STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 BROAD STREET, NEWARK, N. J.

BULLETIN NUMBER 173. May 4, 1937

1. APPELLATE DECISIONS - CONN VS. KEARNY.

FRANK CONN,	:	
Appellant,	:	ON APPEAL
-vs-	:	CONCLUSIONS
TOWN COUNCIL OF THE TOWN OF KEARNY,	:	
Respondent.	:	

William C. Egan, Esq., Attorney for Appellant.
John H. Cooper, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of a transfer of his consumption license from 186 Kearny Avenue to 202 Kearny Avenue at the corner of Boyd Street, in the Town of Kearny.

Respondent denied the transfer by vote of four in favor and five against, because of a petition filed by twenty-seven residents who objected to the transfer of the license.

The filed objection is based upon the allegation that at one time there was a licensee located at premises about three doors north of the premises to which appellant seeks to transfer, and that the objectors had been so annoyed by the manner in which those premises were conducted that subsequently Council refused to renew that license.

All except one of the objectors who signed the petition reside on the westerly side of Kearny Avenue. At the hearing held on the appeal, only four of these objectors appeared. They testified that their objections were based upon the manner in which a former licensee in that vicinity had conducted his business, and also upon the fact that the westerly side of the street where they reside is residential in character.

It appears from the testimony that Kearny Avenue is predominantly a business street, with trolley cars and bus lines; that, while the portion of the westerly side of Kearny Avenue, where the objectors reside, is still residential, the easterly side of the street is devoted almost entirely to business purposes. The evidence shows that 186 Kearny Avenue is located between a cleaning and dyeing establishment and an auto showroom and garage. To the south of 202 Kearny Avenue is a book shop, beauty shop and shoe-shining parlor. Going in a northerly direction on Kearny Avenue, from 202 Kearny Avenue, we find, after crossing Boyd Street, a delicatessen store, cigar store, fish store, shoe store and bakery. Kearny Avenue is eighty feet wide at this point.

From this it appears that the premises to which appellant seeks to transfer his license are located in a business district.

New Jersey State Library

It cannot be said that the neighborhood is of such residential character as to be unfavorably affected by the license transfer. Guenther vs. Parsippany, Bulletin #121, Item 8; DeChristie vs. Gloucester, Bulletin #121, Item 10.

The objection based upon the improper conduct of a former licensee in that locality is not a sufficient reason for denying the transfer. There is no evidence that appellant has improperly conducted his place of business at 186 Kearny Avenue, and he should not suffer because of the misconduct of the former licensee. The objectors have an adequate remedy if appellant's place of business is not properly conducted hereafter.

While transfer of a liquor license to other premises is not an inherent privilege, nevertheless if no fair question is made of the personal character of applicant or the suitability of the premises to which he desires transfer, the refusal of a transfer cannot be arbitrary. Van Schoick vs. Howell, Bulletin #120, Item 6.

The action of respondent is reversed. Respondent is directed to issue the transfer as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 28,1937.

2. MANUFACTURERS AND WHOLESALERS - GIFTS OF EQUIPMENT, PRODUCTS AND THINGS OF VALUE TO RETAIL LICENSEES - THE RULES RESTATED.

April 26,1937.

NOTICE TO BREWERIES AND WHOLESALE BEER DISTRIBUTORS:

Investigation of complaints that breweries and wholesale beer distributors have been furnishing equipment to retail licensees has resulted in numerous inquiries as to the pertinent law and State rules. The governing provisions are Sections 40 and *40A (P.L. 1935, c. 254) of the Control Act and rule #1 of the Rules Governing Signs and Other Advertising Matter. Their effect, as interpreted by the Department, is as follows:

1. Licensed manufacturers and wholesalers may furnish advertising matter, such as interior signs, novelties, etc. not exceeding in cost or reasonable value the sum of $100.00 per license year for each retail licensed premises.

2. Licensed manufacturers and wholesalers may not furnish, repair or replace fixtures or equipment of any kind whatsoever, in any retail licensed premises directly or indirectly, either with or without charge; except, however, that licensed manufacturers and wholesalers may clean and repair coils in retail licensed premises.

The interests of control demand strict observance of the foregoing. Your full and complete cooperation will be appreciated.

D. FREDERICK BURNETT,
Commissioner.

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

3. APPELLATE DECISIONS - POLSTER VS. NEWARK.

BERTHA POLSTER, Appellant,	:	
-vs-	:	ON APPEAL CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	:	

Perry E. Belfatto, Esq., Attorney for Appellant.
Raymond Schroeder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's order adjudging appellant guilty of possessing illicit alcoholic beverages and suspending her license for premises located at 406 Broadway, Newark, for a period of thirty days.

