

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

BULLETIN NUMBER 165.

MARCH 9, 1937.

1. ADDRESS OF
D. FREDERICK BURNETT, STATE COMMISSIONER OF
ALCOHOLIC BEVERAGE CONTROL FOR NEW JERSEY
OVER RADIO STATION WNEW

February 27, 1937

YOU AND YOUR GOVERNMENT

THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

This Department is charged with the supervision of the liquor traffic in every one of its many phases.

There are two main methods of controlling the traffic: (1) the state stores system; (2) the licensing system. New Jersey, after careful study by an independent, non-partisan commission, adopted the latter.

Governor Hoffman, last month, in his Second Annual Message to the Legislature said:

"The license system, which affords a fair field for individual initiative and enterprise, has avoided the pitfalls which have beset several of the states which have entered the liquor business in competition with their own citizens. This industry brings in State revenue of over seven millions of dollars per annum, and license fees contributed to municipal treasuries represent more than four millions of dollars annually. Strict enforcement is a moral duty of the government. It is a source of lawful revenue; it protects law-abiding licensees against liquor outlaws and customers from spurious and sometimes poisonous goods. The accomplishments in this particular field lead to the reasonable belief that the objectives of control of this business can ultimately be obtained by fair but determined administration, and that the evils which beset the prohibition era may be wiped out eventually."

Now -- what are the objectives of control?

But what do you mean -- "control"?

Sometimes it is easier to tell what a thing is not rather than attempt to define what it is.

Illustrative is the story told of General Logan, the celebrated Indian fighter. He was camped one night on western foothills in dangerous Indian country. After posting sentries, he retired to his tent for a well-earned sleep, from which he was rudely awakened, an hour later, by cries of "Help! Help!!!"

The General called out "What's the matter?"

The sentry shouted: "I've captured an Indian."

"Oh, well, then, bring him in!"

"He won't let me!!!"

Now that is not my concept of control. What control really means is enforcement of the law as it is written. Anything short of that is not control. Anything outside of that is out of control. Prohibition failed because it did not achieve control. So will Repeal unless control is accomplished.

The first lesson is that the law was made to be obeyed. Control is Government itself. When I ask you to support control -- I ask you to support Government itself.

The second lesson is like unto the first: Laws should not be put on the books unless they are meant to be obeyed, are capable of enforcement and are going to be enforced. Noble declarations in statutory language mean nothing and accomplish nothing unless they are translated into hard-fisted action. Empty, idle words -- flossy rhetoric and fancy gestures -- which are flouted or winked at bring disrespect for all law.

The objectives become apparent the moment the true concept of control dawns. Those objectives, concretely stated, are:

(1) To select worthy licensees; to make common-sense rules regulating their conduct and the use of licensed places, and then to make them live up to those rules; to discipline for violation by revocation or suspension of the privilege; to insist that those who operate places where liquor is made, sold or consumed shall be decent, law abiding, self respecting. The better licensees urge this very thing. The rest of them must be forced whether they like it or not.

(2) To stop everybody else from doing those things which only licensees may lawfully do; to arrest, indict and convict those who trespass in forbidden fields; to exterminate the bootlegger; to vindicate the law.

Four of the major police problems from time immemorial have been immorality; gambling; narcotics and liquor. This Department, which is essentially a police department, cuts across each of these fields. So far as non-licensees are concerned, the work of this Department is concerned exclusively with liquor. This is why stills are seized; speakeasies raided; poisoned liquor ruthlessly tracked down; bootleggers, hijackers and racketeers arrested. So far as licensees are concerned, our duty extends to everything that occurs on licensed premises, that is, not only liquor but gambling, immorality, intemperance, noise, brawls, in fact the whole gamut of human conduct and its extraordinary manifestations under the exhilaration of alcohol. That is why this Department is concerned with slot machines and dice and betting against the house; with seductive sirens masquerading under and defiling the name of hostess; with the insidious back room evil; with noise so that neighbors and non-belligerents cannot sleep; with music and dancing and amusements in general; with those who drink copiously and then drive vaingloriously to show how well they can hold it; with sales to minors; with everything that deals with decency, sobriety and law and order.

It must be recognized that liquor is a commodity inherently dangerous. But that conclusion is not a terminal but merely the beginning point. The big question is what are we going to do about it? It seems to me that the problem is akin

to the great floods recently caused by the Ohio and Mississippi Rivers. The remedy is to build dikes and levees so high, so reinforced, so planned as to control the natural flow of the stream by regulating it as distinguished from the attempt to destroy it altogether; to make it flow through defined channels; to keep it clean and decent; to purge the stream of those elements which add to the danger; to harness it to the use of mankind; produce a revenue for the public purse and prevent it becoming a curse; to guard those dikes and levees with competent manpower which, with honesty, industry and eternal vigilance, sees that no breaks, no sandboils, no seepage occurs. But if they do, then to see to it that effective remedies are applied instantly.

