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

BULLETIN NUMBER 187 JUNE 18, 1937

1. APPELLATE DECISIONS - ST. MARY'S GREEK CATHOLIC CHURCH v. MANVILLE and BUCZKOWSKI.

ST. MARY'S GREEK CATHOLIC CHURCH,
:
Appellant,
: ON APPEAL
-vs-
: CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH OF MANVILLE and WALTER BUCZKOWSKI,
:
Respondents.
:

Rev. Daniel Medvecky, Appearing for Appellant.
George W. Allgair, Esq., by Charles Howard, Esq., Attorney for Respondent Walter Buczkowski.
No Appearance for Respondent Borough Council of the Borough of Manville.

BY THE COMMISSIONER:

Appellant appeals from the issuance of a plenary retail distribution license on April 22, 1937 to respondent Buczkowski, for premises located at 130 South Main Street, Borough of Manville.

Appellant alleges that the licensed premises are within two hundred feet of its church, and that it has not waived the provisions of Section 76 of the Control Act.

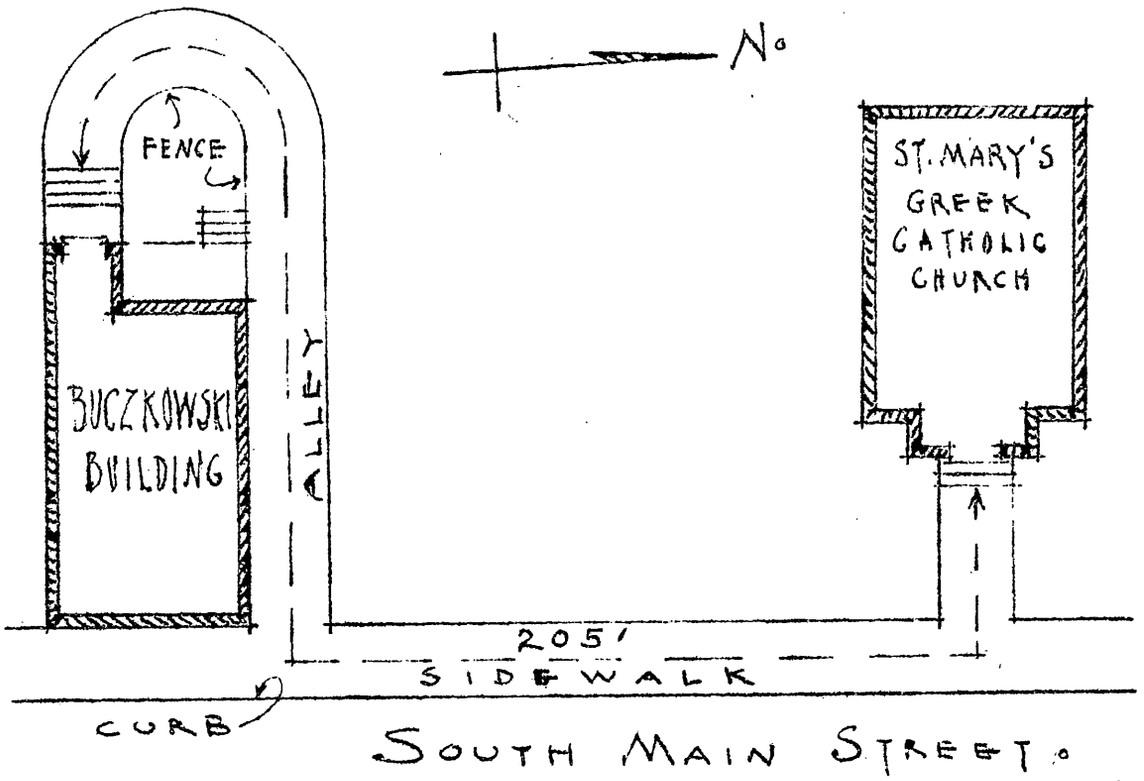
At the first hearing upon this appeal, held on June 3rd, it was admitted that the existing entrance to the licensed premises in which Buczkowski conducts a grocery store and meat market was within two hundred feet of St. Mary's Church; that no waiver was filed and that the license was issued despite a written objection thereto filed by the Church with the Borough Council.

Clearly, therefore, the license should not have been issued for the premises as they existed on April 22 or as they existed on the date of the hearing on June 3rd.

Respondent Buczkowski, however, represented at the hearing on June 3rd that he could rearrange his premises so that the entrance thereto would not be within two hundred feet of the Church, but because of a dispute as to exact measurements it was agreed that the hearing be postponed until June 8th, at which time the parties to the appeal were to produce accurate measurements.

