

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

BULLETIN NUMBER 174.

MAY 11, 1937

1. LICENSEES - SALES PROMOTION - "SURE WINNER SECRET PANEL" SALES - STIMULATOR CARDS ARE NOT PERMISSIBLE - HEREIN OF LOADED LOTTERIES.

May 4, 1937

Fidelity Printing Co.,
Chicago, Illinois.

Gentlemen:

The "sure winner secret panel" sales stimulation cards which you seek to install with our liquor licensees are not permissible in New Jersey. While you say they are in the nature of a profit sharing proposition or like trading stamps, the fact is that the scheme is nothing but the distribution of prizes by chance and therefore a lottery, and hence banned in licensed places. Re Shinn, Bulletin 120, Item 8.

Perhaps it's unfair to lotteries to so name your plan for I note with interest the inducement on your printed order blank: "All awards are wrapped separately so the merchant can control the awarding of these prizes by simply passing out those cards he wishes." That sounds more like a gyp! But they're also out.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. GROCERY STORES - SALE OF UNCHILLED BEER FOR OFF-PREMISES CONSUMPTION - APPROPRIATE LICENSES AND APPLICABLE MUNICIPAL REGULATIONS.

Dear Sir:

Will you please let me have the following information:

(1) Are grocery stores permitted to sell bottled and canned beer? If so, how much is the license fee?

(2) How much is the license fee for a store selling only bottled and canned beer?

Yours truly,
Harry Molotsky.

May 3, 1937

Mr. Harry Molotsky,
Camden, N. J.

Dear Mr. Molotsky:

Grocery stores are permitted to sell bottled or canned beer if they obtain a Plenary Retail Distribution License or a Limited Retail Distribution License. However, certain municipalities do not issue either license either because of ordinances which have been enacted prohibiting the issuance of such license or because no provision has been made locally for the issuance of one or the other or both licenses. In respect to Plenary Retail Distribution Licenses,

certain municipalities have, by ordinance, prohibited the issuance of such license in or upon any premises in which any other mercantile business is carried on. Therefore, in any municipality which has enacted such an ordinance, a grocery store would be unable to qualify for the license.

Your letter does not indicate whether your inquiry refers to the City of Camden. If it does, the records of this Department disclose that in Camden no Plenary Retail Distribution License may be issued in or upon premises in which any other mercantile business is carried on and no provision is made for the issuance of a Limited Retail Distribution License. Therefore, insofar as the City of Camden is concerned, a grocery store would be unable to obtain a license for the sale of bottled or canned beer. If your inquiry refers to some other municipality, you may obtain more definite information in the matter either by advising me of the name of the municipality or by communicating direct with the local issuing authority.

The fee for the Limited Retail Distribution License, the privileges under which are confined to the sale of unchilled malt alcoholic beverages in original containers only and in quantities of not less than seventy-two fluid ounces, is fixed by the local issuing authority and cannot be less than \$25.00 nor more than \$50.00.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. SOLICITOR'S PERMIT - NO TRIAL EMPLOYMENT AS SOLICITOR UNLESS PERMIT IS OBTAINED.

Dear Mr. Burnett:

I am about to ask for a favor which I hope that you will grant me.

I am offered a position as a salesman with Messrs. McKesson-Roeber-Kuebler Co., Newark, for Mercer County, N. J.

I would like very much to try this position for ten days, but cannot afford to pay for license.

Is there any way I could do same?

Yours very truly,
William A. Gobler.

May 3, 1937

Mr. William A. Gobler,
Philadelphia, Pa.

Dear Mr. Gobler:

Section 14b(1) provides:

"No individual shall offer for sale or solicit any order in this State for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without the State, unless such person shall have a solicitor's permit issued by the Commissioner hereunder."

Under the circumstances, you cannot be employed by a licensed New Jersey wholesaler as a solicitor for even a temporary

period unless a solicitor's permit has first been obtained because any solicitation by you without such permit would be a direct violation of the Control Act. The above Section is mandatory and I have no discretion insofar as permitting solicitation by an individual who does not hold a solicitor's permit.

I am very sorry, but I cannot grant your request. If you wish to obtain employment as a solicitor for even a trial period, you must first obtain a solicitor's permit from this Department.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS, EMPLOYMENT OF MINORS AND BRAWLS - 15 DAY SUSPENSION.

May 3, 1937

William H. Zaun, Borough Clerk,
Borough of National Park,
Gloucester County, N.J.

