

COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 90

October 2, 1935

1. SPECIAL PERMITS - DENIED TO MERCANTILE BUSINESS WHEN SOUGHT
FOR PURPOSE OF GIVING ALCOHOLIC BEVERAGES TO CUSTOMERS

In the Matter of the)
Application)

-of-)

M. WALLENSTEIN & COMPANY)

For a Special Permit)

CONCLUSIONS

BY THE COMMISSIONER:

The applicant, proprietor of an Army & Navy Store, at 232 Market Street, Newark, seeks a special permit to dispense alcoholic beverages gratuitously to friends and customers for Thursday, Friday and Saturday this week on the occasion of opening enlarged quarters.

This is not a mere "house-warming" or social celebration. Business is going on as usual. The application frankly admits that alcoholic beverages are to be served to customers. Presumably each customer gets a drink with his purchase. No doubt, trade would be stimulated - so would the customers. In truth, the liquor would not be given away gratuitously; it would be included in the price of the purchase.

Licensees pay heavily for the privilege of dispensing alcoholic beverages. Their business is necessarily subject to strict control because of abuses inherent in liquor traffic. Granting this permit would undoubtedly spur, if not create, business for the applicant, but it would constitute unfair competition with licensed retailers.

The Control Act, Section 3, makes it my duty to "supervise the manufacture, distribution and sale of alcoholic beverages in such manner as to promote temperance". It is against sound public policy to permit any practice unduly designed to increase the consumption of alcoholic beverages. Mercantile business will have to get along on its own merits without the stimulation of liquor.

The application is denied.

D. FREDERICK BURNETT
Commissioner

Dated: September 26, 1935.

2. REVOCATION PROCEEDINGS - REO DISTILLERS, INC. - MODIFICATION OF ORDER

In the Matter of Proceedings)	
to revoke Rectifier and Blender)	
License #R-22 issued to)	
REO DISTILLERS, INC.,)	On Petition
#276-290 Jelliff Avenue,)	<u>ORDER</u>
Newark, N. J.)	

On July 15, 1934, License #R-22 issued to Reo Distillers, Inc. for premises located at #276-290 Jelliff Avenue, Newark, was revoked and the licensed premises were declared ineligible to become the subject of a further license of any kind or class under the Control Act for a period of two (2) years. In order to avoid an unwarranted penalty upon the owner and to eliminate economic waste, the order contained a provision that the Commissioner would entertain an application at any time during the two (2) year period for removal of the disqualification upon filing of proof satisfactory to the Commissioner that the premises were sought to be licensed by an applicant in nowise connected directly or indirectly with the licensee, Reo Distillers, Inc. or any of its officers, directors or stockholders.

On August 26, 1935, application was made by Kraft-Phenix Cheese Corporation, the owner of the premises, for a removal of the disqualification in order that the premises might be leased to Oldetyme Distillers, Inc., the present holder of License #S-4, issued by the Commissioner. The applicant asserts that to the best of its "knowledge, information and belief none of the present directors and officers of Oldetyme Distillers, Inc. are the officers and directors of Reo Distillers, Inc. and that Oldetyme Distillers, Inc. are not directly or indirectly connected with Reo Distillers, Inc.". Investigation conducted by this Department does not disclose any connection between Oldetyme Distillers, Inc. and Reo Distillers, Inc. or any of its officers, directors or stockholders.

Accordingly, it is, on this 27th day of September, 1935,

ORDERED that the disqualification contained in the order of July 15, 1935, in so far as it forbids the leasing to Oldetyme Distillers, Inc. of premises located at #276-290 Jelliff Avenue, Newark, New Jersey, for alcoholic beverage purposes, and its use of said premises for such purposes, be and the same hereby is abrogated.

D. FREDERICK BURNETT
Commissioner

3. SEASONAL RETAIL CONSUMPTION LICENSES - AS TO WHETHER OR NOT THE PROHIBITION THEREOF, BY ORDINANCE, IS VALIDATED BY AN ENABLING STATUTE SUBSEQUENTLY ENACTED.

MUNICIPAL ORDINANCES - CANNOT BE AMENDED BY MERE RESOLUTION.

