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

BULLETIN 264 AUGUST 1, 1938.

1. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - INDIRECT ADVERTISING OF PRICE - WINDOW DISPLAY FEATURING PRICE APPEAL DISAPPROVED.

Dear Sir:

I hand you herewith a photograph of a window display at present being installed in New Jersey retail premises by our employees. You will note that the basic part of the display consists of three pieces headlined, respectively, "The Wilken Family Certainly Gives You Big Value", "The Taste is Right", "The Price Is Right."

Recently there has been called to our attention the fact that agents of the Alcoholic Beverage Control Board in Paterson and vicinity have, without notice to us or our representatives, visited retail premises on which this display was installed and ordered the mutilation of the displays by removal of these headline lines.

We presume that the basis for this action was an interpretation of Section 3 of Regulation No. 21 of January, 1938. However, as we read this regulation and the numerous interpretations thereof our own window display seems far different from the practices which the regulation was intended to prohibit. It is our opinion that those practices include the lurid posting of large signs stating the price, or, what has a similar effect, references to price wars, special low prices, prices slashed, etc.

Our own sign on the other hand constitutes merely a moderate statement of a usual advertising claim, to wit, that the product offered for sale represents a good value at its ordinary and established price. There is no attempt to lure the consumer or any representation of special or extraordinary price but merely a moderate statement of what is fundamental in the advertising of every commodity.

Accordingly, we would appreciate an opinion on your part as to whether your agents in the cases above referred to correctly apply paragraph 3 of Regulation 21.

Yours very truly,
Schenley Products Company,
By - Milton B. Seasonwein.

July 27,1938

Schenley Products Company, Inc.,
New York City.

Att: Mr. Milton B. Seasonwein.

Gentlemen:

The principal feature of the display is price, viz., "The WILKEN FAMILY certainly gives you BIG VALUE", "The TASTE is right", "The PRICE is right", "It's our family's whiskey, neighbor - and neighbor, it's <u>your</u> price!"

The question is whether or not the display constitutes an advertisement, directly or indirectly, of the price of alcoholic beverages, contrary to State Regulations No. 21, Rule 3, which provides:

"No retail licensee shall directly or indirectly advertise or permit or suffer the advertising of the price of any alcoholic beverage or relative size of the container thereof on the exterior of the licensed premises or in the show window or door thereof or in the interior thereof when visible from the street; except, however, that placards not exceeding 1½ inches by 1½ inches and advertising the price of alcoholic beverages being sold in original containers for consumption off the licensed premises may be displayed within the show window of the licensed premises."

Your point that the display makes no attempt to lure the consumer by any representation of special or bargain price, but merely offers the product at its ordinary and established price, is interesting as well as true. But the Rule doesn't apply only to displays of slashed prices. In fact, it doesn't mention cut prices at all. It includes all that and more. It applies to all prices, irrespective of how conservatively stated. It prevents the display of all signs, whether large or small, directly or indirectly suggesting any price, except to the extent expressly allowed, viz., by placards not exceeding 1½" x 1½" in size.

There is no question, then, but that your display is an indirect advertising of price, contrary to Regulations No. 21. Its use on retail premises so as to be visible from the street is, therefore, cause for suspension or revocation of retail licenses.

Please see that all such displays presently installed are removed within ten days from date. Thank you.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DENATURED ALCOHOL - REDISTILLATION - PRESERVATION OF BIOLOGICAL SPECIMENS.

Dear Sir:

I would like to have information on the following:

I am a collector of biological specimens and use denatured alcohol for preserving them on field trips. In doing so the alcohol becomes very dirty. I have a small distilling apparatus to redistill this alcohol so I can use it again, if I am permitted to use it. It holds only two quarts of the alcohol to be redistilled. I used it only for preserving. Am I allowed to use this still for this purpose?

If you wish to see it, you can.

Hoping to receive a favorable reply, as I don't want to do anything against the law.

Yours truly,
Geo. Fiddler.

July 27, 1938

Mr. George Fiddler,
Audubon, N. J.

Dear Mr. Fiddler:

I am not up on pickling flora and fauna in denatured alcohol, but do not object to redistillation of the biological balm if you strictly confine its use to the purposes named.

The still, however, must be registered. Hence, fill and return both enclosed forms.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. LICENSES - SUSPENSION - NO OBJECTION TO SIGN MERELY STATING WHEN PLACE WILL REOPEN.