At the hearing on appeal counsel for appellant stipulated that on December 21, 1936, bottles of Mohave Club Whiskey and Old Drum Whiskey were found upon the licensed premises, and upon analysis by the chemist of this Department were found to be short proof and to have been adulterated with water. These admitted facts not only warranted but required respondent's determination that appellant was guilty of possessing illicit beverages. In re Kneller, Bulletin 49, Item 4; Great Notch Villa v. Clifton, Bulletin 91, Item 11; Light v. Ridgefield, Bulletin 116, Item 8. The licensee's protestation of personal innocence and her suggestion that her mentally defective realtive, a jealous business competitor, or one of her customers might have adulterated the liquor in question, are of no avail. She must be held accountable for the presence of illicit beverages on her licensed premises. Virgilio v. Orange, Bulletin 127, Item 7; In re Kneller, supra.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 28, 1937.

4. APPELLATE DECISIONS - ZAVATARRO VS. NEW BRUNSWICK.

MICHAEL ZAVATARRO, Appellant,	:	
-vs-	:	ON APPEAL CONCLUSIONS
BOARD OF COMMISSIONERS OF THE CITY OF NEW BRUNSWICK, Respondent.	:	

Theodore Strong & Son, Esqs., by Stephen Strong, Esq.,
Attorneys for Appellant.
Thomas H. Hagerty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for a plenary retail consumption license.

The building sought to be licensed is at #32 Rutgers Street, immediately adjacent to a vacant lot on the corner of Codwise Avenue and Rutgers Street. Although Rutgers Street consists mainly of private residences, there are several large industrial plants nearby on the opposite side of Codwise Avenue. The plant of Ryerson & Haynes, Inc., manufacturers of automobile parts and employing 247 persons, is about 140 feet from appellant's premises; the plant of Tampax, Inc., manufacturers of drug specialties and employing 85 persons including 75 girls, is about 180 feet from appellant's premises; and the plant of Armstrong Cork Co., manufacturers of floor covering and employing 91 persons, is located immediately in the rear of the Tampax plant. No tavern has ever been operated in the neighborhood and representatives of these plants protested to the local Chamber of Commerce against the licensing of appellant's premises. The Chamber of Commerce notified the respondent Board of these protests and on the basis thereof the application was denied.

At the hearing on appeal, the manager of Ryerson & Haynes, Inc. testified that the operation of their machines required a high degree of coordination and that the existence of a tavern almost directly in front of their door would present a dangerous inducement, particularly to its night shift. The Vice-President of Tampax, Inc. testified that on previous occasions girl employees leaving its plant had been annoyed by men and that the danger of such annoyance would be increased by the presence of a tavern in the vicinity. A representative of Armstrong Cork Co. testified that its men worked in three shifts; that they did exacting and dangerous work on complicated machinery; and that the presence of a tavern in the vicinity would be a detrimental influence.

It is evident that the drinking of liquor by industrial employees about to handle complicated machinery would increase the danger of injury. And the presence of a tavern directly in front of the industrial plant might well furnish a temptation, not otherwise present, to employees about to begin their shift to have "just one drink" before entering the plant. Consequently, in the interests of efficiency and safety, it was open to the Board to decline the issuance of licenses for premises near industrial plants. This much is not disputed by the appellant. He contends, however, that elsewhere in the City licenses have been issued for premises near industrial plants and that the denial of his particular application was discriminatory. Cf. Kirchies v. Clifton, Bulletin 66, Item 1; United States Pipe & Foundry Co. v. Burlington, Bulletin 73, Item 6.

No objection was ever made to the issuance of those licenses and for aught that appears in the record the operators of those plants did not consider that the presence of taverns would subject their employees to any increased dangers. Indeed, the precise conditions there prevailing may have been dissimilar from the plants at Codwise Avenue and Rutgers Street. Admittedly there was no universal policy against licenses near all industrial plants. Nevertheless, the evidence does indicate that the Board would uniformly deny licenses for premises near industrial plants where there would otherwise be danger to the safety and efficiency of the employees, and *bona fide* objection is urged on that ground. I cannot say that such action is either unreasonable or, in any real sense, discriminatory.

