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

BULLETIN 287 DECEMBER 14, 1938.

1. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULES - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

DANIEL PETOLINO,
40-42 Union Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-306, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Daniel Petolino, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served upon the licensee allege that, on Election Day, November 8, 1938, he sold and delivered to a consumer alcoholic beverages while the polls were open, contrary to Rule 2 of State Regulations No. 20 and that, at the same time, his licensed premises were open, in violation of a resolution adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Licensee pleads guilty. He admits that he knew he was violating the law and says that he served the drinks to two of his friends who had asked him to do so as a favor.

This is the defendant's first offense. His license will be suspended for a term of ten days for violation of Rule 2 of State Regulations No. 20. Because the licensee told the truth and made no alibis, no additional penalty will be imposed for violation of the City ordinance.

Accordingly, it is on this 4th day of December, 1938,

ORDERED that Plenary Retail Consumption License No. C-306, heretofore issued to Daniel Petolino by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and same is hereby suspended for a period of ten (10) days, commencing December 12, 1938 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

2. REFUNDS - AFTER LICENSE DECLARED VOID ON APPEAL.

December 5, 1938

Michael A. Fitzsimmons, Clerk,
South Orange, N. J.

Re: Eavenson v. South Orange and Epicure, Inc.

Dear Mr. Fitzsimmons:

Enclosed is license No. D-6, which has been declared void (Bulletin 283, Item 8), and which has been delivered to me by Mr. Charles Giffoniello, registered agent of Epicure, Inc. Kindly acknowledge receipt.

Mr. Giffoniello has requested me to authorize the return of the fee less any investigation charge. The refund, of course, must be authorized by the Village Board of Trustees but, in order to save time, I call their attention to the decision heretofore rendered in Re Barkman, Bulletin 126, Item 6, viz.:

> "It follows that upon cancellation of a license erroneously issued that refund of the prorated unearned license fee less 10% of the full fee paid should be made to the licensee."

Epicure, Inc. concedes that it is all right to deduct 10% of the fee paid as the statutory investigation charge but claims that the remaining 90% should be refunded to it intact instead of deducting from it the earned license fee. It bases this contention on the fact that it never had physical possession or control of the premises 111-113 South Orange Avenue for which the license was issued and, hence, that it did not operate at any time under its license and that it never could have operated while the license was in force.

The argument proves too much. If sound, it would mean that at the end of the fiscal year on June 30th next, the licensee would have been entitled, if the license had not been cancelled, to a refund of 90% of the license fee for the whole year. It would also follow that, if the licensee had acquired possession but was subsequently dispossessed, he would thereby automatically acquire a claim against the municipality for a refund. The error in its argument is that the accident as to whether or not the licensee actually exercised his privileges or acquired or kept control of the licensed premises is no business or concern of the municipality. Once a license is issued, whether erroneously or not, the licensee has all the privileges and the fee is earned from the time of issuance down to the time of cancellation, which in this case was the day on which the order cancelling the license was made, viz.: November 23, 1938.

The earned fee must, therefore, be deducted. The rule in the Barkman case applies to the instant situation.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. PLENARY RETAIL CONSUMPTION LICENSES - OTHER MERCANTILE BUSINESS - MAY SELL FOOD FOR ON-PREMISES BUT NOT OFF-PREMISES CONSUMPTION.

December 5, 1938

Mr. Raymond W. Grimes,
Jersey City, N. J.

My dear Mr. Grimes:

According to my records, you are the holder of plenary retail consumption license #547 for premises 53 St. Paul's Avenue, Jersey City.

Whether or not you are required to take out a restaurant license in order to dispense food depends entirely on local regulations. In that connection I suggest that you take the matter up with the Municipal Clerk of Jersey City and ascertain what, if any, regulations apply to your handling of food.

So far as the Alcoholic Beverage Control Act is concerned, taverns holding plenary retail consumption licenses may sell food for consumption on the premises as well as beer and liquor.

You may, therefore, so far as the Control Act is concerned, sell hard boiled eggs, rollmops, pigs' feet, lambs' tongues, sardines and anchovies, as well as other food, provided that the same is consumed on the premises. Sales of food to be taken out of the tavern and consumed at home or elsewhere off the licensed premises is not permissible. To do so would be to conduct other mercantile business on the licensed premises in contravention of R. S. 33:1-12 (Control Act, Sec. 13(1)). Violation would be cause for suspension or revocation of your license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. SPECIAL PERMITS - STATE AND FEDERAL FEES REQUIRED.

