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

BULLETIN 219 DECEMBER 10,1937

1. ENTERTAINMENT - CLEAN FUN - NO PERMANENT PROFIT IN DIRT.

Dear Commissioner:

The officers of Hackensack Oval Bar, Inc., have asked me to manage their place of business, 150 Hudson Street, Hackensack, giving such time as may be at my disposal.

Among the suggestions that I have made to stimulate business is to have some form of entertainment, which will include tap dancing and singing. To that end, I called upon the Chief of Police at Hackensack yesterday, and told him it was our intention to take this step; that we desired to comply with any ordinance or regulation in this respect, and asked if any additional permit was necessary. The Chief told me there was no local ordinance covering the situation at this time, but suggested that I communicate with you to ascertain whether or not any department regulation governed such entertainment.

May I emphasize, at this time, that the very strictest supervision will be applied; that there will be nothing suggestive or questionable offered; that the intention is to interest and attract the best possible class of patrons by assuring them of the cleanest form of entertainment - something to which they may bring their wives or families without hesitation. It is hoped that we may commence immediately - Saturday evening, if possible.

In the event that your department has some additional regulation in this respect, will you kindly advise?

Assuring you of our intention to cooperate with your department in every respect, I am,

Yours very truly,

Albert Sanzari
Special Deputy County Clerk

December 4, 1937.

Albert Sanzari,
Special Deputy County Clerk,
Hackensack, New Jersey

My dear Mr. Sanzari:

The important thing in the control of entertainment is to keep it clean. Managers would do well to cultivate the best class of customers, not to pander to the lowest. Indecent suggestion, whether in song or in dance, may cause a fleeting laugh, but it doesn't bring the customer back. Those who are on the still hunt for that kind of a thing go from place to place in the hope

of finding it progressively worse. There is no permanent profit in flotsam or dirt. Good will in any business is based on repeat orders. If the retail liquor business is to survive, it must be kept wholesome and self-respecting. One degenerate performance can do more to hurt the industry than the concerted efforts of a thousand respectable licensees to help it.

Rulings made in re Lowe, Bulletin 215, Item 9 (indecent dance), re Gardiner, Bulletin 215, Item 7 (immoral activities), re Turner, Bulletin 214, Item 10 (Strip-tease), re Miller, Bulletin 214, Item 7 (the hostess racket), Pallie v. Caldwell, Bulletin 191, Item 1(lewdness and immorality), re Evans, Bulletin 172, Item 3 (lewd performances and exhibition of filthy moving pictures), copies of which I have sent you under separate cover, will illustrate the sort of entertainment I am trying to get rid of and what happens to licensees who put on these salacious exhibitions.

For the regulations having particular reference to entertainment on licensed premises, see in the Rules Concerning Conduct of Licensees, Rules 4, 5 and 17. Entertainers, as with all other employees, may be employed on licensed premises without license or permit from this Department, if they are fully qualified to hold licenses in their own right. If not so qualified, they may be employed only pursuant to special permit. Such permits are issuable, upon proper application being made, to those who fail to qualify with respect to age, or residence, or citizenship. See in the Pamphlet Rules the rules governing the employment of disqualified persons, commencing on Page 16. The fee for the permit is $1.00 for each employee. Applications are available on request.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 5, 1937.

In Re: Case No. 195

In his questionnaire and application solicitor denied he had ever been convicted of a crime. Fingerprint records disclose that he had been arrested in May 1934 for breaking, and entry and larceny and receiving stolen goods.

At a hearing duly held, solicitor admitted that he was at the scene of the crime in an automobile with two other men, but denied that he participated in the crime. He admitted, however, that he had been arrested, had pleaded guilty to said charges, received a sentence of from eighteen months to three years and that he had actually served eighteen months in jail. The question of solicitor's guilt cannot be redetermined in a collateral proceeding of this nature. He pleaded guilty to the charges. The crime unquestionably involved moral turpitude.

It is recommended, therefore, that his permit be revoked.