Dear Commissioner:

You ordered the premises of the Green Parrot, Inc., 1120 South Orange Avenue, Newark, N. J. closed for fifteen days for selling to minors. The suspension would terminate on August 8th, 1938.

My client desires to place a sign in the window as follows: "Will open August 8th, 1938." Have you any objections to the same?

Very truly yours,
Harold Simandl.

July 26, 1938

Harold Simandl, Esq.,
Newark, N. J.

Dear Mr. Simandl: Re: Green Parrot, Inc.

Assuming that the suspension terminates on August 8th, I see no objection to the sign. It states nothing but the truth, and in nowise misleads anyone as to why it is now closed. The declaration is as to the licensee's future and not to his past action.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. SPECIAL PERMITS - SALES ON SUNDAY - SPECIAL PERMITS ARE IN EFFECT ONE DAY LICENSES, AND ARE SUBJECT TO ALL MUNICIPAL REGULATIONS APPLICABLE TO REGULAR LICENSEES.

Dear Commissioner:

In a case where a township refuses to give a permit for the sale and consumption of alcoholic beverages to an organization wishing to hold a picnic on a Sunday, such refusal being based on the ground that said township has a resolution prohibiting Sunday sales, will an appeal lie where extenuating circumstances can be shown?

The organization owns 24 acres of property, mostly woodland; its use is, inter alia, for picnics; said picnic will be held in a wooded section at least 400 feet from the highway, and only organization members would attend. Said picnic would not be open to the public.

The statute provides for an appeal from refusal to grant licenses. Would this be proper grounds for an appeal? Thanking you very kindly for your courtesy in replying,

Very truly yours,
John R. Blanda.

July 25, 1938

John R. Blanda, Esq.,
Passaic, N. J.

My dear Mr. Blanda:

I see that you are not entirely clear on the issuance of special permits to sell alcoholic beverages at social affairs.

It is not the municipality that issues such permits. They are issued by me. The application is made to this office. I require as a condition precedent that the application be approved by the municipal Clerk and the Chief of Police as a courtesy, and for the purpose of cooperating with, and protecting the interests of the municipality in which the permit will be exercised. That is why the Clerk is requested to certify that the issuance of the permit would not be contrary to any local resolutions, ordinances or policies, and the Chief of Police is required to approve the applicant as to chracter and reputation. Should the Clerk and the Chief refuse to approve, I am in no wise bound to deny the application.

I do not, however, issue permits for the sale of alcoholic beverages during the hours such sales are prohibited by municipal regulation. Re Turner, Bulletin 249, Item 5. Special permits are in fact licenses for the day, and the premises for which they are issued are licensed premises for the day. They are, therefore, subject to the same regulations applicable to the regular licensees. Re Hoffmeyer, Bulletin 206, Item 2; Re Gordon, Bulletin 191, Item 4. The fact that the affair will be held only for members of the organization, and the further fact that it will be in an isolated section of the municipality, are not extenuating circumstances.

Your client's remedy, if he is aggrieved by the regulation of hours the municipality has adopted, is, first, to endeavor to get the governing body to change it, and, second, if that fails, to appeal.

So far as Sunday selling is concerned, no municipality is going to have that foisted upon it if it doesn't want it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - ADVERTISEMENT OF ALCOHOLIC BEVERAGES IN CONJUNCTION WITH DRUGS AT CUT RATE PROHIBITED WHERE ARRANGEMENT CONVEYS IMPRESSION THAT "CUT RATE" APPLIES TO BOTH DRUGS AND LIQUOR.

Dear Sir:

Being engaged in the Neon Sign business, we have run into the following problem, which we would appreciate your rendering a decision pertaining to same.

An outdoor combination Porcelain Enamel Steel and Neon Tube sign was constructed and erected at the premises of the Clinton Cut Rate Co., 1031 Springfield Ave., Irvington, N. J. This sign reads as follows:

Beer Liquors Wines	Clinton Cut Rate D R U G S	Beer Liquors Wines

On orders of your commission, the two ends reading: "Beer, Liquors, Wines" were blanked out, but what we would like your permission to do, is to utilize the Neon Tubing of these words and to change the wiring of the sign, also to install a flasher to control the reading as follows: First flash sign reads (only) "Clinton Cut Rate Drugs", then these words flash off and the words (only) "Beer Liquors Wines" come on. By flashing as outlined above, the word "Cut Rate" only shows with "Drugs", and our client could still utilize and display the products he has for sale without confusing with the words "Cut Rate."

