

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

BULLETIN NUMBER 130.

July 17, 1936.

1. APPELLATE DECISIONS - HOWELL VS. BRANCHVILLE.

ADA B. HOWELL,)
Appellant,)
-vs-) ON APPEAL
COMMON COUNCIL OF THE BOROUGH) CONCLUSIONS
OF BRANCHVILLE,)
Respondent.)

Albert Silverman, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

Ada B. Howell runs a small country hotel in Branchville. She has had a consumption license for the past two seasons. Her application for a renewal for the current year was turned down. Hence this appeal.

The Common Council's answer contains a prologue. According to Euripides, the prologue explained the plot. It sets forth that the local hearing "was attended by a large delegation from the Women's Club of Branchville. They had previously filed a protest in general terms against the granting of a renewal of the license to Ada B. Howell, the applicant, Spokesmen for the delegation and others made vigorous protest to the Council against the granting of said license. Their talk was general and not of specific violations of law. They said they had nothing against the applicant but this license was doing great injury to the public welfare of the community to which the Women's Club was devoted in promoting".

The answer then sets forth that one consumption license granted to the other village hotel and one distribution license are sufficient; that "if more places are licensed than the reasonable temperate needs of the community require, the competition for business encourages drunkenness and disorderly conduct at home and in public. It is for the more orderly sale of alcoholic beverages the Common Council refused the license of the applicant. They admit they do not charge any violations of law against her, their sole action is prompted with a desire to limit the number of drinking places in the Borough".

The formal answer was not signed by anyone. It was just "filed". Moreover, although regular notice was given, nobody appeared at the hearing of this appeal to represent the Borough or to object to the renewal - not even the ladies of Branchville.

Three of the men of the Common Council, however, with a keen sense of justice, and, perhaps, to make sure that I really understood the prologue, came to the hearing and testified on oath just what had happened. One told in detail of the local hearing attended by the Women's Club; that the women had charged no violation nor did they dispute Mrs. Howell's character or fitness; that none of them objected to the premises except one lady who said they were not sanitary but later testified she had never been in the place; that after the hearing was over, the Council went into executive session, at which there was

no discussion whether there are too many licensed hotels or not; or any discussion of the temperate needs of the town; or any mention of welfare, except as each man for himself; that the main discussion behind the locked doors of executive session was - mirabile dictu - the ladies of Branchville, with general consensus that the Women's Club were the "better class of people and that their evidence (sic) should be accepted". Here follows:

"Q And that the evidence of Mrs. Howell's witnesses should not be accepted?

"A Yes. I objected and told them that I thought this was the same as a court and that all evidence should be considered; and even the members who voted against said there was no evidence at all.

"Q Why did they vote against it?

"A Because the Women's Club came up there and scared them.

"Q Didn't they feel they didn't want to assume the responsibility and wanted Mr. Burnett to grant this license?

"THE HEARER: If you know?

"A I would say they did.

"Q And that was discussed at the executive session?

"A Yes."

Another Councilman corroborated the detail of the first and added that he hadn't voted because he "wanted to put it off to another meeting" - cunctator tactics worthy of Fabius and quite understandable in the presence of superior forces - but if he could vote now he would give Mrs. Howell her license.

The third also fully corroborated the first and added that the answer was not authorized or approved by the Common Council.

The confidence reposed in me by the Common Council shall not be abused. But it is a dangerous practice and not to be relied upon. The prologue may not be so chivalrously or tactfully written, or I may not see through it, or the written facts demanding reversal may not be so clear. Besides, I don't relish being known to the children of Branchville as a goblin or werwolf.

The action of respondent is hereby reversed. The Council is directed to issue the license forthwith.

D. FREDERICK BURNETT
Commissioner.

Dated: July 13, 1936.

2. APPELLATE DECISIONS - BURAK vs. IRVINGTON and CHANCELLOR ASSOCIATION, INC.

SAM BURAK, :

Appellant, :

-vs- :

ON APPEAL

BOARD OF COMMISSIONERS :

OF THE TOWN OF IRVINGTON :

and CHANCELLOR ASSOCIA- :

TION, INC., :

CONCLUSIONS

Respondents. :

George A. Henderson, Esq., Attorney for Appellant.