Solicitor requested that, if the decision was unfavorable, notice thereof be sent to him so that he might resign from his position rather than be discharged. He is married, has one child and his mother is dependent upon him for support. Following ruling set forth in Re Hearing No. 101, Bulletin 147, Item 11, it is recommended that solicitor's request be granted.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - CORRADI vs. CLOSTER

Adolph Corradi,)
Appellant,)
-vs-) ON APPEAL
Borough Council of the Borough of Closter,) CONCLUSIONS
Respondent.)

. . . . . .

William C. Egan, Esq. and LeRoy Vander Burgh, Esq., For the Appellant.

C. Conrad Schneider, Esq., For the Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises formerly known as the "Rinaldo Rendez-Vous" and located at 292 High Street, in the Borough of Closter.

The premises now sought to be licensed were formerly owned and operated as a restaurant by Rinaldo Accorti. Early in 1933, the Borough issued a "3.2 beer license" to Accorti. Certiorari proceedings were thereupon instituted to set aside this license on the ground that the premises were located within a residential zone and the license would authorize an unlawful extension of a non-conforming use in violation of the zoning ordinance. In Speake vs. Closter et al., decided on April 4, 1934 (see Talbot vs. Keppler, Bulletin 117, Item 1) the Supreme Court sustained this contention and set aside the license.

Thereupon, Accorti sought special permission, via exception to the zoning ordinance, to extend his restaurant business so that a license might be granted authorizing the sale of alcoholic beverages. The Board of Adjustment recommended the granting of such permission and in July 1934 the Borough Council adopted the following resolution:

"Under the authority of Chapter 274 of the Laws of New Jersey, commonly called the Zoning Act, the said Rinaldo Accorti shall be permitted to extend the restaurant business operated by him at High Street, in the Borough of Closter, Bergen County, New Jersey, so that he may sell in connection with said business alcoholic beverages under the terms and provisions of the Laws of the State of New Jersey; this permission being given under Section 9 of Chapter 274, Laws of 1928.

"And Be it Further Resolved that the granting of said permission shall not be construed to permit any other rights in violation of the Zoning Ordinance, with the exception of the permission to sell alcoholic beverages necessary in the operation of said business.

"And Be It Further Resolved that this privilege granted to Rinaldo Accorti shall not be assignable or salable to any purchaser of the premises, nor shall it pass to his heirs, and the Zoning Ordinance of the Borough of Closter shall not be affected or changed in any way except as provided specifically in this resolution."

Pursuant to the foregoing resolution, a plenary retail consumption license was issued to Accorti and was renewed for the fiscal years 1935-1936 and 1936-1937. Early in 1937, Accorti's interest in the premises was terminated by foreclosure and in April 1937 he surrendered his license. In June 1937 appellant, one of the new owners of the premises, applied for a plenary retail consumption license for the current period. This application was denied for the reason, inter alia, that the premises were located within a residential zone and the issuance of a license therefor would be in violation of the zoning ordinance, whence this appeal.

It is not disputed that the Supreme Court's decision in Speake vs. Closter, et al, supra, compelled the denial of the appellant's application unless the above quoted resolution granting an exception to the zoning ordinance in favor of Accorti may also be invoked by appellant in his favor. The validity of the exception in its entirety need not be considered for if it is so invalid that the ordinance remains in effect without any exception and prohibits the issuance of a license to appellant. Presumably, appellant's contention is that the exception is, in general, valid but that the express proviso therein to the effect that it is personal to Accorti and shall not extend to any other person is alone invalid. This contention cannot be sustained. It is evident from the language used throughout the resolution that the restriction against extension of the non-conforming use to persons other than Accorti, the then owner, was an essential premise, a condition without which the privilege would not have been granted at all. This being so, the exception either stands or falls in its entirety. See McGlynn vs. Grosso, 114 N.J.L. 540 (Sup.Ct. 1935). In either event the issuance of a license to the appellant would be in violation of the zoning ordinance and his application was, therefore, properly denied. See Talbot vs. Keppler, supra.