At the adjourned hearing, held on June 8th, Buczkowski testified that he had removed all of his liquor from the grocery store to a storeroom in the rear, and had opened a new door from the storeroom into the back yard of his premises; that the storeroom had no connection with the grocery store except through an inside door which he agreed to close permanently. He introduced into evidence a sketch made by a civil engineer whereby it appears that the distance between the nearest entrance to the Church and the new entrance to the storeroom would be two hundred five (205) feet. In order to make up this distance, however, it was neces-

sary to measure from the entrance to the Church to the sidewalk on South Main Street, thence along said sidewalk to an alleyway adjoining Buczkowski's place, thence through said alleyway and around to the new back door -- yes, very much "around" for the distance measured this way in straight lines was still only one hundred seventy-six (176) feet from the church and so, in order to lengthen it, the extra feet were filched by building a semi-circular fence, jutting out from the rear of the Buczkowski building like the back-stretch of a race course, and "around" which the thirsty patrons had to prance to reach the new back door, thus:



The curved fence thus carefully calculated to produce a runway of requisite distance had been put up by Buczkowski and his son on the very morning of the adjourned hearing of June 8th.

Thus neither time nor distance mattered to Buczkowski!

We are so accustomed nowadays to speed records that comment on the timing is quite superfluous. The effort to lengthen distance is not at all common except to golfers, broad jumpers and tavern surveyors.

Buczkowski testified he had enclosed the yard for the benefit of his tenants who lived above his store so the children could play in it and to have a place in which to hang out the Monday wash. The domestic advantage is undoubtedly true, but it is equally obvious that, since the tenants have gotten along so well and so long without the privacy of a curved fence, the real objective was neither sudden solicitude for his tenants nor invigorating strolls or stressed "constitutionals" for his patrons, but rather to make a desperate attempt to gain a score or more feet so to comply with the wording of Section 76 of the Control Act.

The object of the law was to protect churches and schools by zoning taverns at least two hundred feet away. I have repeatedly indicated that this two hundred feet was a real distance and not to be frittered away by the creation of imaginary remoteness. If the ingenious present effort were crowned with success, then in future cases I should expect the alley or back-stretch to be filled with diagonal stiles or hurdles in three planes and perhaps a touch or two of elementary fourth dimensionals. Those with military bent might set up an abatis or resort to wire entanglements. The study of Euclid would receive fresh impetus. The labyrinth constructed by Daedalus for Minos, King of Crete, in which the Minotaur was confined, would become a standard text for those seeking to develop a maze of paths through which the tavern patrons must plod on entrance even if they could not so readily find their way back.

Against this sophistry, the simple rule of measurement laid down in Aldarelli v. Asbury Park, Bulletin 186, Item 12, requires that the two hundred feet shall be measured in straight lines along the side of walls and the street lines nearest to church and tavern.

It appearing that the license was erroneously issued and that the attempted changes in the licensed premises are a mere subterfuge to avoid the provisions of Section 76 of the Control Act, the action of respondent Borough Council of the Borough of Manville in issuing said license is reversed. Said license is hereby declared void. All activities thereunder must cease forthwith.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 15, 1937.

2. APPELLATE DECISIONS - AULETTO v. CAMDEN.

DANIEL AULETTO,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CAMDEN,)
Respondent)

Clifford A. Baldwin, Esq., Attorney for Appellant.
Edward V. Martino, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a transfer of his plenary retail consumption license from premises located at 520 South Second Street, to premises known as Hotel Camden at corner of Second and Penn Streets, Camden.

Respondent denied the license because "there were numerous police complaints and protests from property owners in the vicinity made to the Board."

The Hotel Camden is a seven-story building containing one hundred thirty-four rooms, and at the time of the hearing it had fifty-four permanent guests. Appellant testified that he had arranged to lease a large dining room on the first floor of the building and an adjoining room which he intends to use as a barroom

and kitchen. John M. Hanf, who has been Manager of this Hotel since June 1934, testified that Auletto had arranged with him to serve three meals a day to the guests of the Hotel and that he felt the issuance of the liquor license would help the hotel. He testified further that at the present time another individual is operating a coffee shop in the basement of the hotel but that the operator of the coffee shop for the last year and a half has refused to serve hotel guests.

On behalf of respondent Officer John Wilkie of the Camden Police, Frank G. Hitchner who, prior to 1927, was a City Commissioner of the City of Camden in charge of the Department of Public Safety, and twenty-two residents of the immediate vicinity testified as to the past history of the Hotel Camden and of the neighborhood in which it is located. It appears from their testimony that some six or seven years ago the section of Camden in the vicinity of Second and Penn Streets was a source of considerable trouble to the Police Department of that City; that there were a number of houses of prostitution located in that section and that the Hotel at that time was frequented by streetwalkers and other persons of undesirable character. The testimony also tends to show that this "red light" district has been wiped out; that for the past two years the general condition of the neighborhood has greatly improved, with the result that conditions generally are satisfactory to those residing in that section of the City, and that police complaints have been reduced to a minimum.