Yours very truly,
Salzinger Sign Mfg. Co.
B. Salzinger, Prop.

July 25, 1938

Salzinger Sign Manufacturing Co.,
Newark, N. J.

Gentlemen:

My records disclose that Clinton Cut Rate Drugs was ordered on February 28, 1938, among other things, to remove the words "Beer-Liquor-Wine" from the sign, and acknowledgment of receipt of the order was signed by Louis Edell, manager of the licensee.

I have heretofore ruled in Re Sosnow, Bulletin 227, Item 12, that the sign "Cut Rate Drugs" could be displayed in one of the windows of a licensed premises so long as all of the words were the same size and no liquors were displayed in the same window, but that a sign "Cut Rate" could not be displayed because it would naturally lead patrons to believe that the words "Cut Rate" applied to liquor as well as other merchandise.

For the same reason, it is not permissible for licensees to display signs alternately flashing

"Clinton Cut Rate DRUGS" and "Beer Liquors Wines"

The arrangement of the sign and the flashing conveys the impression that the cut rate applies to both drugs and liquor.

If, therefore, you are going to continue the "Clinton Cut Rate Drugs", the liquor sign must remain blanked out as ordered.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. LICENSES - ADVERTISING - LEGAL NEWSPAPERS - WHAT CONSTITUTES.

July 11, 1938

Memo to: Commissioner Burnett
From: N. L. Jacobs

Several bulletin items have referred to P. L. 1936, c.208 (R. S. Sec. 35:1-2.2) which provided, among other things, that a newspaper must have been published continuously for not less than one year in order to qualify for the publication of legal advertisements. See, for example, Bulletin 183, Item 3, and Bulletin 246, Item 11.

R. S. Sec. 35:1-2.2 was recently amended by P. L. 1938, c. 328, approved by the Governor on June 14th, 1938 and effective immediately, to increase the required period of publication to two years. It now reads as follows:

> "Whenever, by law, it is required that there be published by printing and publishing in a newspaper or newspapers ordinances, resolutions or notices or advertisements of any sort, kind or character by any county, city or other municipality or municipal corporation, or by any municipal board or official board, or body, or office, or officials, or by any person or corporation, such newspaper or newspapers must, in addition to any other qualification now required by law, meet the following qualifications, namely: said newspaper or newspapers shall be entirely printed in the English language, shall have been published continuously for not less than two years, and shall have been entered as second-class mail matter under the postal laws and regulations of the United States."

7. ADVERTISING - FANS - PICTURES OF NUDE FEMALES AS ADVERTISEMENTS FOR TAVERNS DISAPPROVED.

Dear Sir:

On August 2, 1937, we sold 1500 pieces of fans to the Rustic Grill, Marmora, N. J. A duplicate of the picture they selected is enclosed. I received a letter from the proprietors of the Rustic Grill this week stating that someone had informed them that they would not be able to use these fans due to the fact that cafes were not allowed to put out any off-color pictures with their advertisement on same, and they desired to cancel their order.

This picture is strictly art in every detail and is a picture, I am sure, that you have seen in many stores in frames throughout the country. There is nothing lewd about this subject. We have sold the Rustic Grill calendars and fans for many years, and their

advertising matter is always very respectable, and I am sure that you cannot object to a picture such as this being put out in a cafe as long as the reading matter on the back is not objectionable. The proprietors of the Rustic Grill want this fan if they can possibly use it, and have requested me to get a ruling from you as to whether they can do so before we print same up.

Yours very truly,
C. S. Stead, President,
Stead & Andes, Inc.

July 26, 1938

Stead & Andes,
Philadelphia, Pa.

Gentlemen:

I have before me your letter and cardboard fan with picture of a nude female ankle deep in a pond with naught but a rock and a lily in foreground, and nothing much left to the imagination except to wonder why she chose to pose with the pickerels.

The licensee was well advised in cancelling the order. The picture is not lewd - just crude. It may be, as you say, "strictly art in every detail" and possibly it appears, and probably stays, in many a store. But there is a vast difference between a framed picture on a wall in a store and the same thing in hand on a fan in a tavern.