Dear Mr. Zaun:

I have staff report of the proceeding before the Borough Council of National Park against William Freeman, trading as White Bridge Cafe, charged with (a) having sold alcoholic beverages to minors; (b) having employed a minor; and (c) having permitted brawls and disturbances on the licensed premises.

I note the licensee was adjudicated guilty and that the license was suspended for a period of fifteen (15) days - May 10 to May 24 inclusive.

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I wish to extend my sincere appreciation to the members of your Borough Council for their quick and effective action. Licensees must not be allowed to flaunt the law and the rules and regulations governing the conduct of their businesses. This case, coupled with the five day suspension handed out to the Belmont Fire Company last February, should bring National Park licensees to the realization that the law was made to be obeyed.

Keep up the good work.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - PROSTITUTION - OUTRIGHT REVOCATION INDICATED AND EFFECTED.

May 3, 1937

Albert E. Cowling, Clerk,
Union Beach, N. J.

Dear Mr. Cowling:

I have staff report of the proceeding before the Mayor and Borough Council of Union Beach against Emma Davies, trading as Old Heidelberg, charged with having allowed and permitted the licensed premises to be used for immoral purposes in that prostitutes were plying their trade therein.

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

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I wish to thank the Mayor and Borough Council and their attorney, Mr. Karkus, for the prompt and highly salutary action.

Prostitution must be stamped out unflinchingly by those charged with the enforcement of the liquor laws. To tolerate what happened in this case would loose the flood gates that swept the country on its path to Prohibition. Some misguided licensees, by tolerating such practices, invite the issue. They must be stamped out. Your Mayor and Council have done their duty well.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

6. LICENSES - SPECIAL CONDITIONS - THE ISSUANCE OR TRANSFER OF LICENSES SUBJECT TO PUBLICATION OF NOTICE OF INTENTION MUST AFFORD FULL OPPORTUNITY FOR OBJECTIONS TO BE MADE AND DULY HEARD - HEREIN OF THE WORDING OF REQUISITE SPECIAL CONDITION WHERE LICENSE ISSUING AUTHORITY DETERMINES IN ADVANCE OF COMPLETION OF ADVERTISING TO ISSUE OR TRANSFER A LICENSE.

May 4, 1937

Joseph J. Novack,
City Clerk,
Garfield, N. J.

Dear Mr. Novack:

I have before me resolutions adopted by the Mayor and Council on April 14th and 28th respectively, authorizing the issuance of plenary retail distribution license for premises 141 Monroe Street to Salvatore Treglia and the transfer of plenary retail distribution license No. 2 issued to Joe Lazinsk to premises 60 Passaic Street, both subject to the special condition of completion of advertising of "Notice of Intention" the second time.

At first blush, this seems proper but the effect is that the very moment the second notice of intention shall have been published the Municipal Clerk is authorized to issue the license in one case and to endorse the transfer in the other. In the usual and wholly natural desire of licensees to "get going" the license may thus be issued or the transfer effected before anyone has had a chance to protest or, perhaps, even to read the newspaper.

The purpose of the notice of intention is not accomplished merely by its publication. The notice is required in order that anyone deeming that good reason exists for the denial of the license or the transfer may have the opportunity of filing objections and a chance to be heard. Objectors must, therefore, be allowed a reasonable time after publication of the notice in which to file their protests. If perchance they do, then they must be afforded an opportunity to be heard. Until such time elapses and such opportunity is afforded, no license should be issued or transfer effected.

Henceforth, therefore, the rule will be that in all cases where a license issuing authority determines in advance of completion of advertising (but after appropriate investigation, of course), to

issue or to transfer a license, the resolution after expressing such determination shall be made subject to a special condition worded (in case of a new or renewal license) substantially as follows: "Subject to the special condition that the advertising of notice of intention be completed and proof of publication submitted, provided, however, that such license shall not be actually issued until two whole days shall have elapsed after the second publication of notice of intention, not counting the day on which such publication may be made, and, further provided, that if within such period, or at any time before the license is actually issued, an objection or a protest shall be filed against the issuance of such license, the license shall not be issued until the further determination of this board or governing body."

If the determination concerns the transfer of an existing license, appropriate changes will, of course, have to be made in the operative language.

The foregoing ruling applies henceforth throughout the State.

As regards the special conditions in the two specific cases above mentioned, I reserve decision until you certify to me whether or not any protests or objections were filed at any time, either against the issuance of the one license or the transfer of the other. If there were none, I shall approve the special condition as submitted. If, however, there were any such protests or objections filed, the special condition will be disapproved and specific directions issued as to the steps to be taken and the incidental procedure.