The objectors fear that the issuance of a liquor license to Hotel Camden will again attract an undesirable class of people to that section of the City. While they admit that some very reputable people are permanent guests at the Hotel, they are fearful of the class of transients who may be attracted to the Hotel if the license is granted. They base their fears upon the past history of a licensee who operated a restaurant licensed to sell alcoholic beverages at the Hotel. Mr. Hanf, the Manager of the Hotel, testified that this man did not conduct the place properly and that he forced him to leave the premises in December 1934. There has been no liquor license at the Hotel since December 1934.

Nine witnesses were produced on behalf of appellant. Three of them have resided in the neighborhood for a very short period of time and know nothing of the past conditions. The other six admitted that some years ago the conditions had been very bad, but expressed their opinion that the Hotel was not to blame.

Evidently the Camden Police, acting with the same thoroughness if not the same speed as Hercules, have cleaned out the Augean stables. The residents of the vicinity have clearly expressed their sentiment that they fear a recurrence of past evils if undesirable transients are to be attracted again to this section of the City. Whether, in view of the fact that Mr. Hanf has apparently conducted his place in a proper manner and appellant's character is not questioned, such a condition would arise is admittedly a difficult matter to determine. Respondent has evidently concluded from the past history of the Hotel, which has been described as a second or third class hotel, that the fears of the neighbors are not unfounded. In view of the evidence I cannot say that its determination is unreasonable.

The fact that appellant seeks to transfer his license to a hotel does not of necessity mean that he must prevail. As I said in Current v. Fredon, Bulletin 184, Item 1:

> "***nevertheless it does not follow that a hotel is ipso facto entitled to a license just because

it is a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not."

Aside from Mr. Hanf's evidence as to the convenience to his patrons, the testimony in this case shows that the hotel is near two large manufacturing plants. That constitutes appellant's evidence as to necessity. On the other hand, it appears that the Hotel has been operating since December 1934 without a liquor license and no reason appears for the long delay in seeking a license for the Hotel.

I conclude that appellant has not shown that the license is required by public necessity and convenience.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 13, 1937.

3. APPELLATE DECISIONS - CLARK v. HADDON TOWNSHIP.

MARGARET CLARK,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HADDON,)
Respondent)

Angelo D. Malandra, Esq., Attorney for Appellant.
Mark Marritz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of the appellant's application for a plenary retail consumption license for premises located at Lake View Drive and Black Horse Pike in the Township of Haddon.

In August 1935 respondent issued a license for the above mentioned premises to Pearl Langley Caskin and this license was renewed in July 1936. The licensed business was actually conducted by Arthur Del Duca, more commonly known as "Gyp" Del Duca. On December 24, 1936, local police and investigators of the Department of Alcoholic Beverage Control raided the premises, seized paraphernalia pertaining to the business of lottery-policy, more generally known as "numbers," and arrested Garfield Del Duca, a brother of "Gyp." Garfield Del Duca was convicted in the local Recorder's Court for violating an ordinance prohibiting the maintenance of games of chance and was subsequently indicted by the Grand Jury of Camden County for possession of lottery slips. Subsequent to the raid the license of Pearl Langley Caskin was surrendered to the Township Committee but "Gyp" Del Duca is still located at the premises.

On January 13, 1937, appellant filed her application for license. Shortly thereafter the Director of Public Safety of Haddon

Township advised her he suspected that Garfield Del Duca, who has an unsavory reputation, was interested in the application. On February 16, 1937, the application was denied.

The appellant asserts that the Del Ducas have no interest whatsoever in the application for license or in the business to be conducted under the license and contends her application may not properly be denied because of their disqualifications or unlawful activities. The Commissioner has, however, ruled that the fact that the premises sought to be licensed had theretofore been conducted improperly, is a proper factor to be considered by the issuing authority in determining whether to issue a license. See Mulligan v. Lyndhurst, Bulletin 146, Item 6. And where there is some evidence indicating a "tie-up" between an applicant and the persons who had previously conducted the premises improperly, the denial of the application is clearly justified.

The appellant and her husband, Thomas A. Clark, both testified that they knew the Del Ducas only casually. They admitted, nevertheless, that when Garfield was arrested "Gyp" telephoned appellant's husband and asked whether he would go bail and that bail in the sum of $1000. was actually furnished by the appellant. Thereafter, on February 11, 1937, appellant surrendered Garfield Del Duca and had the bail lifted. She testified that this was done as soon as she realized the nature of the charge against him. This testimony, however, is not worthy of belief in view of the testimony by Judge Frank F. Neutze to whom application was made, immediately following the surrender of Garfield, to liberate him once more on the appellant's bail. Judge Neutze testified that at that time it was stated in the presence of appellant and without dissent that there had been some mistake and that the appellant did not desire to surrender Garfield Del Duca but had merely desired to lift the bail temporarily to enable her to place a mortgage on the property. He further testified that the appellant participated in the strenuous efforts made to have Garfield liberated on the same day of his surrender and that, although she did not do much talking, she did "a lot of moaning." This conduct on her part is hardly consistent with her present story that Garfield Del Duca was only a casual acquaintance and that she took determined steps to surrender him and lift the bail as soon as she learned the nature of the charge.