Appellant advances the further contention that the respondent Board was estopped to deny his application because he discontinued his grocery business at the premises in reliance upon an alleged representation by a member of the Board that his application would be granted. This contention is without merit. In the first place, a representation by one of its members would not be binding upon the Board. Cf. Bulletin 160, Item 9. In the second place, the evidence failed completely to establish a representation by any member of the Board that the license would be issued. In its most favorable aspect, appellant's testimony indicated that one of the Commissioners told him that no consumption license could be issued for premises in which a grocery store was conducted, but that if he discontinued his grocery business it would be easy for him to obtain a license. He did not deny, however, that he was also told that in any event formal application, advertisement and investigation would be required. Clearly, the evidence furnishes no basis for estoppel. See Stein v. West New York, Bulletin 101, Item 7.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 29, 1937.

5. APPELLATE DECISIONS - KAHN VS. ORANGE.

JEROME KAHN, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE, Respondent.	ON APPEAL CONCLUSIONS

James A. Palmieri, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license. The premises sought to be licensed are located at 61 Central Avenue in the City of Orange, approximately 40 feet from the East Orange City Line. This street is primarily a business one although there are apartment houses on the other side of the street just across the City Line. A few doors from appellant's premises, in the direction of the City Line, is a tavern. Within four blocks in the opposite direction and on the same side of the street are two more taverns. In the fourth block from appellant's premises on Central Avenue is an establishment having a plenary retail distribution license.

The population of the City of Orange is approximately 35,000, and there are outstanding at the present time 81 plenary retail consumption licenses and 21 plenary retail distribution licenses. Respondent contends that the licensees now operating establishments adequately meet all existing demands. The Chairman

of the respondent Board testified that taking into consideration the density of the population and the character of the neighborhood, the First Ward, in which appellant's premises are located, "ranks with the majority" in the number of taverns and plenary retail distribution licenses.

It appears that about a year ago the respondent Board met in a conference with the City Commissioners and several members of the clergy to consider the various phases of the liquor situation in the City. At that conference the clergy urged that a stricter check be placed upon the number of liquor establishments and their conduct. Following the conference a survey of the city was made by the Chairman of the Board to ascertain the number of liquor establishments which were being operated in the various districts and wards. Thereafter, whenever an application was made for a new license, reference was made to this survey to determine whether there were too many existing establishments in a particular district. In the instant case the Chairman testified that the Board thoroughly inspected the section in which the premises sought to be licensed were located before turning down the application.

The testimony fails to prove any real need for an additional retail distribution license in the vicinity or that the existing establishments cannot adequately take care of the demands of the locality. Cf. Sussex County Drug Co. v. Newton, Bulletin 47, Item 3; Goldberg v. Livingston, Bulletin 163, Item 2; Budd Lake Market, Inc. v. Mount Olive, Bulletin 160, Item 6. Respondent's plan of dividing the city into sections for the purpose of deciding whether there are sufficient licensed premises in a particular locality is an intelligent approach to the solution of a difficult problem. Sadovsky v. Millstone, Bulletin 120, Item 4. There is no proof that its discretion was improperly exercised in the present case.

Appellant's contention that respondent has discriminated against him finds no support in the record. The fact that respondent reached its determination that the issuance of licenses should be restricted in the city after a conference with members of the clergy and tavern owners, fails to support this charge. While such a defensive alliance of temple and tavern is noteworthy, their community of interest in a common problem warranted their joinder of forces to achieve, albeit from different angles, a desirable solution. No agreement was made by respondent to refuse to issue licenses to those applicants who were blackballed by cloth or café. The control over the issuance of licenses resided exclusively in the Board both before and after the conference. There is nothing in the record to suggest that this conference was called for any illegitimate purpose. On the contrary, it appears to express the very commendable attitude on the part of the Board to consider the sentiment of the public in the matter of the issuance of liquor licenses.

Appellant further contends that discrimination exists by reason of the fact that although no new licenses have been issued by respondent the same effect has been accomplished by the respondent's action in permitting indiscriminate transfers from original licensees who were discontinuing the operation of their establishments. Here again there is no evidence to support the charge of discrimination. It is true that a number of licenses have been permitted to be transferred both from person to person as well as from one location to another. In each case, however,

according to the Chairman of the Board, the Board examined the individual applicants, and in granting the application took into consideration that the transferor of the license, although he himself had not been able to make a financial success of the establishment, might well be permitted to retrieve his financial investment by a sale of his interest. It does not appear that the granting of these applications for transfer was for any improper purpose or to discriminate against one applicant in favor of another. Nor does it appear that any transfer was granted which had the effect of increasing unduly the number of licenses in any locality. Moreover, the fact that applications for transfer were granted did not constitute any discrimination against an applicant for a new license. No additional license was thereby issued. Appellant would be in a position to urge this objection only if he were able to show that he applied for a transfer of a license or if the granting of applications for transfers were made with an improper motive of discriminating against himself or other applicants. Neither of these facts has been established.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 29, 1937.