September 27, 1935

Mr. Peter P. Wahlstad,
Borough Clerk
Hopatcong, New Jersey

Dear Sir:

Section 2 of the ordinance adopted by your Township Committee on June 18, 1934 provides that no seasonal retail consumption licenses shall be granted. At the time the ordinance was adopted the statute did not confer specific authority to prohibit the issuance of seasonal licenses and there was some question as to whether or not the power to do so existed. But since then the Act has been amended by C. 257, P.L. 1935, effective June 8, 1935. Now Section 13, sub. (2), authorizes the governing board or body of each municipality to enact, by ordinance, that no seasonal retail consumption license shall be granted within its respective municipality. This raises the question as to whether or not your Section 2 is validated by the enabling statute subsequently enacted for if not, its reenactment is necessary. The statute does not make such an ordinance subject to the Commissioner's approval, so the approval or disapproval of your Section 2 is outside of my jurisdiction. I suggest that you refer it to your Borough Attorney for his advice.

The Township Committee's resolution of July 23, 1934 purports to amend Section 7 of the above mentioned ordinance. The provisions of an ordinance cannot be superseded or amended by mere resolution. That can be accomplished only by another ordinance. American Malleables Co. vs. Bloomfield, 83 N.J.L. 728 (E. & A. 1912).

Now the ordinance of June 18, 1934 expressly fixed the hours during which liquor might be sold from 6 a.m. to 2 a. m. The resolution purports to amend that ordinance by extending the closing hour from 2 a. m. until 3 a. m. This cannot be done for the reason above stated. Hence the resolution is not effective and is therefore disapproved.

It is true that Section 8 of the ordinance confers express authority upon the governing body of the Borough to adopt, by resolution, additional rules and regulations. This, however, is of no help in the instant case because the resolution is not an additional rule, but an amendment of an existing rule already prescribed by ordinance.

I therefore cordially suggest that if you desire the hours to be fixed on the basis of your resolution of July 23d, 1934, that (1) you enact an ordinance to amend Section 7 or (2) you may, if you desire, enact an ordinance to rescind Section 7 entirely. If the latter alternative is followed, then your governing body would have greater flexibility in changing the closing hours from time to time as occasion and experience should indicate, without the necessity of amending the ordinance each time, and such changes could then be effected from time to time by mere resolution for, nothing being mentioned about

closing hours in the ordinance, such resolution would not be inconsistent with the ordinance and would therefore be legal and effective.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

4. SPECIAL PERMIT - CLUB LICENSE - ISSUED TEMPORARILY WHEN ORIGINAL LICENSE WAS CANCELLED UPON A TECHNICALITY.

In the Matter of the)
Application)
-of-)
PASSAIC LODGE OF ELKS)
For a Special Temporary)
Permit)

CONCLUSIONS

BY THE COMMISSIONER:

The applicant seeks a temporary permit for its new Club House, 111 Passaic Avenue, Passaic, New Jersey.

It appears from the files that a club license for the fiscal year beginning July 1st, 1935, had been issued to applicant by the Board of Commissioners of the City of Passaic with respect to its then premises, 29-31 Howe Avenue, Passaic; that, later in July, application was made to the Board for permission to transfer the license to 111 Passaic Avenue; that protests were lodged with the Board against the transfer, whereupon the Board properly referred the whole transfer proceedings to the State Commissioner on the ground that certain members of the Board were also members of the Elks; that thereupon Deputy Commissioner Hock, in charge of licensing, with equal propriety raised the same point as to the original issuance of the license and advised the Board that the license proceedings in the first instance should have been referred to the State Commissioner, pursuant to the Statute, P. L. 1934, C. 44, which provides that no license shall be issued by any issuing authority to any association in which any member is interested directly or indirectly, but that all such cases shall be referred direct to the State Commissioner; that at a regular meeting of the Board held on September 24th, the original license previously issued to the applicant was cancelled and a warrant ordered drawn to refund the original license fee.

The Elks have today made a new application direct to the State Commissioner for a permanent license at their new Club House, and also make the present application for a temporary permit until the license application can be heard on the merits.