Meyer Q. Kessel, Esq., Attorney for Respondent Board of Commissioners of the Town of Irvington.

J. Elmer Hausmann, Esq., Attorney for Respondent Chancellor Association, Inc.

BY THE COMMISSIONER:

This is an appeal from the issuance of a club license by the Board of Commissioners of the Town of Irvington to Chancellor Association, Inc., for premises 477 Union Avenue, Irvington.

Appellant sets forth various reasons why the issuance of said license was erroneous, viz:

1. That the Association, under a previous license held by it, sold alcoholic beverages to non-members and also conducted the premises in an improper manner.

At the hearing, no evidence was introduced that the Club had made sales of alcoholic beverages to non-members. The weight of the evidence does not support the charge that there had been any improper conduct at any time upon the premises controlled by the licensee.

2. Chancellor Association, Inc. is not qualified to receive a club license because it has not been in existence at least three years prior to the submission of its application.

The evidence shows that Chancellor Association, Inc. was incorporated June 1, 1934. It appears, however, that the organization has been in existence since the year 1931 and has had a continuous existence for more than five years. The requirement is "active operation" for at least three years. There is no requirement of incorporation. The fact that corporate life did not begin until incorporation on June 1, 1934 is beside the point. It was an already existing organization that then took on corporate form.

3. Chancellor Association, Inc. has not been in exclusive continuous possession and use of club quarters for the same period of time.

The evidence shows substantial compliance with the rules and regulations. When the club was first organized, it occupied a building in one of the parks in Irvington as a club

house, and continued to occupy these premises until it obtained the use of a club house at the rear of 483 Union Avenue, Irvington. The Club was thus in continuous possession of club quarters from 1931 to September 1935. At that time, the latter building was condemned. The Club thereupon took up temporary quarters in the basement of the home of one of its members. Regular weekly meetings were held each Friday evening at the latter premises from September 1935 to about May 1936 when the Club obtained possession of its present club quarters at 477 Union Avenue. The Club lost its quarters at 483 Union Avenue through circumstances beyond its control, and not because of a violation of the laws of the State or of municipal ordinance. The Club is a bona fide organization. Possession of suitable premises has been obtained. The evidence tends to show that the Club has been in exclusive continuous possession and use of club quarters for the period of more than three years prior to the filing of its application.

4. The license was issued in violation of the zoning ordinance of the Town of Irvington, under which the premises are located in a district zoned for residential purposes, and in a neighborhood in which a license should not be granted.

477 Union Avenue is in a "B" residence zone. The zoning ordinance of Irvington provides, however, that

"In any residence zone no building or premises shall be used, and no building shall be erected, which is arranged, intended or designed to be used except for one or more of the following uses: ***

"6. Clubs, except clubs the chief activity of which is a service carried on as a business."

The zoning ordinance itself, therefore, does not prevent the establishment of the Club at 477 Union Avenue. The club itself does not fall within the service exception. Neither does it appear that the section is actually given over exclusively to residential purposes. There are a number of stores of various kinds across the street on Union Avenue, and all of this opposite side of Union Avenue, for a distance of six blocks, is included in the business zone. While clubs are not favored in strictly residential sections, re Cranford Veterans Holding Company, Inc., Bulletin #126, item 11, and cases therein cited, I do not consider this section to be strictly residential.

The action of respondent Board of Commissioners of the Town of Irvington, in granting a club license to Chancellor Association, Inc., is affirmed.

At the hearing of this case there was some evidence, not of a conclusive nature, that the Mayor and Commissioners of Irvington are honorary members of Chancellor Association, Inc. It appears that they were made honorary members about two years ago, although some of the Commissioners at least were never notified and do not yet know of the action of the Club. Of course, if any member of the issuing authority were interested, directly or indirectly, in the Association, then the local issuing authority would have no power to issue the club license. P.L. 1934, Ch. 44. Under the contentions made, the facts found and the result above reached in this case, I believe it a mere technical gesture to hold that these honorary memberships should not operate to bar the Town Commissioners from issuing the license. At the most, it would then come before me to issue the license, and if my staff could dig up no more against the Chancellor Association, Inc.

than the assiduous appellant, the same result would ensue! Because I believe that the appearances should be strictly observed in these cases of possible self interest, I shall if appellant insists in writing in five days, follow the regular procedure. That is appellant's right and my duty. In any event, it will be advisable, if any of these honorary memberships are still outstanding, that the Club should take steps to cancel same outright immediately; otherwise, the next renewal of this license must be applied for direct to the State Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 13, 1936.