You, friends of the radio audience, as good citizens are an integral part of the manpower necessary to the success of control. It is you who see and hear firsthand those things which the police could never approach because their uniforms give warning, and which my men, roughly only four to a whole county, cannot, because of their small numbers, even hope to patrol let alone control. It is you who see cheating saloons doing business on Election Day while the polls are open or after closing hours; or on prohibited Sunday hours. It is you who see young girls and young boys plied with liquor till they reel, or sold the pocket flasks which anoint wild orgies in automobiles of indulgent parents. The sale of liquor to minors in these days of high powered engines with which the public highways are crowded is the greatest curse of liquor. It is you who stumble into disgusting scenes at bars, in back rooms, in booths, on public dance floors, and in places that have the outward appearances of decency but are sinks of debauchery. If you want to lighten your own tax burden by making others bear their full share, if you want decency, if you want law and order, if you really want to help keep liquor in its place and broken legs and broken lives out of your homes, then obey that impulse! Do your duty, take your pen in hand and tell the Department what you know, what you have seen and who, where and when. Address your letter to the ABC Commissioner, 744 Broad Street, Newark.

The privacy of the citizen who sends us bona fide information, whether it proves to be true or not, will be respected to the last ditch and treated forever in sacred confidence. Your name will positively not be used, neither will you be "mixed up" in the case. Information which you will give will be checked by my own men, and if found to be true, it is they who fearlessly will face the fire and testify to the facts. You will not be called as a witness. Please give us the facts. You drop out of the picture at that point. We do the rest. Sign your name and address; you have nothing to fear. Remember my pledge of secrecy; remember the address: The ABC Commissioner, 744 Broad Street, Newark. Remember this is your Department - part of your Government; that this business of Alcoholic Beverage Control is your own business; that it involves your taxes; your children, your homes.

2. STATUTORY AUTOMATIC SUSPENSION - PETITION FOR LIFTING - PETITION DENIED IF LIQUOR WAS POISONOUS AS WELL AS ILLICIT.

In the Matter of)	
SAMUEL FELSENFELD)	ON PETITION FOR LIFTING OF
.))	STATUTORY AUTOMATIC SUSPENSION
)	BY REASON OF CONVICTION.

BY THE COMMISSIONER:

Petitioner was indicted for possession of illicit alcoholic beverages and, on October 9, 1936, found guilty as charged, after trial by jury in the Essex County Court of Quarter Sessions. The conviction worked an automatic suspension of his plenary retail consumption license for the balance of its term, i.e., through June 30, 1937. His place, was, therefore, closed on October 16th, 1936, and has been closed ever since. See Bulletin 143, Item 2.

A previous petition to lift this suspension was dismissed on October 26th, 1936, because premature and insufficient. Bulletin 145, Item 2.

Thereafter, on October 27th, 1936, the Board of Commissioners of the Town of Irvington revoked petitioner's license.

On February 16th, 1937, the Irvington Commissioners rescinded the revocation and adopted a resolution suspending the license "from the date hereof to and including February 16th, 1937."

The petition now under consideration was then filed.

P. L. 1935, c. 254 provides:

"Upon conviction of violation of any of the provisions of the act. . . . any license held at the time of said conviction pursuant to said act by the person convicted. . . . shall suspend automatically and without notice. . . . the suspension. . . . shall continue for the balance of the term of the license unless the commissioner, in his discretion, and for good cause shown, shall otherwise order. . . ."
(Control Act Reprint, Section *82.)

In determining whether good cause is shown for lifting such suspension, the views of the local issuing authority are given great weight. No suspension has been lifted unless the local issuing authority has been in favor of it. The resolutions of the Irvington Commissioners of February 16th indicate that the local issuing authority has no objection to lifting the statutory suspension.

Since the petitioner has been closed down now for a period of over four months, the ends of justice have been served, and

since there is no objection by the local issuing authority, the petition would now normally be granted. cf. re Morris, Bulletin 98, Item 10; re Stein, Bulletin 106, Item 6; re Honsell, Bulletin 164, Item 10.