The cancellation of the original license was made for the technical reasons aforesaid and not because of any violation or dereliction by the applicant. No question of good character is raised or in any wise appears. In fact, the resolution of the Board, sitting as a Committee of the whole on September 10th, declares that it has no objections to the transfer but consents thereto, and further that the Board is not aware of any

circumstances, limitation or provision of law or local ordinance or resolution which prohibits the issuance of such transfer. The building zone map of the City shows that the premises, 111 Passaic Avenue, are located in the Residence "A" District, Section 3 of which expressly permits clubs, lodges, social and community center buildings. A survey made by Anton L. Pettersen, Civil Engineer, shows that the total distance from the Church on Paulson Avenue to the Club's front entrance is 243.5 feet and to the side entrance 344 feet. Prima facie, therefore, there is nothing on record yet which in any wise will prevent the issuance of the license.

On the other side, the files disclose a petition signed by twelve property owners in the immediate vicinity of the Passaic Avenue premises protesting against the issuance of a license and praying rejection of the transfer application then pending before the local Board. No reasons are assigned in the petition but those petitioners are entitled to be fully heard and present their reasons and objections.

No final disposition of the case, at this time, therefore, may be fairly made.

In the meantime, until the application can be heard on the merits, and an opportunity afforded to both sides to be heard, it would be unfair to deprive the applicant of the privilege heretofore granted by the local Board and cancelled only upon a technicality.

I shall, therefore, issue a special temporary permit to dispense alcoholic beverages to members of the Club and their bona fide guests pending the hearing of the license application on its merits, without prejudice to the objectors as to the final disposition of the case.

The case will be set for hearing on October 10th at 2:30 P. M.

D. FREDERICK BURNETT
Commissioner

Dated, September 26, 1935.

5. PROHIBITED SALES - A WHOLESALE LICENSEE WHO DISTRIBUTES TICKETS TO CONSUMERS ENTITLING THEM TO RECEIVE ALCOHOLIC BEVERAGES WITHOUT CHARGE FROM RETAIL LICENSEES, WHO IN TURN ARE COMPENSATED BY THE WHOLESALER, IS IN SUBSTANCE MAKING A GIFT TO THE ULTIMATE CONSUMER, WHICH CONSTITUTES A PROHIBITED SALE.

Dear Sir:

We should like to have your ruling on the propriety of a practice which is being engaged in in the vicinity of Newark by one and possibly other out of state brewers.

It is the practice of the brewer referred to, to send one of its employees to a street corner in the vicinity of a tavern dispensing that brewer's products; the employee then

proceeds to hand out to all passers-by small tickets advertising the brewer's products on one side and containing on the other side the name and address of the tavern in question, with a statement that the presentation of the ticket at the tavern will entitle the holder to a free glass of that brewer's beer or ale. Subsequently the brewer's employee calls at the tavern and redeems the tickets, allowing the tavern keeper ten cents for each ticket redeemed.

Is not this practice in violation of the provisions of the Control Act, in that this transaction, viewed in its entirety, is a gift by the brewer of its products to the consumer?

Very truly yours,

LINDABURY, STEELMAN, ZINK & LAFFERTY
By: Roy C. Collins

September 9, 1935.

Lindabury, Steelman, Zink & Lafferty, Esqs.,
Newark, N. J.

Gentlemen:

Section 36 of the Control Act authorizes the promulgation of regulations with respect to "practices unduly designated to increase consumption of alcoholic beverages; gifts of equipment, products and things of value; etc.". In general, the Commissioner has hesitated to impose regulations with respect to trade practices involving primarily economic considerations. See Bulletin #87, Item #15. Conduct such as that described in your letter goes beyond normal trade practices and may well be in conflict with the legislative policy seeking to divorce entirely breweries and retail outlets. The promulgation of an express regulation on the subject need not be considered since the described practice constitutes in substance a prohibited gift from a wholesale licensee to the ultimate consumer. The only license available to a foreign brewery, selling its products in New Jersey, is a wholesale license and under section 12, wholesale licensees may sell only to licensed wholesalers and retailers. Section 1(v) of the act provides that a gift by a licensee shall constitute a sale.

It is the Commissioner's ruling that where a wholesale licensee distributes tickets to consumers entitling them to receive alcoholic beverages without charge from retail licensees, who, in turn, are compensated by the wholesale licensee the transaction constitutes a prohibited sale within the meaning of the Control Act.