6. DISCIPLINARY PROCEEDINGS - PENALTIES - DOUBLING THE PENALTY FOR SECOND OFFENDERS ASSURES RESPECT FOR THE LAW

April 29, 1937

Edward M. Comfort, Clerk,
Mount Laurel Township,
Burlington County,
Moorestown, N. J.

My dear Mr. Comfort:

I have staff report of the proceeding before the Township Committee of Mount Laurel against Albert Morris Lewis, resulting in an adjudication of guilt for the possession of slot machines and note that his license was suspended for a period of sixty (60) days, to commence on April 26, 1937.

Expressing no opinion on the merits of the case because it might come before me on appeal, I wish to extend to the Committee and its counsel, Mr. Lippincott, my appreciation for their prompt and very effective action in this case. My records indicate that Lewis was before your Committee once before on a charge of possession of illicit alcoholic beverages, found guilty and his license suspended for a period of thirty days.

Doubling the penalty for second offenders is a sure-fire way of commanding respect for the law.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

7. APPELLATE DECISIONS - MC HUGH VS. EAST PATERSON.

ARTHUR MC HUGH, Appellant, -vs- BOROUGH COUNCIL OF THE BOROUGH OF EAST PATERSON, Respondent.	:	ON APPEAL CONCLUSIONS

William E. Sandmeyer, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's action in revoking appellant's plenary retail consumption license.

Appellant has since disposed of his liquor business to one Russo and has no desire to continue his license but prosecutes this appeal solely to clear his name.

It is unnecessary to examine the charges in the revocation proceedings because (1) the acts on which they were based occurred while he was confined in a sanatorium at Overbrook and while his licensed premises were in the possession of his wife, from whom he separated after his return from the sanatorium, and (2) no notice of those charges was ever served upon him; he had no knowledge of the pendency of the revocation proceedings; and had no opportunity to defend himself.

It thus appears that appellant never had any chance to be heard, let alone a fair opportunity to clear himself.

For failure to comply with Section 28 of the Control Act which requires a five day notice of any charges preferred against a licensee and a reasonable opportunity to be heard afforded him, the proceedings are fatally defective. Romeiko v. Kearny, Bulletin 57, Item 13.

The revocation is therefore reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 29, 1937.

8. APPELLATE DECISIONS - SIERSZPUTOWSKI VS. MONROE TOWNSHIP.

BENJAMIN SIERSZPUTOWSKI, Appellant, -vs- MONROE TOWNSHIP COMMITTEE (MIDDLESEX COUNTY), Respondent.	:	ON APPEAL CONCLUSIONS

Meehan Brothers, Esqs., by John J. Meehan, Esq.,
Attorneys for Appellant.
George J. Plechner, Esq., Attorney for Respondent and Objectors.

BY THE COMMISSIONER:

This is an appeal from the denial of a transfer of appellant's license for premises located on Applegarth-Prospect Plains Road, to premises located at Half Acre, Monroe Township.

Respondent contends, inter alia, that the transfer was properly refused because of the disapproval of the residents in the neighborhood and because there exists no need for a licensed place at or near the premises sought to be licensed.

Respondent Township is essentially a rural community with a population of approximately 3,000. The vicinity in which appellant's premises are located is entirely a quiet farming residential area. There are no business establishments of any kind in the section, and any business which appellant might obtain would have to come from outside. A petition containing the signatures of approximately 90% of the residents within a radius of a mile of Half Acre was filed with the respondent in opposition to the transfer and a number of the objectors, as well as the Chairman of the Township Committee, testified as to the opposition of the residents. There are thirteen licensed premises in the Township already and two of these are approximately a mile from the appellant's premises. Although there was some evidence tending to establish that the appellant's property might make a good business location, there is none that there is any need for an additional licensed place in the vicinity. Nor is there any evidence that transients traveling along the road would be inconvenienced by not being able to find a licensed place in the neighborhood.