It appears, however, in the staff report of October 16, 1936 (Bulletin 143, Item 2) that traces of acetone, a poisonous denaturant were found in the refilled bottles discovered and seized on the licensed premises of the petitioner. Nothing is said of this in the petition. The report is not clear whether he was convicted for this offense or not. If the liquor was, in fact, poisonous, as well as illicit, then I deem there is no good cause shown why the suspension should be lifted, notwithstanding that the place has been closed so long or that the municipality is willing that it be opened. Outright revocation is none too severe a penalty for the possession of poisonous liquor by a licensee. I shall not exercise the discretion in favor of such a licensee.

Hearing will, therefore, be held to determine whether the liquor found on the licensed premises of petitioner was poisonous, as well as illicit.

Decision on this petition is reserved until such determination has been made.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 27th, 1937.

3. STATUTORY AUTOMATIC SUSPENSION - ITS REASON, SCOPE AND OPERATION - THE RELATION OF LOCAL LICENSE ISSUING AUTHORITIES TO SUCH SUSPENSIONS - HEREIN OF GREAT WEIGHT GIVEN TO THE VIEWS OF THE LOCAL ISSUING AUTHORITY ON A PETITION TO LIFT THE SUSPENSION.

March 7, 1937.

W. H. Jamouneau, Clerk,
Town Hall,
Irvington, N. J.

My dear Mr. Jamouneau:

Thanks for sending me the transcript of the proceedings concerning Samuel Felsenfeld. I always appreciate it whenever municipal clerks send in stenographic transcripts of the proceedings in disciplinary cases. It enables me more accurately to do my part.

In reading it, I learned that there was much misconception as to the relation of local issuing authorities in respect to statutory automatic suspensions, and therefore thought to write you.

Previous to Chapter 254 of the Laws of 1935, a licensee might be convicted in the criminal courts of operating a still, selling to minors or possessing bootleg liquor, but his business, via bartenders and other employees, kept going on at the same old stand even if he himself was sojourning in the cooler, unless and until his license was suspended or revoked. But all this

took time - time to prepare the necessary papers, serve the notices, arrange to convene the council, committee, or commissioners, as the case might be, to sit in judgment and to render decision. Hence, in spite of criminal conviction, the licensee might continue to do business as if nothing had occurred, and do so until the formal processes of civil law had run their full course. Sometimes this would run into weeks or even months. Local boards, which had recently held their regular monthly meetings, were compelled to meet again specially to hear the case or else carry the matter over for the better part of two months.

The Laws of 1935 provided that immediately upon the conviction of a licensee for violation of any of the provisions of the Control Act, his license is automatically suspended without any notice or hearing. All the red tape is thus cut out, and, properly so, because he has had his day in court and been found guilty. All the precious time is thus saved. The automatic suspension effected by this statute has proved of great value in several instances.

This automatic suspension continues for the balance of the term of ~~the~~ license unless the State Commissioner, in his discretion and for good cause shown, shall otherwise order. It is this phase of the statute of 1935 to which I direct your special attention. Question at once arises what is meant by good cause for lifting the suspension and what is the relation of ~~the~~ local license issuing authorities to such a lifting.

As to what constitutes good cause, see Re Wellhofer, Bulletin 84, item 1; Re Egan, Bulletin 91, item 10; Re Morris, Bulletin 98, item 10; Re Stein, Bulletin 106, item 6; Re Honsell, Bulletin 164, item 10, and Re Felsenfeld, Bulletin 165, item 2. As to effect of local penalties, see Re Weinberger, Bulletin 98, item 6; Re Bolton, Bulletin 98, item 8, and Re Monks, Bulletin 104, item 2.

Applying these principles, it follows that the action taken by the local license issuing authorities before, concurrently, or after an automatic suspension has been effected may consist either (a) in revoking the license or (b) in suspending it, or (c) in administering no penalty at all.

(a) If the local board revokes, that is the end of the license.

(b) If the local board suspends the license, the term becomes material. If for a period less than that fixed by the State Commissioner as a minimum, the expiration of the local suspension manifests that the local board has no present objection to the reinstatement of the license. Such expiration does not, of itself, lift the automatic suspension. Only the State Commissioner may do that. On the other hand, if the local board suspends the license for a longer period than that ordinarily determined by the State Commissioner as a proper penalty - say, for instance, the local board suspended the license for a term of six months, then, even if I deemed that the licensee had been punished sufficiently at the end of one month, or two months, I would not, in deference to the local attitude, lift the suspension until the local suspension terminated.

(c) If no disciplinary action were taken at all by the local authorities, I would ask them, nevertheless, if I was other-

wise ready to lift the suspension, to pass a resolution expressing one way or the other as they deemed best the present sense of the board on the specific question for it might well be that the reason no disciplinary action was taken was because they knew of the statutory automatic suspension and were content to let it stand on that or otherwise deemed their own action unnecessary.