Please certify to me concerning each case.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF UNCHILLED BEER - LIMITED RETAIL DISTRIBUTION LICENSEES MUST CONFINE THEIR SALES STRICTLY WITHIN THE TERMS OF THEIR LIMITED LICENSES.

May 3, 1937

Hon. William S. Williams,
Mayor of Belleville,
City Hall,
Belleville, N.J.

My dear Mayor:

I have staff report and the Town Clerk's certification of the proceedings before the Board of Commissioners of Belleville against Eric Bertil Kinöberg, Samuel F. Lindenbaum, Lazarus Evenchick and Eva Shapiro, all holders of limited retail distribution licenses and charged with having operated beyond the scope of the terms of their licenses, which permits them to sell only unchilled beer in the original containers for off-premises consumption in quantities of not less than 72 fluid ounces.

I note that all, except Eva Shapiro, were adjudicated guilty, and that their licenses were revoked outright, effective April 30, 1937; that the charge against Eva Shapiro was dismissed.

Expressing no opinion on the merits of the cases because they might come before me by way of appeal - as this is written I am advised that appeals have been filed in two of the cases - I wish to commend most heartily the expressed determination of your Board to demand that this type of licensee confine their sales strictly within the terms of their licenses obtained at a small nominal annual fee.

To adopt any other course would be manifestly unjust to all the retail consumption and distribution licensees of Belleville who pay \$300.00 more for the additional privilege accorded them. It would be rank unfair competition if holders of limited retail distribution licenses were permitted to violate in any way the express terms of their licenses.

My thanks to you and the other members of the Board for your cooperation in proper law enforcement.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSEES WILL HAVE TO LEARN NOT TO RESOLVE DOUBTS AS TO AGE ALWAYS IN FAVOR OF THE CASH REGISTER.

May 5, 1937.

Margaret E. Wermuth, Clerk,
Township of Delaware,
Erlton, New Jersey.

Dear Mrs. Wermuth:

I have staff report and your certification of proceedings before the Township Committee of Delaware against Mrs. Lena O'Brien, charged with having sold alcoholic beverages to a minor.

I note the licensee pleaded guilty and that the license was suspended for a period of three days. My investigators report that the minor served was twenty years of age and could have passed for over twenty-one. That, of course, makes it difficult for the licensee, but penalties steadily measured out will eventually teach licensees that they are not always to resolve their doubts in favor of the cash register. Their only safe way is to refuse to serve anybody if there is any doubt at all about his or her age.

Please again thank the members of your Committee for their salutary action. Coupled with the fifteen day suspension handed out to Mrs. Sarah E. Burke on April 26th last, the penalty should have a decided effect in creating respect for law enforcement in your community.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

9. ENFORCEMENT DIVISION ACTIVITY REPORT FOR APRIL 1 TO 30, 1937, INCLUSIVE.

To: D. Frederick Burnett, Commissioner.

ARRESTS: Total number of persons - - - - - 71
Licensees - - - 3 Non-Licensees - - - 68

SEIZURES: Stills - total number seized - - - - - 23
 1 to 50 gal. capacity- 17 Over 50 gal.capacity- 6

Motor Vehicles - total number seized- - 2
 Trucks - 1 Pleasure cars - 1

Alcohol
 Beverage alcohol - - - - - 183 Gallons
 Denatured alcohol- - - - - 125 Gallons

Mash - Total number of gallons - 22,865

Alcoholic Beverages
 Beer, Ale, etc. - - - - - 364 Bottles
 Wine - - - - - 558 Gallons
 Whiskies and other hard liquor-177 Gallons

RETAIL INSPECTIONS:
 Licensed premises inspected - - - - 2217

Illicit (Bootleg) liquor - - - - 11
 Gambling violations - - - - - 104
 Sign violations - - - - - 61
 Unqualified employees - - - - - 92
 Other violations - - - - - 38

Total violations found- - - - - 306

Total number of bottles gauged- - - - 14,930

COMPLAINTS:
 Investigated and closed - - - - - 409
 Investigated, pending completion- - 423

LABORATORY:
 Number of samples submitted - - - - 191
 Number of analyses made - - - - - 175
 Number of poison liquor cases - - - 2
 Number of cases of alcohol, water
 and artificial coloring - - - - 15
 Number of cases of moonshine (Home-
 made finished product of illicit
 still) - - - - - 18

Respectfully submitted,
 E. W. Garrett,
 Deputy Commissioner.

