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

BULLETIN NUMBER 179. MAY 28, 1937

1. APPELLATE DECISIONS - WILLIAMS v. STRATFORD.

APPELLATE DECISIONS - SUPPLEMENTAL HEARING - MUNICIPAL ISSUING AUTHORITY MAY, SUBJECT TO APPEAL TO THE COMMISSIONER, DENY REFUND WITHOUT HEARING AND ON BASIS OF EX PARTE INVESTIGATION - RULES GOVERNING APPEALS WILL BE MODIFIED WHEN THE INTERESTS OF JUSTICE SO REQUIRE.

May 21, 1937

Benjamin F. Friedman, Esq.,
Camden, New Jersey.

Sydney T. Smith, Esq.,
Camden, New Jersey.

Re: Frances G. Williams v. Borough Council of the Borough of Stratford.

Gentlemen:

The transcript of hearing in the above entitled matter has been carefully considered.

On December 5, 1936 the Commissioner transmitted to the Borough Council of Stratford a synopsis of the Department's investigation disclosing an alleged violation at the licensed premises of Frances G. Williams, holder of Plenary Retail Consumption License C-1 for premises located on the White Horse Pike at Berlin Road and recommended that proceedings be instituted towards the revocation or suspension of the license. On December 17, 1936 the license was surrendered and in view of this action no revocation proceedings were instituted. However, the Borough Council denied refund of any portion of the license fee paid because of the allegations set forth in the Department's synopsis. Appeal was thereupon taken from the denial of refund and the matter duly came on for hearing.

Section 28 of the Control Act permits refund upon surrender of a license provided the licensee "shall not have committed any violation of this Act or of any rule or regulation or done anything which in the fair discretion of the Commissioner or other issuing authority, as the case may be, should bar or preclude such licensee from making such claim for refund." Under this provision it was incumbent upon the Borough Council to deny any refund to the licensee if it believed that the licensee had committed a violation of the Act or the Rules. And such belief could properly be based upon ex parte report of investigation. Cf. Bulletin 10, Item 4. Nowhere in the Statute is there any requirement that the denial of refund be based upon notice and hearing, although the licensee is expressly given the right to appeal. See Section 28. Accordingly, the licensee may not complain on the ground that she was not afforded an opportunity to be heard before the Borough Council. Cf. Garford Trucking, Inc. v. Hoffman, 114 N. J. L. 552, 531 (Sup. Ct. 1935).

The statutory appeal afforded the licensee full and complete opportunity to be heard. The transcript discloses, however, that although the synopsis was introduced in evidence without objection, no actual testimony was introduced on behalf of either party. Under such circumstances it might well be urged that the appellant has not sustained the burden of establishing error, imposed upon her by the Rules Governing Appeals, and that consequently, the denial of refund should be affirmed. These Rules, however, are not invariable and will be modified where the interests of justice demand. See

Rule #14 of the Rules Governing Appeals. Where, as in the instant case, appellant never received formal notice that she was charged with having committed a violation and disclaimed knowledge of the nature thereof, she should be confronted with the evidence against her and afforded an opportunity to cross-examine and introduce such evidence as may be material on her behalf. The Commissioner has therefore directed that further hearing be held at the offices of the Department on Thursday, May 27, 1937 at 2 P. M. for such purpose and the ultimate determination as to whether the denial of refund was proper will be made on the basis of the evidence introduced at such further hearing.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

2. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - APPARENT FUTILITY OF MERE WARNING.

May 24, 1937

B. Lehr Scull, Esq.,
Clerk of Hamilton Township,
Mays Landing, N. J.

Dear Mr. Scull:

I have staff report of the proceedings before the Township Committee of Hamilton against Joseph Lapin and Dominic Repici, charged with sale of alcoholic beverages to minors and against Catherine Dambra, charged with possession of illicit alcoholic beverages.

I note Repici pleaded guilty and the other two licensees were adjudicated guilty; that no penalty was handed out to Repici or Lapin but warnings were given; that the license of Catherine Dambra was revoked outright.