In view of the foregoing determination, extended discussion of the remaining grounds advanced by the respondent in support of its denial is unnecessary. It may be pointed out, however, that the evidence appears to support its contentions

(1) that the neighborhood in which the premises sought to be licensed is wholly residential, thereby warranting the denial without regard to the zoning ordinance (see Vannozzi vs. Trenton, Bulletin 35, Item 7), and (2) that the denial should be sustained under the terms of an ordinance limiting the number of consumption licenses in the municipality to nine, which are actually outstanding, notwithstanding the fact that the ordinance was adopted subsequent to the filing of appellant's application. See Franklin Stores Co. vs. Elizabeth, Bulletin 61, Item 1; Widlansky vs. Highland Park, Bulletin 209, Item 7.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: December 4, 1937.

4. APPELLATE DECISIONS - HAND vs. WOODSTOWN

WALTER S. HAND,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF WOODSTOWN,
Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Joseph Narrow, Esq., and William C. Egan, Esq., Attorneys for Appellant.

Sedgwick Rusling Leap, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a renewal of appellant's consumption license for premises located at 51 North Main Street, Borough of Woodstown.

Respondent contends that its action was proper because appellant has improperly conducted his licensed premises, in that (1) there have been disturbances upon the licensed premises; (2) there have been disturbances on the sidewalk in front of appellant's premises; (3) appellant's patrons have misconducted themselves in an open lot in the rear of appellant's premises.

As to (1): The Chief of Police and a police officer testified that they had visited appellant's premises on three occasions on Saturday nights to quell disturbances, and the Chief of Police testified that he had arrested five patrons inside the saloon on one of these visits. It was admitted, however, that appellant sent for the police on each of these

occasions. It likewise appears that since the time of these arrests appellant has employed a private officer on Saturday nights to maintain order.

Respondent cites Lalliker vs. New Milford, Bulletin 141, Item 8 and Holland vs. Bloomfield, Bulletin 142, Item 7, as dispositive of this appeal. It is difficult to draw the line between cases in which the evidence of misconduct is so clear as to warrant denial of a renewal, and those cases in which such evidence is not sufficient. Often it is a matter of degree and not a difference in kind. In the Lalliker case, which incidentally did not involve a renewal license, the evidence showed that prior licensees in the same premises had caused more trouble than all the other taverns together; that brawls among intoxicated customers were not infrequent, and that people living within two hundred feet of the premises had been unable to sleep because of the unnecessary noises which continued long after midnight. Thus, clearly the place had acquired a bad reputation which warranted the denial of any further license. In the Holland case there was evidence of brawls and lewdness in and about the licensed premises, considerable yelling and profanity during the early hours of the morning, and also evidence of sales to minors and intoxicated persons. In that case the situation seemed to have gotten beyond the control of the licensee. Here, however, the disturbances upon the licensed premises were infrequent, and appellant seems to have made sincere efforts to avoid the recurrence of such disturbances. He has had a license since Repeal and has never had any disciplinary proceedings instituted against him during that time. The instant case is, in nature, similar to Auletto vs. Camden, Bulletin 137, Item 3, and Agzigian vs. Pequannock, Bulletin 216, Item 1, wherein I held that the evidence as to disturbances upon the licensed premises was not sufficient to sustain denial of a renewal of the license.

As to (2): Nearly all of the objectors based their objections upon the conditions existing on the sidewalk in front of appellant's premises. The premises are located in a building containing a large number of stores, near the center of the business district of the Borough. For more than twenty years this side of North Main Street has been a gathering place for colored persons residing in that section of Salem County. Most of these colored people are employed on farms. Particularly on Saturday night they come to town in such numbers as to cause congestion on that side of the street at and near appellant's place of business. Most of them, men and women, patronize Hand's saloon. There is some evidence that some of the people in the Saturday night crowd have been intoxicated and that there have been a number of arrests on North Main Street for disorderly conduct. It is not clear, however, whether these persons became intoxicated in appellant's premises or in the other licensed place which is located a very short distance away, on the same side of the street. The real objection seems to be based upon the large crowds of colored people who congregate on the sidewalk in that vicinity, especially on Saturday night. This appears from the minutes of the Council meeting held on July 14, 1937, which showed that respondent determined that the charges of the objectors had been proven because, among other reasons, "it was a mistake to have a saloon at this particular location, which was in the business center of the Borough as it attracted so many colored persons who came into this Borough from the surrounding farms making it objectionable to the residents of the Borough and to persons who had come into the town to patronize the stores." I

cannot give this reason any weight. The color line is not to be drawn in licensing matters. Sears Roebuck Co. vs. Absecon, Bulletin 185, Item 10; Jones vs. Absecon, Bulletin 218, Item 1.