It follows that the only time that I will lift an automatic suspension is in cases where the license had not been revoked and where the disciplinary action taken by the local issuing authority has already run its course or where no such action has been taken at all. Even in the last mentioned case, I shall require their present point of view and accord great weight to the views of the local issuing authority.

Applying these principles now to the Felsenfeld case (Bulletin 165, Item 2):- If the revocation of October 27th had not been rescinded, I should have had no jurisdiction at all to lift the suspension. As it was, your board, after rescission of the revocation, substituted a suspension terminating the day of their meeting on February 16th. That of itself did not lift the statutory automatic suspension. But it did open the way for me to consider on the merits whether the licensee had been punished sufficiently. It declared the official attitude of your Board that so far as it was concerned, it had no present objection to lifting the suspension. Even so, for the reasons expressed in re Felsenfeld, Bulletin 165, Item 2, I have made no decision as yet in that case. The automatic suspension is therefore still in effect.

Will you please read this letter to your Board and thank them for the time and pains taken in this case as shown by the lengthy transcript which I have read from beginning to end. Incidentally, I note that there is no mention therein of the alleged possession of poisonous liquor. Apparently it was not called to their attention by the attorneys. I am taking care of it by independent inquiry.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. EDUCATIONAL CAMPAIGN.

To: Commissioner Burnett
From: E. W. Garrett.

March 1, 1937.

The speaking engagements arranged to date are as follows:

WEEK BEGINNING FEBRUARY 28, 1937

Wed. Mar. 3 - Veritans Club at Unity Progress
Club, 52 Church St., Paterson, Attorney
N. J. - 12 Noon Harry Castelbaum

Thurs. Mar. 4 - Lions Club at The Tavern,
168 E. Ridgewood Ave., Ridgewood - Attorney
12:15 P. M. A. P. Bianco

WEEK BEGINNING MARCH 7, 1937

Mon. Mar. 8 - League of Women Voters of the
Oranges, at Y.W.C.A., Main St., Inspector
Orange, N. J. - 3 P. M. S. J. MacIntosh

Mon. Mar. 8 - Paterson Grill Owners' Social
Assn. Inc., at The Meadowbrook,
Newark-Pompton Tpke., Cedar Grove, Inspector
N. J. - 9 P. M. S. J. MacIntosh

Tues. March 9 - Bergen County League of Women
Voters, at Lecture Room, Methodist
Church, State St., opposite High
School, Hackensack, N.J. - 12:30 P.M. Inspector
M. E. Ash

WEEK BEGINNING MARCH 21, 1937

Wed. Mar. 24 - Jr. Order United American Mechanics
of 52nd State Council District of
N.J. at Odd Fellows' Hall, 29th St.
and Broadway, Bayonne, N.J. - 8:45 P.M. Deputy Commr.
E.W. Garrett

Thurs. Mar. 25 - Court Jersey City No. 3, Foresters
of America, at Central Hall, 574
Newark Ave., Jersey City, N. J.,
9:15 P.M. Inspector
Edw. Lurie

WEEK BEGINNING MARCH 28, 1937

Tues. Mar. 30 - Arlington Women's Club, Arlington, N.J. Inspector
M. E. Ash

Tues. Mar. 30 - Nutley W.C.T.U., at home of Mrs. Elmer
E. Pearce, Methodist Parsonage, 2
Stewart Ave., Nutley, N.J. - 3 P.M. Investigator
A. Robbins

Wed. Mar. 31 - Young Men's Christian Association,
107 Halsey St., Newark, N.J. - 12 Noon Deputy Commr.
N.L. Jacobs

WEEK BEGINNING APRIL 18, 1937

Thurs. Apr. 22 - Young Men's Christian Association, Inspector
Perth Amboy, N.J. - 8:00 P.M. D.J.H. Murray

E. W. Garrett,
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT LIQUOR - PENAL-
TIES OF 30 AND 45 DAYS.

March 3, 1937.

Harry S. Reichenstein, Secretary,
Municipal Board of Alcoholic Beverage Control,
City Hall,
Newark, N. J.

Dear Mr. Reichenstein:

I have staff report and your certification of the dis-
ciplinary proceedings for possession of illicit alcoholic bever-
ages against (a) William J. McCann, resulting in a suspension of
his license for forty-five days; and (b) Harry Bobyock, resulting
in a suspension of his license for thirty days.

Passing no opinion on the merits of the cases because
they may both come before me by way of appeal - one already hav-
ing been filed in the Bobyock case - I again desire to express to
the members of your Board my appreciation for the commendably
stiff punishments now being imposed as of course upon those who
appear to deserve them.