Expressing no opinion on the merits of the Lapin and Dambra cases because they might come before me by way of appeal, I wish to thank the members of the Committee for their cooperation with one reservation, viz.: I do not believe warnings alone have much deterrent effect. The only language licensees seem to respect where their violations are uncovered, is revocation or suspension. The penalty in the Dambra case is eloquent. I note, however, that she did not appear at the trial. Possibly the warning to Repici and Lapin will serve to prevent future violations. If not, I respectfully request that in future cases involving sales to minors real penalties be imposed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. LICENSED PREMISES - CHANGE OF ENTRANCE - PROCEDURE.

Dear Commissioner:

Max Passoff, License D-10, premises 171 Brook Ave., which is a corner property at 52 Main Ave., desires to change the entrance to #52. As this is the same premises and only a change of entrance from

Brook to Main Ave., will you please advise if the ruling of your department requires Passoff to publish a notice of intention, file application for transfer and obtain stock transfer permit from you, also the federal license permit be transferred, and oblige

Yours very truly,
A. D. Bolton,
City Clerk.

May 24, 1937

Mr. A. D. Bolton,
City Clerk,
Passaic, New Jersey.

Dear Mr. Bolton:

In order to extend a licensed premises, it is necessary that the licensee obtain either a new license for the additional premises or the transfer of his old license to cover both, see re Campanello, Bulletin 114, Item 8; re Cohen, Bulletin 89, Item 7; re Johnson, Bulletin 170, Item 14. Where the object is to restrict the licensed premises rather than extend it, there is no reason for requesting a formal transfer and the procedure is radically different (see re Daly, Bulletin 171, Item 3).

In Passoff's case, the premises were approved upon the initial issuance of the license. The change contemplated, you tell me will not affect such premises, except as to entrance and exit. The change of entrance in the instant case, however, has an important effect because it constitutes a change in address from 171 Brook Ave. to 52 Main Ave. Although there may not have been any objections to the issuance of a license for 171 Brook Ave., it does not follow that there would be no objections to 52 Main Ave. because the new entrance may now be within 200 feet of a church or school, thereby coming within the restriction set forth in Section 76 of the Control Act. In addition, moving of the entrance around the corner to 52 Main Ave. may be objectionable to residents on Main Avenue, although the former entrance was not objectionable. Also, it is possible that the new entrance may come within some zoning restriction which would not affect 171 Brook Avenue.

Therefore, it will be necessary for Mr. Passoff to apply for transfer of his license from 171 Brook Avenue to 52 Main Avenue as set forth in the provisions of Section 23 of the Control Act and the rules in such case made and provided. Application should be made setting forth the same matters and things with reference to the premises as were required to be set forth in the original application for license, including publication of Notice of Intention to apply for transfer. The fee for transfer of license from premises to premises is $5.00.

No Special Permit will be required in respect to the stock because such permit is only required where stock is transferred from person to person.

The Federal Stamp held by the licensee should be submitted to the Collector of Internal Revenue for proper endorsement of the new address thereon.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. TRANSPORTATION INSIGNIA - NOT ISSUED FOR TRY-OUTS OF VEHICLES - CARS MUST BE TESTED WITH OTHER BALLAST THAN BEER.

Dear Sir:

I have a Plenary Retail Distribution license granted by Roxbury Township.

I wish to buy a second hand car to transport beer, but before I buy any I want to try them out. I can do this on May 28th and 29th. Will you send me a letter showing I have a right to transport beer in a car on either of these days, as I cannot tell which day I have them, but either 28th or 29th. If car proves satisfactory, I will notify you, and get a permit for my windshield.

Yours respectfully,
Guy R. Davis.

May 25, 1937

Mr. Guy R. Davis,
Ledgewood, N. J.

Dear Mr. Davis:

Section 2 of the Control Act prohibits the transportation of alcoholic beverages except pursuant to and within the terms of a license. Municipal licensees, therefore, may deliver alcoholic beverages in their own vehicles in connection with their business, provided the vehicles bear proper transportation insignia pursuant to Rules Governing the Issuance of Transportation Insignia.