I am definitely opposed to any advertising tie-up of nudes and booze.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. STATE BEVERAGE DISTRIBUTORS - "HEALTH MINERAL WATERS" ABOUNDING WITH THERAPEUTIC QUALITIES BUT FAILING TO QUALIFY AS EITHER ALCOHOLIC BEVERAGE OR ACCESSORY MAY NOT BE SOLD BY STATE BEVERAGE DISTRIBUTORS.

July 28, 1938

Glickenhaus & Glickenhaus, Esqs.,
Newark, N.J.

Gentlemen:

I have your letter of May 16th, inquiring whether a State beverage distributor may handle Min-Aqua, which is advertised as an alkalizer, natural purgative, and dispenser of slenderizing programs.

This "health mineral water" is neither an alcoholic beverage nor an accessory. Re Schmidt's Wine & Liquor, Inc., Bulletin 197, Item 12.

Products supposed to possess therapeutic values or curative properties may not be sold from premises for which State beverage distributor licenses have been issued.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. ADVERTISING - STIMULATION OF THE LITERATE AND INCIDENTALLY OF TRADE BY MEMBERSHIP IN PROPRIETARY CLUBS - HEREIN OF "THE BOTTLE-OF-THE-MONTH-CLUB."

Dear Sir:

In an attempt to popularize our store and to stimulate our trade, we have conceived of a novel plan. It is to be called "The Bottle-of-the-Month-Club." Membership is free, and requires but a verbal pledge by the member to purchase one bottle a month (from a suggested list of five items) for 12 months. The inducement is in price. We are going to advertise only those unknown brands which are not covered by Fair Trade agreements. No personal soliciting will be allowed, only by mail.

Yours truly,
Herman E. Volpin.

July 28, 1938

New Yorker Liquor Stores,
Atlantic City, N. J.

Att: Mr. Herman E. Volpin.

Gentlemen:

Your "Bottle-of-the-Month-Club" hath, strangely, a familiar sound, reminiscent of best sellers. But haven't you forgotten the Advisory Board and the extra dividends?

It may be all right to be up to one's knees in books, but I think bottles would cause even more stumbling in darkness.

Moreover, if the scheme should appeal to men of letters, your proprietary club would soon suffer from plagiarism (moral turpitude per se to the literati) and the public be plagued to sign up with competitors offering even more liberal inducements to membership such as "Fifth-of-the-Fortnight", "Case-of-the-Quarter", and "Carload-of-the-Year" Clubs.

So, to save us all the high pressure, I'll disapprove the conception aborning.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES OUT OF HOURS - HEREIN OF THE ABSOLUTE RESPONSIBILITY OF LICENSEES FOR THE CONDUCT OF THEIR TAVERNS AND THE FUTILITY OF EXCUSES.

In the Matter of Disciplinary Proceedings against ANNA ZOCHOWSKI, 51 Chambers Street, Newark, New Jersey, Holder of Plenary Retail Consumption License No. C-945 for the term expiring June 30, 1938, and now holder (with Marcella Slomkowski as partner) of Plenary Retail Consumption License No. C-973, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Nathaniel J. Klein and Morris Feinberg, Esqs., Attorneys for the Licensee.

BY THE COMMISSIONER:

The defendant, a Newark licensee, is charged herein with keeping her tavern open and selling alcoholic beverages there after 3:00 A. M. on Sunday, May 29th, 1938, in violation of Newark Ordinance #6579, which forbids the sale or service of alcoholic beverages between 3:00 A. M. and 12:00 noon on Sundays (and 3:00 A. M. and 7:00 A. M. on weekdays), and which further forbids licensed premises (with certain exceptions here not material) to be opened during those prohibited hours.

This proceeding, though instituted during the last licensing term, which expired June 30, 1938, does not abate but remains effective against the license presently held for these same premises by both defendant and one Marcella Slomkowski as partners. See State Regulations #15.

At 3:45 A. M. on the Sunday in question, two Newark police officers heard phonograph music emanating from the defendant's tavern and noticed that the tavern was lit up and open for business. They looked inside and discovered five patrons therein. After seeing the bartender sell and serve three glasses of beer at the bar, they entered and arrested the bartender and the defendant's manager.

