic content. One state provides that such content must be designated by weight, another by volume. Some states provide that there must be a legend on the label that the beer contains not less than a certain percentage of alcohol and not more than another percentage.

These varying requirements certainly impose a hardship and unnecessary expense upon the brewer.

One state requires no alcoholic legend on the label if it is over 3.2%, but if it is less than 3.2% it must be labeled.

North Dakota, for instance, requires an exact statement of alcoholic content on the bottle and allows a spread of 2/10 of 1%, without permitting a statement covering a maximum and minimum content.

Some of this lack of uniformity is in laws and some of it is in regulations. For example, in the State of Arkansas the Commission has ruled that all beer shall be labeled with the legend "This beer does not contain more than 5% of alcohol by weight", although the law simply provides that the alcoholic content be shown on the label in that state. Thus beer that contains less than 4% of alcohol by weight must be labeled that it contains not more than 5%, which, of course, gives the false impression that other states and the Federal authorities have endeavored to prevent.

I realize that you have given some thought to this matter and recognize the evils of the situation to which I refer.

I am under the impression, however, that you have not gotten very far in your attempt to do something about it.

It strikes me that the situation is a good deal like that which caused Mark Twain to say that everyone was always complaining about the weather but that no one ever did anything about it.

I think that this conference can do something about this evil. You cannot accomplish anything by passing resolutions here and then going home and forgetting about them.

You can accomplish something, however, by maintaining a standing committee, active throughout the year, cooperating with other interested organizations including the brewers' associations in the several states.

Above the desk of that outstanding industrialist, Judge Gary, there was an electric sign bearing the legend "IT CAN BE DONE".

Let us adopt that slogan for this movement.

I know that it isn't easy. It will require patience, persistence and a capacity for hard work.

It will be worth your effort. Do not hesitate to call upon the brewers of the country to cooperate with you.

They will be glad to do so.

Since there is a wide variance in the character, the habits and the ideas of people of various sections of the country,

it would seem desirable to start to build this work up by groups of states, and I suggest for your consideration the holding of sectional conferences and a program designed to accomplish this desirable uniformity, section by section, with the idea, the hope and I trust the confidence, that ultimately reasonably uniform legislation and regulations throughout the country can be brought about.

My remarks up to this time have dealt largely with those things that we as brewers feel need correction.

I am happy to turn to the consideration of some of those laws, regulations and practices that meet with the commendation of the members of my industry.

I have not had much experience in business in those states where it is a provision of the law or the regulations that all beer shall be sold both to distributors and to retailers on a cash basis.

Brewers who have had such experience, however, indicate to me that they are very well pleased with this requirement and that evils that creep into the industry in the absence of such a regulation are thus guarded against.

It is my understanding that the laws or the regulations of practically every state require, and I am glad that it is so, that no brewer shall have a financial interest in any retail place of business, shall not in any way control a retail license, or furnish equipment for a licensee.

We all realize that when there is not a credit restriction placed upon the brewer, the financial connection between a brewer and a retail place of business that it is desirable to prevent and that the laws and regulations attempt to prevent, is present by the indirect method of extending large credit.

In my state there is a limit of 90 days' credit, but if once you give a man credit, it is hard to stop it at 90 days, and those brewers who are operating in states where the business is strictly on a cash basis have something for which to be grateful.

One by one the states appear to be falling in line in the requirement that knobs should be placed on faucets indicating the brand of beer or ale that is being drawn from that faucet. Every right thinking brewer must and does commend this regulation and I am sure that an extremely large percentage of my colleagues would recommend a universal requirement that every faucet from which beer is drawn should carry an identification knob.

The regulation of signs undoubtedly has caused you considerable concern.

I am not in a position to report that sentiment among the brewers is unanimous in respect to this question.

I am confident, however, that a large majority favor the New York or New Jersey laws and regulations.

The New York law and regulations thereunder provide that no sign of any kind advertising any brand of liquor, wine or beer may be permitted on the exterior of any retail licensed premises, but that placards advertising brands of liquor, wine and beer may be permitted in the interior or show window of the premises, provided that such placards shall not exceed 270 square inches.

The New Jersey regulations make the same restriction so far as exterior signs are concerned, but do not make any restrictions on signs in the interior or the show window, except that the aggregate cost or reasonable value of those signs furnished by the manufacturer or wholesaler must not exceed $100 in respect to each of the licensed premises.