Rule 5 of Rules Governing the Issuance of Transportation Insignia provides:

> "Transportation insignia shall be issued only for vehicles owned or leased and controlled by the licensee. Applications for transportation insignia for leased vehicles must be accompanied by a copy of the lease."

Therefore, no transportation insignia may be issued for any vehicle unless you either own or lease such vehicle. Temporary permission for a vehicle, not either owned or leased by you, will not be granted.

Under the circumstances, you will have to make up your mind as to what vehicle you desire to buy before permission can be granted to transport beer in it. If you must try the car out with ballast, why not test it with a load of bricks? It won't run any worse with beer aboard unless you get it in the carburetor!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SUNDAY SALES OUT OF HOURS - FIVE DAY PENALTY FOR FIRST OFFENDER.

May 25, 1937

Daniel J. Lane, Esq.,
City Clerk,
Gloucester City, N. J.

Dear Mr. Lane:

I have staff report of the proceedings before the Common Council of Gloucester City against Edward J. Kammauff, charged with having sold alcoholic beverages on Sunday before the proper opening hour.

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

That's fine work and should certainly teach Gloucester City licensees that the closing hour regulations were made to be obeyed. Investigator Lockwood reports that my comments in re Wieser, Bulletin 175, Item 2, were read by you at the hearing on the question of penalty. I am pleased to learn that the suggestion of five days as a penalty for first offenders was adopted.

Please express to the members of the Council my appreciation.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

3. SPECIAL PERMITS - SOCIAL ORGANIZATIONS - PERMISSION NORMALLY WITHHELD WHEN SOUGHT FOR PREMISES OF A LICENSEE DISCIPLINED BY SUSPENSION BUT GRANTED IN THIS CASE UNDER SPECIAL CIRCUMSTANCES.

May 24, 1937

Miss Katherine Fitzsimmons,
Short Hills, N. J.

My dear Miss Fitzsimmons:

I have yours of the 22nd re Benefit Dance to aid the Catholic workers with funds for their new Settlement House.

Normally I do not grant special permits in respect to social affairs held on the premises of a licensee who has been disciplined by suspension for infraction of the law or regulations until the suspension has been terminated.

In view, however, of the worthy object and because your plans were wholly under way when the unfortunate affair occurred, I shall be glad to grant your organization a special permit for the Benefit Dance to be held at the Knights of Columbus Hall on May 27th. Please file your application at once. Deputy Commissioner Hock of my staff will be glad to explain to you the incidental detail.

I hope your dance will provide all the funds and the fun that you hope for.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

7. CLUB LICENSES - STATUS OF WOMEN'S AUXILIARY - THE LADIES, IN ORDER TO BE SERVED LIQUOR, MUST BE MEMBERS OF THE CLUB ITSELF OR ELSE BONA FIDE GUESTS OF A MEMBER - HEREIN OF THE FUTILITY OF EVASIVE DEVICES SIMULATING MEMBERSHIP OR FAKING A GUEST AND OF WARNING TO CLUBS WHICH CUT CORNERS.

Dear Commissioner:

Do members of a women's auxiliary have the privilege to use a bar in a club which has a license to dispense alcoholic beverages, and is it necessary for the members of a women's auxiliary to have a membership card in the event their rights are questioned?

Very truly yours,
Christopher N. Peditto.

May 25, 1937

Christopher N. Peditto, Esq.,
Palmyra, N. J.

My dear Mr. Peditto:

If the club holds a plenary or seasonal retail consumption license, it may sell or dispense alcoholic beverages to the women's auxiliary, or to the public generally for that matter, irrespective of membership in the club.

If, on the other hand, the club takes out merely a club license, it may sell or serve alcoholic beverages only to bona fide members of the club and their guests. In such case, before they could buy, the women's auxiliary would have to be either members of the club itself or the bona fide guests of a member. Guests are persons expressly invited to the club by a member and who, on arrival at the club, are not only sponsored but personally attended by their respective hosts. Re Club Licenses, Bulletin 100, Item 3; cf. re Hausmann, Bulletin 141, Item 5.

A mere membership or guest card of itself has no legal standing. If the holder is a bona fide member or the guest a bona fide one, no card is necessary. If he is not a bona fide member or guest, the possession of the card won't make him one. Re McCormack, Bulletin 143, Item 7.