The defendant (who was not on the premises at the time) does not deny that her tavern was open and the above drinks sold and served after hours. Her defense is that, although the true time was 3:45 A. M., the tavern's clock had been tampered with by the bartender and erroneously registered only twelve minutes to three.

Her manager testified that he was at the tavern on the Sunday morning in question until 1:00 A. M., when he left the

bartender in charge and went to the nearby tavern of a friend; that he there had some drinks and then, although not knowing the time, left to close the defendant's tavern because he thought it "was late"; that the clock in the defendant's tavern registered 2:30 A.M. when he entered; that, having "too much in my head", he sat down by the bar and fell asleep; that he knew nothing further until the two Newark policemen shook and arrested him; that he pointed out to the police that it was only twelve minutes to three by the tavern clock. The manager further testified that he had hired the bartender only a few days before; that the bartender has now disappeared, but admitted before his disappearance that "someone" had tampered with the clock.

The sooner licensees get out of their heads the fatuous notion that they can wriggle out of liability by blaming everybody and everything else but themselves, the better it will be for the continuity of their business. I mention their foolish alibis only to refute them. Licensees might as well learn first as last that they are absolutely responsible for the conduct of their taverns and that excuses don't go.

The defendant has a past record. Last December, the Municipal Board of Alcoholic Beverage Control of Newark found her guilty of selling liquor at her tavern during prohibited hours and suspended her license for five days.

Apparently, she has not yet learned her lesson.

Her license will now be suspended for ten (10) days for selling and serving liquor after hours, and for an additional ten (10) days for remaining open after hours.

On the next offense it will be revoked outright.

Accordingly, it is on this 27th day of July, 1938,

ORDERED, that plenary retail consumption license No. C-973, heretofore issued to Anna Zochowski and Marcella Slomkowski, be, and the same is hereby suspended for a period of twenty (20) days, commencing July 30, 1938, at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

11. APPELLATE DECISIONS - MARINACCIO v. OCEAN TOWNSHIP.

GUISEPPE MARINACCIO,)
Appellant,) ON APPEAL
-vs- CONCLUSIONS
TOWNSHIP COMMITTEE OF OCEAN,)
Respondent.)

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Alton V. Evans, Esq., Attorney for Appellant.
Henry H. Patterson, Esq., Attorney for the Respondent.
T. S. Hamilton, an Objector, Pro Se.

BY THE COMMISSIONER:

On May 20, 1938, appellant applied to the Township Committee of Ocean Township, Monmouth County, for a plenary retail consumption license for a restaurant at Norwood Avenue and Elberon Boulevard,

Elberon Park. This application was denied on May 27, 1938 because of the undisputed fact that the premises are located in a vicinity restricted to residential purposes under a local zoning ordinance in effect since June 6, 1930.

Although appellant duly appealed from this denial, his appeal was taken too late to be heard and determined before the expiration (midnight, June 30, 1938) of the licensing period to which his application related. Consequently, a stipulation was entered into at the hearing that the determination herein shall apply to any new application made by the appellant for the same premises for the current term.

A liquor license is properly denied when issuance thereof violated the terms of a local zoning ordinance. Speake v. Closter, (decided by the Supreme Court of this State on April 4, 1934, but not reported); Talbot v. Keppler, Bulletin 117, Item 1; Corradi v. Closter, Bulletin 219, Item 3; East Brunswick Township Board of Adjustment v. East Brunswick, Bulletin 223, Item 5.

Appellant contends, however, that issuance of a liquor license for the premises in question is not contrary to the ordinance. He founds this contention upon the fact that since the premises have been continuously used as a restaurant from 1928-9 (a date prior to enactment of the ordinance), they are permitted by the zoning statute and the local ordinance to continue to be used for that purpose as a "non-conforming use." R. S. 40:55-48; Sec. 5, Ordinance of June 6, 1930.

However, this non-conforming use of the premises as a restaurant does not include the privilege to sell alcoholic beverages there. When the restaurant began operation (1928-9) and when the zoning ordinance was adopted (1930), Prohibition was in effect. As a result, although the restaurant may continue as a non-conforming use in this residential zone, it may so continue only as a non-liquor vending restaurant, since its exemption from the ordinance is limited to its non-conforming character at the time that ordinance was adopted. R. S. 40:55-48; Sec. 5, Ordinance of June 6, 1930.