In view of the character of the neighborhood, the almost unanimous objection of the residents therein, and the existence of a considerable number of licensed premises supplying the demands of the community, it cannot be said that the denial of appellant's application was unreasonable. Apgar v. Tewksbury, Bulletin 66, Item 2; Herrman v. Landis, Bulletin 88, Item 1; Thomas v. Evesham, Bulletin 80, Item 2; Hickey v. Lopatcong, Bulletin 68, Item 1; Hill v. Montville, Bulletin 148, Item 9.

The fact that this is an application for a transfer rather than for a new license does not affect the result. A transfer is a privilege not inherent in the appellant's license. Where, as here, the issuing authority, in the exercise of the discretion conferred upon it, acted reasonably, its determination will not be disturbed. Hill v. Montville, supra.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 29, 1937.

9. MUNICIPAL BOARDS OF ALCOHOLIC BEVERAGE CONTROL - HOLD-OVER IN OFFICE AFTER EXPIRATION OF TERM - HEREIN OF HOW LONG SUCH HOLD-OVER LASTS.

MUNICIPAL BOARDS OF ALCOHOLIC BEVERAGE CONTROL - QUORUM - WHAT CONSTITUTES.

MUNICIPAL BOARDS OF ALCOHOLIC BEVERAGE CONTROL - POWER TO ACT IN ABSENCE OF ONE OF ITS MEMBERS - HEREIN OF THE RULE THAT A MAJORITY OF A QUORUM MAY TRANSACT ANY BUSINESS AND DO ANYTHING WHICH IT IS WITHIN THE POWER OF THE BOARD AS A WHOLE TO DO.

April 29, 1937.

Harry S. Reichenstein, City Clerk,
Newark, New Jersey.

Dear Mr. Reichenstein:

I have your request for ruling based on the fact that Mr. Hartdegen's term of office has expired.

Three questions arise:

1 - Does he hold over?

YES. The laws of 1881, p. 47; 1 C. S. 619, Sec. 105, so provide, viz.: "That any officer of any city in this state who now holds or hereafter shall hold any office therein, under any law of this state which fixes the term thereof for a precise and a determined period, shall continue to hold such office and exercise the duties of the same, notwithstanding the time limited for its continuance shall have expired, until his successor has been appointed and qualified."

See Clark vs. Trenton, 49 N.J.L. 349 (Sup. Ct. 1887); Stilsing vs. Davis, 45 N.J.L. 390 (Sup. Ct. 1883); Hoell vs. Camden, 68 N.J.L. 226 (Sup. Ct. 1902).

This is the same ruling I made in Re Trenton, Bulletin 56, Item 1.

2 - How long does such hold-over last?

He continues in office at the sufferance of the governing board or body which appointed him, viz.: the Board of Commissioners of the City of Newark. Such hold-over is therefore terminable instantly by the appointment of his successor, providing, of course, that he is qualified. If the latter Board should fail to exercise their prerogative, he will continue to hold over until his successor is appointed by the Board which will come in as the result of the approaching May election.

3 - May the other two members of the Excise Board continue to function if Mr. Hartdegen should refuse to sit or to act?

They may -- the same as if he were ill -- or disqualified to act in the particular matter, as actually happened in the Mohawk Restaurant case in connection with another member of the same board. The common law rule is that a majority constitutes a quorum and the vote of a majority of such quorum is sufficient to transact business and to do any act the board as a whole has the power to do. Public Service Railway Co. vs. General Omnibus Co., 93 N.J.L. 344, and cases cited. There is nothing in the Alcoholic Beverage Control Act which indicates a different rule.

Expressions which crept into my letter of December 11, 1934, to the Town Clerk of Morristown intimating that its excise

board could not function unless it consisted of three persons were erroneous as well as unnecessary. The object of that letter was to urge that a vacancy caused by a resignation made more than nine months before, should be promptly filled, believing as I do that public interest is best served when the statutory requirement is fulfilled that the excise board "shall consist of three persons".

Yours does.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. NATIONAL GUARD - CAMP, POST AND REGIMENTAL EXCHANGES - LICENSE IS NECESSARY FOR SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION

SPECIAL PERMITS - CONDUCT OF RAFFLES - NOT GRANTED BECAUSE INTRINSICALLY LOTTERIES AND THEREFORE ILLEGAL

May 1, 1937

Lieut. Col. Henry L. Moeller
Newark Armory
Newark, N. J.

Dear Col. Moeller:

I am informed that at the Newark Horse Show, conducted under the auspices of the Essex Troop of the 102nd Cavalry, programs are sold at 50¢, payment of which entitles the purchaser to a chance on a door prize; that last night, the door prize awarded was a case of whiskey.

