

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

BULLETIN NUMBER 55

December 13, 1934

1. WAREHOUSE RECEIPTS - WARNING

I find a sudden and increasing activity in warehouse receipts. The sales talk is based sometimes on the alleged opportunity of obtaining assured good liquor, but more often on alleged easy money chances to make fabulous profits. I fear the public will be misled. Hence this warning.

Much of the light-bodied whiskey now being manufactured improves but little with age. The few who are buying such receipts to make sure of quality should make full inquiry to ascertain that the Bourbon or Rye Whiskey called for by the receipts is of the so-called "heavy bodied" type which does improve materially with age. The many who are buying warehouse receipts as a speculation should know that the odds are greatly against an increase in present prices. In fact, every indication points to lower prices for liquor.

No whiskey represented by a warehouse receipt can be withdrawn from the bonded warehouse in barrels by anyone except a holder of a rectifier's or distiller's permit from the Federal Alcohol Control Administration. Everyone else, before obtaining possession, must have the whiskey bottled at considerable expense, and on top of that pay the internal revenue, state and local taxes, together with the storage and insurance charges accumulated while the goods were in the warehouse.

Joseph H. Choate, Jr., Director of the Federal Alcohol Control Administration, in view of the wide-spread misunderstanding concerning these receipts, has issued the following statement:

"Since the repeal of the Prohibition Amendment, and especially during the last few months, the sale of bonded whiskey warehouse receipts to the public has increased to an extraordinary degree. Purchasers appear frequently to have little or no idea of the nature of the commitment, relying entirely on representations made to them

by brokers and salesmen. In many instances these representations, while not actually fraudulent, are nevertheless misleading and frequently hold out to prospective purchasers hopes for handsome profits far beyond anything justified by known facts.

"It may not be generally understood by the public that after the process of distilling whiskey is completed, the finished product is barreled and, unless immediately sold as new whiskey, is placed in a warehouse, usually at the distillery, supervised by United States Treasury officials. These warehouses are designated 'bonded warehouses'. Prior to Prohibition, whiskey was usually not sold for consumption until it had aged for at least four years and been bottled in bonded warehouses, at which time it became 'bottled in bond' whiskey. Upon such withdrawal the United States internal revenue tax was paid by the party withdrawing the whiskey.

"It has long been the practice of distillers to sell their products while in the warehouse by means of bonded whiskey warehouse receipts. Until recently these receipts ordinarily did not come into the hands of the public, but were purchased principally by rectifiers and wholesalers with a view to using the actual whiskey in their own business.

"By means of a campaign of advertising and publicity which can only be characterized as 'high-pressure', the public is being widely importuned to purchase these receipts. Brokers and dealers are organizing selling groups and setting up the machinery for active sales campaigns throughout the country. Already many thousands of barrels of whiskey have been sold to the public through warehouse receipts at wholly exorbitant prices. Much of this whiskey is undoubtedly 'light-bodied' and will not greatly improve in quality with age or increase in value to the same extent as heavier-bodied whiskeys.

"Few people realize that the whiskey represented by the receipt cannot be withdrawn from the warehouse in barrels by anyone who does not hold a permit from the Federal Alcohol Control Administration as a rectifier or a distiller, except State dispensaries. Therefore, any other owner of a warehouse receipt who desire to get possession of the whiskey must before obtaining possession have the whiskey bottled at considerable expense. In addition, he must pay the Internal Revenue, State and local taxes. Payment must also be made of storage charges accumulated while the goods remain in warehouse, as well as insurance charges. Individuals who purchase warehouse receipts at the present time would not knowingly contemplate going through this difficult and expensive procedure to get possession of the whiskey, and consequently in most cases an effort would have to be made to resell the receipt at an advance in price.

"The only substantial market for receipts are the rectifiers and wholesalers, and it is hardly conceivable, in view of the large amount of whiskey now being distilled, that either rectifiers or wholesalers will be willing to pay anything approaching the figures at which receipts are now offered to the public. It is thus evident that unless the greatest care is exercised, purchasers of warehouse receipts, far from making a profit, are practically certain to sustain **substantial** losses.