Newark licensees will soon awaken to the fact that
they are to be held to strict accountability.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS AND AFTER CLOSING HOURS - PENALTY OF 14 DAYS.

March 3, 1937

David M. Bowen, Esq.,
Fairfield Township Attorney,
Bridgeton, N. J.

Dear Mr. Bowen:

I have staff report and your Clerk's certification of the proceedings before the Township Committee of Fairfield against Violet E. Holst, t/a Pinchurst Supper Club, charged with (a) having sold and served alcoholic beverages to minors; and (b) having sold and served alcoholic beverages after closing hour.

I note the licensee was adjudicated guilty and that her license was suspended for fourteen days starting March 1, 1937.

I am not expressing any opinion on the merits of the case, because, perchance, it may come before me by way of appeal. I do, however, wish to express to you, and through you, to the members of the Township Committee, my sincere appreciation for the prompt, efficient and business-like manner in which the proceedings were carried to a conclusion. The penalty inflicted should go a long way to inculcate a decent and abiding respect for law and order in your community. I have frequently stated that as licensees begin to learn in well-governed municipalities that the civic-minded officials thereof mean business, the work of such governing bodies, so far as the disagreeable task of administering punishments is concerned, will become less and less.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - CONVICTION OF A CRIME - SUBSEQUENT TO ISSUANCE OF LICENSE WHICH, IF IT HAD OCCURRED BEFORE, WOULD HAVE PREVENTED SUCH ISSUANCE - REVOCATION INDICATED.

March 3, 1937.

Edward J. Coyle, Esq.,
Deputy City Clerk,
Hoboken, N. J.

Dear Mr. Coyle:

I have staff report and your certification of the proceedings before the Board of Commissioners of Hoboken against Joseph Brignola, charged with (a) having possessed illicit alcoholic beverages; and (b) having been convicted of a crime after the license had been granted to him, which, if it had occurred before, would have prevented the issuance of the license, viz., the conviction of Brignola in the Federal court of conspiracy to violate the U. S. Laws.

The report states:

"On October 6, 1936, the licensee Brignola was sentenced by Judge T. Blake Kennedy in the United States District Court for the Southern District of New York to a year and a day in the U. S. Penitentiary in Pennsylvania after his conviction on a charge of conspiracy to violate

the U. S. laws. Chief McFeeley of Hoboken immediately ordered the licensed premises closed.

"A certified copy of the record of conviction was obtained by this Department together with facts upon which conviction was based. This record of conviction was presented by Investigators Ilaria and Kaufman at the hearing held before the Board of Commissioners of Hoboken.

"In addition to this Inspectors Longo and Flaherty of the Federal Alcohol Tax Unit testified that on August 24, 1936 they inspected the licensed premises and found that one of the opened bottles taken from behind the bar contained an alcoholic beverage other than as represented by its label. Subsequent test by the U. S. Chemist verified the finding of the inspectors that the bottle had been refilled."

I note the licensee was adjudicated guilty and that his license was revoked.

Expressing no opinion on the merits of the case because it may come before me by way of appeal, I would ask that you express to the members of the Board and to Chief McFeeley my sincere respect and appreciation for their effective action in this case.

I take it that the major reason for revocation was the conviction, subsequent to the issuance of the license, of a crime of such nature that if the conviction had occurred before the license was issued, the license never would have been issued.

This is a case of first impression in the State. It illustrates the flexibility and adequacy of the provisions of the Control Act to deal effectively with cases out of the ordinary run. Thus, this licensee was convicted, after he had received his license, of a crime which had nothing to do with the handling of liquor nor did the crime bear on any of the problems of liquor control except that the conviction for conspiracy demonstrated that he was not worthy of having a license.

It is pleasing to note that your Board administered the revocation which was indicated by the facts.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SUNDAY SALES AND ALLOWING PERSONS OF ILL REPUTE ON LICENSED PREMISES - REVOCATION.

March 4, 1937.

Frank A. Priest, Esq.,
Township Clerk of Hamilton,
Municipal Building,
2090 Greenwood Avenue,
Trenton, N. J.

Dear Mr. Priest:

I have staff report and your certification of the proceedings before the Township Committee of Hamilton against Frank Lis, charged with (a) having sold alcoholic beverages on Sunday in violation of Township resolution; and (b) having permitted persons of ill repute on or about the licensed premises.

The report states:

"On Sunday, February 7, 1937, Investigators Perry and Poole arrived at the licensed premises about 10:15 A.M. They found the side door locked but while there a man came up and asked if they wanted a drink. They answered 'yes.' This man, who they later found out was the licensee, opened the door and allowed the investigators to enter. Each ordered and was served a Scotch whiskey and soda. They then identified themselves and ordered the licensee to discontinue sales.