I have had an opportunity to observe these laws and regulations in operation and I have no hesitancy or reservation in giving them my full approval.

Prior to Prohibition one of the handicaps that the brewers carried was an over-display of brewers' signs on the outside of retail licensed places.

We knew that it was being overdone and the advisory committee of the United States Brewers Association, of which I was chairman, was charged with the responsibility of correcting the situation by voluntary action of the brewers.

The narrow vision of a limited number of brewers interfered with our accomplishing the desired result.

I, for one, am grateful that there are now governmental agencies that have the power to protect us from ourselves.

It would be a blessing and a safeguard to the brewers if all of the states followed the excellent example of New York and New Jersey in this matter of sign laws and regulations.

I am glad to be able to say to you also that letters received by me from brewers all over the country make reference to the fact that almost universally they are receiving courteous consideration from members of the State Liquor Administration bodies and that a real effort seems to be made generally to give efficient cooperation.

I think that you appreciate that you are concerned not only with the technical details of the enforcement of laws and regulations and the collection of taxes, but that you properly may give earnest consideration to the social problems present in connection with the business that you are entrusted with the responsibility of regulating.

It would seem to me to be within the scope of your activities to make a study to determine to what extent beer is a factor in connection with drunken driving.

We believe that it is within your province to give careful consideration to the question of drinking by minors and improper conditions existing in places where beer is sold.

We want this business to be on as high a plane as possible and we want your cooperation in keeping it there.

In this connection let me ask you to give consideration to regulations requiring extremely high license fees. I think you will find as a result of these extremely high fees practices that are deplorable and dangerous develop that with a more reasonable fee would be eliminated.

In closing I desire to say to you that the success of your several administrations and the protection of the industries entrusted to your care depend upon your enforcement of all laws and regulations strictly and impartially, absolutely free from

political influence and with that attitude that we are justified in expecting from members of our courts.

There is always danger when great power is entrusted to an individual or a small group that such power will be used in a discriminating manner and to advance the selfish interests of a limited number of those affected.

That is the possible evil that might result from the broad authority that the law has given you.

The brewers of this country are not concerned about the strictness of the laws and regulations that you administer or create, but they are deeply concerned that these be applied equally, impartially, to all brewers and to the customers of all brewers by you and the personnel of the organization that you have been authorized to create.

You can depend upon the earnest cooperation of the brewers. Do not hesitate to call upon them for that cooperation. They will welcome an opportunity to assist you in performing that service to society that the responsibilities that have been entrusted to you give you the opportunity to perform.

ADDRESS OF
HON. WILLIAM H. WILLIAMS,
MAYOR OF BELLEVILLE,
Essex County, New Jersey

-to-

THE TAVERN KEEPERS OF BELLEVILLE
As Reported in the Belleville News of June 5, 1936.

"Certain tavern keepers apparently failed to understand definite provisions of the State Law and Local Ordinance covering the sale of alcoholic beverages.

He read Section 8 covering the employment of females in licensed premises and sale of beverages to females, which reads as follows: "No females, excepting licensees or members of their immediate family, or minors shall be permitted to serve, sell or in any manner engage in the actual dispensing of any of the aforesaid beverages. No female shall be served at any bar from which the aforesaid alcoholic beverages are dispensed.

"Certain tavern keepers are not paying respect to Section 6 of the Local Beverage Ordinance which reads as follows: 'Sales of alcoholic beverages shall not be permitted by licensees between the hours of 2 A. M. and 1 P. M. on Sundays, nor between the hours of 2 A. M. and 7 A. M. on other days. All premises devoted exclusively to the sale of alcoholic beverages shall be closed to the public during prohibited hours of sale.'

"We want all to understand that closing at 2 A. M. means to have the premises closed at 2 A. M. and opening at 1 P. M. Sundays means not opening until 1 P. M.

"Many complaints have been received of places being open after 2 o'clock in the morning and the license application forms of said operators will not be issued at the end of this meeting as they will be held over for further discussion by the board.

"Regarding Section 7, covering shades and screens on licensed premises, our board is giving further study to this problem and subsequent instructions in the near future will be issued by the Excise Board for the police department to exercise.