As to (3): A man and his wife who, since February 1937, resided in a house on a side street, and whose windows overlook the empty lot, testified that over a long period of time patrons from appellant's premises gathered in this lot during the late hours of the night. They testified that several of these patrons were drunk and unruly, and used the lot for toilet purposes. When respondent prepared its budget in January 1937, it included the receipts from only one liquor license, so that apparently it had determined at that time not to renew Hand's license even without the evidence of the two witnesses referred to. Appellant denied that the condition complained of was due to patrons from his place. He presented some evidence that patrons from an adjoining restaurant, whose rear door likewise opened upon the said lot, contributed to the unwholesome conditions described. There are no separate toilet facilities for women upon appellant's licensed premises. While I feel that the installation of such facilities would be advisable, I hesitate to place that as a condition to the renewal of this license in the present state of the record. The evidence is not sufficient to convince me that appellant has improperly conducted his premises because I am not convinced that all the persons who created the condition were appellant's patrons, or that appellant's attention was ever called to the condition so that he could take steps to remedy the situation in so far as his patrons were concerned. At the time of the hearing, the hearer, with consent of all parties, viewed the licensed premises. At that time it appeared that appellant had placed a large padlock upon the rear door leading to the lot. This prevents patrons from using the lot without consent of the person in charge of the licensed premises. For the protection of these objectors and to fix responsibility, the condition existing at the time of the inspection should continue. If respondent deems it in the public interest to require the installation of separate toilets or more adequate facilities, I will entertain a motion, on notice to the other side, to make such installation a condition subsequent to renewal.

It should be unnecessary to add that these conclusions dispose only of the present issue before me, viz.: Shall the 1937 license be renewed? If it becomes demonstrable that the premises constitute a nuisance, future renewals will be denied.

The action of respondent is reversed and respondent is directed to renew the license as applied for, upon condition that appellant keeps the rear door of his premises locked, except at such times as he or the person in charge of the licensed premises shall unlock said door for their own convenience, and that patrons of the licensed premises shall use only the front door for ingress and egress to and from the licensed premises.

D. FREDERICK BURNETT
Commissioner

Dated: December 4, 1937.

5. DISCIPLINARY PROCEEDINGS - ILLEGAL TRANSPORTATION - P. & P. TRANSPORTATION CO., INC. - LICENSE REINSTATED.

In the Matter of Disciplinary Proceedings against

P. & P. Transportation Co., Inc., 429 Bellevue Avenue Hammonton, New Jersey, holder of Transportation License T-40

. . . . . .

ON PETITION TO MITIGATE PENALTY OF REVOCATION OF LICENSE

CONCLUSIONS AND ORDER

Joseph Altman, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On August 9, 1937, an order was entered by the Commissioner revoking Transportation License T-40 held by P. & P. Transportation Co., Inc., effective as of August 12, 1937.

A petition has now been filed by this company requesting that the penalty of revocation be mitigated and that the license be restored.

The order of revocation was based upon a finding of guilt against the licensee, in that its president, Frank Pitale -- then trading as P. & P. Transportation Co. Inc. -- did, on January 21, 1936 and on divers days prior thereto, transport denatured alcohol knowing that it was to be used for beverage purposes and/or under circumstances from which the licensee might reasonably have deduced that the intention of the purchaser or consignee was to use same for beverage purposes, some of which was transported to property known as the Longo Farm, Oak Road, Hammonton, New Jersey, where an illegal distilling plant was discovered; such transportation being contrary to Section 27 of the Alcoholic Beverage Control Act.