The privilege of selling or serving liquor is not inherent in or incident to a restaurant business. Such a privilege is a new and independent use. See the cases cited above. In Speake v. Closter, supra, which involved the issuance of a 3.2 beer license for premises, as here, located in a residential zone but operated as a restaurant under a non-conforming use, Mr. Justice Bodine said:

> "Long before the 18th Amendment was ever contemplated, the sale of malt liquors was not favored in residential districts. It was a well recognized fact that the very character of a place licensed for the sale of alcoholic beverages, whatever the content, changed the character of the neighborhood, and that the business of selling malt liquors was quite different from that of dispensing food alone. No one conscious of the use and abuse of malt liquors can regard the license as otherwise than authorizing a new use in a zoned area. The mere fact that the respondent immediately after the grant of the license displayed signs indicating that his premises were a 'Beer Garden' was eloquent of the new use to which he intended to devote his property. A restaurant conducted for the sale of food alone cannot be regarded as a 'beer garden.' A 'beer garden' possesses a

character and caters to a need far different from the mere sale of food. The granting of a license to sell beer was an unlawful interference with the rights secured to the prosecutrix under the Zoning Ordinance of the Borough. The license is set aside."

Hence, I conclude that issuance of the liquor license applied for by appellant would be contrary to the terms of the local zoning ordinance.

Appellant contends, however, that respondent may not now deny a liquor license for the restaurant because it issued a plenary retail consumption license for the same premises for 1934-5-6-7-8 to one Eugene Tinelli, a former tenant who conducted a restaurant there until approximately June 3, 1938, at which time he surrendered his then outstanding license.

This contention, however, is without merit. The fact that the Tinelli licenses were unlawfully issued is no justification for granting illegally the present application. When the public is concerned, wrongs do not blossom into rights. A liquor license is a privilege which expires annually. R. S. 33:1-26 (Control Act, Sec. 23). There is no requirement that illegality shall be perpetuated year after year.

While it may be true that the present owners of the premises have expended a substantial sum of money in adapting them for use in the sale of liquor, nevertheless they acquired no vested right thereby. The owners were charged with notice that a liquor license for those premises was contrary to the terms of the ordinance. While they may have innocently assumed that the ordinance did not disqualify their particular premises from a liquor license, the risk of such assumption was on their own shoulders. Cf. Ostrowsky v. Newark, 102 N. J. Eq. 169 (Ch. 1928) and Memorial Presbyterian Church v. Newark, Bulletin 191, Item 8.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 27, 1938.

12. ADVERTISING - RADIO CONTEST DISAPPROVED - BINGO OVER THE AIR BANNED.

Dear Mr. Burnett:

We contemplate an advertising campaign for L. N. Renault & Sons American Wines incorporating the prize contest, details of which are given below.

We have submitted the proposed plan to the F.A.A., who have passed upon it.

The details are as follows:

1. The contest is similar to moving picture "Screeno" or "Bank Night", with the exception that the contestants write in their own numbers.

2. Distribution of contest blanks
   (a) Through retail licensees
   (b) Direct from Renault office.

3. Restricted to adults over 18 years old.

4. Will meet Post Office requirements as to skill and not chance.

5. Contest will be conducted by radio.

With this information before you, will you kindly give us a ruling covering the acceptability of such a program?

Very truly yours,
White-Lowell Company, Inc.

July 30, 1938

White-Lowell Company, Inc.,
New York, N. Y.

Gentlemen:

Your contest is on the order of the currently popular "Bingo." Contest blanks are to be distributed to the general public (excepting minors under eighteen years of age) through retail licensees and the Renault office. The listening public, armed with contest blanks and pencils, will then draw close to the family radio at the appointed hour, and, in between commercials extolling the virtues of the wines, proceed to fill in the blanks with numbers as called by the announcer. Prizes await the more fortunate, or, as you intimate, the more skillful.

The scheme is disapproved.

All prize contests advertising alcoholic beverages have heretofore been disapproved. Continental Can Company, Bulletin 261, Item 10, and cases therein cited. Liquor licensees may not handle contest blanks or possess them on the licensed premises. Re Hartman, Bulletin 172, Item 5.