Membership and guest cards have but little practical value nowadays so far as the service of liquor is concerned. Everything depends on the real facts and not what appears on the surface. The days when such cards served as passports to speakeasies are past. Clubs which value the much reduced rate for which they obtain club licenses must confine sales and service of liquor strictly within the limited privileges conferred or else face the unpleasantry of a revocation which bars them for two years from getting any license - even if they then are willing to pay the full fee for a plenary license. That's something to be considered and consummated before being caught.

It doesn't pay to cut corners in New Jersey.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. LICENSED PREMISES - JARS IN TAVERNS TO RAISE FUNDS FOR AMBULANCE PERMISSIBLE - HEREIN OF DONATIVE ORISONS.

Dear Sir:

The Wildwood Fire Department are trying to raise funds to purchase an ambulance. In order to do this large glass jars have been placed in various places around the City for donations to this fund. Would it be permissible to have these jars in the various cafes and saloons?

Very truly yours,
George R. Holmes,
Chief.

May 25, 1937

George R. Holmes, Fire Chief,
Wildwood-by-the-Sea,
New Jersey.

My dear Chief:

The Fire Department deserves respect both for its worthy objective and the wholesome manner in which the funds are to be raised.

You may place these jars in taverns, if the owners are willing, and may frequent gifts be accompanied by a fervent pater noster to forfend all donors from any personal use of the ambulance!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. LICENSES - DISQUALIFICATION UNDER SECTION 40 - RETAIL LICENSES MAY NOT BE HELD BY CORPORATION INTERESTED IN FOREIGN WHOLESALER AND MANUFACTURER - CORPORATION OPERATING UNDER JUDICIAL CONTROL IN PROCEEDINGS UNDER SECTION 77B OF THE BANKRUPTCY ACT MAY HOLD RETAIL LICENSES SO LONG AS SUCH CONTROL CONTINUES NOTWITHSTANDING ITS INTEREST IN FOREIGN WHOLESALER AND MANUFACTURER.

Dear Sir:

All of the capital stock of D. A. Schulte, Inc. (a New York corporation) is owned by Schulte Retail Stores Corporation (a Delaware corporation).

On June 3rd, 1936, Schulte Retail Stores Corporation filed a petition for reorganization pursuant to Section 77-B of the Bankruptcy Act in the United States District Court for the Southern District of New York. At the same time D. A. Schulte, Inc. filed a petition in the same proceedings as a subsidiary debtor.

Both of the petitions were approved and the debtors were continued in possession; the first order continuing the debtors in possession having been made on June 3rd, 1936, and the second order on June 30th, 1936. The debtors are acting under the latter order. No trustee has been appointed.

The proceedings are being handled by Judge Knox, and he has made a general order of reference to Peter B. Olney, Jr., as Special Master.

77-B, sub-section c, provides that the court may continue the debtor in possession or appoint a trustee. It contains the following language:

> "* * * In case a trustee is not appointed, the debtor shall continue in the possession of its property, and, if authorized by the judge, shall operate the business thereof during such period, fixed or indefinite, as the judge may from time to time prescribe, and shall have all the title to and shall exercise, consistently with the provisions of this section, all the powers of a trustee appointed pursuant to this section, subject at all times to the control of the judge, and to such limitations, restrictions, terms and conditions as the judge may from time to time impose and prescribe. While the debtor is in possession (a) its officers shall be entitled to receive only such reasonable compensation as the judge shall from time to time approve, and (b) no person shall be elected or appointed to any office, to fill a vacancy or otherwise, without the prior approval of the judge."

In the case of IN RE CHENEY BROS., 12 Fed. Supp. 605, the court said, that where a debtor is continued in possession by an order of the court, it acquires the status of a bankruptcy trustee; and in IN RE JAMES BUTLER GROCERY CO., 12 Fed. Supp. 851, the court said (page 852):

> "Therefore, apparently the trustee under section 77-B, or his alternate, the debtor in possession, is a combination of an ordinary trustee in bankruptcy and a receiver in equity, unless the order of appointment is circumscribed so as to limit such amplitude of function."