Under the circumstances, the respondent was fully justified in calling upon the appellant to give a complete and truthful explanation of the interest of the Del Ducas in her application and the business to be conducted thereunder. This she has not done. Respondent's determination that consequently the privileges of a license for the premises in question should not be afforded to her, was entirely reasonable. Cf. Helke v. Penns Neck, Bulletin 106, Item 3.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 15, 1937.

4. LICENSES - ADVERTISING - PROPER NEWSPAPERS.

Dear Sir:

We herewith enter our objection to your granting a license to the Old Red Bank Yacht Club, at Fair Haven, N. J. until the Old Red Bank Yacht Club submit an affidavit of publication that their

"Notice of Intention" has been advertised in the "Fair Haven Chat." They have advertised in the Red Bank Register, a newspaper published in Red Bank, N. J. The Fair Haven Chat is published and circulates in Fair Haven, N. J.; has been entered in the Post Office at Fair Haven as second class matter since 1922, its office of publication is in Fair Haven and it is printed in Fair Haven in the English language, and according to our reading of the Act, it is the newspaper in which all applicants for licenses in Fair Haven must advertise their "Notices of Intention."

Respectfully yours,
John P. Ryan,
Advertising Manager.

June 15, 1937

The Fair Haven Chat,
Fair Haven, N. J.

Att: John P. Ryan, Advertising Manager.
Gentlemen: Re: Old Red Bank Yacht Club.

The records of this Department disclose that the Old Red Bank Yacht Club filed application for a Special Permit on May 24, 1937 to dispense alcoholic beverages on its club premises which are situated beyond the low-water mark. This application was granted and the permit issued on May 28, 1937, effective from the date of issuance until October 31, 1937.

Enclosed is a copy of Bulletin 126, Item 10 re Old Red Bank Yacht Club, Inc., setting forth that the premises to be licensed were beyond the low-water mark and the premises were, therefore, outside the jurisdiction of the municipality.

Section 22 of the Control Act provides that every applicant shall cause Notice of Intention to make such application to be published in the form prescribed in a newspaper circulated in the municipality in which the licensed premises are located and further provided, that if there shall be no such newspaper, that notice shall be published in a newspaper published and circulated in the county in which the licensed premises are located. Although the above Section required such notice to be published only when a license is applied for, I ruled that such notice should be published by the Old Red Bank Yacht Club because the permit extended privileges equivalent to a Club License.

However, the fact that the premises of the Old Red Bank Yacht Club are not located within any municipal jurisdiction, eliminates the requirement that publication of Notice of Intention be published in a newspaper in the particular municipality where the premises are located. Hence such an applicant may publish in any newspaper published and circulated in the county in which the premises are located.

Therefore, the publication of Notice of Intention by this club in the Red Bank Register was not inconsistent with either the Control Act or State Rules.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

5. LICENSES - ADVERTISING - PROPER NEWSPAPERS.

Dear Sir:

We herewith enter our objection to your granting a license to the Players Boat Club, at Fair Haven, N. J. until the Players Boat Club submit an affidavit of publication that their Notice of Intention has been advertised in the "Fair Haven Chat." They have advertised in the Red Bank Register, a newspaper published in Red Bank, N. J. The Fair Haven Chat has been published at Fair Haven, N. J. and has been entered in the Post Office at Fair Haven as second class mail matter since 1922, its office of publication is in Fair Haven and it is printed in Fair Haven in the English language, and according to our reading of the Act, it is the newspaper in which all applicants for licenses in Fair Haven must advertise their "Notices of Intention."

Respectfully yours,
John P. Ryan,
Advertising Manager.

June 15, 1937

The Fair Haven Chat,
Fair Haven, N. J.

Att: John P. Ryan, Advertising Manager.
Gentlemen: Re: Players Boat Club.

Our records disclose that a Club License has been issued to the above club by this Department for the last two years under the provisions of Section 18A of the Control Act. The licensed premises are located at 925 River Rd., Fair Haven, N. J. and, hence, are within the jurisdiction of Fair Haven municipal authorities. Publication of Notice of Intention, therefore, is governed by Section 22 of the Act and the principles set forth in my letter of even date re Old Red Bank Yacht Club do not apply.