No useful purpose will be served to recount the testimony upon which the adjudication of guilt was entered and upon which the order of revocation was predicated, as it is set forth at considerable length in Re P. & P. Transportation Co., Inc., Bulletin 201, Item 3.

The petition now under consideration sets up the following as the reasons for the plea of clemency:

1. Since the order of revocation was entered, Frank Pitale and the P. & P. Transportation Co., Inc. with other defendants, were brought on for trial before the U. S. District Court at Philadelphia on a criminal conspiracy charge. Their complicity was based, among other things in the indictment, upon the facts which were presented at the hearing before this Department. Petitioner states that this conspiracy indictment, so far as it concerns Frank Pitale and the P. & P. Transportation Co., Inc., was ordered dismissed by the Court after the government had presented its case. This allegation has been verified through the Alcohol Tax Unit of the U. S. Treasury Department at Newark.

2. The severe financial loss suffered by petitioner occasioned by the withdrawal of its liquor transportation business in this state. It is alleged that the deprivation of the license for the last three months has caused a money loss to the petitioner of approximately fourteen thousand dollars ($14,000.00).

While it is true, as stated by petitioner that the evidence upon which the order of revocation was entered in this tribunal was essentially circumstantial, it is also true that, as set forth in the opinion whereby the license was revoked, the evidence "is sufficient to show that Frank Pitale transported denatured alcohol * * * * under circumstances from which he should reasonably deduce the intention of the purchaser or consignee to use the denatured alcohol for beverage purposes."

Of course, the acquittal in the criminal conspiracy case is in no way dispositive in the proceeding had before this Department. However, I believe that considerable weight should be given to that phase of the matter on the question of mitigation of the penalty in these proceedings even though it is true that far different degrees of proof are required to convict in a criminal case than is necessary in a civil proceeding before this Department which is directed solely against the improper exercise of a privilege conferred upon a licensee. Certainly the proof at the hearing before this Department disclosed gross carelessness on the part of Frank Pitale in the exercise of the privilege granted to him by the license which permitted him to transport alcoholic beverages in New Jersey. His whole course of conduct relative to the transportation of the denatured alcohol cartons on his trucks and the attendant circumstances relative thereto, was undeniably loose and slipshod. Such conduct by a licensee merits not only severe condemnation but also adequate punishment.

However, I am now of the opinion that this licensee has been taught its lesson and has been sufficiently punished by (1) its loss of business, (2) its loss of reputation, (3) the very proceeding in the criminal court even though it resulted in a dismissal of the charges and (4) by the present revocation of its license which has now been in force for over three months.

Accordingly, the prayer of the petition is granted. The revocation of the license is hereby set aside. In its place, a suspension of the license from August 12, 1937 to December 5, 1937, is hereby imposed.

It is, therefore, on this 5th day of December, 1937, ORDERED that Transportation License T-40, heretofore issued to the P. & P. Transportation Co., Inc. and revoked by order of the Commissioner of August 9, 1937, be and the same is hereby reinstated effective December 5, 1937.

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - MILLER vs. PATERSON

MEYER MILLER,

Appellant,

-vs-

BOARD OF ALDERMEN OF THE CITY OF PATERSON,

Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

William F. Hinchcliffe, Esq., Attorney for Appellant
Salvatore D. Viviano, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from denial of a transfer of a plenary retail consumption license from 153 Spring Street to 791 Main Street, Paterson.

Respondent filed an answer wherein it alleged in substance that respondent in its discretion did not feel that said transfer should be granted.

At the hearing of the appeal no one appeared on behalf of respondent, and appellant proceeded ex parte. After the hearing respondent was notified that a subsequent hearing would be held if the City desired to present any proof. In reply thereto, counsel for respondent advised "the City leaves the matter to your determination, on the record and testimony taken by you at the ex parte hearing."

The excerpt from the minutes of the regular meeting of respondent, held on October 18, 1937, shows that the application for transfer was denied solely because the Board of Aldermen felt that there were a sufficient number of licenses outstanding in the vicinity.