10. LICENSEES - FINGERPRINTING - SCOPE AND EFFECT.

Dear Mr. Burnett:

It is our understanding that by law applicants for either beer or liquor licenses in your State are required to furnish, at the time of application, finger prints not only of themselves but of their employees as well.

I would appreciate receiving from you any information which you may have on the subject as to the benefits which have

resulted from such a requirement and any other comments that you care to make on such a regulation.

Yours very truly,

C. E. Smith,
Director of Licensing
and Enforcement.

May 3, 1937

Hon. C. E. Smith,
Director of Licensing and Enforcement,
Pennsylvania Liquor Control Board,
Harrisburg, Pa.

Dear Mr. Smith:

The New Jersey Alcoholic Beverage Control Act contains no express provision for the taking of fingerprints. However, Section 36 of the Control Act gives to the Commissioner the power to promulgate rules and regulations and it is by this authority that the Commissioner has provided for the taking of fingerprints of all State licensees and employees thereof. Enclosed is a copy of Rules Governing Identification of State Licensees and Their Employees, in which the provision for fingerprinting is set forth in Rule 6.

Although the rule cited provides for the fingerprinting of all State licensees and their employees, such fingerprints have not been required generally among the trade. At the present time, the only fingerprints required by this Department are those of solicitors. In addition, fingerprints have been required pursuant to investigation of licensees or employees in specific cases.

Fingerprints have not been required generally, first, because this Department has neither a sufficient staff of investigators nor facilities for fingerprinting the large number of persons engaged in the industry, and secondly, because the need for general fingerprinting has not presented itself.

Two years ago this Department inaugurated the issuance of Solicitors' Permits for all persons who sell alcoholic beverages on behalf of licensed New Jersey manufacturers or wholesalers. Our experience during the first seven months that these permits were issued indicated that many undesirable persons were employed in this capacity and, as a result of this, it was determined to require the fingerprinting of all holders of Solicitors' Permits. The fingerprinting of solicitors began about a year ago and since that time approximately 4,000 solicitors have been fingerprinted. We believe that this procedure is very valuable because immediately upon the requirement for fingerprinting, many solicitors dropped out of the industry without even attempting to renew their permit and we have every reason to believe that many who would have entered the industry gave up their intention because of this requirement. In addition, in nearly a hundred cases, Solicitors' Permits were either revoked or applications therefor were denied as the result of criminal records revealed through fingerprints. Almost every week applications are denied because of criminal records disclosed by this procedure.

Fingerprinting has also proved its worth because copies of the fingerprints in each case are forwarded to Federal authorities in Washington and to the New Jersey State Police. As a result thereof, even though the applicant may qualify at the time of his application, this Department would be advised should he be arrested or convicted at any future date in either the State of New Jersey or in most other parts of the United States.

We believe that fingerprinting has been of great assistance in our attempts to purge the industry of undesirables and at the present time we are considering seriously the extending of this requirement to other groups in the industry and possibly to all State licensees and their employees. As a result of our experience, I highly recommend the use of fingerprinting because it is effective in preventing the entrance of undesirable persons into the industry and eliminates those who prove themselves undesirable while engaged in the industry.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.
By: Erwin B. Hock,
Deputy Commissioner.

11. STANDARDS OF FILL - RESTATEMENT.

April 27, 1937

NOTICE TO LICENSEES:

In June 1934, the standards of fill promulgated by Federal Authorities were adopted for New Jersey in order to achieve uniformity. Thereafter, several amendments were made by the State Commissioner, including the recent amendments, effective May 1, 1937, which prohibit the possession of "nips" of whiskey, rum and gin on any retail premises within this State. In view of numerous inquiries received, the main provisions of the Rules Concerning Size of Containers of Alcoholic Beverages, as amended, are herewith summarized and restated:

(1) The smallest containers which may be possessed or sold by plenary retail distribution licensees are as follows:

- Whiskey, rum and gin - - - - - 4/5 pint
- Brandy and Holland gin - - - - - 3/4 pint
- Cordials and liqueurs- - - - - 1/2 pint
- Wine - - - - - 3/8 pint

(2) The smallest containers which may be possessed and sold for on premises consumption by plenary and seasonal retail consumption licensees and club licensees are as follows:

- Whiskey, rum and gin - - - - - 4/5 pint
- Brandy and Holland gin, cordials and
liqueurs, and wine - - - - - No minimum size

(3) The smallest containers which may be possessed and sold for off premises consumption by plenary and seasonal retail consumption licensees are as follows:

- Whiskey, rum and gin - - - - - 4/5 pint
- Brandy and Holland gin - - - - - 3/4 pint
- Cordials and liqueurs- - - - - 1/2 pint
- Wine - - - - - 3/8 pint

(4) Containers in the following sizes may be possessed and sold for consumption on trains and boats by plenary retail transit licensees:

- Whiskey, rum and gin in containers of two ounces
or less;

Whiskey, rum and gin in containers of 4/5 pint or more;

Brandy and Holland gin, cordials and liqueurs, and wine in containers of any size.