"At the hearing the investigators testified to the above facts.

"Before the hearing began the charges were amended to include a violation of State Rule #4 of Rules Concerning Conduct of Licensees and Use of Licensed Premises, which, among other things, prohibits a licensee from allowing persons of ill repute on his licensed premises.

"In support of this charge Police Officers Merryweather and Bossman testified as follows:

"On January 25, 1937 they were detailed to St. Francis Hospital on a report that a man and woman were there who were badly hurt, having been beaten up. They found William Toms and his wife. Toms suffered from lacerations of the face and possible fracture of the nose. They informed the police officers that they had been at the above licensed premises and upon leaving same had been approached by three men who made insulting remarks. A fight then occurred wherein Toms received his injuries. The police officers then went to the licensed premises, arriving there at 2:50 A.M. Sunday, January 24, 1937. The licensee and bartender stated they knew nothing of the fight. While the officers were questioning the licensee a man named John Rauch came in and stated he had been robbed of \$100.00 in the yard outside. He said he could identify the men. Just at that time three men came in and he pointed them out as his assailants. Merryweather stated he attempted to arrest them but in the confusion two escaped but one was captured. Later, Rauch would not identify him as one of the men in the yard when he was held up. Merryweather stated the bartender knew who the men were but would not give their names. He further stated that the bartender pointed out one man in the licensed premises who had a criminal record and two others who he said were bad and that he was also afraid of. Bossman in his testimony stated that an automobile which they learned had been stolen was found in the yard.

"The evidence was considered by the Committee in executive session.

"Certification from the Clerk reveals that

"License revoked and licensed premises rendered ineligible for two years from February 27, 1937.

"NOTE: The certification contains the following:

"On their return, Mr. Hartman, Chairman, stated that it was the unanimous opinion of the Committee

that due to continuous violation of the Sunday Ordinance, as the evidence showed, and which was not denied, and the fact that it was common knowledge that the place was not run as it should be and as the evidence shows that men of ill repute were making headquarters there, that the license of Frank Lis should be revoked."

Wholly reserving consideration of the merits in case the licensee should appeal, as is his right, it is a pleasure again to commend your Township Committee for the dispatch and vision with which the Alcoholic Beverage Control Act is administered in your municipality.

Each community has it in its own power through its governing body to insist that licensees run decent, clean places and close on time. There is no reason to temporize with licensees who do not appreciate the special privileges afforded them.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. LICENSEES - MEMBERS OF MUNICIPAL GOVERNING BODIES - RESIGNATION OF LICENSEE-COUNCILMAN ON GROUND OF CONFLICTING INTERESTS APPLAUDED.

March 3, 1937.

My dear Commissioner:

At the meeting of the Borough Council of Seaside Heights, last week, I endorsed a motion to refer to you the question as to whether or not a Councilman who also held a retail liquor license could properly be a member of a Police Committee.

Without waiting for your ruling to arrive, I immediately tendered my resignation as a member of the Police Committee believing that it was inconsistent for me as a licensee whose duty it was to obey the law to act as a Councilman and have any supervision or control over the Police whose duty it is to enforce the law. I was therefore glad to receive your ruling confirming my own impression.

On reflection, I have decided to go even further and to resign outright my position as a Councilman because of the fact that I hold a retail liquor license. I understand from you that there is no law compelling me to resign. Nevertheless I desire to do so because I believe it is only right to keep political influence and possible favoritism entirely divorced from the alcoholic beverage industry. Accordingly I am concurrently herewith sending my resignation as a member of the Council to the Municipal Clerk, effective immediately.

As a licensee I have always been in favor of strict enforcement of the Control law without fear or favor and I ask that you continue to cooperate with all our honest licensees in making sure that the law and the rules are lived up to in spirit as well as in letter.

Sincerely yours,

AUGUST C. HOFFMANN

March 3, 1937.

Mr. August C. Hoffmann,
Seaside Heights,
New Jersey.

My dear Mr. Hoffmann:

I have yours of the 3rd.

The highly honorable attitude you have taken, if followed by all licensees who happen also to be members of municipal governing bodies, will be a giant stride toward the complete separation of liquor from politics.

With respect, I am,

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

10. LICENSES - PARTNERSHIP - UPON RETIREMENT OF A PARTNER, THE REMAINING PARTNER MAY CONTINUE IN BUSINESS UNDER THE LICENSE THEREFORE ISSUED TO THE PARTNERSHIP AND NO TRANSFER IS NECESSARY.