Your letter states that the Players Boat Club has published Notice of Intention in connection with its application for renewal of license in the Red Bank Register whereas such publication should have been made in The Fair Haven Chat. The question to be determined, therefore, is whether or not The Fair Haven Chat qualifies within the meaning of Section 22 as a newspaper eligible for such publication. This may only be decided by hearing as provided in Section 21.

Application for renewal of this license for the next fiscal year beginning July 1, 1937, has not, as yet, been received. However, in view of your objection, upon the filing of application by this club, a hearing will be scheduled at which all interested parties should make personal appearance and be sworn and testify, subject to cross-examination by the other side.

Enclosed are copies of Bulletins 67, Item 16 re Paterson Evening News, and Bulletin 183, Item 3 re Ritchie, which set forth the qualifications of a newspaper eligible to publish Notice of Intention to apply for a license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. MINORS - EMPLOYEES - MISREPRESENTATION OF AGE - SPECIAL PERMIT DENIED TO MINOR GUILTY OF DECEIVING HIS FORMER EMPLOYER AS TO HIS AGE.

June 15, 1937

Dear Sir: Re: Blank.

You tell me that when you applied two years ago for your job that you lied to your employer and told him that you were 21 when in fact you were but 18, and now that he has found you out, you have been discharged.

Now you ask me for a permit which will allow you, even though still a minor, to be employed by the same licensee. You ask not only for the permit but also that an exception be made in your case so that you may sell liquor, which the State law does not permit any minor to do.

Normally, I would grant you a permit to work for a licensee even though you could not sell liquor. But in view of the deception you have practiced on your last employer, who might have lost his license because of it, I shall not issue any permit to you. The six months remaining before you come of age will give you an opportunity of learning the value of telling the truth.

Chapter 135 of the Laws of 1937 makes it an offense for a minor to misrepresent his age to induce a licensee to sell him liquor. Unfortunately, there is no law imposing a penalty upon employees of licensees who misrepresent their age to induce licensees to give them jobs. Should it become necessary for the protection of the trade, I shall not hesitate to recommend appropriate penalties.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. SPECIAL PERMITS - RIGHTS OF HOLDERS TO PURCHASE ALCOHOLIC BEVERAGES FOR RESALE - CLUB LICENSEES MAY NOT SUPPLY ALCOHOLIC BEVERAGES TO HOLDERS OF SPECIAL PERMIT FOR RESALE EXCEPT WHEN THE SAME ARE TO BE CONSUMED ON THE LICENSED PREMISES OF THE CLUB.

Dear Sir:

We have a problem which we do not know how to handle. An organization which holds its regular monthly meetings in our meeting room is holding an outdoor outing for the benefit of their sick fund. This organization has applied for a special alcoholic beverage permit and has asked to buy their beverages through us. We are the holders of a club license. Is it permissible for us to do this and how would I handle this on the beverage report?

Very truly yours,
J. A. Tomazewski,
Financial Secretary.

June 15, 1937

Polish Falcons No. 59 Inc.,
Trenton, N. J.

Gentlemen: Att: Mr. J. A. Tomazewski, Financial Secretary.

The records of this Department disclose that your club is the holder of Club License CB-11 for premises at 1004 N. Olden

Ave., Trenton, N. J. Section 13(5) of the Control Act provides that the holder of a Club License shall be entitled to sell, only to bona fide club members and their guests, alcoholic beverages intended for immediate consumption on the licensed premises. Therefore, your club may not sell alcoholic beverages to be dispensed and consumed at an outing to be held away from the licensed premises.

Although Special Permits issued for the dispensing of alcoholic beverages at social affairs allow the permittee to purchase the beverages to be dispensed from a licensed New Jersey manufacturer, wholesaler or retailer, the permission does not apply to sales of alcoholic beverages by a Club licensee where the beverages are to be consumed off the licensed premises. The only time that an organization, holding a Special Permit, may purchase alcoholic beverages from a Club licensee pursuant to such Special Permit, is when the alcoholic beverages so purchased are to be dispensed or consumed on the licensed premises of the club. If the beverages are to be consumed elsewhere, the permittee must purchase the alcoholic beverages to be dispensed from a licensed manufacturer or wholesaler or from a retail licensee whose license permits the sale of alcoholic beverages for consumption off the licensed premises, such as a Plenary Retail Consumption or Plenary Retail Distribution Licensee.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. MUNICIPAL ORDINANCES - THE NOISE PROBLEM - A NEW STEP IN ATTEMPTED SOLUTION.

Dear Sir:

I herewith submit copies of a resolution passed by the Council of the Borough of Keansburg, regarding the use of loud speakers, etc. in licensed premises, for approval.