"In this connection it may be observed that one of the principal arguments used by salesmen of warehouse receipts is to point to the present high value of four year old bonded whiskey, the inference

being that one who purchases whiskey receipts today will have something of a similar high value four years hence. But the present high value of four year old whiskey depends on the fact that supply is practically exhausted. The present price, therefore, of four year old whiskey cannot possibly serve as a basis for estimating the price of similar whiskey four years from today. New whiskey today is sold at wholesale and by certain distillers to brokers and receipt dealers at from thirty to forty-five dollars a barrel for bourbon and up to sixty dollars a barrel for rye, depending on the quality of the product. Prior to Prohibition four year old bourbon and rye whiskey sold at wholesale for from fifteen to twenty-five dollars a barrel according to quality. Each week thousands of gallons of bourbon and rye whiskey are being distilled and placed in bonded warehouses. Although large quantities are being withdrawn for immediate sale, it may well occur, unless further restrictions are imposed upon productive capacity, that by 1938 the supply of whiskey in bonded warehouses in this country will equal if not exceed the average amount on hand prior to Prohibition of approximately 244,900,000 gallons. Well informed members of the industry have expressed the opinion that the price of four year old whiskey in 1938 and 1939 will not greatly exceed the present price of new whiskey.

"These figures are of particular significance to present day purchasers of bonded whiskey warehouse receipts, many of whom are now paying for bourbon whiskey at the rate of from sixty to a hundred dollars per barrel. On commitments at these figures the purchaser of whiskey receipts is obviously assured of a substantial loss on his investment.

"Much of the whiskey now being manufactured is described as 'light-bodied', and this type improves comparatively little with age, whereas the so-called 'heavy-bodied' type does improve materially. It is important, therefore, to understand precisely what type is represented by the receipt.

"It should also be noted that in certain states bonded whiskey warehouse receipts are classified as securities, and to be legally sold must be registered with the State securities commission. Again, in other states, the local liquor control authorities treat the sale of receipts as a sale of the whiskey itself and require persons dealing in them to take out state licenses. In some dry states, dealings in bonded whiskey warehouse receipts are forbidden.

"All of these things are matters regarding which the prospective purchaser of warehouse receipts should inform himself, and in every instance full inquiry should be made as to the value and quality of the whiskey covered by the receipt, as well as the nature and extent of charges for storage, insurance and taxes, Federal, State and local. This is particularly important as most distillers reserve the right to sell the whiskey unless such charges are paid promptly. Much also depends on the reliability and financial standing of the distiller as well as of the broker or agent who offers the receipt for sale, and glittering advertisements of the profits to be realized should be treated with great caution.

"Bonded whiskey warehouse receipts in the past served a necessary purpose in the industry, namely, for the financing of operations by the distillers and to enable rectifiers and wholesalers to anticipate their market requirements. These uses for bonded whiskey warehouse receipts exist today, but widespread speculation by the public in receipts constitutes a menace to the industry and a source of probable loss and disappointment to unwary purchasers."

D. FREDERICK BURNETT

Dated: December 10, 1934

Commissioner

2. APPELLATE DECISIONS - SHUMSKI VS. TRENTON

DANIEL SHUMSKI,
Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIS
BEVERAGE CONTROL OF TRENTON,
Respondent

ON APPEAL
CONCLUSIONS

Crawford Jamieson, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied because there are a sufficient number of licensed places in the vicinity of appellant's premises and an additional license would be socially undesirable.

It appears that appellant had made an application for the same premises for the period expiring June 30, 1934, which was denied for the same reason now relied upon by respondent. Notwithstanding this stated reason, however, respondent subsequently issued an additional license for other premises just around the corner from appellant's and admittedly in the same vicinity. In view of such action, respondent's contention cannot be sustained. Cf. Nobili vs. Trenton, Bulletin #42, Item #6

The remaining facts and issues are similar to those in Adams vs. Trenton, Bulletin #54, Item #9. For the reasons there stated the denial of appellant's application was erroneous

The action of respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 6, 1934

3. APPELLATE DECISIONS - ROSANIA VS. READINGTON

JOSEPH ROSANIA,
Appellant,

-vs-

TOWNSHIP COMMITTEE OF READINGTON
TOWNSHIP (HUNTERDON COUNTY),
Respondent

ON APPEAL
CONCLUSIONS

Joseph A. D'Alessio, Esq., Attorney for Appellant
Nathan Duff, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was denied by virtue of its limitation of the number of licenses to be issued to three (3) and the issuance of the allotted number. Although the limitation is subject to appeal, it will not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to appellant. Ryman vs. Branchburg, Bulletin #37, Item #18.

No substantial evidence was introduced to show that the limitation itself was unreasonable. Nor can appellant successfully maintain that the limitation was improperly applied to him. His premises are located in a rural community which is sparsely populated. One of the three licenses which had been issued was for an hotel within 250 feet of appellant's premises. There is nothing to indicate either that the hotel was improperly preferred over appellant or that it is inadequate to supply all the demands of the residents of the community.