3. LICENSEES - SUNDAY SALES - SERVICE OF LIQUOR "WITH MEALS" DISAPPROVED - HEREIN OF MEMORIES OF RAINES LAW SANDWICHES AND OTHER INEDIBLES WHICH MADE A FARCE OF THE LAW.

Dear Mr. Burnett:

We are counsel for six or seven municipalities in Hunterdon County, N. J.

This question has come up for our opinion. One of the municipalities at present gives a Retail Plenary Consumption License to only one operator and refuses him permission to open up on Sunday. They desire now to give a license to a second operator and permit him to serve liquor on Sunday with meals only but they will not permit him to serve liquor over the bar on Sunday. They are willing to extend the same privilege to the first operator but he probably will not serve meals as at present he doesn't do so and there is little possibility of him adding the facilities for such service. The town has a population of seven hundred.

Do you believe that the council of the Borough would have its actions considered unreasonable by your department if it were to pass a resolution to the effect that operators might serve liquor with meals on Sunday but liquor could not be served over the bar or in any other way on Sunday, unconnected with meals.

Very truly yours,

HAUCK & FELTER

July 14, 1936.

Hauck & Felter,
First National Bank Building,
Clinton, New Jersey.

Attention: Wesley L. Lance, Esq.

Dear Mr. Lance:

I have before me yours of June 16th regarding a municipal regulation which would permit licensees to serve liquor with meals on Sundays but would prohibit them from serving alcoholic beverages over bars or in any way other than with meals.

Regulations to the same or similar effect have been submitted by several municipalities. The general form is to prohibit all sale or service of alcoholic beverages on Sundays except in restaurants at tables with meals. Actually they confer the privilege of selling on Sundays only upon those licensees which are restaurants and whose premises are equipped

to serve meals. They prohibit Sunday sales by licensees which are not restaurants and whose premises are not so equipped. They do, therefore, discriminate between members of the same license class. The question is whether or not the discrimination is permissible.

Generally speaking all those within the same license class must be treated alike and are entitled to equal privileges. Carrying out this principle I ruled in re Wenzel (Bulletin 19, item 7) that a regulation prohibiting certain retailers from doing business on Sunday, while authorizing other retailers of the same license class to do so, was invalid. In re Sierszputowski (Bulletin 52, item 4), approval was given to a contemplated ordinance permitting sales on Sundays on condition that it apply to all. In re Holz (Bulletin 117, item 8), I held that regulations extending the local closing hour must confer the privilege generally upon all licensees and not upon some in particular. In re Harrington (Bulletin 118, item 13), I ruled that discrimination as to closing hours against some and in favor of others was not permissible.

Nevertheless, exceptions which affect alike all those similarly situated may be valid if reasonable and if they can be said to carry out a public purpose. See re Wenzel, supra, and the cases cited therein.

It was on this latter ground that I held in Retail Liquor Dealers Association v. Plainfield (Bulletin 70, item 1) that an ordinance barring screens in licensed premises could properly except hotels from its operation; that while it did discriminate between members of the same license class, it could properly do so in the case of hotels. In re Teaneck, (Bulletin 125, item 8), I said I would approve a regulation excepting restaurants from the local closing hour if all bona fide restaurants were made exempt. In Bulletin 43, item 11, I indicated that I would tentatively approve, as a valid exercise of police power, regulations which prohibited the sale of alcoholic beverages on Sundays except at hotels or restaurants with meals. In consequence, where such regulations have been otherwise proper, I have done so. Any regulation dealing with the same or similar subject matter which you may prepare will be considered in the light of the same principles.