The premises to which appellant seeks to transfer his license are located in a business and industrial district, a very short distance away from a railroad station. These premises were occupied as a saloon for more than thirty-five years prior to 1935, since which time the premises have been vacant. They are equipped to be used for the sale of alcoholic beverages, and it has proved practically impossible to rent them for other purposes.

There is a place licensed for consumption on the same side of Main Street about four hundred five feet away, and on the opposite side of Main Street there are two places licensed for consumption; one about six hundred feet away and the other on the opposite side of the railroad about three hundred forty-five feet away. There are also two places licensed for consumption on Getty Avenue which are respectively about seven hundred fifty feet and ten hundred seventy feet from the premises in question.

While the transfer of a liquor license to another premises is not an inherent privilege, nevertheless, if no fair question is made of the personal character of the applicant or the suitability of the premises to which he desires transfer, the refusal to transfer may not be arbitrary. Van Schoick vs. Howell, Bulletin 120, Item 6.

Respondent alleges as its sole reason for denial the fact that there are a sufficient number in the vicinity, but fails to offer any proof to sustain its contention. In Crociata vs. Clifton, Bulletin 189, Item 6, it was held that, until appellant makes out a prima facie case, there is no reason for introduction of any evidence by respondent. In that case I held that appellant had failed to establish such a prima facie case because he had failed to show that there was need for a new distribution license within one hundred feet of the same type of license existing on the same side of the street.

While there are unquestionably a large number of existing consumption licensees in the immediate vicinity, appellant has shown in this case that the section is a combined business and industrial section; that a railroad station exists nearby, and that the nearest licensed place on the same side of the street is more than four hundred feet away. This is sufficient evidence to establish a prima facie case on behalf of appellant in a city of the size of Paterson.

Moreover, it appears that in April 1937 respondent issued a new license to Charles Barski, 168 Getty Avenue, which is one of the places heretofore mentioned; and that said new license is within one hundred seventy feet of an existing licensed premises.

The action of respondent is, therefore, reversed and respondent is directed to issue the transfer as applied for.

D. FREDERICK BURNETT
Commissioner.

Dated: December 5, 1937.

7. LICENSEES - RULE 20 - THE RULE FORBIDS LIQUOR LICENSEES FROM FURNISHING AT ANY TIME ANY SPECIAL INDUCEMENTS TO THEIR CUSTOMERS IN RESPECT TO OFF-PREMISES CONSUMPTION - THIS INCLUDES CHRISTMAS GIFTS ALTHOUGH MADE ONLY IN APPRECIATION OF PAST PATRONAGE.

Gentlemen:

Will you kindly inform me if it permissible for a retail licensee to give as a Xmas gift a pint of liquor. This gift is not given in conjunction with a sale of any liquor or merchandise, but in appreciation of past patronage. Your Rule 20 of November 1st applies to conjunction sales only.

Very truly yours,

JOSEPH A. LIEBESMAN

December 6, 1937.

Mr. Joseph A. Liebesman,
Bradley Beach, N.J.

Dear Sir:

Your thought that Rule 20 applies to "conjunction" sales only, means, I take it, that, as you construe it, gifts, inducements, etc., may not be given at the same time a sale of alcoholic beverages is made but are all right if not simultaneous.

This interpretation is not correct. It is immaterial whether the gift is given before, or at the time, or after the sale is made. Otherwise, licensees could render the rule feeble and inert. The purpose of the rule is to forbid liquor licensees from directly or indirectly furnishing any special inducements to their customers in respect to off-premises consumption at any time.

If Christmas gifts, in appreciation of past patronage were allowed, then any time a licensee had the impulse to demonstrate his gratitude with a pint of liquor, he might do so, as you seem to think, merely because the gift is not delivered at the precise moment when a sale is made. Such a blithe evasion would result in a galaxy of memorial bestowals - Easter, Yom Kippur, St. Rocco, Father's Day, Cotters Saturday Night - anybody's birthday - in fact, any day on which the liquor licensee became seized with donative intent!

But such is not the Rule!!

As a liquor licensee, you may not make any gifts to your customers at any time excepting, as you know, advertising novelties of merely nominal value.