The act provides (Section 77-B (C) (2)) that the

> "trustee shall have all the title, and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all the powers of the trustee appointed pursuant to section 44 of this Act, and if authorized by the judge, the same powers as those exercised by a receiver in equity to the extent consistent with this section, and, subject to the authorization and control of the judge, the power to operate the business of the debtor during such period, fixed or indefinite, as the judge may from time to time prescribe."

Mr. Justice Roberts in STRATON v. NEW, 283 U. S. 318, pointed out that the purpose of the bankruptcy law is to place the property of the bankrupt under the control of the court. "This jurisdiction is exclusive" he said, "within the field defined by the law, and is so far in rem that the estate is regarded as in custodia legis from the filing of the petition." (page 321)

In making the orders continuing the debtors in possession Judge Knox stated that he intended to exercise close supervision and control over the operations of the business; and he appointed Referee Olney as Special Master to act for him in the exercise of that supervision. He said, from the bench, that he felt that every commitment made by the debtor in possession is a commitment of the court.

Since the filing of the petitions there has been no independent action by the officers or directors of either of the corporations. All of the employees of both companies have been, in effect, employees of the court. The debtors function in exactly the same manner as trustees would function had trustees been appointed. They are in almost constant attendance before the Special Master in matters which relate to operations of the business and policies affecting those operations. Their disbursements, commitments and contracts of all kinds are submitted to the Special Master for scrutiny and approval.

In addition to this close supervision by the court, the debtors, in possession, are subject to the scrutiny of ten committees and their counsel.

With the filing of the reorganization proceedings the accountants of the firm of Stern, Porter & Kingston ceased to represent the debtors, and the firm of S. D. Leidesdorf & Co. was retained by order of the court. Periodic meetings are held by the accountants, counsel and representative and counsel for the various committees, and monthly reports are made to the court in accordance with rule 77-B-6 of the bankruptcy court.

I am entirely satisfied that the officers and directors of the debtors are not free to determine any questions of policy, nor any matters of importance in connection with the administration of the estate, and that there cannot be any question of control of operations or policies by the directors of Park & Tilford or Park & Tilford Import Corporation.

A plan of reorganization is being considered and will be presented to the court when it is completed. It may very likely be that the plan submitted by the debtors will not be acceptable, and that a plan or plans will be presented by the various groups of creditors and stockholders. It may be that the plan finally adopted will contemplate an entirely new board of directors, or a board which will be dominated by representatives of the creditors.

We urge, therefore, that because of these reasons no action should be taken, during the pendency of the proceedings before the Federal court, which will in any way interfere with the administration of the assets and estate of the debtors; and that sufficient legal reason appears for holding that section 40 of our Alcoholic Beverage Act does not apply to the Schulte situation during these proceedings.

Very truly yours,
E. Scheck.

May 24, 1937

Emanuel P. Scheck, Esq.,
Newark, New Jersey.

Dear Sir:

It is my understanding that the stock of D. A. Schulte, Inc., holder of retail licenses in New Jersey, is owned by a holding corporation which has common officers, directors and stockholders with another holding corporation owning all of the stock of Park & Tilford Import Corp., a New York licensed manufacturer·

and wholesaler. The Commissioner has heretofore ruled that the aforesaid relationship created an interest by Park & Tilford Import Corp. in the retailing of alcoholic beverages within New Jersey and that consequently it was disqualified under the provisions of Section 40 of the Control Act from obtaining a wholesale license within this State. See Bulletin 70, Item 6. The present inquiry is whether the relationship does not also disqualify the D. A. Schulte, Inc. from holding retail licenses within New Jersey.

Section 40 seeks to eliminate brewery and distillery control over retail outlets by divorcing completely the manufacturing and wholesaling of alcoholic beverages from their retail sale. It expressly provides that it shall be unlawful for any person interested in the retailing of alcoholic beverages to be interested directly or indirectly "with any manufacturing, wholesaling or importing interests of any kind whatsoever outside of the State." In view of this provision and the principles underlying the ruling in Bulletin 70, Item 6, it is evident that, apart from the special considerations outlined in your letter and mentioned hereafter, D. A. Schulte, Inc. could not lawfully hold retail licenses within this State so long as its relationship with Park & Tilford Import Corp. continues.