Approval of radio advertising is confined to simple statements describing the product, at such times and in such manner that whatever appeal there may be to impressionable youth is reduced to a minimum. Re Mayer, Bulletin 205, Item 11.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. WHOLESALE LICENSEES - DELIVERIES FOR ACCOUNT OF HOLDERS OF SPECIAL PERMITS FOR SOCIAL AFFAIRS PRIOR TO EFFECTIVE DATE OF SPECIAL PERMIT FORBIDDEN.

Dear Commissioner:

I would like to know if an order was placed with me for a Sunday picnic, and the Lodge or club obtained a special permit dated for Sunday, would I be allowed to make delivery on Saturday to the licensed grounds for this affair.

Truly yours,
South Jersey Bottling Co.

July 29, 1938

South Jersey Bottling Co.,
Camden, N. J.

Gentlemen:

The premises in respect to which a special permit is issued for a social affair becomes, for that day, a licensed premises. Re Gordon, Bulletin 191, Item 4; Re Hoffmeyer, Bulletin 206, Item 2.

Until the special permit becomes effective, no one may store any alcoholic beverages on premises that are not licensed. Consequently, you may not deliver alcoholic beverages to the picnic grounds on Saturday when the special permit is issued to a social organization for a Sunday picnic only.

Of course, if the special permit is issued in respect to premises which are already licensed under a regular retail license, you may make delivery to such premises at any time.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. MUNICIPAL REGULATIONS - "CURFEW" ORDINANCE PROHIBITING CHILDREN UNDER FOURTEEN YEARS OF AGE FROM LOITERING IN STREETS OR PUBLIC PLACES AFTER 9:30 P.M. - LICENSED PLACES ARE NOT "PUBLIC PLACES" WITHIN THE MEANING OF THE ALCOHOLIC BEVERAGE LAW - THE ORDINANCE, THEREFORE, IS NOT CONCERNED WITH LIQUOR CONTROL AND A MEMBER OF THE BOARD OF COMMISSIONERS WHO HOLDS A LIQUOR LICENSE IS NOT DISQUALIFIED FROM VOTING UPON IT.

July 30, 1938

Vincent J. Minetti,
Town Clerk,
Raritan, N. J.

Dear Mr. Minetti:

I have before me your letter of July 28th, enclosing copy of pending ordinance to prohibit children under the age of fourteen years from remaining, loitering, or being found upon any of the streets, alleys, parks, or public places in the Town of Raritan after 9:30 at night.

You ask "Can a member of the Board of Commissioners who also holds a retail consumption license vote on the enclosed 'curfew' ordinance."

There is nothing on the face of the ordinance which in anywise deals with or concerns alcoholic beverages or any phases of the control of the traffic therein. The only possible question that can be raised in this respect is that the ordinance speaks of "public places." I have, however, heretofore ruled that a tavern is not a public place. See Re Dorsey, Bulletin 226, Item 11, and the cases therein cited.

R. S. 10:1-5 defines an inn, tavern, roadhouse or hotel or restaurant, or any place where beverages of any kind are retailed for consumption on the premises, to be a place of public accommodation, resort or amusement within the meaning of the Civil Rights Act. But

that is an express statutory definition applicable only to Chapter 1 of Title 10 of the Revised Statutes. It in nowise conflicts with the ruling made in Re Dorsey.

Hence, I conclude that the proposed ordinance has nothing to do with the liquor Control Act.

It follows that a member of your Board of Commissioners who happens to hold a retail liquor license is in nowise disqualified from voting upon such an ordinance.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. "OTHER MERCANTILE BUSINESS" - WHAT CONSTITUTES - HEREIN OF NON-ALCOHOLIC ACCESSORY BEVERAGES AS MARKING THE LIMIT - ALSO A NEW APPRAISEMENT OF WHAT IS SUCH AN ACCESSORY AND THE LIMITATIONS ON THAT TERM.

Dear Commissioner:

A client of mine holding plenary retail distribution license desires to know whether he may properly sell the following accessories without violation of the Alcoholic Beverage Control Act or your regulations thereunder. Such client considers the following items to be liquor accessories and desires to retail them as such:

> Grenadine; Sparklet Syphons; Sparklet Refill Bulbs; Angostura Bitters; Cocktail Cherries and Cocktail Olives; bottled fruit juices such as lemon, lime, orange, for use in mixing cocktails; non-alcoholic sodas as ginger ale, lime rickey, club soda, Coca-Cola, sarsaparilla, orange, cream, lemon, seltzer.