December 5, 1938

Miss Mary A. Walus,
Sayreville, N. J.

My dear Miss Walus:

The State permit to sell alcoholic beverages at social affairs may be issued to authorize the sale of any kind or kinds of alcoholic beverages. The fee is $10.00 and is the same, no matter whether it is beer, wine, hard liquor, or any combination thereof that is sold.

It is only in connection with the Federal special taxes, which must be paid in addition to and separate from the State fee above mentioned, that a price distinction is made between sales of fermented malt beverages and wines and hard liquor.

Where it is desired to sell at a social affair only fermented malt liquor, Federal law imposes a special tax of $2.00 for each calendar month in which such sales are made. For example, to sell malt beverages at an affair to be held on January 1st, there would be required (1) a New Jersey special permit costing $10.00, and (2) a Federal special tax stamp authorizing sales of malt liquors costing $2.00, making a total of $12.00.

Where it is desired to sell either wine only or wine and beer, the Federal tax is also $2.00 per calendar month. The stamp required is the Federal special tax stamp authorizing sale of wines or wine and fermented malt liquor. Here, also, the total cost would be $12.00.

Persons desiring to sell other than fermented malt liquors and wines at fairs, picnics, outings or other social affairs, are required by Federal law to procure the Federal special retail liquor dealer tax stamp authorizing sales of all alcoholic beverages, for which the fee is prorated from the first day of the month in which sale is to be made, to and including the 30th day of June following. Such stamp is $25.00 per fiscal year. Thus, taking the same example used before except that now hard liquor is to be sold: The New Jersey special permit fee of $10.00 would remain the same, but the Federal retail liquor dealer's stamp would cost not $2.00, but $12.50, being prorated from January 1st to June 30th, and the total would be $22.50. This Federal stamp would be good, of course, until June 30th, and would cover all sales until that time, while the $2.00 stamp would be good only for the month issued.

I am enclosing an application for the State permit. It must be fully executed, signed by the Chief of Police and Clerk of the municipality in which the affair will be held, and returned to this office. The $10.00 fee must accompany the application in cash, money order or certified check drawn to my order as Commissioner.

Since you are planning to hold your affair on New Year's Eve, it would not be amiss to remind you beforehand that all State permits for New Year's Eve affairs will be expressly conditioned according to the hours in force in the municipality where the event takes place, but in no event beyond 5:00 A.M. See Bulletin 286, Item 1.

In this same connection, since you undoubtedly plan to sell alcoholic beverages on the eve of New Year's (December 31, 1938) as well as during the early morning hours of January 1st, it would be well to ascertain beforehand from the Federal Bureau of Internal Revenue whether the Federal special taxes must be paid for the calendar month of December as well as for January. For this, communicate directly with the Federal Bureau of Internal Revenue, Post Office Building, Newark, N. J.

The Federal special taxes are payable to and the stamps obtainable at the offices of the Collector of Internal Revenue in the Post Office Buildings at Newark or at Camden.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. ADVERTISING - USE OF TERMS "CUT RATE" AND "NEVER UNDERSOLD"

December 8, 1938

Palace Drug Stores, Inc.,
Jersey City, N. J.

Gentlemen:

I have before me yours submitting label reading:

"Never Undersold
"PALACE ----------
"----------CUT RATE DRUGS
"172 Newark Ave., Jersey City, N.J.
"DRUGS -- PRESCRIPTIONS -- COSMETICS
"Free Delivery - Wines & Liquors - Phones 3-2422 - 3-9255"

So far as the term "cut rate" is concerned, it affirmatively appears that it applies only to drugs and not to the wines and liquors. Its use in the manner submitted, so far as the State Alcoholic Beverage Law and Regulations are concerned, is therefore permissible.

But the term "never undersold" applies to your whole advertisement - wines and liquors as well as drugs. It will, therefore, have to come out.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
ISIDORE C. HORN, 379 Centre Street, Nutley, N. J.,) CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License No. D-3, issued by the Board of Commissioners of the Town of Nutley.)