Very truly yours,
D. FREDERICK BURNETT
Commissioner.

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

6. REVOCATION PROCEEDINGS - ANNA WILKALIS - DENIAL OF PETITION FOR MODIFICATION OF ORDER

In the Matter of Revocation)	
Proceedings against Anna Wilkalis,)	
107 Hobart Avenue, Bayonne, the)	
Holder of Plenary Retail Consump-)	On Petition of Mawilk Realty
tion License #C-115, issued by the)	Co. for Modification of Order
Board of Commissioners of Bayonne.)	
)	CONCLUSIONS

Minturn & Weinberger, Esqs. , Attorneys for Petitioner.

BY THE COMMISSIONER:

This is a petition to modify the Commissioner's order of May 29th, 1935 in the above matter, disqualifying the premises located at #107 Hobart Avenue, Bayonne, for a period of two years from becoming the subject of any license of any kind or class under the Control Act. See Re Wilkalis, Bulletin #76, Item #10. The petition is filed by Mawilk Realty Co., a corporation organized on June 27th, 1935, which presumably is now the owner of the premises in question. It is not alleged that the corporation is a bona fide purchaser of the property. On the contrary, it appears that the husband of Anna Wilkalis is the president of petitioner corporation. Petitioner, therefore, can be in no better position than the former licensee.

The reasons for modification, as stated in the petition, are:

- "(a) An undue hardship was created thereby resulting in tremendous losses.
- (b) The premises have, because of this provision depreciated in value considerably; no tenants are available because the said premises are particularly situated for the alcoholic business.
- (c) Margaret Kiever residing at #17 West 15th Street, Bayonne, New Jersey, is desirous of leasing the premises located at #107 Hobart Avenue, Bayonne, New Jersey, in order to use the same for the alcoholic beverage business, but is unwilling to lease the same because said premises cannot become the subject of a liquor license.
- (d) Anna Malakauskas is not at the present time engaged in the alcoholic beverage business at any place, either directly or indirectly, nor has she been so engaged since the date of the aforesaid order.
- (e) The accumulation of taxes and interest items will result in the inevitable; namely, the loss of the premises to the petitioner unless this modification is granted, as serious consequences

are already confronting your petitioner with regard to the said various items of indebtedness, such as water bills and tax bills due and owing to the premises; the mortgage now covering the same is being foreclosed.

- (f) To rent the said premises for what it has been used for for the last past forth [sic] years; namely, as a place dispensing liquors for beverage purposes."

The facts leading up to the revocation of the license formerly held by Anna Wilkalis and the disqualification of the premises are fully set forth in the Commissioner's original conclusions and order. See Re Wilkalis, supra. The flagrant violation of the Control Act which led to the entry of that order had been carefully planned by the licensee. It was not an occasional, or accidental, or incidental violation, but rather a well conceived scheme on a broad scale to "palm off" bootleg liquor on the public under the protection of a retail liquor license. The licensee knew the significance of her acts and the chances she was taking, but believed she could "get away with it." Having but briefly tasted the penalty which she so well deserved she now seeks mercy.

For a long time and in total disregard of the vigorous campaign being waged to eliminate the bootlegger and illicit liquor, the former licensee wilfully, and on a wide commercial basis, persisted in cheating both the Federal and State Governments out of the taxes rightly due them, and did all in her power to thwart the efforts of this Department to control the liquor industry. People who wilfully, persistently, and for the benefit of their own pockets break the law, cannot be heard to complain when the penalty imposed strikes them in the same pockets. The rectification and sale of illicit beverages by a retail licensee upon the licensed premises undermines law-enforcement and hurts, if not shatters the confidence of the public in the good faith of all honest licensees. In the instant case the severest punishment provided by law was merited and imposed. I am sorry for the resulting economic distress of the former licensee but it affords no basis for mitigation now. Wilful violators must be prepared to pay the full penalty.

The petition is denied.

D. FREDERICK BURNETT

Commissioner.

Dated: September 30, 1935.