"Certain tavern keepers have advised the police that the Local Ordinance does not provide for penalty for violations. This board wants you to thoroughly understand the provisions of Section 12, which specifically provides; upon conviction for a violation, a fine of not less than $50.00 and not over $250.00, or imprisonment for 10 days and not over 90 days, or a penalty of both such fine and imprisonment in the discretion of the Court.

"Section 13 further provides that; after conviction for a second offense under this Ordinance and the State Act, the penalty shall be twice the amount as provided by Section 12.

"Therefore, it behooves the tavern keepers to thoroughly understand that not only are severe penalties provided by Section 12 and 13 of our Local Ordinance, such penalties to be imposed by our local recorder, but revocation of license rests with the Excise Board and I am assuring you folks that this Excise Board intends to have our local Ordinance and the State Alcoholic Beverage Act respected.

"Our department of health demands that the proper sanitary standards be maintained in all places where alcoholic beverages are dispensed and we further instruct those who are dispensers of food, that a restaurant license is necessary and that if such licenses are not promptly obtained, the matter will be referred to the police department.

"The State Law demands that gambling shall not be maintained on licensed premises and upon conviction of gambling, even for drinks, this Board has no other duty than to revoke licenses.

"Copies of the Alcoholic Beverage Act and copies of the local Ordinance are available to all persons in the beverage business and no reason should exist for any beverage dealer not having a thorough understanding of the regulations controlling his business.

"This Board believes the major portion of our license holders are endeavoring to operate their business in a proper manner, but a limited number apparently do not see fit to play the game according to the rules.

"Certain evils exist generally in the liquor business and many of those evils exist here in Belleville and it is the intention of this Board to eliminate these evils. It is wholly unfair to the liquor dealer who is exerting his best influence to run his business properly, that a limited number be allowed to place a black mark on the name of every license holder.

"One serious evil is the refilling of labeled bottles with illicit liquor. In many cases a bottle of some nationally advertised brand is used until the labels are too stained to fool the buyer.

"I am informed by reliable authority that 30 to 50 percent of all the liquor sold in New Jersey is illegal liquor. It is my belief that a substantial amount of illegal liquor is sold here in Belleville. Certain places have already been checked up and the proprietors of such places need not be surprised if they hear unpleasant information at an early date. Those who are

refilling bottles with illicit liquor are cheating their customers and are aiding bootleggers and cheating the State out of taxes and are risking the privilege of staying in the beverage business in Belleville.

"The sale of so called 'Smoke' has been a matter of deep concern to the members of this board and while some tavern keepers may believe they are getting away with this type of conduct, your Excise Board will have no patience with any tavern keeper who disregards the health of any one unwise enough to drink this type of beverage.

"We want tavern keepers to thoroughly understand that disturbances not only in the place of business, but in front of the tavern premises, will not be countenanced. We want you folks to build up a feeling of confidence both in this board and in our police department. We feel there is a definite understanding among the tavern keepers that if the police officers are called in for a disturbance, that such action will cause a black mark to be placed against the tavern keeper. Members of this board thoroughly understand that the tavern keeper is not always responsible for the actions of persons on his premises and we will endeavor at all times to be utmostly fair in our determinations, but we expect you folks to expel from your premises any persons not conducting themselves properly and not to hesitate to call the police to prevent disturbances.

"Another matter of deep concern is the question of selling liquor to automobile drivers. Most tavern keepers know which of their regular customers are automobile drivers and there is a definite responsibility on the tavern keeper who has such information to refrain from selling any more than a reasonable amount of beverage to an automobile driver.

"Prominent liquor manufacturers are advertising on a national scale the slogan, 'Moderation in Drinking.' The wise tavern keeper will use discretion in the amount of alcoholic beverage he sells to a customer and he will find it good business not to permit a customer to take more than he has the ability to absorb and retain his full faculties. It is the duty of all in the liquor business to see that the conditions that brought about National Prohibition shall not develop again.

"The time expended by members of the excise board to listen to testimony and to discuss the violations committed by certain license holders has become a source of annoyance to this board. I, for one, do not propose to sit two or three evenings a week until midnight listening to trumped-up stories and alibis in relation to charges brought against license holders who know full well what their duty is and it is unfair to every member of this Excise Board that they shall be called upon to sacrifice this time in addition to other demands of public service placed upon them.