Accordingly, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 6, 1934

4. RECTIFIERS - POWER TO SELL PRODUCTS LIMITED TO SUCH BEVERAGES AS HAVE BEEN PROCESSED UNDER ITS LICENSE IN THIS STATE AND DOES NOT EXTEND TO BEVERAGES MANUFACTURED ENTIRELY OUTSIDE THIS STATE AND NOT SUBJECTED TO ANY PROCESSING WITHIN THIS STATE

D. Frederick Burnett, Commissioner.

Dear Sir:

Re: Hiram Walker & Sons

We are addressing you on behalf of Hiram Walker & Sons (New Jersey) Inc. which has erected a rectifying plant in Jersey City. Our client has not commenced operations and hence is not seeking a license for the moment. It is a wholly controlled affiliate of Hiram Walker & Sons, Inc., which operates the largest distillery in the world at Peoria, and Hiram Walker & Sons, Limited of Walkerville, Canada, distillers of "Canadian Club" and other well-known brands.

Now that the Peoria distillery has been completed our client is looking forward toward the opening of the Jersey City plant, and has again inquired of us concerning the scope of the Rectifier and Blender license which we have advised will be required as a condition to its operating in your state. The particular question involved is whether under such license it will be permitted to sell to duly licensed wholesalers and retailers products manufactured at the said Peoria and Walkerville plants of the parent company. It will not handle any products manufactured by outside concerns. In other words, it will only handle products rectified and blended by it and products manufactured outside the State of New Jersey by said wholly owned affiliates of the parent company.

When our client was considering opening a plant in the east we persuaded it to select New Jersey not only because of the thoroughly decent attitude of the personnel of your Department and of the Tax Department as contrasted with the attitude of similar officials in other states, but because we were given an affi

mative answer to the question above mentioned. In other words, we were told that under the Rectifier and Blender license our client could handle all the products of its affiliates as well as those rectified in the Jersey City plant. This was reiterated to us by your Department about three months ago. We would like to have definite assurance on the subject at this time so that we may give final advice to our client preliminary to filing a formal application.

It should be noted that each license requiring a larger fee includes functions provided under a license requiring a lesser fee, thereby showing a legislative intent to avoid double taxation. Further, that in the case of a limited distillery license, which is obviously intended to be highly restricted in scope, the phrase "his said products" is used, whereas, in both the instances of the plenary distillery license and of the Rectifier and Blender license the phrase "his products" is used, indicating a broader meaning than that intended by the phrase "his said products".

Yours very truly,
STECKLER, FRANK & STECKLER

December 6, 1934

Steckler, Frank & Steckler, Esqs.,
New York City

Gentlemen:

I have your inquiry as to whether Hiram Walker & Sons (New Jersey) Inc. a corporation of Delaware, and the holder of a rectifier and blender license, may sell alcoholic beverages manufactured by its parent corporation in plants situated outside this State.

Section 11 of the Control Act provides that the holder of a rectifier and blender license may rectify, blend, treat and mix distilled alcoholic beverages; fortify, blend and treat fermented alcoholic beverages; prepare mixtures of alcoholic beverages; and distribute and sell his products. A license to rectify blend or otherwise manufacture alcoholic beverages would be nugatory without the incidental privilege of distributing and selling the products manufactured pursuant thereto. The phrase "distribute and sell his products" was included to provide expressly for such incidental privilege. Read in the light of its purpose and context, it refers solely to products manufactured pursuant to the New Jersey license and does not refer generally to products owned by the licensee. Selling alcoholic beverages other than those manufactured under the license, for purposes of resale would constitute an ordinary wholesale transaction, which is permissible only under a wholesale license. Bulletin #50, Item #9.

Your letter notes that the Control Act uses the words "his said products" when dealing with the limited distillery license and suggests that this indicates an intent to limit the sales by this type of licensee only and not by other types of licensees, to products manufactured under the license. The word "said" is not found in the provisions relating to the other limited manufacturing licenses, i.e. limited brewery and winery licenses. Considering the nature and legislative history of limited manufacturing licenses, it must be concluded that its presence in the provision relating to limited distillery licenses is without significance.

Hiram Walker & Sons (New Jersey) Inc. would not be permitted to sell under its rectifier and blender license, alcoholic beverages manufactured by it outside this State but not rectified, blended, treated, fortified or mixed within this State. A fortiori it may not sell alcoholic beverages manufactured outside this State by a corporation which, in legal contemplation, is entirely distinct from the New Jersey licensee without first having rectified, blended, fortified, mixed or treated such alcoholic beverages within this State. Bulletin #54, Item #4.

A different problem is presented where the alcoholic beverages are shipped into this State in bulk and are then subjected to some process by the New Jersey licensee previous to resale. It may be purified, refined, mixed or subjected to some other process by the New Jersey licensee and thus become his product, which may be sold and distributed by him pursuant to his New Jersey license. Included among the permitted processes is bottling and rebottling for resale. Bulletin #7, Item #8.