John C. Howe, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The licensee having pleaded guilty to the charge of selling liquor at his store on November 23rd, at a price below the minimum retail price in violation of State Regulations No. 30,

It is, on this 10th day of December, 1938,

ORDERED, that Plenary Retail Distribution License No. D-3, heretofore issued to Isidore C. Horn by the Board of Commissioners of the Town of Nutley, be and the same is hereby suspended for a period of ten (10) days commencing December 11, 1938, at midnight.

D. FREDERICK BURNETT,
Commissioner.

7. TWO HUNDRED FEET RULE - PROCEEDINGS TO CANCEL LICENSE BECAUSE ISSUED FOR PREMISES WITHIN TWO HUNDRED FEET OF A CHURCH - MUNICIPAL ISSUING AUTHORITIES SHOULD NOT ACCEPT SURVEYS MADE IN DEFIANCE OF EXPRESS RULINGS.

In the Matter of Proceedings to Revoke or Cancel Plenary Retail Distribution License No. D-65 issued to

PHILIP PASTERNAK,
204 Broadway,
Newark, N. J.,

by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Samuel Poleshuck, Esq., Attorney for Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Notice was served upon the licensee to show cause why his license should not be revoked or cancelled because (1) in his application dated June 6, 1938, he falsely stated that his premises are not within 200 feet of any church and (2) his premises are located within 200 feet of the Park Presbyterian Church in violation of R. S. 33:1-76 (Control Act, Sec. 76).

In the latter part of 1937, Pasternak made his first application for a distribution license for premises herein considered. At that time, the Newark Police Department reported that the distance between his premises and Park Presbyterian Church was 196 feet and the Newark Building Department reported that said distance was 197½ feet.

Thereupon Pasternak caused a survey of said distance to be made by Amos Nisenson, a licensed Engineer and Surveyor. He made the distance 201 feet 6 inches, and thereupon the Newark Municipal Board issued the original license on February 24, 1938.

I find that the surveyor eked out the two hundred one and a half feet by setting up arbitrary offsets to the middle of the sidewalk on Broadway and thereupon including those offsets in his measurement. If he had set up longer offsets he could have increased the distance ad lib! But that is not the way to measure. Such devices, depending on the exigencies of particular clients, was condemned in Aldarelli v. Asbury Park, Bulletin 186, Item 12, wherein the correct method of measurement is set forth. This ruling, dated June 12, 1937, was made eight months before the Newark Municipal Board of Alcoholic Beverage Control disregarded the measurements of the Newark Police Department and the Newark Building Department and accepted, on February 24, 1938, the Nisenson survey made in direct contravention of the ruling.

When the license came up for renewal, Deputy Chief Philip Sebold recommended that renewal be denied because the licensed premises were within the prohibited two hundred feet of the church.

Ordinarily, under such circumstances, the license should be cancelled outright.

I do not find, however, that Pasternak acted in bad faith. On June 6, 1938, when he applied for a renewal, he stated in his application that his premises are not within 200 feet of any church. At the hearing, he testified that he did not wilfully make a false statement in so answering, but that his answer was based on the Nisenson survey and his past experience in obtaining a license. In the absence of such evidence, there is nothing to show that Pasternak perpetrated a fraud or wilfully made any misrepresentation or misleading statement in his application. Hence, there is no basis for revoking the license on the first ground above stated.

It appears that Pasternak has rented premises known as #198 Broadway, Newark; that he has filed an application with the Municipal Board to transfer his license to that address; that he advertised his notice of intention on November 23, 1938 and November 30, 1938 and that said application is still pending. Since #198 Broadway appears to be more than 60 feet further removed from the church, it would appear that if this application to transfer is granted, the condition complained of will be corrected. Cf. Retail Liquor Distributors Association v. Atlantic City and Kornblau, Bulletin 88, Item 11; Retail Liquor Distributors Association v. Atlantic City and Soloff, Bulletin 88, Item 13; M. O'Neil Supply Co. v. Ocean, Bulletin 278, Item 1.

Operation of the business at 204 Broadway must, however, cease immediately.

Accordingly, it is on this 10th day of December, 1938,

ORDERED that Plenary Retail Distribution License No.D-65, heretofore issued to Philip Pasternak by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for the balance of its term, effective immediately, with leave reserved to the licensee to pursue his application to transfer the said license to #198 Broadway, Newark. If the Municipal Board of Alcoholic Beverage Control of the City of Newark grants the said application of transfer, petitioner may apply to me for an order lifting the suspension herein imposed so that the license may be transferred from #204 Broadway to #198 Broadway in the City of Newark.