Respectfully,
Cyril J. McCauley

August 1, 1938

Cyril J. McCauley, Esq.,
Union City, N. J.

My dear Mr. McCauley:

I have your letter and note that your client holds a plenary retail distribution license.

The first thing to ascertain is whether or not the municipality in which the licensed premises are situated has enacted an ordinance pursuant to R. S. 33:1-12 (Control Act, Sec. 13-3a) prohibiting the issuance of plenary retail distribution licenses "to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on."

If not, then there is no objection to the holder of such a license carrying as many side-lines as he pleases.

If, however, such an ordinance has been enacted, question arises as to what is meant by "any other mercantile business."

Of course, it means that wholly independent and distinct lines of business may not be conducted upon the premises licensed for the sale of packaged liquors, for instance, groceries, hardware, drugs, a department store.

A more difficult question arises when the items sought to be sold are so related to or allied with alcoholic beverages that they might plausibly be classed as a part of the business of such a licensee and therefore their sale not constitute an other mercantile business. Such is the problem which your inquiry presents.

The Control Act supplies the clue to the answer. Section 13(1) (R. S. 33:1-12) provides that no plenary retail consumption license may be issued to permit the sale of alcoholic beverages in or upon any premises in which other mercantile business is carried on, subject, however, to certain exceptions including the keeping of a hotel or restaurant and "the retail sale of non-alcoholic beverages as accessory beverages to alcoholic beverages." It is true that the last quoted exception is not carried down, as it might well have been, into R.S.33:1-12(3a) under which licenses for package goods stores are provided for as first above mentioned. But it does indicate clearly that the Legislature did not have in mind, when it prohibited "other mercantile business", to bar the holder of a plenary retail liquor license from selling non-alcoholic "accessory" beverages. And it would be unreasonable to impute to the Legislature an intent to permit a tavern to sell such accessories in original containers or packages for off-premises consumption but deny the same privilege to a regular package goods store.

I therefore take the statute to mean that the sale of non-alcoholic accessory beverages is not an other mercantile business. Bulletin 41, Item 2; Re Boonton, Bulletin 57, Item 17.

Conversely, the sale of such accessory beverages is the limit in the way of side-lines to which the holder of a package goods license may go whenever there is an ordinance prohibiting such licensee from engaging in any other mercantile business. Re Schmidt, Bulletin 197, Item 12; Re Scharf, Bulletin 235, Item 5.

The remaining question is - what is an accessory beverage? In Re Schmidt, supra, I said: "Accessory beverages are those which are commonly used for mixing or in conjunction with alcoholic beverages," and illustrated via club soda, ginger ale, seltzer and vichy. I shall have to retract the term "commonly" for I have since learned that there has developed a call for alcoholic concoctions with other soft drinks newly drafted into service as a base, such as Coca-Cola, cream soda and sarsaparilla - which to one of the old school may seem iniquitous, if not downright perversion. There is, however, no accounting for taste. So I shall not attempt the Herculean task of defining the non-alcoholic vehicles in which alcoholic beverages may properly be mixed or partaken providing that they may reasonably be held to be accessory beverages.

To that extent and for those reasons, this ruling will be liberal. But that does not mean that it may be trifled with. The mere fact that someone may be found who professes to like his Scotch with salts, or his Martini with milk of magnesia, is no reason for holding these formidable medicaments to be accessory beverages. In fact, they are not beverages at all in the accepted sense. Thus mineral salts and so-called health mineral waters have been ruled not to be accessory beverages. Re Schmidt, supra. So, too, preparations whose claim to fame is that they dispense with slenderizing programs. Re Min-Aqua, Bulletin 264, Item 8.

So, again, pretzels, peanuts, cherries, olives, and nuts, while they may be and often are served with liquor, are foods, not beverages, and hence do not rate as accessories in the statutory sense. Re Scharf, supra.

Applying the foregoing principles to your inquiry, it follows that if there is such an ordinance as above in effect, the cocktail cherries and olives are out but the other items, excepting sparklet syphons and refill bulbs, are permissible as accessory beverages.

Ruling on the sparklet syphons and refill bulbs is reserved until samples are submitted and their nature determined.

Very truly yours,

Commissioner.