"Reasonable license fees have been extended to tavern keepers and to operators of package stores and while a fee of $500 or more has been discussed, the members of this board are in agreement that the ability of an applicant for a beverage license to pay a substantial sum of money is no indication that he may make the best type of license holder. We realize the operator who has difficulty in paying $350 can be a really fine licensee and we also realize that the party with ability to pay $1,000 can be an unworthy licensee.

"Our local police are at a disadvantage in making investigations. Practically every tavern keeper knows every officer,

but we are determined that the co-ordinated efforts of this Excise Board and our local Recorder, who is sitting here with us tonight by invitation, and Commissioner Burnett, whose representative, Mr. Brewster, sitting at my left, will make Belleville highly respected for its control of the liquor business and a place where a liquor license will be regarded as a highly desirable privilege.

"Bootleggers whether operating on a large scale or tavern keepers refilling bottles with illicit liquor are certainly going to understand the State Laws and Local Ordinance mean exactly what they state. We realize there is a definite tendency to cheat by the use of illicit liquor. The taxes on alcohol total $3 per gallon. The bootlegger's price is $1.50 per gallon on a 20 cents per gallon manufactured cost. But, if the license holder will realize that it is dangerous to try to meet the competition of the illicit liquor dealer and that while he may get away with it for a while, he can rest assured that men from either Commissioner Burnett's Department or local police and, if necessary, special investigators will catch up with him.

"The matter of treating patrons to one more drink before they leave is distinctly unethical in the liquor business. In no other type of business does such an evil exist and in many cases it is the one more drink given as a treat that sends a patron to the hospital or morgue as an automobile victim.

"You received your licenses as qualified and trusted folks, when you conduct your business properly, you will get the proper protection that merchants are entitled to. When you commit violations you must face the penalty. This board has proven time and again that it will be fair with all persons brought before it, but will have no patience with those who deliberately violate the standards of your business. You can help this board by not being parties to misconduct and we ask you to apply honest principles in the operation of your business.

"Public opinion is the saving grace of this nation. About every seven years public opinion revolts against existing evils. You, who were in the liquor business years ago must full well know the evils that helped to bring on Prohibition and it is not a difficult matter to have a substantial number of citizens throughout the State again revolt against many of the evils created by those in the liquor business.

"More people want the liquor business run right than there are people who want the liquor business to run improperly. Only those who want to violate the law and weak-kneed public officials want the liquor business to run the way it was operated before prohibition.

"On the question of minors being served liquor, I want to assure you on behalf of the members of this board, that upon the conviction, or even where it seems reasonably certain, even though not upheld by a court conviction, this board will not have the slightest patience with any tavern keeper who sells to minors. We know it is most difficult for you to determine the ages of several of our youth, realizing that many young men and women from the ages of 18 to 20 may appear older. But, the State Law is very specific and places the responsibility upon you who handle alcoholic beverages. You can play safe and soon become known as the operator of a place where minors know that alcoholic beverages are not available to them. You may also realize that it does not take very long for information to circulate that beverages are available at certain places for minors.

"I wonder what the average tavern keeper would have given five or ten years ago if he had available to him the privileges that he has available to him today. You have these privileges but you must keep in mind that they are privileges to operate and must not be considered as a right. The privileges can easily be withdrawn from violators. You can build your business up to a standard that will be respected. It is up to you as individual operators to do your part. This board will respect you if you operate in a proper manner."

3. LICENSEES - QUALIFICATIONS - PERSONS CONVICTED FOR OPERATING ILLICIT STILLS SINCE REPEAL ARE NOT FIT TO BE LICENSEES.

June 12, 1936

Board of Commissioners,
City Hall,
Union City, N. J.

Gentlemen: Re: John Apicella, trading as "New Wonder Bar", 362 Mountain Road, Union City, N. J. License #C-193

Our records indicate that John Apicella, the holder of license #C-193 issued by you for premises located at #362 Mountain Road, and operated under the name "New Wonder Bar" was convicted in the United States District Court for the Southern District of New York on April 9, 1936, for conspiracy to violate the Internal Revenue Laws of the United States. The conviction resulted from John Apicella's participation in the operation of an illicit still in the State of New York.