I might explain that we have a peculiar situation here in Keansburg in the summer, where we have a large number of licensed places surrounded by summer bungalows. It seems that a large number of the licensed places often use a loud speaker, sometimes on the outside of the building and sometimes on the inside, and very loud music which disturbs the surrounding residents.

With this thing in view the Borough Council passed a resolution, copies of which are enclosed, and feel it is necessary in the regulation of the various licensed premises in the Borough of Keansburg.

They have tried to make it definite, and also to see that it is not unreasonable.

Yours very truly,
Howard W. Roberts,
Borough Attorney,
Borough of Keansburg.

June 16, 1937

Howard W. Roberts, Esq.,
Atlantic Highlands, N. J.

Dear Mr. Roberts: Re: Borough of Keansburg.

I have before me your letter of the 8th; also the "Resolution concerning loud speakers and music, at premises having a plenary retail consumption license" adopted by the Keansburg Borough Council on June 1, 1937, which provides:

> "BE IT RESOLVED, by the Borough Council of the Borough of Keansburg, that in all premises where there is a plenary retail consumption license to sell alcoholic beverages, that no loud speakers shall be placed or operated on the outside of such premises, and shall not be operated on the inside of such premises when the same is audible more than one hundred feet distant from the said premises; and no music shall be played on said premises where the same is audible more than one hundred feet distant from said premises."

I have heretofore approved special conditions imposed by the issuance of particular consumption licenses designed to overcome excessive instrumental and vocal noise and other sins committed in the name of music. Re Morey, Bulletin 138, Item 2. Municipalities will do well, in progressing towards a satisfactory solution of the problem, to make such regulations applicable to the entire class. I deem the Council's resolution to be wholly reasonable, definite and fair. It is approved as submitted.

The approval herein given is subject, as with all municipal regulations given ex parte approval, to review on appeal. See re Hauck & Felter, Bulletin 130, Item 3 and the items cited therein.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. HOTELS - RESTAURANTS - UNLICENSED RESTAURANTS AND HOTELS MAY NOT DABBLE IN LIQUOR - NO OCCASION FOR IMPOSING A CORKAGE CHARGE IN UNLICENSED HOTEL.

Gentlemen:

The writer would appreciate receiving the attitude of your Board with regard to practices described below.

In a hotel or restaurant which does not have a license to sell or dispense alcoholic beverages, is it permissible to charge guests a "corkage charge" on any liquor brought on the premises by guests and consumed thereon?

To put the above query in hypothetical form, let us suppose that a guest arranges for a dinner or banquet at a hotel which does not have a liquor license, and arranges to provide all the liquors to be consumed thereat. Is the hotel permitted under your regulations to provide one or more of its employees to dispense the liquors provided by the guest at the dinner? Would the hotel in that instance be allowed to charge the guest a service charge or corkage fee in compensation for providing glasses, mineral waters, service, etc.?

Very truly yours,
James A. Walsh.

June 16, 1937

James A. Walsh, Esq.,
New York City, N. Y.

Dear Sir:

The imposing of a corkage charge necessarily implies that a service has been rendered; that the cork has been pulled or the drinks have been mixed, and the wine or liquor has been served. Hotels and restaurants not holding licenses may not, however, mix or serve drinks to patrons who carry their own nor permit their employees to do so. Re Murnane, Bulletin 153, Item 5.

Unlicensed hotels and restaurants may not dabble in liquor under any pretext. Re Bashover, Bulletin 184, Item 2; re Shamberg, Bulletin 186, Item 1.

As non-licensees are prohibited from servicing alcoholic beverages, no occasion would arise for charging a corkage fee.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. LICENSED PREMISES - AUTHORITY OF MUNICIPAL LICENSING OFFICIALS AND POLICE OFFICERS TO INSPECT LICENSED PREMISES IS CONFERRED BY STATUTE - NO SPECIAL ENABLING ORDINANCE OR SEARCH WARRANT IS NECESSARY.

Dear Sir:

In connection with your recent letter (Bulletin 181, Item 8) sent to Charles Schmidt, our Borough attorney, which had reference to Joseph Izzo, employed by Alvino Izzo, operating premises for the dispensing of liquor.

At the meeting of the Mayor and Council on July 9th, the Council felt that this matter should be turned over to the Public Safety Committee, of which I am a member and this committee is responsible for the operations of our Police Department but as yet we have no police ordinance. The point in question that the writer would like to know is whether or not the police officer has the right to enter the premises where liquor is sold and to determine whether or not any individual not qualified to serve liquor is really functioning as in the case of J. Izzo. Our Police Department would also like to have a copy of the rules and regulations which we understand was drawn up by the Alcoholic Beverage Control.

Some of the questions brought up in connection with the dispensing of liquor are sometimes confusing and also technical and we would therefore appreciate this set of rules and regulations, as well as any information you may be able to give us in regard to the above questions.