(5) The smallest containers which may be sold or delivered by licensed manufacturers and wholesalers to plenary retail distribution licensees are as follows:

- Whiskey, rum and gin - - - - - 4/5 pint
- Brandy and Holland gin - - - - - 3/4 pint
- Cordials and liqueurs- - - - - 1/2 pint
- Wine - - - - - 3/8 pint

(6) The smallest containers which may be sold or delivered by licensed manufacturers and wholesalers to plenary and seasonal retail consumption licensees and club licensees are as follows:

- Whiskey, rum and gin - - - - - 4/5 pint
- Brandy and Holland gin, cordials and liqueurs, and wine- - - - - No minimum size

(7) Containers of the following size may be sold and delivered by licensed manufacturers and wholesalers to plenary retail transit licensees:

Whiskey, rum and gin in containers of two ounces or less;

Whiskey, rum and gin in containers of 4/5 pint or more;

Brandy and Holland gin, cordials and liqueurs, and wine in containers of any size.

D. FREDERICK BURNETT,
Commissioner.

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

12. LICENSEES - EMPLOYMENT OF MINORS - MINORS UNDER 15 YEARS OF AGE MAY NOT BE EMPLOYED IN DRUG STORES WHICH HOLD LIQUOR LICENSES.

Dear Mr. Hock:

I see in Bulletin No. 169, Item No. 15 that you have suggested to Mr. Burnett as of March 30 that the rule stating that

"No minor under the age of 15 years may be employed in any manner whatsoever by any consumption licensee," be amended by dropping the word "consumption."

I wish to suggest that this would prohibit the employment by such people as ourselves, of errand boys used in delivering medicines. These boys are occasionally under the age of 15 years. At present we do not happen to have in our employ anyone under the age limit, but it is conceivable that we may at some future date desire to hire a boy to work after school who would be under 15.

This would also prohibit the employment, by a druggist licensee, of his own children. I agree that no child under 15 years of age, whether a son of the licensee or not, should be employed in any capacity in the liquor business. But in the drug business it is a common practice for boys who intend to be pharmacists to work after school as soon as they get into high school. I myself did this, and my brother did also. I believe that every pharmacist who has a son whom he intends to make a pharmacist, has him helping around the store at a very tender age. Pharmacy is still an apprentice profession.

I would appreciate your thoughts on this matter.

Very truly yours,

Maxwell B. Gold.

May 5, 1937

Mr. Maxwell B. Gold,
Gold's Drug Stores,
Jersey City, N. J.

Dear Mr. Gold:

When the Control Act was enacted in 1933 it prohibited entirely the employment of minors by a licensee. This restriction was provided for because public policy has always been opposed to any contact of minors with the alcoholic beverage industry. In 1934 an amendment was enacted to permit the employment of minors by licensees with certain restrictions. These restrictions were that the minors could only be employed by a licensee pursuant to a Special Permit issued by the Commissioner and under the condition that such employee shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage.

Since this amendment became effective several thousand permits have been issued to employ minors. Almost immediately applications were filed to employ minors as young as seven years of age.

Because of this and of statutory restrictions in respect to the employment of minors generally, it became necessary for the Commissioner to determine a policy and promulgate a ruling. In Bulletin 96, Item 9 (copy enclosed), re employment of minors, the Commissioner promulgated the ruling that no minor under the age of fifteen years may be employed in any manner whatsoever by any consumption licensee and the reasons were stated therein. The same problem, however, continued to exist in respect to the employment of minors by licensees other than consumption licensees.

I believe that public policy is directed not only against the employment of minors of tender age in respect to consumption licensees, but also to all licensees. I can appreciate that under certain circumstances there may not be anything wrong in the employment of a minor under fifteen years of age by a distribution licensee, but in many cases such employment should be prohibited. All rulings made and policies, however, must apply generally to all licensees. To permit such employment in one case and deny it in another, would be most unfair and it was for this reason that I recommended to the Commissioner the extension of the rule to cover the employment of minors by all licensees.