7. TRANSPORTATION - LIQUOR IMPORTED INTO NEW JERSEY FOR PERSONAL CONSUMPTION -- VIOLATION OF MAXIMUM QUANTITIES - VIOLATORS TO BE ARRESTED AND VEHICLES CONFISCATED.

September 30, 1935.

GENERAL NOTICE

Section 2 of the Alcoholic Beverage Control Act was amended at the last session of the Legislature to provide that alcoholic beverages intended for personal consumption could be transported in any vehicle into this State from a point outside, but not in quantities exceeding one-fourth (1/4) barrel, or one (1) case containing not in excess of twelve (12) quarts in all, of beer, ale or porter, and one (1) gallon of wine and two (2) quarts of other alcoholic beverages within any consecutive period of twenty-four (24) hours.

Complaints come to the Department, particularly from Trenton and Camden, that consumers and retail licensees are importing quantities in excess of the statutory maximum.

The law is made to be obeyed.

Public notice is hereby given that violators are subject to arrest and upon conviction to imprisonment, or fine, or both. Vehicles are subject to confiscation and forfeiture to the State.

Inspectors will be assigned at irregular intervals without further notice to apprehend violators and vehicles. All good citizens will cooperate in the observance of the law with the consequent production of revenue justly payable to the State.

D. FREDERICK BURNETT
Commissioner

8. RULES AND REGULATIONS GOVERNING CONDUCT OF LICENSEES AND THE USE OF LICENSED PREMISES - RULE 2 -- ELECTION DAY CLOSING - APPLICATION TO CLUBS

September 30, 1935.

Mr. William J. Elwell,
Vineland,
New Jersey.

Dear Mr. Elwell:

Hon. David T. Wilentz, Attorney General, has referred to me for reply your letter of September 23rd, wherein you raise questions as follows:

(1) On election day can a private social club stay open to members, providing no liquors or beer are served.

(2) Can such a club stay open and serve liquors and beer.

Rule 2 of the Rules and Regulations governing conduct of licensees and the use of licensed premises reads:

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election".

The answer to your first question is, therefore, in the affirmative.

The answer to your second question is, therefore, in the negative, so long as the polls are open pursuant to election day law.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - HENRY vs. WAY

ORAM EDWARD HENRY,)
Appellant,))

-vs-

HONORABLE PALMER M. WAY, JUDGE)
OF THE COURT OF COMMON PLEAS OF)
CAPE MAY COUNTY AND ISSUING)
AUTHORITY,)
Respondent)

ON APPEAL
CONCLUSIONS

Robert Bright, Esq., Harry Tenenbaum, Esq., and
John J. Meehan, Esq., Attorneys for Appellant.

Rex A. Donnelly, Esq., and Charles Bonnell, Esq.,
Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at #6008 Park Boulevard, Wildwood Crest.

Respondent contends that the application was properly denied for the reason, among others, that there is a licensed place within 300 feet of appellant's premises, and that this place is adequate to supply the reasonable demands of the vicinity and renders the issuance of an additional license socially undesirable.

Wildwood Crest is essentially a residential summer resort community, having an all-year population, according to the last Federal census, of 738. During the summer, this population is increased to approximately 10,000. Appellant's premises consist of a restaurant on the shore of Sunset Lake, which is used as a base for commercial fishing. In addition there are other restaurants, a garage, and a boat-building establishment in the

immediate vicinity. One of these restaurants, about 300 feet away, has been licensed.

Charges made at the outset of the hearing of political prejudice were retracted before the close of the hearing when it became apparent that there was no evidence to support them. The only thing that remains in the record is the question of social desirability.

Unquestionably this existing licensed place is adequate to supply the needs of the local residents. It is argued, however, that the large number of persons who frequent the shore of the lake to fish demonstrates the desirability of issuing an additional license. Local public opinion on the question is in sharp disagreement. Petitions with numerous signers were filed both in favor of and in opposition to appellant's application. The Wildwood Crest Borough Council unanimously adopted a resolution to the effect that

***no more liquor licenses be issued to anyone during the year 1935 unless it be an established place of business that had held a previous license issued by the ISSUING AUTHORITY.**

Such a resolution has no legal force, to be sure, in counties of the sixth class where licenses are issued by the Judge of the Court of Common Pleas, but it nevertheless is entitled to great weight as the considered opinion of the governing body of the very municipality in which the premises sought to be licensed are located. Cf. Whitcraft v. Loder, Bulletin #49, Item #2.