It is the ruling of the Commissioner that the holder of a rectifier and blender license may sell only such of its alcoholic beverages as have been purified, refined, mixed, bottled or subjected to some other process pursuant to its license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

5. RECTIFIERS - POWER TO SELL PRODUCTS - WHEN PLENARY EXPORT WHOLESALE LICENSE IS NECESSARY - POWER TO SELL ALCOHOL FOR INDUSTRIAL PURPOSES

November 21, 1934

Commissioner of Alcoholic Beverage Control

Dear Sir: Re: American Distilling Company

This is to confirm Mr. Collins' recent oral request for rulings under the circumstances set forth in a letter received from the above company, pertinent portions of which are as follows:

"In the first place, we should like to import from our distillery at Pekin, Ill. bulk alcoholic liquors which would then be bottled and possibly rectified and blended at the proposed New Jersey plant, such products to be sold in New Jersey and other states according to the laws of such states. In connection with this business, we must also be enabled to import from our distillery at Pekin, bottled case goods to be distributed from our New Jersey premises to wholesalers in New Jersey and dealers in other states, in accordance with their laws.

"We would also like to import intoxicating liquors and alcohol in bulk and sell same in bulk to rectifiers in New Jersey and other states. In connection with the above outlined operations you can readily see it would be necessary for us to store on our proposed premises both bulk and case goods.

"From my examination of the New Jersey Alcoholic Beverage Control Act it would seem to me that a Rectifier's and Blender's permit at a cost of \$2500. per annum would cover most of the proposed operations outlined above. However, there is some doubt in my mind as to whether the holder of such a permit would be permitted to sell merchandise manufactured by the same company but at a place outside of the State of New Jersey and hence not under the Rectifier's and Blender's Permit. As I told you today on the telephone, there was a recent opinion issued by Commissioner Burnett under date of October 26, 1934, which is listed as Bulletin No. 50, Item No. 9, in which somewhat the same situation was discussed.

"I would like to have you consider the question as to whether or not under the permit above mentioned pure alcohol may be sold for industrial as well as beverages purposes
* * *"

In considering the above requests, Mr. Shapiro enumerated three specific desires as follows:

1. The rectifying of alcoholic liquors.
2. The receiving of liquor in bulk from proposed licensee's own plant outside of New Jersey and its subsequent sale in bulk under rectifier's license.
3. The receiving of liquor in bulk from proposed licensee's own plant outside of New Jersey and its subsequent re-bottling and sale under rectifier's license.

It has been suggested that ruling in the Winery cases whereby goods were permitted to be brought into New Jersey in bulk and thereafter bottled and sold, should prompt an affirmative answer for the third desire.

We understand that "Hiram-Walker" contemplates doing a similar business to that of our client, and has requested rulings thereon, for which reason we would thank you to consider both applications at the same time and to favor us with rulings at your early convenience.

Very truly yours,
McDERMOTT, ENRIGHT & CARPENTER

December 6, 1934

McDermott, Enright & Carpenter, Esqs.,
Jersey City, N. J.

Gentlemen:

I have your letter of November 21st, and am enclosing herewith copy of opinion (In re Hiram Walker & Sons, Bulletin 55 Item 4) relating to the subject of your inquiries.

You will note therefrom that the holder of a rectifier and blender license may sell only such of its alcoholic beverages as have been purified, refined, mixed, bottled or subjected to some other process pursuant to its license. It may not sell bottled case goods and alcoholic beverages in bulk, manufactured in Illinois, from its New Jersey plant to licensed New Jersey manufacturers, wholesalers and retailers within this State and to persons outside the State pursuant to the laws of the places of sale, except under a plenary export wholesale license.

Under section 27, the provisions of the act do not apply to alcohol intended for and actually used in the manufacture and sale of the products there described, including industrial products, when they are unfit in fact for beverage purposes. This section applies to licensees as well as other persons and consequently the holder of a rectifier and blender license may sell alcohol for industrial purposes within the limitations thereof.

Under the present regulations of this Department, all of the activities outlined in your letter and listed below may be engaged in by a person holding both a rectifier and blender license and a plenary export wholesale license.