D. FREDERICK BURNETT,
Commissioner.

8. NEW YEAR'S EVE - BLANKET CHARGE PERMISSIBLE - HEREIN A CAUTION.

My dear Commissioner:

A client of mine has asked the following question:

> He has a tavern and wishes to make a fixed charge of $6.00 per person for New Year's Eve. This charge of $6.00 is to include the following: Cover charge, entertainment, supper, breakfast, all the liquor the patron can legally drink (champagne excepted), and noisemakers.

It is to be observed that in addition to the liquor, these additional items are included in the fixed charge.

Will you be kind enough to inform me whether such a charge is permissible?

Very truly yours,
Hymen M. Goldstein.

December 12, 1938

Hymen M. Goldstein, Esq.,
Newark, N. J.

Dear Mr. Goldstein:

A blanket charge for a New Year's Eve party, including entertainment, food and drink accords with custom and is fairly distinguishable from promotional schemes offering unlimited quantities of beer or liquor at a set price. Re Sugrue, Bulletin 232, Item 3.

It will therefore be permissible on New Year's Eve.

I take it that the reference to liquor "the patron can legally drink" refers to personal status and not individual capacity, i.e., to adults who are not actually or apparently intoxicated. We don't want a new crop of drunken driver cases. Bear also in mind that there are no "wraps off" for minors, New Year's or no.

As for breakfast: Cut it out as it would have to be a mighty early one, for all places must close down at 5 A.M. sharp this year because New Year's falls on Sunday.

Thoughtful observance will make a good start for a Happy New Year.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FAIR TRADE - HEREIN OF PRACTICES WHICH, IF CONTINUED, WILL DEFEAT THE VERY OBJECTIVES OF THE FAIR TRADE REGULATIONS.

In the Matter of Disciplinary Proceedings against THOMAS TSIBIKAS, 551 Ocean Avenue, Jersey City, New Jersey, Holder of Plenary Retail Distribution License No. D-1, issued by the Board of Commissioners of the City of Jersey City.	CONCLUSIONS AND ORDER

Thomas Tsibikas, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

It is charged that, on November 4, 1938, licensee sold a pint of Old Maturity Rye Whiskey (4 years old) at a price below the minimum retail price, in violation of State Regulations No. 30.

On November 4, 1938 Inspector Kenney and Investigator Flynn, of this Department, purchased from said licensee for $1.19 a pint bottle of whiskey with the following label thereon:

"This Whiskey is 4 years Old
Bottled in Bond
Old Maturity Brand
Straight Rye Whiskey
100 Proof
Bottled in Bond expressly for
Hercules Liquor Products Corp.,
New York, N.Y."

In Bulletin 275 Old Maturity Rye Whiskey (4 years old) is listed under Hercules Liquor Products Corp. at $1.25 per pint and accordingly the alleged violation was reported, as a result of which this charge was prepared and served.

At the hearing licensee testified that, when he purchased the item from the Hercules Corporation, it advised him that the item in question was not under Fair Trade; that, after the charge had been served upon him, he was further advised by Hercules that it had a brand of Old Maturity 90 proof which it had listed at $1.25 per pint, but that the bonded whiskey was never under Fair Trade.

The files of the Department show that, on October 19, 1938, Hercules Liquor Products Corp. mailed a letter to this Department enclosing a copy of the Fair Trade contract and a copy of the Fair Trade price list mailed on said date to all of its customers in the State of New Jersey. Said price list included:

	"Quarts	Pints
"Old Maturity 4 Yr. Old Rye 90 Proof	2.45	1.25
Old Maturity Bonded Rye Why. 100 Proof	2.95	1.49"

On October 21st the corporation wrote in advising that it desired to withdraw Old Maturity Rye 100 proof bottled in bond from the Fair Trade agreement resale prices, as submitted on October 19, 1938. When Bulletin 275 was promulgated and published on October 26, 1938, it contained the item "Old Maturity Rye Whiskey (4 years old)" without any reference to the proof of said product.

It clearly appears from the above evidence that the Old Maturity Bonded Rye Whiskey sold by the licensee, although 4 years old, was not in fact subject to Fair Trade prices.