In any event, I shall look with disfavor on any loose device such as serving liquor with "meals". For what is a meal? And how much does it cost or is it given away? And how much of it, if any, has to be actually eaten before the drink passport is validated? Or is "the meal" a hard cube of crust to be bandied from hand to hand as an exhibit for the thirstily curious, so impenetrable, so durable that it might well outlast a generation of seasoned Sunday soaks. I don't want any recurrence of "Raines Law sandwiches" or "Bride's Biscuits" or any other jokes which make a farce or hollow mockery of the law. Whether or not I give your draft even "ex parte" approval depends entirely on its text. "Meals" just won't go. A bona fide restaurant may. I am on to the plausible tricks and there is not going to be any "inching".

All such approvals have, however, been made ex parte. They are, therefore, not final. No final adjudication on municipal regulations is made until both sides have been given full and equal opportunity to be heard. Because they are not final, all such approvals are given with the understanding that they are subject to review should anyone, deeming the regulation unreasonable, apply for same. Upon application for review of the Commissioner's ex parte approval, the matter will be heard de novo entirely unprejudiced by the previous ex parte determination and the propriety and validity of the regulation will be finally threshed out. See re Giordano, Bulletin 34, item 5; re Municipal Ordinances, Bulletin 43, item 12; re Kemeny, Bulletin 125, item 7.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - WHITE VS. BORDENTOWN.

WILLIAM N. WHITE,	:	
	:	
Appellant,	:	ON APPEAL
	:	
-vs-	:	CONCLUSIONS
	:	
TOWNSHIP COMMITTEE OF THE	:	
TOWNSHIP OF BORDENTOWN,	:	
	:	
Respondent.	:	
	:	

Frank J. Backes, Esq., Attorney for Appellant.
Samuel F. Garrison, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from refusal to renew plenary retail consumption license for premises located on Homestead Avenue, Piersonville, Bordentown Township.

In its answer, respondent alleged that it had denied renewal for various reasons, among which were the following: (1) that said White has served or permitted alcoholic beverages to be served to persons under the age of twenty-one (21) years; (2) that White uses intoxicating liquor to excess and is generally not a proper person to have a license for the sale of intoxicating beverages.

It is unnecessary to consider the numerous other reasons set forth. At the hearing, so far as these other alleged reasons were concerned, there was either a total absence of evidence or else of an unsatisfactory character or else overcome by the favorable testimony produced by appellant and his witnesses. The situation, however, is different with reference to the two grounds set forth in the preceding paragraph.

As to the sale to minors, respondent produced three boys, one eighteen years of age, another who will be twenty-one within a month, and the third of whom will not be twenty-one until November 28th of this year. All three testified that they had frequently

been served alcoholic beverages in White's premises. The youngest boy testified that he visited the premises for the purpose of buying drinks as often as two or three times a week. Although two of these boys lived only a few doors away from the licensed premises and apparently were well known to the licensee, no one on the licensed premises questioned them as to their age until about a week ago. At that time they admitted they were under twenty-one, and then they were refused. But this occurred after respondent had denied appellant's renewal on June 23, 1936. While it is true that these boys became confused in fixing the actual dates on which sales were actually made to them, I am satisfied that all of them were served drinks and that the youngest of them at least was of such a youthful appearance as to put appellant on notice as to his age, especially in view of this witness' testimony that he has been buying alcoholic beverages at appellant's premises for the past two years.

As to the general character of appellant, it is sufficient to consider his own testimony. He admitted that he gets drunk about once a week; that when he gets drunk, he leaves the premises in charge of someone else, goes upstairs to bed and is usually in shape to take charge again the following morning. There was some testimony that he was seldom on the licensed premises, and that, when he was, he has been seen frequently in a drunken condition. In the face of this testimony, and appellant's own admission, I sustain respondent's determination that appellant is not a proper person to have a license for the sale of intoxicating beverages.

Either of the foregoing findings is sufficient to warrant affirmance.

The action of respondent is, therefore, affirmed.

On June 29, 1936, an Order was entered herein extending appellant's old license pending the determination of this appeal and until further order. That order is herewith vacated. Appellant shall cease doing business immediately. In accordance with the terms of said order, respondent shall retain, in addition to the statutory investigation fee, the prorated portion of the license fee for the period during which the extension of the license remained in effect.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 14, 1936.

5. ALIENS - NOT ALL ALIENS BARRED AS LICENSEES OR EMPLOYEES - EVERYTHING DEPENDS ON WHETHER A TREATY HAS BEEN MADE WITH THE COUNTRIES OF WHICH THEY ARE SUBJECTS - THE SITUATION EXPLAINED.