In your particular case the employment of a minor under fifteen years of age may seem all right, but the law must apply to all alike. I do not believe that this restriction imposes any undue hardship on licensees. I am sorry, but I can not agree with you. If drug stores desire to go in the liquor business, they must comply with the law as set forth for all licensees.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Erwin B. Hock,
Deputy Commissioner.

13. LICENSED PREMISES - SALE OF GASOLINE - WHEN PERMISSIBLE.

Dear Sir:

Briefly, this is the situation:

I purchased, from John Alder, the Belle Mead Tavern, located in Belle Mead, N. J.

I have leased this to be operated as a tavern.

I wish to sell gasoline and oil, retail only.

Gas and oil were formerly sold here, a license for same being issued to John Alder for 1936.

The equipment is already installed and is located in front of the tavern, exactly eleven feet from same.

The gasoline business would be operated by me, and not by the lessor of the tavern, nor would any oil or gasoline be stored on the leased premises.

It is my desire to be absolutely correct in every detail, strictly obeying the regulations covering such situations, and I would certainly appreciate your guidance.

I understand there are rules covering the sale of gasoline when associated with a tavern. Even though this place did

so, under former management, I still wish to be certain we act according to the rules of your department.

Very truly yours,
Turner P. Bardsley.

May 5, 1937

Mr. Turner P. Bardsley,
Belle Mead, New Jersey.

Dear Sir:

Section 13(1) of the Control Act provides that a plenary retail consumption license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on.

The application will contain a description of the premises where the alcoholic beverages are to be sold, and this ordinarily determines what constitutes the licensed premises. Whether a prohibited business is being carried on upon such licensed premises depends on whether the conduct of the respective businesses and their independence of location renders them substantially separate and distinct.

As I understand your letter, you have purchased the Belle Mead Tavern but have leased the tavern itself to another person. If the building in which the tavern is located is the licensed premises as described in the application, and all sales of alcoholic beverages are confined to that building, there would be no objection to your operating a separate gasoline business, the equipment for which is already installed eleven feet in front of the tavern. Since, as you say, you are to have no interest in the operation of the licensed business, and since the licensee is to have no interest in your gasoline business, it appears that they are independent enterprises and, although your equipment is in close proximity to the tavern, it appears to be sufficiently removed therefrom to constitute an independent location.

It will be your responsibility to see that these two businesses are kept separate and distinct. Otherwise the Control Act will be violated.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - GIFT OF EMPTY HALF BARREL PERMISSIBLE PROVIDED IT DOES NOT CAUSE THE AGGREGATE VALUE TO EXCEED THE ALLOWABLE \$100.00 PER YEAR.

Gentlemen:

Would there be any objection under the laws of New Jersey to an out-of-state brewer holding a New Jersey wholesale license supplying a retailer with an empty half barrel to be cut in half and used by the retailer for advertising display purposes.

Yours very truly,
C. D. Williams, Secretary,
United States Brewers' Association.

May 5, 1937

United States Brewers' Association,
New York City.

Gentlemen:

There is no objection to a New Jersey wholesaler giving a retailer an empty half barrel to be used in an advertising display provided the gift does not cause the aggregate cost or reasonable value of advertising matter furnished to exceed the allowable \$100.00 per year, for that would be in violation of Rule 1 of the New Jersey Rules Governing Signs and Other Advertising Matter (copy enclosed) and cause for the suspension or revocation of the license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

- 15. TIED HOUSES - REVOCATION PROCEEDINGS - ILLEGAL FOR STATE BEVERAGE DISTRIBUTORS TO HOLD CHATTEL MORTGAGE ON LICENSED RETAIL LIQUOR ESTABLISHMENT - HEREIN OF ERRONEOUS LEGAL ADVICE AS A NON-INSULATOR FROM LEGAL RESPONSIBILITY AND OF THE DUTY OF THE HOLDERS OF SPECIAL PRIVILEGES TO BE PERSONALLY CONSCIOUS OF THE LAW'S REQUIREMENTS AND OF LOOKING BEFORE LEAPING.

In the Matter of Revocation)
 Proceedings against)
)
 PIETRO CARABELLI,)
 t/a P. Carabelli Beverage Co.,)
 735 Princeton Avenue,)
 Trenton, New Jersey)

CONCLUSIONS
AND ORDER

Holder of State Beverage Distri-)
 butor's License SBD-178.)
 - - - - -)

Vincent R. Panaro, Esq., Attorney for the Licensee.
 George Gildea, Esq., Attorney for Owner of Property Containing
 Licensed Premises.
 Jerome B. McKenna, Esq., Attorney for the Department.