(1) The rectifying of alcoholic beverages;

(2) The receiving of alcoholic beverages in bulk from the licensee's plant outside of New Jersey and its subsequent rebottling and sale within this State to licensed manufacturers, wholesalers and retailers and without this State to any persons pursuant to the laws of the places of sale;

(3) The receiving of alcoholic beverages bottled or in bulk from the licensee's plant outside of New Jersey and its subsequent sale bottled or in bulk and without having been subjected to any process within this State, to licensed New Jersey manufacturers, wholesalers and retailers and without this State to any persons pursuant to the laws of the places of sale;

(4) The selling of alcohol for industrial purposes within the limitations of section 27.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

6. MUNICIPAL ORDINANCES - VALIDITY - INTERFERENCE WITH STATE-WIDE PROVISIONS

December 8, 1934

T. Philips Brown, Esq.,
Camden, New Jersey

Dear Sir:

Re: Borough of Laurel Springs

I have a resolution passed by your Borough Council pursuant to the Alcoholic Beverage Control Act as amended and supplemented:-

Dated June 18, 1934 fixing plenary retail consumption, plenary retail distribution and club license fees and regulating the sale of alcoholic beverages.

It is approved as submitted with the following exceptions:-

Section 1 provides that "It shall not be lawful to conduct the business of selling or distributing such beverages within the Borough of Laurel Springs, New Jersey, without first obtaining a license therefor, after approval thereof by this Commission." As so worded, it purports to make any license, under the operation of which the sale or distribution of alcoholic beverages in Laurel Springs is proposed, issuable only after approval by your Borough Council. By its terms, it applies to licenses issued by the State Department as well as to those issued by the Municipality. Although said approval by your Borough Council is necessary to the issuance of any of the five classes of retail licenses which the statute authorizes them to issue, I doubt that it was your intention similarly to condition the issuance of State licenses and make sales and distribution thereunder, if not approved by you, a violation of the ordinance. It would not be legal in any event. Hence, I suggest, in order to remove all doubt, that "after approval thereof by this Commission" be deleted and, in place thereof, that you substitute therefor the following wording: ISSUED PURSUANT TO "AN ACT CONCERNING ALCOHOLIC BEVERAGES", PASSED DECEMBER 6, 1933 AS AMENDED AND SUPPLEMENTED. It will not prejudice you for, insofar as the issuance of your own licenses is concerned, you are fully protected, to the extent necessary, by statute.

Section 3 makes all licenses subject to all police regulations and ordinances of this Borough "relating to the conduct of said business and to the maintenance of sanitary conditions in, on or about the place licensed." Regulations of the conduct of businesses and the nature and condition of the premises, are, pursuant to Section 37 of the Act, subject to the approval of the Commissioner first obtained. But the regulations and ordinances referred to have not been submitted; hence, I cannot reach a determination thereon. Until then, I cannot approve Section 3.

Section 8 provides that "No person shall sell any beverage authorized by the said Act of the Legislature of the State of New Jersey in the Borough of Laurel Springs without a license first having been obtained as herein provided." But the resolution provides, in Section 6, only for plenary retail consumption, plenary retail distribution and club licenses. Here again, similarly as in Section 1, you have failed to consider the effect of your resolution on licenses issued by the Commissioner. The net result of Section 8 is to prohibit within your Borough, the sale of alcoholic beverages by any licensee other than those falling within the three classes included in Section 6. It may be remedied by deleting "as herein provided" and, in place thereof substituting therefor the following wording: ISSUED PURSUANT TO "AN ACT CONCERNING ALCOHOLIC BEVERAGES", PASSED DECEMBER 6, 1933 AS AMENDED AND SUPPLEMENTED.

I quote your Section 10. "Any person violating any of the terms of this resolution, in addition to the penalties provided herein

and by the laws of this State, shall be subject to the fines and penalties provided in said Act." I do not find, in your resolution, any penalties referred to as being "provided herein" except inferentially that they may be the penalties carried by the police regulations and ordinances mentioned in Section 3 of this resolution. As above stated, those regulations and ordinances are not yet before me. Even if they were before me, I doubt that penalties so included by reference to general police regulations and ordinances would be valid. The incorporation by reference, if such was your intention, is too indefinite, too inferential to support any penalty, for penalties are always construed strictly. The section further purports to subject any one violating any of the terms of the resolution to the fines and penalties provided in the Act. Insofar as this refers to penalties of suspension and revocation, its inclusion is not necessary, for you are fully protected by Section 28 of the Act. Insofar as it refers to fines, it is of no effect, for such statutory penalties are for violations of the Act and are misdemeanors. In any event, I doubt that any fine or imprisonment can be imposed by mere resolution. That result can be accomplished only by ordinance. When you consider your ordinance in this respect, I cordially suggest that you refer to the discussion of this problem contained in Bulletin 52, item 1.

Very truly yours,
 D. FREDERICK BURNETT,
 Commissioner

7. APPELLATE DECISIONS - LEVIN VS. TRENTON

LOUIS LEVIN,	}	
Appellant		
-vs-		ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC	}	CONCLUSIONS
BEVERAGE CONTROL OF TRENTON,		
Respondent.		