July 15, 1936.

Mrs. M. Guskind,
113 Wayne Street,
Jersey City, New Jersey.

My dear Mrs. Guskind:

I have before me your letter of June 29th expressing surprise regarding the issuance of liquor licenses to aliens and the employment of aliens in connection with licensed businesses.

So many anonymous letters come in to the same effect, and there is so much misapprehension about it that I'm glad to have this opportunity to set it all straight.

Bear two things in mind:

1. The State statute does prohibit the licensing and employment of aliens. The only exception is that aliens may get an employment permit for duties or services other than the sale or manufacture or bottling of alcoholic beverages.

2. The United States has entered into reciprocal treaties with certain other countries which are binding on the State of New Jersey. Under these treaties, citizens of those countries may not be excluded from privileges afforded to citizens of the United States solely because they are not citizens of the United States. Citizens of the following countries are protected by such treaties and therefore may obtain licenses and be employed by licensees provided that under the Control Act they are otherwise fully qualified:

Argentina	Great Britain, including nationals of	
Austria	Scotland and other British territory	
Belgium	in Europe, but not including nationals	
Bolivia	of British territory not in Europe,	
Borneo	such as Canada.	
China	Honduras	
Colombia	Hungary	
Costa Rica	Irish Free State	
Danzig	Italy	
Denmark	Japan	
Egypt	Latvia	
El Salvador	Liberia	
Estonia	Norway	Spain
Ethiopia	Paraguay	Switzerland
Finland	Poland	Turkey
Germany	Siam	Yugoslavia

The only disqualification which the treaties excuse is that of alienage. Citizens of these countries are subject to and must fully comply with all of the other provisions and requirements of the statute.

To illustrate: To report to me that a Spanish alien is acting as barkeeper for Jones is pointless. The Federal treaty supersedes to that extent the New Jersey ban on aliens.

On the other hand, if you report he is a Chilean, a Russian, or a Swede that's something quite different and we'll act at once.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. LICENSEES - CONSUMPTION LICENSEES MAY SELL BEER IN BARRELS FOR CONSUMPTION ON OR OFF THE LICENSED PREMISES.

SPECIAL PERMITS - SPECIAL PERMITS FOR SALES OF ALCOHOLIC BEVERAGES AT SOCIAL AFFAIRS ALLOW THE ORGANIZATION HOLDING THE PERMIT TO PURCHASE FROM LICENSED RETAILERS AND ALLOW LICENSED RETAILERS TO SELL TO THE PERMITTEE.

June 9th, 1936.

Dear Commissioner Burnett:

A local picnic grove, adjoining licensed premises for retail consumption of alcoholic beverages, is facing a problem in connection with the sale of beer in barrels to organizations using the picnic grounds on a rental basis. The license is issued to the owner of the picnic grounds and permits him of course to sell "alcoholic beverages in original containers for consumption off the licensed premises". The local issuing authorities contend that the sale of beer in barrels constitutes a legal sale of beer within the intent of the law.

It seems, that the licensee has been informed by agents of your department that the sale of beer in barrels under his license is prohibited. In going over the various bulletins issued by your department I cannot find this situation covered and therefore request, that you kindly inform me as to your ruling in the matter.

I understand of course, that the licensee is permitted to sell beer by the glass in the grounds if such grounds are covered in the license. However, the sale by the glass is objectionable to organizations using the grounds. Organizations using picnic grounds usually make arrangements with the owner, if he holds a license, to furnish the beer in barrels at a certain price per barrel. In view of statements made by your agents the owner in question has refused to furnish beer in barrels with the result that he has lost much business and finds himself unable to rent his grounds to desirable organizations who are evidently able to make arrangements with owners of other picnic grounds who seem to be only too willing to supply beer in barrels.

As the municipality, as well as the licensee want to operate strictly within the law, an early decision by you would be appreciated.

Respectfully,

Wm. A. Lenz
Borough Clerk.

July 13, 1936.

Wm. A. Lenz,
Borough Clerk,
Roseland, New Jersey.

Dear Mr. Lenz:

I have before me your letter of June 9th regarding the licensee who wants to sell beer in barrels to the organizations using his picnic grounds.