This case illustrates the practical difficulties which arise when manufacturers or wholesalers list certain items and withhold other items bearing the same trade name. It is easy enough to distinguish one from the other when they are put side by side for comparison. In the instant case the item which is registered is 90 proof and the unregistered item is 100 proof. But minute differences of this kind are confusing. They caused my men to pick up, as well they might, a bottle of whiskey which fitted perfectly the description promulgated in Bulletin 275. Men in the field cannot be expected to carry around with them the Department correspondence files and a microscope to test for subtle differences. If men on the staff cannot tell by mere inspection, how much more is the public likely to be confused!

Fairness to all parties concerned would seem to require that manufacturers and wholesalers list their entire line of any particular product which bears the same brand name irrespective of age or proof or style of container. Otherwise the State is put to work and expense for the purpose of protecting a particular item arbitrarily chosen leaving another item of the same brand to be kicked around or sacrificed as the exigencies of competition may require.

Practices like this defeat the very objectives for which the Fair Trade Regulations were made by bringing about the very bargains in liquor and the consequent lessening of consumer resistance which the Regulations were designed to prevent.

In the instant case the absurd result is reached that an unregistered but better grade of whiskey was lawfully sold for a price less than a poorer grade of the same brand could be sold.

The charge is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 12, 1938.

10. APPELLATE DECISIONS - BRAUNSTEIN v. DEERFIELD.

JACOB BRAUNSTEIN,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DEERFIELD,

Respondent

ON APPEAL
CONCLUSIONS

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for the Appellant.
No Appearance on behalf of Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises to be constructed on the north side of Landis Avenue one-half mile east of Garton Road, Township of Deerfield.

Respondent makes no objection to the suitability of the premises to be constructed or to appellant's fitness to hold a license. A plan of his proposed building was filed with respondent and apparently found to be satisfactory.

Respondent, in its answer, assigns as grounds for the denial (1) that appellant "is a non-resident of the Township and does not own property" therein and (2) that the locality in question is sufficiently serviced by three liquor establishments located nearby, one being 100 yards from appellant's proposed site and the other two approximately one-half mile away. Respondent, however, entered no appearance at the hearing on appeal.

The contention that appellant owns no "property" in the Township is not well taken either in point of fact or law. As to fact, it appears that appellant has purchased the land where he proposes to build. As to law, even if appellant held no proprietary interest in land or property in the Township, such would be an insufficient reason for denying a license. There is no reasonable relation between municipal control of the retail liquor traffic and a requirement that licensees own real estate in the municipality. Cf. Re Miller, Bulletin 167, Item 8, holding that failure to pay municipal property taxes is not a valid ground for denial of a license.

Nor is there legal merit to respondent's assertion that appellant is not a local resident. No regulation, either state or municipal, requires such residence. Assuming that a municipal policy to issue licenses only to local residents is valid, there is no evidence that such a policy prevails in Deerfield Township.

As to respondent's contention that there are three nearby licensed establishments which are adequate to service the locality (one being located 100 yards from appellant's proposed site), appellant's uncontested evidence, as corroborated by investigatiom of this Department, reveals that the nearest liquor premises are 1073 feet, and the next nearest five-tenths of a mile, away. This last contention, therefore, fails.

The appellant having presented a prima facie case and having squarely met the points raised in respondent's answer, and

the respondent having failed to make any appearance or otherwise defend the case, I cannot in the absence of serious opposition do less than direct that the license issue.

The action of respondent is, therefore, reversed. Respondent is directed to issue a license to appellant forthwith with the express notation thereon that it is subject to the condition that the proposed premises be constructed in accordance with the plan filed and found satisfactory.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 11, 1938.

11. DISCIPLINARY PROCEEDINGS - GAMBLING - 5 DAYS.

December 12, 1938

John W. Knox,
Township Clerk,
Neptune, N. J.

My dear Mr. Knox:

I have before me staff report and your letter of December 5th enclosing resolution and order, and notice of suspension in disciplinary proceedings conducted by the Township Committee on November 29th against Jumping Brook Restaurant, Inc., t/a Jumping Brook Country Club, Jumping Brook Road.

I note that the licensee was charged with possession of an old-fashioned slot machine and a new style "Keeney's 1938 Track Time," a device in the nature of a slot machine with payoff drawer; that after a plea of guilty, the license was suspended for five days.