In the event John Apicella applies for renewal of his license for the period commencing July 1, 1936, it will become your duty to determine whether he is a fit person to hold a license. See Bulletin #45, Item #15. Determination that he is not will compel a denial of the application for renewal. A person convicted for having participated in the operation of an illicit still since Repeal is not the sort of person qualified to enjoy the privileges of a license. A license is a privilege which should be granted sparingly.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

4. APPELLATE DECISIONS - WELLENS v. PASSAIC.

MANNING WELLENS,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE CITY OF PASSAIC,)
Respondent)
- - - - - - - - - - - - - - - - - -

Greenburg & Wilensky, Esqs., by Oscar R. Wilensky, Esq., Attorneys for Appellant.
Joseph J. Weinberger, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's action (1) revoking appellant's plenary retail consumption license for the fiscal year expiring June 30, 1936 upon the ground that appellant had violated Rule #1 of the State rules concerning conduct of licensees and the use of licensed premises by permitting two minor girls to be served alcoholic beverages in the licensed premises; and (2) denying appellant's application for a renewal of his license for the current fiscal year expiring June 30, 1937.

Since the refusal to renew was predicated upon the revocation of the license sought to be renewed, a determination with reference to the propriety of the revocation will be dispositive of both aspects of the case.

Appellant concedes that on the evening of May 26, 1936 his employee served alcoholic beverages called "gin juniors" to two minor girls, high school students, aged 14 and 17 years respectively. Appellant was on the premises at the time. He was arrested, charged with aiding and abetting sales to minors, in violation of Section 50 of the Control Act; the employee being charged with the illegal sales, in violation of Section 77.

At the hearing of this appeal, appellant moved to dismiss the charge on the ground that Rule #1 of the State Rules Concerning Conduct of Licensees and the Use of Licensed Premises goes beyond the Commissioner's power and is therefore ultra vires and void. The rule reads:

> "No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverages, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

This rule was promulgated pursuant to Section 36 of the

Control Act, and must be read together with Section 77.

Section 36 provides:

"The Commissioner is hereby authorized and empowered to make such general rules and regulations *** as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act, in addition thereto, and not inconsistent therewith, and to alter, amend, repeal and publish the same from time to time. Such regulations may cover the following subjects: *** such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this act." (Italics mine).

Section 77 provides:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor and punished accordingly."

The rule not only prohibits sales to minors but also service to and consumption by minors on the licensed premises. It is designed to implement the enforcement of the Act, particularly Section 77, and is reasonably necessary to stringent and comprehensive administration thereof. The rule, therefore, falls strictly within the delegation of power to the Commissioner contained in Section 36.

Appellant argues, however, that the rule is inconsistent with Section 50 of the Act, which is the Section appellant is charged in the Police Court with violating. Section 50 reads:

"Any person who shall knowingly aid or abet another in the violation of this act shall be guilty of a misdemeanor punishable in the same manner as the violation aided or abetted."

Appellant stresses the use of the word "knowingly" in this Section, and urges that since knowledge is a necessary ingredient of the crime, the rule promulgated by me, which is operative even in the absence of knowledge, is inconsistent with the statute.

Without pausing to consider whether appellant's construction of Section 50 as to the necessity of knowledge in the criminal proceeding is correct, as it probably is, it is apparent that an administrative regulation prohibiting certain conduct regardless of knowledge is not inconsistent with a statutory definition of a crime which includes knowledge as an essential ingredient. The two things are radically different in nature and concept. As I said in Re Wolfe, Bulletin #112, item 9:

"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."

Furthermore, appellant falls into error in reading Rule #1 in connection with Section 50. The pertinent statutory provi-

sion, as above pointed out, is Section 77. Under this Section the seller's knowledge of the purchaser's age is immaterial. State vs. Koettgen, 89 N.J.L. 678 (E. & A. 1916). In that case, the statute under consideration provided that sales to a minor under eighteen years of age was a misdemeanor. In the course of its opinion the court, speaking through Mr. Justice Kalisch, said, at page 684:

> "But it must be borne in mind that, in the present case, the statute makes the sale of intoxicating liquors to a minor under the age of eighteen years, and not to one appearing to be under that age, a misdemeanor; hence the fact of age becomes vitally material. If the minor, to whom intoxicating liquor was sold, had attained the age of eighteen years, though he appeared to be but sixteen, there would be no violation of the statute. If the plaintiff in error had been indicted under the statute for selling intoxicating liquors to a minor under the age of eighteen years, he could not have successfully defended himself against the charge by proof that the minor appeared to him and other witnesses to be of the age of eighteen years."