BY THE COMMISSIONER:

Notice to show cause why State Beverage Distributor License SBD-178, issued to Pietro Carabelli, trading as P. Carabelli Beverage Co. for premises at 735 Princeton Avenue, Trenton, should not be suspended or revoked, were duly served upon the licensee and the owner of the property containing the licensed premises.

The charge alleges the acceptance by the licensee of a chattel mortgage from a plenary retail consumption licensee as security for payment of an open account due him for beer sold and delivered.

The evidence disclosed that Pietro Rossi, a plenary retail consumption licensee, was indebted to Carabelli in the sum of \$415.21 on a book account for beer sold and delivered; that in order to secure this indebtedness and to obtain a continuation of the beer deliveries to him by Carabelli, Rossi, on May 28, 1936, executed and delivered to Carabelli a chattel mortgage covering the entire contents of his retail establishment. The mortgage is recorded in the Mercer County Clerk's Office.

Carabelli did not dispute acceptance of the chattel mortgage, but testified he had done so, acting upon the advice of his

counsel, Mr. Panaro; that if he had known it was illegal, he would not have taken the mortgage. His attorney, Mr. Panaro, took the stand and assumed full responsibility for the transaction.

The mortgage in question was produced and placed in evidence. It showed on its face that it had been cancelled of record about one week after the charge was preferred by this Department. Carabelli also stated that he had taken one other such chattel mortgage from John Ghiandoni, a retail licensee, to secure an open account of \$285.00. This mortgage was also produced and placed in evidence. Its face showed that it had also been cancelled of record immediately after the instant charge had been preferred.

The evidence clearly substantiated the truth of the charge and the licensee is hereby adjudicated guilty.

Section 40 of the Alcoholic Beverage Control Act makes it unlawful for any manufacturer or wholesaler of alcoholic beverages to be directly or indirectly interested in the retailing of such beverages. The objective of this section is to divorce the production and wholesaling of alcoholic beverages from the retail sale thereof — to eliminate, so far as the brewing industry is concerned, the curse of retail outlets. Re Goldstein v. Trenton, Bulletin 54, Item 1; Re Krueger Brewing Co., Bulletin 55, Item 12; Re Bade, Bulletin 127, Item 6. In the latter case, I said:

"The importance of vigorously prohibiting any interest by the wholesaler in retail licensed premises, is immediately apparent. No subterfuge which results in a 'tied house' can be tolerated. In Reichelderfer v. Johnson, 72 F. (2d) 552, 554 (Dist. of Columbia 1934), the court said:

"One of the well-recognized objections to the methods of sale and distribution of liquors prior to the era of prohibition was the fact that brewers and wholesalers frequently monopolized and controlled the retail trade."

See also In re: State Liquor Control Board, Bulletin 104, Item 1."

I have given considerable thought to the penalty. No subterfuge was employed in these transactions. There was no attempt at concealment. The mortgages were openly recorded. I am wholly satisfied that Carabelli had no intention of violating the law, and, in fact, did not dream that he was. Apparently he believed, as business men so often do, that if he left everything in the hands of his lawyer, it would be all right. I give full credence to his lawyer too when he swears that, at the time he advised Carabelli to accept the mortgages, he was totally ignorant of Section 40 of the Control Act and did not wake up to the fact that he had advised and caused his client to do an illegal thing until after the charges were made and served. The lawyer is a young man, admitted to the Bar but fifteen months. Even if he had been practicing fifteen years, or twice that, I can well understand that, with the tremendous growth of administrative law which has taken place in the last decade or so, no lawyer can profess even working knowledge of every statutory provision, every rule and regulation of administrative officialdom and the daily decisions and developments. The day of Bacon, who took all knowledge for his field, has long since passed.

Hence, this case boils down to actual ignorance of, and negligence in failing to look up, the law before leaping into illegality.

Proper control of the liquor business requires that this violation shall not pass unnoticed and unwhipped. Some penalty must be imposed. Retail licensees are held legally responsible for the acts of their bartenders, irrespective of their own personal innocence. So wholesalers are legally responsible for the acts of their lawyers. Erroneous legal advice is not an insulator from legal responsibility.

Any contrary ruling would provide an obvious alibi and easy escape to every defendant and eventually breed legal specialists on "taking the rap" or posing as "fall guys" for offending licensees.