Very truly yours,

J. W. Schwenker,
Councilman, Borough of Montvale.
Member of Public Safety Committee.

June 16, 1937

Councilman J. W. Schwenker,
Montvale, N. J.

My dear Mr. Schwenker:

Section 32 of the Alcoholic Beverage Control Act expressly authorizes municipal license issuing authorities to make such investigations as they deem proper in the administration of the Act, including the inspection and search of premises for which the license has been issued, of any building containing the same and of all licensed buildings. Such investigations or inspections may be made without search warrant by the issuing authority or by any police officer. No special enabling ordinance giving you and your men this authority is necessary. It is conferred by the statute.

See in this connection State v. Schill, reprinted in Bulletin 79, Item 8; also Bulletin 83, Item 1, paragraph 11; re Development Syndicate Inc., Bulletin 131, Item 8. Mr. Bunce, the Borough Clerk, has these bulletins in his files.

I have sent you under separate cover two copies of the pamphlet reprint of the Control Act and of the compiled State Rules and Regulations, one set for yourself and one for the Police Department. For Section 32, see in the Act, page 28. For the regulations applicable to retail licensees, see in the pamphlet the rules on pages 16 through 35, and 52 through 59.

Your police officers have the authority to inspect licensed premises at any time to see that the Control Act, the State Regulations and the provisions of your local liquor ordinance are being complied with.

I appreciate that the problems confronting you are difficult and sometimes confusing. It is our duty and pleasure to assist you in solving them from time to time as occasions arise. Do not hesitate to call upon us any time. We are glad to be of service.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. PLENARY RETAIL DISTRIBUTION LICENSES - OTHER MERCANTILE BUSINESS - ORDINANCE BARRING ALL MERCANTILE BUSINESS EXCEPT THE SALE OF ALCOHOLIC BEVERAGES OR ACCESSORY BEVERAGES PROHIBITS THE DISTRIBUTION OF GIFTS, PREMIUMS OR SOUVENIRS OTHER THAN ALCOHOLIC BEVERAGES OR ACCESSORY BEVERAGES.

Dear Sir:

An Ordinance was recently passed eliminating combination liquor stores in the Borough of Ramsey, Bergen County. My client has a combination store which is being subdivided in such a way as to form two complete and independent stores, one to be used for liquor and the other to be used for other merchandise.

My client plans to open the new store on July 1st, and wishes to give out souvenirs during the opening weekend and would like to have an opinion from you as to whether or not this is permissible.

The souvenirs will be in the nature of cocktail shakers, glass ware or similar bar accessories and other small items but not alcoholic beverages.

Will you kindly likewise advise whether it is permissible for my client to have cards printed with amounts to be punched thereon which would entitle customers to receive gifts after purchasing merchandise up to a certain amount.

Very truly yours,
Morris N. Scharf.

June 16, 1937

Morris N. Scharf, Esq.,
Ramsey, New Jersey.

My dear Mr. Scharf:

I understand that your client holds a plenary retail distribution license for premises in the Borough of Ramsey and intends to apply for a renewal for the ensuing year.

According to my records, ordinance adopted by the Council of the Borough of Ramsey March 23rd, 1937, provides that no plenary retail distribution license shall be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business (except the retail sale of non-alcoholic beverages in original containers as accessory beverages to alcoholic beverages) is carried on.

The ordinance by its terms is effective July 1st, 1937.

After July 1st, your client will be prohibited by the ordinance from distributing from his licensed premises any merchandise other than alcoholic beverages or the accessory beverages referred to in the ordinance. Articles such as cocktail shakers, glassware and similar bar accessories will be out, whether he sells or gives them away. Merchandise distributed as premiums or souvenirs is, in legal contemplation, sold since it is paid for in the price of the other merchandise purchased. Re Simandl, Bulletin 123, Item 10. The ordinance prohibits the sale of all merchandise except that expressly authorized. Cf. re Lord & Thomas, Bulletin 82, Item 8.

The use of cards printed with amounts to be punched in predetermined ratio to the amount purchased, the fully punched card entitling the holder to a gift of a predetermined value, is not presently prohibited either by the Alcoholic Beverage Control Act or by the State Regulations. It is possible that pertinent regulations may be issued in the future. I have had them under consideration for some time. The statute confers upon me the power to regulate with respect to practices designed unduly to increase the consumption of alcoholic beverages. It seems clear that such devices are designed to increase consumption. Their use, however, in other mercantile lines is so wide that I am not yet sure that they can fairly be said to unduly increase consumption. Until pertinent regulations are issued the use of the cards is not prohibited.