Your letter sets forth that on June 3, 1936 petitions under Section 77B of the Bankruptcy Act were filed by Schulte Retail Stores Corporation and D. A. Schulte, Inc. as subsidiary debtor, in the United States District Court for the Southern District of New York; that the debtors were continued in possession pursuant to Section 77B, sub-section C; that the business of the debtors is being conducted under strict supervision of the District Court and its Special Master; that the officers and directors of the debtors "are not free to determine any questions of policy, nor any matters of importance in connection with the administration of the estate"; and that plans of reorganization will be submitted in the near future.

In legal contemplation the corporate debtors have relinquished their independent standing and have assumed positions similar to trustees in bankruptcy and receivers in equity acting under court direction. See In re Avorn Dress Co., 79 F. (2d) 337 (CCA. 2d, 1935); In re James Butler Grocery Co., 12 F. Supp. 851, 852 (E. D. N. Y. 1935). In no real sense can they be under control of any other corporation or individual so long as judicial administration continues. Cf. 1 Gerdes, Corporate Reorganizations, (1936) Sec. 454, p. 688 et seq. This being so, the evil sought to be obviated by Section 40, namely, —control by manufacturers and wholesalers over retailers —is in nowise present. Section 40 should, therefore, be construed to be inapplicable.

Accordingly, you are advised that the present view of the Department is that so long as judicial control over the activities of D. A. Schulte, Inc. continues, it is not disqualified from holding licenses solely because of its relationship with Park & Tilford Import Corp. However, in the event such judicial control terminates and the relationship with Park & Tilford Import Corp. continues, the holding of retail licenses by D. A. Schulte, Inc. would be considered unlawful and steps would be taken to revoke such licenses.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

10. APPELLATE DECISIONS - LINDENBAUM VS. BELLEVILLE.

SAMUEL F. LINDENBAUM, :

Appellant, : ON APPEAL

-vs- : CONCLUSIONS

THE BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE, :

Respondent. :

Irving Mandelbaum, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of limited retail distribution license No. DL-1, issued to appellant for premises located at 437 Cortland Street, Belleville.

On April 14, 1937 Investigators Anderson and Hill of this Department found three men drinking bottled beer on the licensed premises.

At the hearing the young man who had purchased the beer testified that he had entered appellant's delicatessen store during his lunch hour and had met two of his fellow employees there; that he had bought six bottles of beer from Harry Mandelbaum, a clerk in charge of the store, and received a bottle opener from him; that the clerk immediately went to a rear room; that the bottles were then opened and the contents thereof consumed on the licensed premises by himself and his two fellow employees. The Investigators testified, however, that when they entered the Clerk was in front of the counter in the store.

Section 13(3)b of the Control Act provides as follows:

> "Limited retail distribution license. The holder of this license, subject to rules and regulations, shall be permitted to sell for consumption off the licensed premises, but only in original containers, any unchilled brewed malt alcoholic beverages in quantities of not less than seventy-two (72) fluid ounces."

The evidence shows a violation of the terms of the license held by appellant in that the contents of the six bottles were being consumed on the licensed premises in the presence of the clerk in charge of the store at the time the Investigators entered.

Appellant argues that he was not responsible because he was not present. Licensees, however, are responsible for the acts of their employees on the licensed premises. In Re Kneller, Bulletin #49, Item 4.

Appellant argues also that the case was prejudged by respondent and that the penalty is too severe. There is no evidence

to sustain appellant's contention that this case was prejudged. Mayor Williams, who was called as a witness by appellant, specifically denied that the members of the board had predetermined the guilt or innocence of appellant prior to the hearing held before such board. While it is true that the Mayor testified that a policy had been adopted to revoke such licenses after violations had been established, the fact that such policy existed was not prejudicial to appellant in so far as the question of his guilt or innocence is concerned.