Hon. J. Conner French, Attorney for Appellant
 Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at #11-13 Stockton Street, Trenton.

On May 18, 1934, while appellant was operating at #17 Stockton Street by virtue of a license issued to him by respondent during the previous fiscal year he leased premises at #15 Stockton Street, the lease containing a provision that in the event a transfer of the license was not obtained, that appellant, at his option, might terminate the lease. Appellant applied to respondent for such transfer but later changed his mind and requested respondent to deny the application for transfer telling respondent Board that he did so in order that he might exercise his option to terminate the lease. Respondent complied and denied appellant's request for transfer.

Later, when appellant applied for a license for the present fiscal year at 11 Stockton Street, he was denied. The denial was sought by respondent to be justified by appellant's conduct above narrated.

The difficulty with respondent's position is that while it was not a party to the transaction of which it now complains, nevertheless it played into the hands of appellant by denying his application for transfer upon his request to do so, knowing that he was to utilize the denial to cancel another lease. The indignation which respondent now professes toward the alleged unethical conduct of appellant would have come with better grace if it had been exhibited and acted upon at the time appellant sought to have respondent pull his chestnuts out of the fire. No casualties were reported at that time.

The weight which would normally be placed against unethical conduct in determining whether a license should be granted is not of the same moment where the charge is belated and comes from a party who knew of it at the time and took no steps to thwart it.

The affirmative testimony is that appellant had a good reputation, had conducted his business properly under his previous license, and was a proper person to whom a license might be issued. There was no question raised as to the suitability of the premises sought to be licensed. Respondent's determination that appellant was an unfit person to receive a license cannot be sustained.

The action of respondent Board is reversed.

Dated: December 10, 1934

D. FREDERICK BURNETT,
Commissioner

8. APPELLATE DECISIONS - FACCIDOMO VS. UNION BEACH

TONY FACCIDOMO,
Appellant

-vs-

MAYOR AND COMMON COUNCIL OF
THE BOROUGH OF UNION BEACH
(MONMOUTH COUNTY),
Respondent

ON APPEAL
CONCLUSIONS

William V. Azzoli, Esq., Attorney for Appellant
Ezra W. Karkus, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at Front Street opposite Pine Street, Union Beach.

Respondent contends, inter alia, that the application was properly denied for the reason that there is a sufficient number of licensed places in the vicinity of the premises sought

to be licensed and that an additional license in said vicinity would be socially undesirable. This contention was raised by amendment to the answer at the hearing of the appeal. In order to afford appellant complete opportunity to meet the issue a supplementary hearing was held and further evidence introduced.

The right of an issuing authority to deny an application where the issuance of the license would result in too many licensed places in any given vicinity is settled. Bader vs. Camden, Bulletin #44, Item #8; Furman vs. Springfield, Bulletin #49, Item #6; Clement vs. Loder, Bulletin #52, Item #5. Union Beach is essentially a summer resort with a population of approximately 2000. Twelve plenary retail consumption licenses have been issued therein. There is now a licensed place within 100 feet of appellant's premises, a second within 200 feet and a third within 300 feet. All these places, as well as appellant's are located on the beach front. There is testimony that an additional license for premises along the beach front would be socially undesirable. It does not appear that public necessity or convenience dictate the issuance of an additional license for said vicinity. The determination of respondent is justified by the evidence and is reasonable.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 10, 1934

9. RULES CONCERNING THE SIZE OF CONTAINERS - APPLICATION TO MODIFY DENIED - MINIMUM OF FILL MUST BE CONTAINED IN SINGLE BOTTLE

Mr. D. Frederick Burnett

Dear Mr. Burnett:

We are figuring on getting out some special Christmas assortments for sale by the package stores at prices ranging from \$5.00 to \$25.00 per Christmas package.

Inasmuch as we would like to have as large an assortment of varieties in each package as possible, we would like to include such items as half-pint bottles of Rum, half-pint bottles of Whiskey, etc. While we are aware of the fact that half-pints are not permitted to be sold to package stores for resale by them, we feel that your Department might not have any objection where it was included in a group of other merchandise and where the entire group was sold at one time.

Very truly yours,
MAJESTIC WINE & SPIRITS, INC.

December 10, 1934

Majestic Wine & Spirits, Inc.,
Camden, N. J.

Gentlemen:

I have your letter inquiring whether retail licensees may sell Christmas packages containing one-half pint bottles of whiskey, rum and other distilled spirits.

Investigation early disclosed the evils and abuses inherent in the sale of alcoholic beverages in under-sized containers. Their intensive sales promotion not only worked havoc with our younger generation but was also conducive to public drunkenness and disorder. See Bulletin #26, Item #2.