If this be so, it is against the law.

For, while no license is required for the retail sale of alcoholic beverages for on-premises consumption where sold at any camp, post, or regimental Exchange, if the consent of the State Military Board shall have been first obtained, this dispensation is confined to sales for on-premises consumption. Since the award of a prize, coupled with the payment of an entrance fee, is a sale, the award of a case of liquor for off-premises consumption is prohibited by law except pursuant to a regular license or a special permit. You have no license and special permits are not granted for the conduct of raffles since they are intrinsically lotteries, and therefore illegal.

I presume what occurred last night was inadvertent. No action will, therefore, be taken. I respectfully ask that you issue such orders and take such action as may be necessary to prevent a reoccurrence of the violation.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. SPECIAL PERMITS - PRIVILEGES CONFERRED - HOLDERS OF SPECIAL PERMITS TO SELL ALCOHOLIC BEVERAGES AT SOCIAL AFFAIRS MAY PURCHASE FROM LICENSED RETAIL DEALERS AS WELL AS FROM MANUFACTURERS AND WHOLESALERS

Dear Sir:

On my business travels to different retail dealers, I have been approached with the question of whether retail liquor dealers are permitted to sell to clubs, organizations, etc. who hold a twenty-four hour special permit.

Yours very truly,

CHAS. R. GADEK

April 30, 1937

Mr. Charles R. Gadek
Perth Amboy, N. J.

My dear Mr. Gadek:

The holders of special permits to sell alcoholic beverages at social affairs may purchase alcoholic beverages for sale at the social affair from any licensed New Jersey manufacturer, wholesaler or retailer.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED - HEREIN OF SHORTSIGHTEDNESS AND STAGGERS.

May 3, 1927

Walter S. McManus, Esq.,
Borough Clerk,
Garwood, N. J.

Dear Mr. McManus:

I have staff report of the proceeding before the Borough Council of Garwood against Anthony Pasukonis, trading as Tony's Buffet, charged with having sold alcoholic beverages to persons actually or apparently intoxicated, thereby violating a State Rule.

I note he was adjudicated guilty and that his license was suspended for two (2) days.

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I wish, however, to thank the members of the Council for their prompt action.

Now that this case serves as warning to licensees in your municipality, I recommend a stiffer penalty for the next offense of this kind.

Serving alcoholic beverages to customers who have all to apparently consumed their "quota" is a very poor way of building up the liquor business to a respected and high plane. Such shortsighted practices, indulged in by a few misguided licensees,

furnish well founded arguments for those who wholly disapprove the sale and distribution of alcoholic beverages in its entirety. Conscientous licensees evince as much disgust at the practice of serving a "drunk," who may later stagger out into the public street, as do the general public who witness such a pitiable spectacle.

A handful of licensees who value a few dollars gained by this kind of business above all else, should not be allowed to undermine the foundation upon which proper control in New Jersey is being gradually built. To permit such practices to continue without adequately deterring punishment invites disaster.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

13. NIPS - DISPLAY OF NIPS ON LICENSED PREMISES PROHIBITED

SPECIAL PERMITS - NOT ISSUABLE FOR THE DISPLAY OF NIPS

May 1, 1937

Mr. David G. Weitzman
Camden, New Jersey

My dear Mr. Weitzman:

The State rules prohibit plenary retail distribution licensees not only from purchasing and selling nips but also from possessing them on licensed premises.

I am sorry if you will have to change your show-case display but the nips will have to be removed at once. The mere possession of them on your premises is cause for the revocation of your license.

In view of the amended rules effective today as aforesaid, no special permits for the display of miniatures will be granted hereafter and all those in force, if any at the present time, are hereby cancelled. The regulations heretofore set forth in Bulletin 142, Item 2, are therefore abrogated.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

14. BULLETIN ITEMS SUPERSEDED - REGULATIONS CONCERNING DISPLAY OF MINIATURES BY SPECIAL PERMIT

Since miniatures are no longer permissible (Bulletin 168, Item 15; see also Bulletin 173, Item 2), the regulations heretofore promulgated for display of miniatures by special permit, Bulletin 142, Item 2, is hereby abrogated. (See Bulletin 173, Item 13).