The state law does not prohibit consumption licensees from selling beer by the barrel either for consumption on or for consumption off the licensed premises. The Federal law, however, requires that the licensee shall have a \$50 revenue stamp. Retail licensees, however, even under state law may not sell except to consumers. They may not sell for the purpose of resale (re Eisner, Bulletin #119, item 2), except pursuant to the terms and conditions of a special permit. Nor may the organizations using the picnic grove sell alcoholic beverages to their members and guests unless they first obtain a special permit. No sales of

alcoholic beverages may be made unless duly licensed. The special permit authorizing the organization to sell alcoholic beverages to its members and guests will also allow the organization to purchase alcoholic beverages for resale from licensed New Jersey retailers. Pursuant to this authority, the retail licensee who runs the picnic grounds may sell the alcoholic beverages even though the holder of the special permit will subsequently resell them. Only one special permit is required for each outing. I suggest you come in, see Mr. Hock of the Licensing Division and get a supply of applications for such special permits.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. LICENSEES - AS MEMBERS OF MUNICIPAL GOVERNING BODIES - EXTENT OF DISQUALIFICATION.

April 29, 1936.

My dear Commissioner:

As per our conversation this morning re George H. Krauss, of Sea Bright, running for Councilman. Mr. Krauss is a candidate for Councilman in Sea Bright at the General election in November, and if elected will take office on January first next. Will you please advise me if there is anything that would hinder Mr. Krauss from running for this office, being that he is in the liquor business in Sea Bright. Of course I feel that the law would not affect him in any way until he became a Councilman, which of course he would immediately take up with you in January, should he be elected.

Mr. Krauss bears an excellent reputation here and has been induced to become a Candidate by his many friends, but does not want to do anything that will conflict with your rules and regulations.

Very truly yours,

Judge Walter J. Sweeney.

July 14, 1936.

Hon. Walter J. Sweeney,
Recorder,
Sea Bright, N. J.

My dear Judge Sweeney:

I am sorry to find that in the press of business incident to the licensing season, the peak of which has just passed, your letter of April 29th was overlooked. It has just come to my attention.

There is no provision in the General Election Law, Control Act, or any State regulations adopted thereunder which prohibits a person who holds a liquor license from becoming a candidate for or holding the office of Borough Councilman. Indeed, P.L. 1934, chapter 44, supplementing the Control Act, apparently contemplates that such office may be held by a licensee, for it provides that while no license shall be issued by any such issuing authority to any member thereof, application for such license may be made directly to the State Commissioner, who is authorized to issue the same, subject to rules and regulations, upon the same terms and conditions and for the same fee as other licenses of the same class are issuable in said municipality.

Where, however, under the particular charter and governing statutes of the municipality the Councilman is authorized to sit as magistrate or to exercise the powers of an enforcement officer it would be against sound public policy to permit him to enjoy the privileges of a liquor license. Thus it has been ruled that a Mayor who has the power to sit as a magistrate cannot at the same time hold a liquor license. Re Johnson, Bulletin #116, Item #1 (copy enclosed).

In any event, a member of a municipal governing body who holds a liquor license is disqualified from any participation whatsoever in the deliberations of that body concerning any phase of alcoholic beverage control. See Re Siracusa, Bulletin #89, Item #9 (copy enclosed). He may not therefore vote upon the granting or rejecting of licenses or take part in hearings on license applications, revocation proceedings, or proposed ordinances or resolutions concerning the liquor traffic.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. SOLICITORS' PERMITS - SPECIALISTS OR MISSIONARIES MUST HAVE SOLICITORS' PERMITS AND MAY ONLY BE UTILIZED IN NEW JERSEY WHEN THE HOUSE WHICH THEY REPRESENT HOLDS LICENSE IN NEW JERSEY.

June 11th, 1936.

Dear Sir:

Can I employ a representative of an importing house from New York to work for me temporarily, to place merchandise that he is a specialist on, and to whom I shall pay a salary during the time that he is in my employ?

Very truly yours,

Monmouth Liquor Distributors, Inc.
Philip Schnitzer.

July 14, 1936.

Monmouth Liquor Distributors, Inc.,
Asbury Park, New Jersey.