Please express to the members of the Township Committee my appreciation for the prompt handling of these proceedings and for the wholesome penalty imposed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - 10 DAYS.

December 12, 1938

Carl I. Edwards,
Pequannock Township Clerk,
Pompton Plains, N. J.

My dear Mr. Edwards:

I have before me staff report and your letter of November 17th enclosing copy of resolution and order, and notice of suspension in disciplinary proceedings against George W. Hill, t/a Hitching Post, Turnpike at Fairview Avenue, charged with sale of alcoholic beverages to a minor.

I note that the licensee was found guilty and his license suspended for ten days.

While I can express no opinion on the merits because perchance the case may come before me by way of appeal, I nevertheless wish that you would convey to the members of the Township Committee my appreciation for their prompt and proper handling of the proceedings.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SUNDAY SALES AND SALES TO MINORS - LICENSE SUSPENDED ALTHOUGH GRAND JURY DID NOT INDICT.

December 12, 1938

Mrs. Ann M. Baumgartner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Camden, N. J.

My dear Mrs. Baumgartner:

I have before me staff report and resolutions adopted by the Board on November 22nd and November 29th, in disciplinary proceedings against

1. Vincent Vari,
T/a Vari's Cafe,
202 So. Fourth Street

2. Joseph Palese
T/a Spruce Cafe
900 So. Fourth Street

I note that Vari was charged with sale of alcoholic beverages to a 17 year old girl who had been served three or four glasses of beer before the investigators arrived; that no inquiry had been made about her age; that your Board, despite the fact that the Grand Jury which had also considered the case had not made any criminal indictment, nevertheless found the licensee guilty and suspended his license for seven days.

As regards the Palese case: I note that the licensee was charged with sale on Sunday during prohibited hours and his license suspended for five days.

I do not entertain, let alone express, any opinion on the merits of either case, which perchance may come before me by way of appeal, but I have no hesitancy in saying that if the verdicts of guilt were properly found, the action of your Board in each case commands respect.

With appreciation, I am

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. SUNDAY SALES - NEW YEAR'S EVE - EFFECT OF REFERENDUM - REFERENDUM PROHIBITING SUNDAY SALES MAKES SALE AT ANY TIME ON SUNDAY UNLAWFUL AND CANNOT BE CHANGED EXCEPT BY SUBSEQUENT REFERENDUM.

December 12, 1938

Dr. P. F. Runyon, Mayor,
Freehold, N. J.

My dear Dr. Runyon:

The Freehold referendum prohibits all Sunday sales. The law declares that such a referendum makes sales of alcoholic beverages at any time on Sunday a misdemeanor, for which the offender may be punished by fine, or imprisonment, or both, as well as cause for suspension or revocation of his license. Re Gloucester Township Beverage Association, Bulletin 261, Item 12.

This referendum stays put unless and until a different result is reached by a later referendum. The effect cannot be obviated even by an ordinance.

Therefore, I suggest that you advise your licensees that all sales must stop promptly at midnight on Saturday even though it is New Year's Eve.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

15. SUNDAY SALES - NEW YEAR'S EVE - NO EXTENSION OF HOURS HAS BEEN GRANTED TO LICENSEES BY THE STATE COMMISSIONER - SUCH EXTENSIONS ARE WHOLLY IN THE DISCRETION OF LICENSE ISSUING AUTHORITIES SUBJECT ONLY THAT NO EXTENSION SHALL BE MADE ON CHRISTMAS EVE ANY YEAR LONGER THAN 3:00 A.M. OR ON NEW YEAR'S EVE, WHEN NEW YEAR'S FALLS ON SUNDAY, LONGER THAN 5:00 A.M.

Dear Sir:

Will you kindly advise me whether I can stay open after 12:00 o'clock New Year's Eve, as I read in the paper that we can stay open until 5 o'clock New Year's morning. Does that mean the whole State, or do I have to go to the Township Committee?

Yours truly,
Edward R. Lemley, Jr.

December 13, 1938

Mr. Edward R. Lemley, Jr.,
Swedesboro, N. J.