The rules pertaining to under-sized containers, as originally promulgated, permitted the sale of alcoholic beverages in bottles of any size provided the number of such bottles sold at any one time to any one person contained an aggregate of at least one pint. See Bulletin #16, Item #1. This restriction, however, proved insufficient and was later modified to prohibit the sale of any alcoholic beverages, other than beer and malt beverages, for consumption off the licensed premises unless the bottle, container or receptacle contained a full pint.

Under date of June 17, 1934, the rules concerning the size of containers were modified in order to coordinate them with the regulations relating to standards of fill promulgated by the Federal Alcohol Control Administration. This modification, however, in no wise affected the requirement that the prescribed minimum be contained in a single bottle as distinguished from several under-sized bottles contained in a single package.

In view of the history of the regulations and the conviction that the desired result will not otherwise be attained, the Commissioner has declined to permit the sale of packages containing under-sized bottles, even though the aggregate thereof equals the prescribed standards of fill.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

10. SALE - GIFT BY LICENSEE CONSTITUTES SALE - SUCH GIFT GOVERNED BY RULES CONCERNING THE SIZE OF CONTAINERS

December 6, 1934

Department of Alcoholic Beverage Control,
Newark, N. J.

Gentlemen:

Several saloon-keepers have asked us if it will be permissible for them to give away half pints and miniatures to their trade at Christmas time. Will you please advise us if this will conflict with any present ruling, or if there will be made a special ruling to cover this case.

Yours very truly,
JAMES D. THOMPSON

December 10, 1934

Mr. James D. Thompson,
Camden, N. J.

Dear Sir:

I have your letter of December 6th inquiring whether "gifts" by retail licensees of alcoholic beverages in bottles containing less than the minimum standards of fill prescribed in the Commissioner's rules concerning the size of containers are permitted. The rules prohibit "sales". The question raised is whether such gifts constitute sales.

It may well be urged that such "gifts" are not purely gratuitous deliveries, but constitute solicitations which are included in the definition of "sales" contained in section 1 of the Control Act. This question need not be determined, however, since section 1 contains a provision which is controlling. Although it exempts deliveries "by purely gratuitous title", this exemption relates solely to deliveries by non-licensees, for it expressly provides that "the gratuitous delivery or gift of any alcoholic beverage by any licensee" shall constitute a sale. In so far as the opinion in Bulletin #37, Item #11 suggests a contrary conclusion, it is no longer in effect.

It is the ruling of the Commissioner that "gifts" by retail licensees for consumption off the licensed premises may not be made except in containers which meet the requirements of the rules heretofore promulgated governing the size thereof.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

11. RULES CONCERNING THE SIZE OF CONTAINERS - MODIFIED - WINE IN SIX OUNCE BOTTLES PERMITTED

December 10, 1934

Mondette & Company,
New York City.

Gentlemen:

The Commissioner has carefully considered the requests made by you and others that the rules governing the size of containers of alcoholic beverages be modified in order to permit the sale of wine in bottles containing 6 or 6 2/5 ounces.

In an opinion rendered under even date (In Re: Majestic Wine & Spirits, Inc.), the Commissioner declined to modify the rules governing the size of containers to permit the sale of one-half pint bottles of whiskey, rum and other distilled spirits. When dealing with wines, however, the evils inherent in the sale of alcoholic beverages in under-sized containers are present only to a limited degree. Consequently, the Commissioner has been more receptive to the suggestion that the minimum fill with respect to wines be lowered.

The Federal Alcohol Control Administration advises that it will not adopt any standards of fill in regard to wine prior to January 1, 1935. It has indicated that it will allow

the use of the widely prevalent 6 2/5 ounce wine bottle. In general, the Commissioner's rules have been coordinated with the regulations relating to standards of fill adopted by the Federal Alcohol Control Administration, and for the sake of uniformity, it is not unlikely that when the Federal Alcohol Control Administration adopts a standard of fill with respect to wines, a similar standard will be adopted by the Commissioner.

Pending further action in this connection by the Federal Alcohol Control Administration, the Commissioner has ruled that the minimum standard of fill with respect to wine shall be six (6) fluid ounces.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

12. PROHIBITED INTERESTS IN RETAIL LICENSES - WHAT CONSTITUTES -
LOANS

December 11, 1934

Lewis & Kelsey,
New York, N. Y.

Gentlemen:

Yours of November 28, 1934 received, wherein you inquire whether your client, G. Krueger Brewing Company, may loan money to the receiver of The Ramshead, Inc., a retail licensee. You state that the insolvent estate owes your client approximately \$1500.00 for goods sold and delivered and that the loan, if made, is for the sole purpose of attempting to recoup part of the indebtedness currently outstanding. You further state that it is not the desire of your client to require any security whatever in the nature of a mortgage upon the premises or a chattel mortgage upon the goods and fixtures therein, but merely a direct unsecured loan.