Gentlemen:

I have yours of the 11th inquiring whether you may employ a representative of a New York importing house to work for you temporarily as a specialist or, as it is generally called, as a missionary.

You may only employ such a representative, if the New York house he represents holds an alcoholic beverage license in the State of New Jersey. Section 14 b (1) provides:

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

Rule 4 of Rules Governing Solicitors' Permits provides:

"Solicitors' permits may be issued only to agents or employees of duly licensed New Jersey manufacturers or wholesalers."

Even though the representative referred to were employed by you, he would continue to be an employee of the New York importing house and through his employment by you would specialize in the furthering of sales of the products distributed by the New York importer. Under these circumstances, it is clear that he indirectly would be representing and making sales for the New York concern, even though employed by you and paid a salary by you.

Such situations would only open the way for subterfuge and create a situation through which unlicensed out of State firms could place their representatives in the New Jersey market.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Erwin B. Hock,
Deputy Commissioner.

9. APPELLATE DECISIONS - PARKER LIQUOR STORES, INC. vs. JERSEY CITY.

PARKER LIQUOR STORES, INC.,)
a corporation of the State)
of New Jersey,)

Appellant,)

ON APPEAL

-vs-)

CONCLUSIONS

THE BOARD OF COMMISSIONERS)
OF THE MAYOR AND ALDERMEN OF)
JERSEY CITY,)

Respondent.)

Aaron Last, Esq., Attorney for Appellant.

N. Louis Paladeau, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's order suspending appellant's license for a period of seven (7) days on the ground that it had violated Rule #3 of the Rules Governing Signs and Other Advertising Matter. The testimony introduced at the hearing on appeal establishes the following facts:

On May 7, 1936, investigators of the Department notified appellant that the following signs displayed by it were in violation of the Commissioner's Rules Governing Signs and directed their removal:

"LIQUOR PRICES SLASHED"

"LIQUOR-PRICE WAR
IGNORE WINDOW PRICES.
CONSULT OUR SALESMEN INSIDE,
DISCOUNT UPON DISCOUNT IS OUR
POLICY"

On May 18, 1936, investigators of the Department observed

the following painted on the exterior of each show window:

"PRICE WAR	ONLY
SEAGRAM'S	2 PINTS
5	TO A CUSTOMER"
CROWN	

In addition, there were signs reading "LIQUOR PRICES SLASHED", "CRASH - LIQUOR PRICE WAR", etc. Pursuant to direction from the investigators, the signs were removed. On May 21, 1936, further sign violations were observed; and on May 22, 1936, the appellant was directed to remove signs reading "LOWEST PRICES" and "CUT RATE".

The Rules Governing Signs provide that no retail licensee shall "directly or indirectly" advertise or permit the advertising of the price of any alcoholic beverage on the exterior of the licensed premises or in the show window or door thereof or in the interior when visible from the street. The only exception is that placards not exceeding 1-1/2 inches by 1-1/2 inches may be displayed within the show window advertising the price of liquor sold for off premises consumption. Although the numerical price was not mentioned, each of the signs referred to above was an indirect price display in violation of the rules.

At the hearing the licensee contended that its violations were unwitting - a pretty but half witted phrase under the facts. The repeated warnings by investigators of the Department and the licensee's continued violations, despite the warnings, negative any suggestion of innocence and support the conclusion that the licensee's violations were conscious and in flagrant disregard of the rules.

The licensee further urges, in extenuation, that the displays were incident to a "price war" and were calculated solely to meet competitive practices. This belated plea was anticipated in Bulletin #120, Item #1, where the Commissioner, after referring to the Rules Governing Signs and the proscription against references to the slashing of prices and the "price war", said:

"Licensees should not be stampeded, whatever the price panic, into violation of rules which stand good at all times. Price fixing is none of my business, but the Control Act is and these rules will be strictly enforced all the time.

"Immediate check-up will be made of all licensees throughout the State. Violations will be visited with immediate revocation proceedings."

The action of the respondent is affirmed.

On June 30, 1936, an order was entered herein staying the suspension of appellant's license and providing that in the event of affirmance, the suspension shall take effect during the period of appellant's renewal license. That Order is vacated, effective at midnight (D.S.T.) July 17, 1936, at which time the suspension of appellant's license for a period of seven days shall take effect as heretofore ordered by respondent.