My dear Mr. Lemley:

My notice of November 29th (Bulletin 286, Item 1), about which you read in the newspaper, does not extend the hours on New Year's Eve. It was addressed, as you see, to municipal governing bodies and license issuing authorities and not to licensees. It merely points out that if extensions of hours are contemplated by municipal governing bodies, they should not be made on Christmas Eve any year longer than 3:00 A.M., or on New Year's Eve, when New Year's falls on Sunday, as it does this year, longer than 5:00 A.M.

Where the hours are fixed by local resolution, they may be changed by resolution. If fixed by ordinance, they may be changed only by a later ordinance unless the original ordinance itself provides that they may be changed by resolution.

According to my records, the hours of sale in Logan Township are governed by Section 2 of ordinance adopted by the Township Committee on June 10, 1935, which provides:

> "2. No such alcoholic beverages shall be sold except between the hours of 5 A.M. and 12 P.M. and excepting that no alcoholic beverages shall be sold between the hours 12 o'clock Saturday and 5 o'clock A.M. Monday morning."

That ordinance prohibits sales of alcoholic beverages from 12:00 o'clock midnight Saturday night until 5:00 A.M. Monday morning. There are no exceptions for New Year's Eve or any provision for amendment by resolution. Hence, the only way in which that ordinance can be changed is by the adoption of another ordinance.

Unless your Township Committee sees fit to enact an ordinance granting longer hours, you will have to stop selling at midnight on New Year's Eve and refrain from selling at any time on New Year's Day, just as on any other Sunday.

Whether or not such an amendment should be made is a matter wholly in the discretion of the Township Committee, except, as aforesaid, that any extension of hours on New Year's Eve this year shall not be longer at the maximum than 5:00 A.M.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

16. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against JOSEPH LEVINE, 591 Orange Street, Newark, New Jersey, Holder of Plenary Retail Distribution License No. D-50 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Fred G. Stickel, Jr., Attorney for the Licensee.

BY THE COMMISSIONER:

The licensee having pleaded guilty to charges of selling liquor at his store on November 28th, at a price below the minimum retail price in violation of Rule 6 of State Regulations No. 30, and also to displaying in the show window of his store a price placard exceeding 1½ inches by 1½ inches, contrary to Rule 3 of State Regulations No. 21,

It is, on this 12th day of December, 1938,

ORDERED, that plenary Retail Distribution License No.D-50, heretofore issued to Joseph Levine by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days commencing December 12, 1938, at midnight.

D. FREDERICK BURNETT,
Commissioner.

17. MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - IF APPLICABLE ONLY TO PLENARY RETAIL CONSUMPTION LICENSES, THE REGULATION SHOULD EXPRESSLY SO PROVIDE - EXCEPTION IN FAVOR OF PREMISES LICENSED AT THE TIME OF ADOPTION OF THE REGULATION DISAPPROVED.

MUNICIPAL REGULATIONS - HOURS OF SALE - TO CHANGE HOURS FROM STANDARD TIME, DAYLIGHT SAVING TIME MUST BE ADOPTED AS THE OFFICIAL TIME FOR THE MUNICIPALITY - SUCH ADOPTION MAY BE BY RESOLUTION, NOTWITHSTANDING THE REGULATION OF HOURS IS BY ORDINANCE.

MUNICIPAL REGULATIONS - IDENTIFICATION OF LICENSEES AND EMPLOYEES - REGULATION SHOULD APPLY TO ALL LICENSEES AND ALL EMPLOYEES.

MUNICIPAL REGULATIONS - REPORTS BY RETAIL LICENSEES TO MUNICIPALITIES DISCOURAGED.

December 12, 1938

Thomas J. Wieser,
City Clerk,
Linden, N.J.

My dear Mr. Wieser:

I have before me yours of December 5th and proposed ordinance concerning alcoholic beverages which was introduced on the 6th and will be further considered on the 20th.

* * * * *

Section 7 of Article II provides:

> "No plenary retail consumption license shall be granted for any premises within five hundred (500) feet of any existing licensed premises, PROVIDED HOWEVER, that this section shall not apply to any premises the subject of an existing license as of the date hereof."

The ordinance provides for the issuance of plenary retail consumption, plenary and limited retail distribution and club licenses. Does this mean that no plenary retail consumption license shall be issued for premises within five hundred feet of another place for which a plenary retail consumption license is outstanding? Or does it mean that no consumption license shall be issued for premises within five hundred feet of a place for which <u>any</u> kind of license is outstanding? As worded, I believe the latter is the correct construction. If that was what you intended it to say, then well and good. But if your purpose was merely to prohibit consumption licenses within five hundred feet of each other, you must add in the third line immediately following "existing" the words "plenary retail consumption."