I hold that Rule #1 of the State Rules Concerning Conduct of Licensees and the Use of Licensed Premises is not inconsistent with the Control Act, and is valid. The motion to dismiss the charge is therefore denied.

On the merits appellant argues that the punishment - outright revocation - is excessive, claiming that the girls looked over twenty-one years of age and stressing the fact that the actual sale was made by his employee without appellant's knowledge; that he has had a license since Repeal and has never been in trouble before; and that his entire investment will be lost if the action of respondent is affirmed.

The girls in question were present at the hearing. While they may have appeared somewhat older than they actually turned out, they could not have been mistaken for adults. Appellant contended that the amber lights in the booth where the girls sat made it appear to him that they were over the age of twenty-one. Not even the dim lights in appellant's premises or the dressed-up appearance of the girls on the night in question fooled the State investigators. Their suspicions were aroused as soon as they saw the girls and their inquiries quickly disclosed the true ages. What the investigators did, the licensee and his employee were duty bound to do and should have done. Glamorous lights create many illusions but they are no excuse to the licensee who installed them when he himself trips because of them.

Nor can appellant absolve himself from liability because of the fact that he personally did not make the sale. He is responsible at all times for what goes on in his premises. As I said in Re Kneller, Bulletin #49, item 4:

> "A licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. The license is his. So is the business. It is his duty to see to it that the business is conducted in accordance with the law. If unable to do so because of other interests, that is his personal lookout. It does not exonerate him from full responsibility for what goes on upon the licensed premises. This licensee was his brother's keeper."

So in Great Notch Villa vs. Clifton, Bulletin #91, item 11, I said:

"It may be that neither appellant's President nor any other officer knew of the violation. Such lack of knowledge, however, would be no defense since the appellant corporation must be held responsible for what transpires at the licensed premises. Any other conclusion would permit ready circumvention of the Act. Cf. Riewerts vs. Englewood, Bulletin #60, Item #9."

In Cassie vs. East Orange, Bulletin #128, item 3, the fact that the licensee's wife unbeknown to him tampered with bottles on the bar was held not to relieve the licensee from civil responsibility. I said:

"The licensee is responsible for the presence of illicit beverages on the licensed premises. Virgilio vs. Orange, Bulletin #127, item 8. He is responsible for what his brother does on the licensed premises. Re Kneller, Bulletin #49, item 4. So also for his wife."

See also Re Lowe, Bulletin #122, item 10, where a licensee was held responsible because his place was open during prohibited hours even though he had gone to the pains of giving written instructions to his barkeeper not to open the tavern until the proper time.

So also in Re Krupin, Bulletin #117, item 2, the licensee sought escape from the charge of possession of bootleg on the ground that the illicit beverages belonged to his brother whom he had to humor because suffering from an automobile accident. The humanitarian experiment on licensed premises, irrespective of the supposed therapeutic value of the administration of bad spirits to induce good ones, was disapproved and held no excuse.

Thus, uniformly, licensees have been held responsible for what takes place on licensed premises. The same rule must be applied here.

The penalty is extreme, but the offense was serious. Sales of intoxicating liquor to high school girls cannot be tolerated. The fact that this is the first time appellant has been in difficulty is a matter which might properly have been considered by respondent in imposing the penalty but affords no basis for reversal on appeal. The plea for mitigation on this score should be made, if at all, to respondent, which may grant relief in the event they determine such action advisable.

In Re Bischoff, Bulletin #53, item 5; Robinson vs. Newark, Bulletin #54, item 2; Re MacLeod, Bulletin #112, item 4; Re Dorothy Light, Bulletin #122, item 7; Re Cassie vs. East Orange, Bulletin #128, item 3.

The action of respondent in revoking appellant's license and in denying his application for renewal of said license for the current period is affirmed.

On July 1, 1936, an order was entered herein staying respondent's order of revocation and extending appellant's old li-

cense until further ordered. That order is hereby vacated, effective July 30, 1936 at midnight, at which time appellant shall cease doing business. In accordance with the terms of said order, respondent shall retain, in addition to the statutory investigation fee, the prorated portion of the license fee for the period during which the extension of the license remained in effect.

L. Hardwicke Burnett

Commissioner.

Dated: July 27, 1936.