Section 40 of the New Jersey Alcoholic Beverage Control Act prohibits any manufacturer or wholesaler of alcoholic beverages from having any interest, direct or indirect, in the retailing of alcoholic beverages. The objective of this section is to divorce the manufacture and wholesale of alcoholic beverages from the retail sale thereof - to eliminate retail outlets owned by manufacturing interests. See Bulletin #54, Item #1. By the ruling of the Commissioner a mortgage upon licensed premises or a chattel mortgage upon the goods and fixtures therein constitutes a prohibited interest and may not be given to secure even a past indebtedness.

So long as there is no "payment or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product" of any manufacturer or wholesaler, there is no express prohibition in Section 40 against the unsecured loan of money to a retail licensee. Such a loan does not constitute a direct or indirect interest in the retail sale of alcoholic beverages.

In the instant case the loan is to be made to a receiver appointed by a court of competent jurisdiction not alone to protect the manufacturers' interest in the insolvent estate but also to permit such receiver to temporarily continue the business. Such a transaction is not likely to lead to abuse of any privilege granted or to unduly interfere with proper enforcement. The permission herein granted is expressly limited to the instant case.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

13. GIFTS - PERSONS NOT HOLDING BEVERAGE LICENSES MAY NOT DELIVER ALCOHOLIC BEVERAGES BY GIFT OR OTHERWISE TO CUSTOMERS OR PROSPECTIVE CUSTOMERS

December 12, 1934

Majestic Wine & Spirits, Inc.,
Camden, N. J.

Gentlemen:

I have your letter inquiring whether the holder of a plenary wholesale license may sell alcoholic beverages to merchants who do not hold licenses under the Control Act, and who intend to distribute them gratuitously to their customers. Your inquiry must be answered in the negative for several reasons.

(1) "Gifts", by merchants who do not hold licenses authorizing the sale of alcoholic beverages, in the course of their business to customers and prospective customers are in violation of the Control Act. They are directly accompanied by the desire and expectation of further trade and resulting financial return. Consequently, they can hardly be said to be "purely gratuitous deliveries" within the exemption contained in section 1 (v).

(2) Section 12 authorizes the holder of a plenary wholesale license to sell to licensed wholesalers and retailers. It clearly prohibits the sale of alcoholic beverages by licensed wholesalers to merchants who hold no licenses under the Control Act, regardless of their intended ultimate disposition.

(3) It seems that entirely aside from statutory provision the promiscuous delivery of alcoholic beverages by merchants of all classes to customers and prospective customers should be restricted. This conclusion is suggested in aid not only of the economic interests of the licensees but also of the interests of control generally. If the presence of large quantities of alcoholic beverages in unlicensed places of business were sanctioned, evasions would be facilitated and enforcement rendered more difficult.

Accordingly, the Commissioner has promulgated the following regulation, effective immediately.

"No licensee shall deliver within this State to any person not holding a license under the Control Act alcoholic beverages intended by such person for delivery, by gift or otherwise, to customers or prospective customers in the course of

his business."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

14.

REFUNDS - PROCEDURE BY APPLICANT

December 12, 1934

Pier Operating Corporation,
Brooklyn, N. Y.

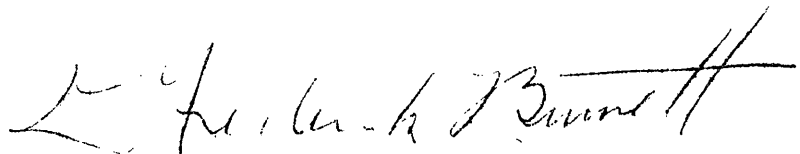
Gentlemen:

I have your letter informing that you surrendered your plenary retail consumption license covering the Garden Pier at Atlantic City; that you have requested a refund from the Atlantic City authorities; that the same has not been made; and inquiring your proper procedure.

Section 28 entitles you to a statutory refund subject to the deductions therein mentioned, provided you have not disqualified yourself by committing any violation of the Act or any rule or regulation or done anything which in the fair discretion of the issuing authority should bar or preclude the claim.

Your proper procedure is to make formal demand for refund and to call upon the issuing authority to specify on what grounds it refuses to make such refund. That defines the issue and in the event of your subsequent appeal to the State Commissioner enables the matter to be properly adjudicated. I assume that you will have no difficulty with Atlantic City if you are properly entitled to the refund, and that by calling the matter to their attention, you will get prompt, effective service.

Very truly yours,



Commissioner