15. LICENSEES - EMPLOYEES - QUALIFICATION - MORAL TURPITUDE AND OTHER QUESTIONS OF QUALIFICATION MAY BE DETERMINED BY THE STATE COMMISSIONER OR BY THE LOCAL ISSUING AUTHORITY

May 3, 1937

My dear Sir:

Re: Turpitude

The question, I take it, is whether or not your convictions in 1929 for a Prohibition violation and in 1931 for passing counterfeit money, involve moral turpitude. If they did, one or the other or both, you would be disqualified from obtaining a license in your own right and hence, could not be employed as bartender by any licensee.

The answer depends to some extent upon the circumstances of each case. There is no hard and fast rule as to what constitutes moral turpitude. Without full knowledge of the facts, I could not give you an opinion.

The proper procedure for you to follow in order to determine whether or not you are eligible for employment, is to file a petition with me briefly outlining the facts and requesting a hearing. Upon receipt of such petition, a hearing will be scheduled at which you may appear and explain all of the circumstances of your convictions. Decision will then be rendered upon the testimony given and upon such independent investigation by my own men, as may be necessary.

In re Blank, Bulletin 82, Item 4, I made a special ruling to the effect that moral turpitude and other questions of qualification of persons seeking employment with licensees may be determined by the local issuing authority, subject to appeal. There is no reason in law why that ruling should be disturbed. Local issuing authorities may, therefore, exercise the power at any time, if they so choose. As a matter of practical convenience, however, I realize that, in view of the delicacy and difficulty involved in determining whether a given conviction does involve moral turpitude, it is often simpler and more expedient that these questions should be passed upon by the State Department with its greater facilities for investigation and its larger experience in handling matters of this kind. Hence, for the purpose of relieving municipal issuing authorities from an onerous duty, as distinguished from depriving them of power to do so if they wish, I have on several occasions, since the aforesaid ruling in re Blank, exercised the power to determine the presence or absence of moral turpitude in the first instance on original application made direct to the State Commissioner instead of requiring the applicant to have such matter first determined by the local issuing authority and then come before me only via appeal.

In short, the ruling in re Blank, Bulletin 82, Item 4, is permissive and not mandatory.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

16. LICENSES - EXECUTION SALE - LICENSES ARE NOT SUBJECT TO LEVY, ATTACHMENT, EXECUTION OR SEIZURE FOR DEBTS

ALCOHOLIC BEVERAGES - SHERIFFS AND CONSTABLES IN BEHALF OF JUDGMENT OR ATTACHING CREDITORS MAY LEVY UPON BUT MAY NOT SELL ALCOHOLIC BEVERAGES WITHOUT SPECIAL PERMIT FIRST OBTAINED

May 3rd, 1937.

Hon. James S. McRell,
Sheriff of Essex County,
County Hall of Records,
Newark, New Jersey

My dear Sheriff McRell:

My attention has been called to the fact that on April 5th you executed a bill of sale conveying to Nick Parella all the right, title and interest of John Ferriol in certain furniture and fixtures, plenary retail consumption license No. C-103 and a quantity of alcoholic beverages. It appears that the sale was made by you pursuant to a levy on an execution issued out of the Essex County Circuit Court in a case in which Parella was the plaintiff and Ferriol defendant.

As to the furniture and fixtures, there is no question.

As to the license: Section 23 of the Alcoholic Beverage Control Act provides that under no circumstances shall a liquor license or rights thereunder be deemed property subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts or any other transfer or disposition whatsoever, except to the extent expressly provided by this Act. The Act does not otherwise provide any exception as to this general rule in so far as judicial sales are concerned and, accordingly, a liquor license is not subject to levy and sale under an execution.

Referring to the alcoholic beverages mentioned in the bill of sale: There is nothing contained in the Control Act which would prohibit a judicial officer from making a proper levy upon such alcoholic beverages. The sale of such alcoholic beverages by the judicial officer, however, raises another question. Section 2 of the Control Act provides, among other things, that it shall be unlawful to sell alcoholic beverages in this State except pursuant to and within the terms of a license or as otherwise expressly authorized under this Act. Under the authority conferred upon me by Section 75 of the Control Act, special permits are issued by me, on application by judgment or attaching creditors, authorizing sheriffs, constables or other duly authorized persons to sell the alcoholic beverages upon which a levy has been made.

I know that you are anxious to give me your complete cooperation. May I suggest, therefore, that in the future you decline to make any levy upon any liquor licenses and further that, after levying upon alcoholic beverages, you require judgment or attaching creditors to present to you a proper special permit from this Department before proceeding with the sale of such alcoholic beverages.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

May 3, 1937.