March 2, 1937.

Mrs. Ann M. Baumgartner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Camden, New Jersey.

Dear Mrs. Baumgartner:

I have before me the resolution adopted by your Board on February 23d by which I note that plenary retail consumption license No. 197 issued to John Grzybowski and Clarence Boreszewski, 529 South 6th Street has been transferred to John Grzybowski, same premises, and a fee of \$50 has been paid.

I take it that Grzybowski and Boreszewski were originally licensed as partners and that Grzybowski, the partner, is the same person as the Grzybowski to whom the transfer was made.

If this is true, no formal transfer nor payment of fee was necessary.

Upon the retirement of a partner, the remaining partner may continue in business under the license theretofore issued to the partnership. Re Markey, Bulletin 19, item 6. When the partnership's license was issued, the Board passed upon the qualifications of each partner as an individual and issued the license to the both of them. Each was, therefore, presumably qualified to hold the license in his own right. The retirement of one would not prevent the remaining partner from continuing under the license without being required to obtain a transfer or pay another fee. The remaining partner has given up no rights or privileges specifically secured to him in the original granting of the license.

Actually, all that was needed to effect the change was that record be made in the Board's files and on the license certificate as indicated in re Hafner, Bulletin 20, item 7. I suggest that the resolution of February 23d be rescinded, the fee refunded and the procedure set out in re Hafner followed.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. LICENSED PREMISES - APPLICATION MAY BE USED TO DELIMIT BUT NOT TO ENLARGE THE DESCRIPTION OF THE LICENSED PREMISES SET FORTH IN THE LICENSE CERTIFICATE - CONSUMPTION LICENSEE MAY NOT MAINTAIN, UNDER SINGLE LICENSE, TAVERN AND PACKAGE GOODS STORE WHICH ARE CONDUCTED DISTINCTLY AND ARE SEPARATED BY ROOM AND HALLWAY.

February 27th, 1937,

Louis Schlenger, Inc.,
Colonial Hotel,
Pompton Lakes, N. J.

Gentlemen:

I have reviewed letter from Louis Schlenger dated August 28, 1936, Mr. Hock's reply thereto and the reports of our investigators pertaining to your conduct of business at #258-260 Wanaque Avenue, Pompton Lakes.

The application filed by Louis Schlenger, Inc. for a plenary retail consumption license for the period expiring June 30, 1937, describes the premises where alcoholic beverages are to be sold and served as follows: "258-260 Wanaque Av- Pompton Lakes, N.J. Entire First Floor." License #C-8 issued pursuant thereto described the licensed premises as "260 Wanaque Av- Pompton Lakes." At the time the license was issued the licensee operated a bar at 260 Wanaque Avenue. At a later date and without obtaining any additional license, it opened a package goods store at 258 Wanaque Avenue, located within the same building. The package goods store is conducted as a distinct place of business and is separated from the tavern by a room and hallway. The present inquiry is whether, under the foregoing facts, the tavern and package goods store may both be conducted under a single license.

Sales of alcoholic beverages pursuant to a license may be made only within the "licensed premises" as therein described. In the usual case the description of the licensed premises on the license certificate is in general terms and reference must therefore be made to the description contained in the application. Although the application may serve to delimit the general description contained in the license certificate, it cannot be used to enlarge it. Enforcement officers should have the right to assume that the licensed premises do not, in any event, extend beyond those described in the certificate actually issued to the licensee. Illustrations may be helpful: a license certificate may state that the licensed premises are located at 744 Broad Street, which happens to be a large office building. By reference to the application, however, it is ascertained that the actual licensed premises consist of certain rooms on a designated floor. On the other hand, the certificate may describe the licensed premises as 650 Broad Street, whereas the application sought a license for all portions of premises located at 648-650 Broad Street. Here, apart from amendment or transfer, the licensed premises would be 650 Broad Street.

The foregoing would require the conclusion that your present license does not authorize your operation of a package goods store at 258 Wanaque Avenue. There is, however, an additional reason necessitating the same conclusion. Section 23 of the Control Act provides that "a separate license is required for each specific place of business." Although a consumption licensee may maintain one or more bars and also a bottle goods department (cf. Bulletin #59, Item #13), all of his activities must

be part of a single business operated as one unit at a specified place. Cf. Bulletin #81, Item #10. A tavern and package store which are conducted distinctly and are separated entirely by a room and hallway are, in substantial sense, separate establishments requiring separate licenses.