D. FREDERICK BURNETT,
Commissioner.

10. APPELLATE DECISIONS - MUTUAL WINE STORES, INC. vs. JERSEY CITY.

MUTUAL WINE STORES, INC., a corporation of the State of New Jersey,)	
)	
Appellant,)	
-vs-)	ON APPEAL
THE BOARD OF COMMISSIONERS OF THE MAYOR AND ALDERMEN OF JERSEY CITY,)	CONCLUSIONS
)	
Respondent.)	

Samuel Moskowitz, Esq., Attorney for Appellant.
 N. Louis Paladeau, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's order suspending appellant's license for a period of seven (7) days on the ground that it had violated rule #3 of the Rules Governing Signs and Other Advertising Matter. The testimony introduced at the hearing on appeal establishes the following facts:

On May 21, 1936, an investigator of the Department inspected appellant's licensed premises and observed a neon sign reading "Cut Rate Liquors, Wines, Beer". The licensee was advised that the words "Cut Rate" were in violation of the Rules Governing Signs and their removal was directed. A covering was placed upon the proscribed words in the presence of the investigator.

On the following day, investigators again visited the licensed premises and observed the neon sign in full use. The covering had been removed. The investigators also observed a cardboard sign reading as follows:

"S H O P
 in our
 A U T O M A T I C
 M A R K - D O W N
LIQUOR DEP'T

You automatically mark down the price by presenting a bonafide proof of a price that is lower than ours. Besides our own usual special we will meet any current price on Wine or Liquor in the eastern part of the United States.

With the exception of those States which do not have a State Liquor Tax.

BUY MUTUAL"

After advising the licensee that both signs violated the Commissioner's rules, the cardboard sign was removed and the neon sign was disconnected. On the following day, the neon sign remained on display, although the words "Cut Rate" were not illuminated.

On June 12, 1936, an investigator of the Department observed approximately 30 cardboard placards bearing the word "Special" placed in the licensee's show window immediately adjoining other placards advertising the numerical price of alcoholic beverages. A cardboard sign reading as follows was also displayed in the window:

" TO MY COMRADES
OF THE WORLD WAR -

WHEN YOU CELEBRATE
THE VICTORY OF YOUR
BONUS REWARD

SHOP MUTUAL
for
QUALITY & SAVINGS
Sgt. Irving Gross
479th Aero Squadron
A.E.F.
U.S.A."

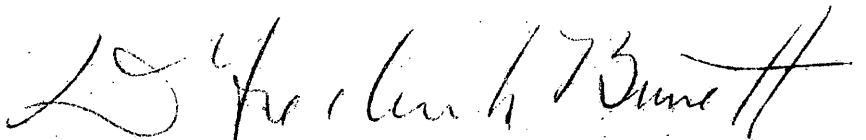
The licensee was notified that the signs were in violation of the rules and they were removed by direction of the investigators. I am not at all sure that these signs of June 12th are violations. At least it is a close squeak.

The Rules Governing Signs provide that no retail licensee shall "directly or indirectly" advertise or permit the advertising of the price of any alcoholic beverage on the exterior of the licensed premises or in the show window or door thereof or in the interior when visible from the street. The only exception is that placards not exceeding 1-1/2 inches by 1-1/2 inches may be displayed within the show window advertising the price of liquor sold for off premises consumption. Although the numerical price was not mentioned, each of the signs described above was an indirect price display in violation of the rules.

Some disciplinary action was warranted. The seven (7) day suspension imposed by respondent is too severe. The licensee's violations were nothing as flagrant as those committed by the licensee in the case of Parker Liquor Stores, Inc. vs. Jersey City, Bulletin #130, Item #9, where identical punishment was imposed.

The action of respondent is affirmed on condition that the suspension be and it hereby is reduced to two days.

On June 30, 1936, an order was entered herein staying the suspension of appellant's license and providing that in the event of affirmance, the suspension shall take effect during the period of appellant's renewal license. That Order is vacated, effective at midnight (D.S.T.) July 19, 1936, at which time the suspension of appellant's license for a period of two days shall take effect as heretofore ordered by respondent and modified hereby.



Commissioner.

Dated: July 15, 1936.