17. RULES GOVERNING LICENSEES - PROHIBIT HOUSE TO HOUSE SOLICITATION - HEREIN OF THE REASONS FOR THE RULE AND RULINGS ON ITS SCOPE AND CONTENT.

My dear Commissioner Burnett:-

We have made several requests to your department for permission to distribute directly into the homes advertising folders such as a regular newspaper size or tabloid circular or a set of coasters and hot plates for various brewers who are anxious to promote the sale of their beer.

Our business consists of maintaining permanently employed, uniformed, adult carriers who distribute directly into the home food samples, proprietary medicine samples, coupons, advertising material, etc.

The enclosed booklet describes our business and our methods of working.

In the case of the brewers under your jurisdiction no attempt to make a sale is to be made, merely bring their particular beer to the attention of the householder.

A number of our zone division offices in middle western states such as Indiana, Illinois and Ohio are regularly distributing actual samples either in cans or in bottles directly to the householder accompanied by a coupon which is redeemable at the nearest retail outlet selling that beer for a portion of the retail case price.

It is not our desire or the desire of the brewers who have offered us this business to actually sample their product, but to deliver directly to the homes advertising material prepared to increase sales of the particular beer at the retail outlets in the neighborhoods where the distribution takes place.

The writer would be grateful for an expression of opinion from you on such a campaign. We have had serious consideration by several of the brewers in Newark as to conducting such a campaign. Would you be kind to advise the writer as to the possibility of our executing such a campaign for these brewers.

The New York Alcoholic Beverage Control Board has granted us permission to execute home-to-home distribution of advertising material for brewers within the state with the proviso however, that the copy appearing in this advertising material be it a booklet, tabloid, etc., must be submitted to their Legal Department for editing.

Very truly yours,

C. R. BAINES
Vice President
Advertising Distributors of America, Inc.

May 3, 1937.

Advertising Distributors of America, Inc.
New York City

Gentlemen:

Your business, I understand, involves the distribution

directly to the consumer in the home of merchandise samples and advertising matter. The purpose - to sell the product. The method - to contact the householder, deliver the material and promote the sale in one manner or another, or merely to leave the literature, as your client may direct.

Rule 3 of the New Jersey Rules Concerning Conduct of Licensees and Use of Licensed Premises, applicable to all licensees in the State whether manufacturers, wholesalers or retailers, provides:

> "3. No licensee shall directly or indirectly solicit from house to house, personally or by telephone, the purchase of alcoholic beverages, nor allow, permit or suffer such solicitation."

This rule was made because of frequent complaints received from householders of solicitation of products which they did not wish to buy. There are many who have for liquor a deep-rooted feeling of aversion and dislike. Often the reason is based on principle, or moral or religious scruples. Others, who hold no such antipathy, are opposed because they do not want to be exposed to high pressure sales promotion in their homes. Household interruption and the heightening irritation caused by personal solicitation eventually become maddening whether caused by the ring of the phone or the buzz of the doorbell. Excessive promotion of liquor sales is consciously distasteful to the public.

The rule does not prevent proper advertising in the newspapers or sending advertising literature through the mail. Nor is it designed to prevent the mere distribution from house to house of handbills or pamphlets or other approved advertising matter provided that such distribution is not accompanied by any direct solicitation. Such handbills or pamphlets may be thrown on the porch, put in the mail box or slid under the door. In no wise, however, may the householder be personally contacted - no door bells may be rung - no sales talk given.

You may not distribute samples of alcoholic beverages to householders on behalf of any manufacturer or wholesaler whether licensed in New Jersey or not. Under our statute, the delivery of samples of alcoholic beverages would be deemed a sale, requiring that the proper license be first obtained. Licensed New Jersey manufacturers and wholesalers may sell in New Jersey only to duly licensed wholesalers and retailers. They may not sell or deliver to consumers. Only licensed retailers have that privilege.

I take it, of course, that you are not interested in distributing handbills and pamphlets in the limited manner aforesaid which any messenger boy could do. It follows that the sales promotion work you contemplate, involving as it does house-to-house solicitation and distribution of samples and advertising material coupled with direct contact with the householder, is unlawful in New Jersey. Even a licensed liquor solicitor could not lawfully do what you purpose. Such a campaign will therefore not be countenanced. Participating licensees would be charged with responsibility pursuant to the rule.

Very truly yours,

D. Frederick Burnett,
Commissioner.

New Jersey State Library