The determination of the question as to the number of licensed places which should be permitted in any given vicinity is a matter confided to the sound discretion of the issuing authority. Connolly v. Middletown, Bulletin #81, Item #11, and cases therein cited. The number of transients passing the premises sought to be licensed is one, but only one, of the factors to be considered by an issuing authority in reaching its decision. Connolly v. Middletown, supra.

The fact that appellant produced witnesses who stated that in their opinions the issuance of an additional license was socially desirable does not demonstrate that the action of respondent in denying it was unreasonable. It merely shows a difference of opinion on a question upon which reasonable men can differ. Kalish v. Linden, Bulletin #71, Item #14. Other citizens took the opposite view. The respondent, who is primarily charged with the duty of determining this admittedly difficult and delicate question, resolved it against appellant. The burden of proof in this appeal is therefore on appellant. The proof adduced fails to convince that respondent's determination was unreasonable. Hence the Commissioner will not reverse respondent's exercise of an honest and reasonable discretion. Voos v. Union, Bulletin #73, Item #1; Haenelt v. Haworth, Bulletin #57, Item #11; Karpf v. Soners Point, Bulletin #81, Item #6; Redfern v. Keansburg, Bulletin #81, Item #7; Furnan v. Springfield, Bulletin #49, Item #6; Sussex County Drug Co. v. Newton, Bulletin #47, Item #3.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: September 30, 1935.

10. REVOCATION PROCEEDINGS - MICHAEL BODENSTEIN and ABE H. GELTZEILER

In the Matter of the)
Revocation Proceedings)
against)

MICHAEL BODENSTEIN,)
c/o Wanamassa Gardens,)
Wickapecko Drive,)
Ocean Township,)
Monmouth County, N. J.)

holder of Plenary Retail Con-)
sumption License #C-4, issued by)
the Township Committee of)
Ocean Township)

-----)

CONCLUSIONS

In the Matter of the)
Revocation Proceedings)
against)

ABE H. GELTZEILER,)
c/o Giddy's Wanamassa Gardens,)
Wickapecko Drive,)
Wanamassa, Ocean Township,)
Monmouth County, N. J.)

holder of Plenary Retail Con-)
sumption License #C-10, issued)
by the Township Committee of)
Ocean Township)

-----)

Jerome B. McKenna, Esq., Attorney for Department

Charles Handler, Esq., Attorney for Abe H. Geltzeiler, Licensee

Joseph R. Megill, Esq., Attorney for Mary E. Griffin, Owner of
licensed premises.

Charges and notices to show cause why plenary retail consumption license #C-4 issued to Michael Bodenstein and plenary retail consumption license #C-10 issued to Abe H. Geltzeiler by the Township Committee of Ocean Township for premises known as Wanamassa Gardens, Wickapecko Drive, Ocean Township, should not be suspended or revoked, were duly served upon the licensees and Mary E. Griffin, owner of the licensed premises. Upon the return date of the notices, hearings were held, testimony was taken and the licensees and owner were afforded full opportunity to be heard.

The evidence establishes that in the spring of this year, one Martin Brandman agreed with Geltzeiler to take over the operation of Wanamassa Gardens, Brandman to make the necessary financial investment and Geltzeiler to act as manager. Neither Brandman nor Geltzeiler desired to have the license issued in his name. Application was therefore filed in the name of Michael Bodenstein, with his consent, and in due course

a license was issued to Bodenstein for the period expiring June 30, 1935.

Under date of May 31, 1935, a second application was executed by Bodenstein for the current license period and pursuant thereto license #C-4 was issued. In each application Bodenstein stated that he was the only person interested, directly or indirectly, in the business to be conducted under the license. It is now not disputed that Bodenstein did not participate in the actual management of the business and was not in any sense the owner thereof. Brandman was the real owner and Geltzeiler acted as his manager.