But that's not liquor.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. ADVERTISING - USE OF REPRESENTATIONS OF OR REFERENCES TO SANTA CLAUS IN ADVERTISING COPY DISAPPROVED.

December 6, 1937.

Gardner Advertising Company,
St. Louis, Missouri.

Gentlemen:

I have before me your letter of November 24th, and the copy you propose to use in advertising Cook's Imperial American Champagne.

I have carefully examined the subject matter of the advertisements.

I feel that, with one exception, they make a very dignified appeal.

I think it would be better, and therefore suggest, that you strike out the representation of Santa Claus in the first advertisement and the reference to Santa Claus in the second. Candidly, I think that the use of Santa Claus in connection with holiday liquor advertising makes the wrong kind of an appeal. Santa Claus belongs to the children. Liquor does not. Let us, therefore, preserve him for the kids as the kindly and benevolent bringer of appropriate gifts that he has always been to them.

I have consistently discouraged the use of Santa Claus in holiday liquor advertising. Re Badenhausen, Bulletin 145, Item 11; Notice to Licensees re Christmas Advertising, Bulletin 148, Item 1; Re Deighan, Bulletin 148, Item 6.

The risk of adverse public reaction would be greatly reduced if liquor advertising were confined to statements of inherent quality, viz., the class, type, age, alcoholic content, etc., and not based on the few remaining sentimentalities we allow ourselves, such as Santa Claus.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. DISCIPLINARY PROCEEDINGS - BOWS TO FACILE ALIBIS CREATE DISAPPOINTMENT AT LAW ENFORCEMENT - HEREIN OF BRINGING UP FATHER.

December 6, 1937.

Charles Troupe, Esq.,
Township Clerk of Upper Penns Neck,
Carney's Point, New Jersey

Dear Mr. Troupe:

I have staff report of the proceedings before the Township Committee of Upper Penns Neck against two of your licensees, charged with having sold or served alcoholic beverages on Primary Election Day while the polls were open for voting in violation of the State Rule.

1. Alice H. Swaverly. I note this licensee was adjudged not guilty after her testimony to the effect that she had been out of the State on Primary Election Day and that her father had acted contrary to her express order that no sales should be made while the polls were open for voting.

Inspector Middleton in his report states as follows:

"that quite a few licensees from the vicinity attended the hearing; that several of these licensees stopped him and expressed disappointment with the decision stating that apparently all one had to do was to leave someone who is not a paid employee in charge of the premises on Election Day and that these non-paid employees could open the bar and do a land-office business and the licensee would not be held accountable by the township authorities."

And that is exactly the situation. Excuses are out of order in this type of case at the present time. The rule has been in effect since 1934 and its violation calls for punishment. To adopt any other rule than that which makes a licensee strictly accountable for all violations on his or her licensed premises would be to break up proper control in this state. The responsibility of a licensee for what goes on in the licensed premises was particularly called to the attention of your attorney in a letter to him of October 11, 1937, relative to this case, reading in part as follows:

> "Therefore, while unfortunately an employee may have acted contrary to the employer's instructions, nevertheless, in the interest of proper control, the licensee must be held to strict accountability for such violations that occur in the licensed premises."

The case should not have been dismissed.

2. Angela Mason. I note this licensee pleaded guilty to the charge and that the license was suspended for five days. That is a substantial punishment for which I desire to express my appreciation to the Township Committee.

Very truly yours,

D. Frederick Burnett,
Commissioner

10. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 7, 1937.

Re: Case #196

In his application and questionnaire applicant admitted that he had been convicted in 1931 and served three months "under bankruptcy". After his fingerprints were taken, it was disclosed that in 1930 applicant had pleaded guilty to a number of charges of using the mails in a scheme to defraud by means of false financial statements mailed to creditors; that he had received a sentence of six months' imprisonment, which sentence was later amended to ninety-two days' imprisonment.

At the hearing applicant testified that prior to the time of his conviction, he had been engaged in the jewelry business; that on the advice of a friend, he had mailed false statements of his worth to various concerns in order to establish credit; that some time later he went through bankruptcy. Applicant admits that the statements sent were in fact false; that he pleaded guilty to the charges and received the sentence as set forth above.