As to the penalty imposed, it should be noted that licenses of the type held by appellant are issued for a very small annual fee, (not less than $25. nor more than $50. in any municipality), and to permit holders of such licenses to escape with light penalties after violations are discovered might not only encourage violation by others holding this type of license but would also create or tend to create unfair competition with those holding other types of licenses. The plea for mitigation should be made, if at all, to respondent, which may grant relief in the event they determine such action advisable. Wellens vs. Passaic, Bulletin #134, Item 4, and cases therein cited.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 26, 1937.

11. APPELLATE DECISIONS - KINDBERG VS. BELLEVILLE.

BERTIL ERIC KINDBERG, :
Appellant, :
-vs- : ON APPEAL
THE BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE, : CONCLUSIONS
Respondent. :

Irving Mandelbaum, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of limited retail distribution license No. DL-7, issued to appellant for premises located at 577 Belleville Avenue, Belleville.

On April 14, 1937, Investigators Hill and Anderson of this Department visited the licensed premises and purchased three bottles of beer from appellant's mother, who was then in charge of premises. The bottles were taken from a refrigerator located in the store.

At the hearing the Investigators testified that there were five cases of beer on ice, and the licensee testified that there was about a case and a half of beer on ice, which he kept there for his personal use. Regardless of the exact amount, it clearly appears that there was a sale of chilled beer and admittedly a

sale of less than seventy-two fluid ounces. Appellant testified that he had instructed his mother not to sell less than seventy-two ounces of beer, but his mother testified that she did not know anything about the regulations as to the quantity of beer which might be sold. The mother was not a full-time employee, but she did work in the licensed premises "every now and then and every day sometimes", and was paid for her services. The employer is responsible for the acts of the employee upon the licensed premises. In Re Kneller, Bulletin #49, Item 4.

Appellant herein raises the same contention as to prejudicial action on the part of respondent, and the severity of the penalty, as was raised in the case of Lindenbaum vs. Belleville, Bulletin #179, Item 10. These contentions were duly considered and disposed of in the decision of that case.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 26, 1937.

12. APPELLATE DECISIONS - EVENCHICK VS. BELLEVILLE.

LAZARUS EVENCHICK,

Appellant,

-vs-

THE BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE,

Respondent.

ON APPEAL

CONCLUSIONS

Irving Mandelbaum, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of limited retail distribution license No. DL-10, issued to appellant for premises located at 525 Washington Avenue, Belleville.

On April 14, 1937, Investigators Anderson and Hill of this Department, while making an inspection, found five eight-ounce bottles of beer and a thirty-six ounce bottle of beer in a refrigerator upon the licensed premises. The licensee told them at that time that the beer was for his personal consumption. At the hearing the Investigators admitted that they had not purchased any alcoholic beverages at the time of their inspection, and appellant testified that he ate his meals in a kitchen at the rear of his store and that he had placed these bottles of beer on ice for his own use.

Despite the suspicion which is naturally aroused by the presence of bottled beer in a refrigerator on premises licensed to sell only unchilled beer, especially after this licensee had received a warning from this Department a few years ago that he should not keep beer on ice at the licensed premises, nevertheless I find no evidence of sale in violation of the terms of his license.

The action of respondent must, therefore, be reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 26, 1937.

13. APPELLATE DECISIONS - PARKER VS. BELLEVILLE.

DOROTHY F. PARKER, :
Appellant, :
-vs- :
BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE, :
Respondent. :

ON APPEAL

CONCLUSIONS

Andrew B. Crummy, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Respondent denied an application for a transfer of a limited retail distribution license from Mary Spergel Best to appellant, for premises located at 529 Joralemon Street, Belleville, and appellant appeals therefrom. By stipulation the appeal is submitted upon the petition of appeal and answer filed herein.

The petition alleges that the transfer was denied for three reasons stated therein, which are hereafter considered, and contends that the action of respondent was erroneous in that it was an arbitrary and unreasonable denial of the transfer. The answer filed admits that the transfer was denied because of the three reasons set forth in said petition, but denies that respondent's action was arbitrary or unreasonable. The answer also alleges three additional reasons.

I shall consider first the three reasons set forth in the petition, viz.:

1. Several licensees of said town holding licenses of the same type are now being prosecuted for alleged violations of The Alcoholic Beverage Control Act.