You are accordingly advised that the sale of alcoholic beverages at the package goods store located at 258 Wanaque Avenue, Pompton Lakes, must be discontinued forthwith.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

12. BREWERIES - BREWERY SALESMEN MAY NOT SOLICIT CONSUMERS OR DO MISSIONARY WORK FOR RETAILERS.

Dear Mr. Burnett:

We would be pleased to have a ruling from you stating your approval or disapproval with respect to the activities of our salesmen in stores as follows:

It was felt that if our salesmen were permitted to discuss and illustrate the quality of Ballantine products with consumers when entering licensed outlets to purchase their needs, we could enlarge upon our sales opportunities with the consuming trade. This work of course would be applicable particularly on a Saturday. No samples, free goods, or anything of a like nature would be involved. It is purely a case of the salesman attempting to sell to consumers who have never tasted Ballantine products before.

Very truly yours,

P. BALLANTINE & SONS.

March 2, 1937.

P. Ballantine & Sons,
Newark, New Jersey.

Gentlemen:

I understand that you want to have Ballantine's salesmen solicit the sale of Ballantine's products to customers who come into retail stores.

Sorry, but it can't be done.

It means (1) that your salesmen would be soliciting directly from consumers and (2) that they would be doing so on behalf of the retailer.

According to my records, you hold plenary brewery and limited wholesale licenses. They allow the holder to sell only to licensed New Jersey manufacturers, wholesalers and retailers. Neither permits sales to or solicitation of consumers.

Moreover, Section 40 of the Control Act makes it unlawful for any person interested in any way whatsoever in the

manufacturing or wholesaling of alcoholic beverages to be directly or indirectly interested in the retailing of any alcoholic beverages. Your salesmen may not, therefore, represent the brewery and be missionaries for the retailer at the same time.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 3rd, 1937.

RE: Hearing No. 155.

In his questionnaire filed with this Department prior to the issuance of his permit, solicitor swore he had never been convicted of any crime. After his fingerprints were taken and forwarded to the Federal Bureau of Investigation, report was received from said Bureau that solicitor had been arrested 1931, charge violation Section 1897 Penal Law for the State of New York (possessing firearms). Subsequently the Police Department of the City of New York advised that their record showed that solicitor had been arrested in 1931 and a revolver found in the seat of the car occupied by solicitor and others, and that on May 18th, 1931 sentence was suspended in the Court of Special Sessions. It appearing from this evidence that there has been a conviction against solicitor, a hearing was scheduled, at which he appeared.

At the hearing solicitor testified that he knew nothing about the presence of the revolver in the car, and that he had been acquitted in Special Sessions.

Examination of the minutes of the Court of Special Sessions of the City of New York subsequently made by our investigators disclosed that the solicitor was tried and acquitted on the charge of possessing firearms. The Police Department of the City of New York thereafter certified that the records of that Department had been corrected to conform with the minutes of the Court of Special Sessions.

It appearing that there is no conviction against solicitor, it is recommended that no further action be taken.

EDWARD J. DORTON,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

14. APPELLATE DECISIONS - CONWAY VS. TOWNSHIP OF HADDON.

FRANKIE CONWAY, :

Appellant, :

-vs- :

ON APPEAL

CONCLUSIONS

TOWNSHIP COMMITTEE OF THE :

TOWNSHIP OF HADDON, :

Respondent. :

Frank M. Lario, Esq., Attorney for Appellant.
Mark Marritz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

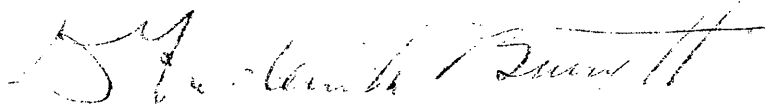
This is an appeal from an alleged denial of the transfer of a consumption license from Black Horse Pike, West Collingswood Heights, to 18 Cuthbert Road, Westmont, both in the Township of Haddon.

Although the answer filed herein admitted that the application for transfer was in proper form, it appeared from the evidence taken at the hearing that in fact no application for transfer of the license duly sworn to by appellant had been filed with respondent. Instead of filing such application, appellant had merely written a letter to respondent requesting a transfer. It was admitted that appellant complied with the other statutory prerequisites, and that respondent at its hearing below did not question the failure to file an application in proper form but denied the transfer for various reasons which at this time need not be considered.

The filing of application for transfer, signed and sworn to by applicant, is a jurisdictional requirement. Section 23 of the Control Act.

At the hearing appellant's counsel, who was in no way responsible for appellant's failure to file a proper application, moved for leave to withdraw this appeal without prejudice.

The motion is granted without prejudice to appellant's right to file with respondent an application in proper form.



Commissioner.

Dated: March 3, 1937.