When Bodenstein sought a solicitor's permit from the Commissioner in July, 1935, he ascertained that such permit could not be issued to the holder of a retail license. He thereupon sought to surrender his license, but no action thereon was taken by the Township Committee. Upon learning that Bodenstein was surrendering his license, Geltzeiler executed an application in his own name under date of July 19, 1935, and a license was issued to him on August 16, 1935. While action was pending on Geltzeiler application, Brandman and Geltzeiler continued the operation of the business and the sale of alcoholic beverages under purported authority of the Bodenstein license.

The Geltzeiler application contains the statement that he was the only person interested in the business to be conducted under the license. Although there is some testimony to this effect, the clear weight of the evidence establishes that the same relationship which had existed between Brandman and Geltzeiler with respect to the business conducted at Wanamassa Gardens under the Bodenstein license continued under the Geltzeiler license.

From all of the foregoing the conclusion must be reached that neither Bodenstein nor Geltzeiler was the true owner of the business conducted under their licenses; that they did not disclose the interest of Martin Brandman and that their applications contained false statements as to the persons interested in the business. The conduct of Bodenstein and Geltzeiler was in clear violation of the Control Act. If the liquor industry is to be controlled, every precaution must be taken to insure that licenses are held not by "fronts" but only by the real owners of the businesses conducted under the licenses. There must be a finding of guilty on each of the charges preferred against Bodenstein and Geltzeiler respectively. The remaining question to be considered is the extent of the penalty to be imposed.

Each of the licensees denies intentional wrongdoing and there is some evidence to this effect. Bodenstein voluntarily came to the offices of the Department and disclosed the true facts with respect to the management of Wanamassa Gardens. Similarly, Geltzeiler freely answered questions submitted by the Department's agents during their investigation of the matter. Each licensee has tendered his license for surrender and does not intend to apply for a further license under the Control Act. Bodenstein desires to continue employment with a reputable wholesale licensee and Geltzeiler asserts that he will seek employment with a reputable retail licensee. Each states that he is the sole support of a family and has no independent financial resources.

Pending further investigation and consideration of these facts, decision will be reserved on the question of whether the licenses should be revoked with the consequent statutory disqualification for a period of two (2) years. In the meantime and

pending final determination the licenses will be considered as having been surrendered and in view of the findings herein the Township Committee will be directed to forfeit the unearned portions of the license fees paid.

The testimony establishes that Mary E. Griffin, the owner of the licensed premises, was entirely innocent and had no connection with any of the violations discussed above. None of the persons involved directly or indirectly in the licenses here considered will be interested in anywise in the future management of Wanamassa Gardens. Under these circumstances, the premises should not be disqualified, regardless of the ultimate determination on the issue reserved.

An order will be entered in accordance with these Conclusions.

D. FREDERICK BURNETT,
Commissioner

By: Nathan L. Jacobs
Dated: August 30, 1935 Chief Deputy Commissioner

11. LICENSEES - EMPLOYEES - FAILURE TO OBTAIN A LICENSE DISTINGUISHED FROM FAILURE TO QUALIFY AS A LICENSEE

October 1, 1935.

Mr. George Barone,
245 Union Avenue,
Paterson, N. J.

My dear Mr. Barone:

I have yours of September 24th, by which you inquire in view of the decision made on your appeal from the refusal of the City of Paterson to grant you a license for premises known as the Four Towers, now Rex Towers (Bulletin 86, item 5), whether you may work there or run the restaurant.

That decision upheld the action of the majority of the Paterson Aldermen who voted against your application as reasonable. Their decision was therefore affirmed. That was as far as it went. It was held that the private locked towers where liquor was served, afforded opportunity and immunity difficult for those seeking neurotic excitement to overlook and hence it was an exercise of reasonable discretion on the part of the Aldermen in determining that the public interest required that places where liquor was sold be open to public view. They also justified their refusal by reference to your police record and the fact that you had been found guilty of violating the local screen regulation and sentence was suspended.

Your present questions were not involved in that decision and therefore are still open.

The Control Act, Sec. 23, provides: "No person who would fail to qualify as a licensee.....shall be knowingly employed by or connected in any business capacity whatsoever with the licensee." It does not say that a person who fails to obtain a license shall not be employed. There is a vast difference between failure to obtain a license and failure to