2. The fee paid was so small that it constituted unfair competition to those licensees paying larger fees for their type of licenses.

3. That on or after July 1, 1937, they the governing body and Excise Board would issue no licenses of this type to anyone.

None of these reasons are sufficient.

1. The fact that several licensees holding the same type of license have violated the Control Act cannot prejudice appellant who, for aught that appears, is worthy in every respect. Licensees are properly held to strict responsibility for the acts of their employees as well as their own but they are not to be punished for the sins of other licensees. To say they are "birds of a feather"

is wholly without weight in proceedings of this kind where every case should be heard on its own merits.

2. It is a late day to talk of unfair competition when the statutory fees have long since been paid. If the fees are too small, complaint should be made at the door of the Legislature and not laid on the doorstep of the licensee.

3. The license already issued is valid until June 30, 1937. If appellant wishes to take the license for the balance of its term, it is her own lookout whether it is renewable or not, but until the license is abolished it is transferable.

The additional reasons set forth in the answer for denying the transfer are:

4. Since denial of the application for transfer of the Limited Retail Distribution license, as a result of hearings held before the Board of Commissioners of the Town of Belleville three Limited Retail Distribution licenses were revoked because the aforesaid Board of Commissioners found the licensees guilty of violating the provisions of the Alcoholic Beverage Control Act.

5. The Board of Commissioners of the Town of Belleville have instructed the Town Attorney to prepare necessary amendments to ordinances now in existence in the Town of Belleville so as to effect the abolition of Limited Retail Distribution Licenses in the Town of Belleville; said abolition to be effective at the end of the present licensing period; namely, July 1, 1937.

6. The Board of Commissioners of the Town of Belleville had in mind the ultimate abolition of this type of license when they refused to grant transfer, and having this determination in mind refused to grant a license to a person just purchasing business, who would hold same only for a period of two and one-half months.

4. See "1", supra.

5. See "3", supra.

6. See "3", supra.

There appears to be no valid reason why the transfer was refused.

The action of respondent is, therefore, reversed and respondent is ordered to grant the transfer as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 26, 1937.

14. RULES CONCERNING LICENSEES AND THE USE OF LICENSED PREMISES - UNDESIRABLES - MORE ABOUT BEARS - HEREIN OF THE STATUTES IN SUCH CASE MADE AND PROVIDED AND OF SOLICITUDE FOR DENIZENS FERAE NATURAE THEMSELVES.

NEW JERSEY VIVISECTION INVESTIGATION SOCIETY

Mrs. Frederick Bertram
State Chairman

May 22, 1937

My dear Mr. Burnett:

If you will get a copy of the Roadside Menagerie Bill A 487 you will find that no wild animals caged or tied may be displayed at any public market or place of business.

This Bill became a law in 1936 as the result of an overwhelming demand by the people of New Jersey.

I wish to thank you for the stand you have taken. These animals become ugly because they do not live a natural life, are purposely kept without water so that people will buy stuff for them to drink.

We love our own freedom, but forget that for a wild creature to be caged or confined must be little short of torture.

Thank you again.

Very truly yours,
Christiana Bertram.

May 26, 1937

Mrs. Frederick Bertram,
State Chairman,
New Jersey Vivisection Investigation Society,
Tenafly, New Jersey.

My dear Mrs. Bertram:

Thanks very much for your boost of the 22nd re bears in barrooms as "undesirables."

The Assembly Bill you mention has become Chapter 228 of the Laws of 1936 (p. 717) and prohibits the keeping or exhibiting of any wild animal other than birds or fowl "at any road stand, gasoline station, or market," located on any public streets or highways.

I confess that my decision was based on consideration for the beholders rather than solicitude for the bears, although I have always been interested, even specializing on them, as most of us do, in childhood.

I really hadn't thought of them as unduly increasing beverage consumption. Most that I have encountered (on the roadside) have been content with soda "pop."

Enclosed is a copy of the text of the decision for your personal use, with my sincere compliments.

Cordially yours,
Frederick Burnett
Commissioner.