In view of the fact that applicant pleaded guilty to these charges, it is impossible to consider his contention that the crime was due merely to his lack of business experience or his further contention that he was unable at the time to hire a lawyer and hence did not have the proper legal advice. The only question to be determined is whether or not the crime for which he was convicted involved moral turpitude. In Re Case No. 61, Bulletin 193, Item 2.

A conviction for using the mails to defraud ordinarily involves moral turpitude. Ponzi vs. Ward, 7 Fed. Supp. 736;

Re Application for Solicitor's Permit Case No. 18, Bulletin 97, Item 10. Applicant admits that he knew the financial statements were false and that they were sent through the mails with the intention of establishing a false credit rating. Under these circumstances, I believe the crime for which he was convicted involves moral turpitude.

It is recommended that the permit be denied.

Edward J. Dorton,
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

11. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - INADEQUATE PENALTIES CONFIRM IMPRESSION THAT NOBODY CARES.

December 8, 1937.

G. Franklyn Disbrow,
City Clerk,
South Amboy, N. J.

Dear Mr. Disbrow:

I have staff report of the proceedings before the Common Council of South Amboy against Charles Jerome, charged with having sold alcoholic beverages during prohibited hours in violation of your local regulation.

I note the licensee pleaded guilty to the charge and that his license was suspended for two days.

Please thank the members of the Council and City Attorney John P. McGuire, Esq., for their prompt attention to this matter. However, I am of the opinion that this type of violation deserves more drastic punishment if licensees are to be brought to the realization that the law and the rules and regulations affecting the conduct of their business were made to be obeyed.

The report states that the licensee admitted that he often kept open until 5:30 A. M. as "nobody in town bothered about the closing time." But somebody should. A too lenient penalty tends to confirm his impression that nobody does. My suggested penalties for violations of "closing hours" or "hours of sale" regulations are as follows: five days for first offenders, double that for second offenses and outright revocation for third offenders.

I trust that the Council will follow these recommended penalties in future cases.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - DRASTIC PENALTIES TEACH LICENSEES THAT THE AUTHORITIES MEAN BUSINESS.

December 8, 1937.

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

Dear Mrs. Baumgartner:

I have staff report and your certification of the proceedings before the Municipal Board of Alcoholic Beverage Control of Camden against:

1. Fourteenth Ward Democratic Club -- club licensee -- charged with (a) having sold alcoholic beverages during prohibited hours on Sunday, (b) having sold to non-members and (c) having possessed a slot machine on the licensed premises. I note the licensee admitted the truth of these charges and that its license was suspended for a period of twenty days.

2. Eleventh Ward Democratic Club -- club licensee -- charged with having sold alcoholic beverages during prohibited hours on Sunday and note an adjudication of guilt and a suspension of the license for ten days.

Expressing no opinion on the merits of the latter case because it might come before me by way of an appeal, I wish to extend my sincere thanks to the Board for the penalties imposed in both these cases. I have frequently stated that club licensees-because of the special privileges granted them under the Control Act -- should be in the forefront to see that the law and the rules and regulations governing the conduct of their liquor business are scrupulously obeyed. When they transgress in the fashion as seems to be indicated by these two cases, drastic action is called for. Your Board has done just that. It should go a long way to teach Camden licensees that your Board means business.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - FIFTEEN DAYS SUSPENSION.

December 8, 1937

Hon. Percy Camp,
Judge of the Court of
Common Pleas of Ocean County,
Toms River, N. J.

My dear Judge:

I have staff report and your certification of the proceedings before you against William J. Van Kirk, t/a Captain Kidd's Inn, Dover Township, charged with having sold alcoholic beverages to minors -- three girls, each nineteen years of age and one young man, age twenty.

I note the licensee entered a plea of guilty and that you suspended his license for a period of fifteen days.

Please accept my sincere thanks for your prompt and most effective action in this case. It should go a long way to teach licensees in your county that "sales to minors" will not be tolerated; that they are to be held to strict accountability for such violations in their licensed premises.

Cordially yours,

Commissioner