Strict enforcement will go a long way to save the liquor industry from annihilation. It is the only fair thing to other licensees who refuse to take chances. Those vested with special privileges under the law are charged to be personally conscious of what the law requires. When licensees or their lawyers do not know, the simple recourse is to ask for an official ruling.

Accordingly, it is, on this 6th day of May, 1937, ORDERED, that State Beverage Distributor's License SBD-178, heretofore issued to Pietro Carabelli, trading as P. Carabelli Beverage Co., be, and the same is hereby suspended for five days, effective May 10th, 1937.

D. FREDERICK BURNETT,
Commissioner.

16. LICENSES - CONSIDERATIONS APPLICABLE - HEREIN OF THE EFFECT OF MIGRATORY RESIDENCE AT RENO IN AID OF MARITAL RELATIONSHIPS UPON THE STATUTORY REQUIREMENTS FOR LIQUOR LICENSES IN NEW JERSEY.

In the Matter of Application of)
J. MURVIN OSBORN, INC.,)
for a plenary retail consumption)
license for premises on the East)
Side of Station Plaza, Sea Girt,)
New Jersey.)
- - - - -)

CONCLUSIONS

J. Stanley Herbert, Esq., for the Applicant.

This matter comes before me because a member of the Borough Council of Sea Girt is an officer of the Meralo Holding Co., which is the owner of the premises sought to be licensed. The applicant is a corporation of New Jersey having an authorized capital of \$50,000.00, divided into 500 shares of \$100.00 par value each. There has been issued only \$1,000.00 of this amount, to the following original incorporators:

Elsie J. Osborn	8 shares
J. Murvin Osborn	1 share
Thomas C. Herbert	1 share

The applicant has never been engaged in the liquor business but J. Murvin Osborn, its President, held a license in Wall Township two years ago and Elsie J. Osborn, the Vice-President, was the holder of a license during the past year in the same Township.

A letter objecting to the issuance of this license was received and the objector and the applicant were notified to appear for a hearing before me. The objector failed to appear. The objection was based upon the allegation that there are too many licensees in Sea Girt.

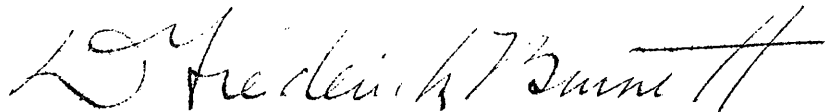
The testimony of Mr. Osborn, as well as that of Investigator Clinch, discloses that the premises sought to be licensed are located in a business section of Sea Girt; that the number of plenary retail consumption licenses in Sea Girt is limited to three, and that there is now a vacancy. It further appears that there are no plenary retail consumption licensees now operating in the immediate vicinity of the premises in question; that the only establishment having a plenary retail consumption license in the vicinity of the applicant's premises is now closed for the winter; and that the only other plenary retail consumption license is a considerable distance away from applicant's premises. It is true that there is another liquor establishment approximately three blocks away from the applicant's premises on Sea Girt Boulevard, but this is in the Borough of Manasquan. Applicant proposes to operate an all-year-round establishment. The governing body of Sea Girt has approved the issuance of this license to applicant.

Each of the stockholders of the applicant corporation bears an excellent reputation in the locality. No question has been raised as to their character. Mrs. Osborn, the principal stockholder, is qualified in all respects as an individual applicant for a license.

Just prior to the hearing I received a telegram stating that Mr. Osborn had acquired a residence in Reno in 1933 for the purpose of obtaining a divorce and questioning his qualifications as to residence in New Jersey. I do not attribute much weight to that point. Migratory residence at Reno in aid of marital relationship in New Jersey is not to be taken over seriously. His domicile was in New Jersey all the time. In his words: "It was necessary to claim my residence in Reno legally to get a divorce, but my home I still claimed in New Jersey." However, this question need not be determined in view of the fact that he is not the holder of more than 10% of the stock of the applicant corporation. Sections 22, 22A.

It appeared at the hearing that Mr. Thomas C. Herbert, the holder of one share of stock, is "a constable of Monmouth County." What his duties are does not appear. If he were an official whose duty it is to enforce the liquor law, he is disqualified from having an interest in any liquor license. Applicant, however, has offered to arrange to have Herbert transfer his interest to Ruth D. Smith, a person qualified in all respects. It will not, therefore, be necessary to decide whether his interest conflicts with his duties as constable.

The application is granted, provided that the share of stock now held by Thomas C. Herbert is transferred to a purchaser qualified to hold an interest in the corporation to which the license shall be issued.



Commissioner.

Dated: May 7, 1937.

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