The purpose of the regulation is to separate licensed premises. I can see some merit in an exception permitting the renewal for the same premises of plenary retail consumption licenses presently outstanding, notwithstanding that they are within five hundred feet. There is an investment in both business and fixtures by such licensees that should be protected. But I see no necessity for continuing an undesirable situation after the present license holder has moved. The premises are entitled to no such exception. I therefore suggest that you revise the last three lines of this section to read "provided, however, that this shall not prevent the renewal for the same premises of plenary retail consumption licenses outstanding at the time this regulation is adopted." As it now stands, I do not approve it.

* * * * *

Noting, however, that Section 1 of Article III calls for Standard or Daylight Saving Time during such period when each may be in effect, I call to your attention Re Tanier, Bulletin 261, Item 1, and Re Lane, Bulletin 261, Item 2, ruling that in order to change the hours established by municipal regulation from Eastern Standard to Daylight Saving Time, the latter must be made the official time for the municipality, and that in order to constitute it the official time, it must be adopted by resolution or ordinance of the municipal governing body. In other words, the time will not be in effect unless it is official. Mere proclamation by the Mayor or conformance on the part of the residents, standing alone, is not enough. Unless the Council affirmatively provides, by resolution or ordinance, for Daylight Saving Time during the period it is customarily in use, your hours will be deemed to be Standard Time the year round. The adoption of Daylight Saving Time as the official time, by resolution, will effectively convert the hours, notwithstanding that they are established by ordinance. The ordinance, by its terms (Article I, Section 6), expressly contemplates amendment by resolution. An ordinance may lawfully be amended by resolution if the subject matter could lawfully be regulated by resolution in the first place and such amendment is expressly contemplated by the ordinance. See Re Somerville, Bulletin 110, Item 5.

Sections 1 through 5 of Article IV, dealing with the fingerprinting and identification of licensees and their employees, are approved in principle. They are, however, inadequate in two respects.

Section 1 requires the fingerprinting of the "licensee and every agent, bartender, waiter, or other employee connected with or employed by or to be connected with or employed by said licensee....." That's all right for licensees who are individuals. But what about corporations? You can't fingerprint a corporation, and where the officers, directors and stockholders are not actually employed in the business, no fingerprinting or identification would be required.

If you want to make a clean sweep of it, the regulations should be applicable to every individual, partnership or corporation holding a license and to all persons connected in any capacity whatsoever with the licensee's alcoholic beverage business as director, officer, stockholder, partner, owner, employee or otherwise. But you must bear in mind that if you do this, it will have the effect of preventing the licensing of a large corporation, such as those that operate chain stores. Yet it would be wholly improper to enforce the regulation against the small local corporation and not against the large one. Hence, reconsider these five sections with some care. Unless made to apply to corporations, in some way,

it is little use in adopting them because, as they now stand, they could be substantially evaded by incorporation, which would mean that the very persons at whom they are aimed could get around them by this device and avoid submitting any fingerprints at all.

Section 5 purports to call for questionnaires concerning the location, housing and situation of licensed premises, and the personal history of employees, from the licensee and also from his employees. The information regarding the premises should be required of the licensee, not of his employees. The personal history should come from the individual employees themselves. There is nothing in the section requiring the personal history of licensees. As above pointed out, if the regulation is to be really effective, it must apply to all.

Section 6 of Article IV requires monthly reports by each licensee of the amount of alcoholic beverages on hand, the source of supply, the means of delivery, the number and size of containers purchased, the age and brand of the beverages, and such other information as may be required. Technically, I suppose it is within your power to require such reports, and therefore I shall give the regulation tentative, although reluctant, approval. But it does seem to me that the information thus elicited will be of little or no actual value. The Tax Department uses such reports to check back against wholesalers. Yours will be useful only as an inventory and will be out of date the day after it is filed. Licensees are now required to submit monthly report of sales to the State Tax Commissioner; there seems to be no real need for imposing the additional burden of a similar municipal report. Unless you have some specific use for the information in mind, I suggest that you exscind this section completely.

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Very truly yours,

Commissioner.