Bear in mind that these gifts or premiums, as with the souvenirs above, must be confined to merchandise allowed by the ordinance. They may be alcoholic beverages or the accessory beverages permitted by the ordinance. If alcoholic beverages, they are in the contemplation of the Control Act, sales, and therefore must be reported as such on the monthly report of sales made to the State Tax Department. Re Fair Wine & Liquor Stores, Bulletin 87, Item 15.

Coupons or cards where the bonus, discount, price advantage or prize is concealed, have already been prohibited. They are essentially lotteries. See re Shinn, Bulletin 120, Item 8; re Fidelity Printing Co., Bulletin 174, Item 1.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - RECTIFIER'S LICENSE - REVOCATION.

In the Matter of Revocation Proceedings against BRAUER LIQUOR CO., holder of Rectifier and Blender License R-39, for premises 31 Wilkinson Avenue, Jersey City.	CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., for the Department.
No appearance for Respondent.

BY THE COMMISSIONER:

On June 1, 1937, four days after the hearing in this matter, licensee voluntarily surrendered its license. However, the "surrender of a license shall not bar proceedings to revoke such license." Control Act, Sec. 28.

Four charges were preferred:

1. Selling warehouse receipts in this State without a license therefor, contrary to Section 73 of the Control Act.

2. & 3. Selling, in original containers, certain alcoholic beverages which were not the licensee's own product, contrary to the scope of its license under Section 11 (4) of the Control Act.

4. Permitting one of its salesmen to solicit orders in this State without solicitor's permit, contrary to Rule 6 of the Rules Governing Solicitors' Permits.

Notice was given to licensee and its receiver to show cause why the license should not be revoked or suspended under the above charges. Notice was also given to the U. S. Rubber Company, as owner of the licensed premises, that upon revocation of the license, the premises may, within the discretion of the Commissioner, be declared ineligible to become the subject of any further license under the Control Act for two years thereafter.

At the time for hearing no appearances were made on behalf of licensee or its receiver or the U. S. Rubber Company.

With reference to the first charge, the evidence disclosed the following:

In May 1936, licensee sold to R. H. Macy & Co., of New York, certain warehouse receipts covering a quantity of Dunville's and Jaunting Car Irish Whiskey. This sale resulted from acceptance by licensee (at its place of business in Jersey City) of orders

which R. H. Macy & Co. had forwarded to it via the mails from New York.

In late August or early September, 1936, licensee, at its place of business in Jersey City, sold to one Alvin S. Loeb, a "liquor broker," warehouse receipts covering 495 barrels of whiskey.

On November 12, 1936, licensee sold to C. B. Baker Co. of New Jersey, warehouse receipts covering 15 barrels of rye. On December 24, 1936, it sold to the same company warehouse receipts covering 201 barrels of rye. On January 7, 1937, it sold to the same company warehouse receipts covering 163 barrels of whiskey, and on the next day sold to the same company warehouse receipts covering 296 barrels of whiskey. All these transactions were consummated in New Jersey, the latter two being closed over the telephone between a representative of C. B. Baker Co. at Atlantic City and a representative of licensee at Jersey City.

In March, 1936, licensee sold to Equitable Trading Corp. of New York, warehouse receipts covering 50 cases of French Cognac, and in October 1936, sold to the same corporation warehouse receipts covering 100 cases of Canadian whiskey. Both these transactions were consummated in this State, apparently at licensee's premises.

With reference to the second and third charges, the evidence disclosed the following:

One Edward Francis McCabe (engaged in the express and trucking business) on May 19, 1936, under licensee's order to the Harborside Warehouse in Jersey City, withdrew two 5-case lots of Dunville's Irish Whiskey, which he then delivered to Morrison & Co. of New York, apparently in execution of a sale of that liquor by licensee.

One Ernest Schmidt (operating as the Rapid Service Express Co., Inc.) on June 24, 1936, under licensee's order to the same warehouse, withdrew therefrom two 5-case lots of Dunville's Irish Whiskey, one lot of which was to be delivered to Morrison & Co., of New York, apparently in execution of a sale of that liquor by licensee.

When all these various lots were withdrawn from the warehouse, licensee surrendered to the warehouse the outstanding warehouse receipts.

With reference to the fourth charge the evidence disclosed that one Morris Safronski of Atlantic City, without a solicitor's permit, repeatedly accepted orders in this State on behalf of licensee and was paid by licensee on commission basis as one of its salesmen.

I find that the licensee is guilty of all charges preferred against it. Revocation is indicated.

No facts appear which indicate that the premises should be declared ineligible.

Accordingly, it is on this 16th day of June, 1937,

ORDERED that rectifier and blender license R-39 heretofore issued to Brauer Liquor Co., be and is hereby revoked, effective immediately; and it is further

ORDERED that the voluntary surrender of the said license shall not affect this revocation.

Inspected by:
E. E. B. ANDERSON
and found O.K.

D. Frederick Burnett,
Commissioner.