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

BULLETIN 257. JULY 5th, 1938.

1. APPELLATE DECISIONS - HOLDERNESS vs. ORANGE.

WALTER M. HOLDERNESS,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE,)
Respondent.)

ON APPEAL

CONCLUSIONS

Lawrence E. Burns, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent (Edmond J. Dwyer, Esq., on the brief).

BY THE COMMISSIONER:

The Orange ordinance provides:

"No female shall be permitted to be served at any public bar, nor shall any female be permitted to consume alcoholic beverages at any public bar."

A woman was served a glass of beer and consumed it at the public bar on the licensed premises of appellant for which violation his license was suspended for five days.

On this appeal it was stipulated that the only questions to be decided are those arising from appellant's contentions that:

1. The ordinance is unconstitutional;
2. It is unreasonable;
3. The suspension of five days is excessive.

1st: Appellant contends that the regulation, outlawing women from being served or from drinking at the bar, is an unconstitutional interference with his tavern business; an unconstitutional interference with the liberty of women; and an unconstitutional discrimination against the rights and privileges of women to be served liquor at a public bar co-equal with men.

Passing the fact that appellant lacks standing to complain of alleged interference with and discrimination against the rights of women because not a member of that class and therefore may not champion their cause in his defense, the real question is whether this ordinance is a valid exercise of so-called police power, that is, the general power of the State to protect and promote the health, safety, morals and general welfare of the people.

The sale of intoxicating liquor is in a class by itself. Paul vs. Gloucester, 50 N.J.L. 585, 595 (E. & A. 1888); Bumball vs. Burnett, 115 N.J.L. 254, 255 (Sup. Ct., 1935); Conover vs. Burnett, 118 N.J. L. 483, 485 (Sup. Ct. 1937). It is therefore subject to unique regulation. That means that restrictions upon the liquor traffic may be upheld which might not be sustained as to callings that may be pursued as of common right. Adams vs. Cronin, 29 Colo. 488, 69 Pac. 590 (1902).

In Crowley vs. Christensen, 137 U.S. 86, 34 L. Ed. 620, 11 S. Ct. 13 (1890), the United States Supreme Court, in upholding an ordinance of San Francisco regulating the issuance of licenses to sell liquors and wines, declared:

> "It is undoubtedly true that it is the right of every citizen of the United States to pursue any lawful trade or business, under such restrictions as are imposed upon all persons of the same age, sex and condition. But the possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law ...
>
> "... The sale of such liquors in this way has therefore been, at all times, by the courts of every State, considered as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality, and not of Federal law. The police power of the State is fully competent to regulate the business -- to mitigate its evils or to suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the state or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority."

In Cronin vs. Adams, 192 U.S. 108, 48 L. Ed. 365, 24 S. Ct. 219 (1903), the United States Supreme Court upheld against constitutional attack a municipal ordinance of Denver which prohibited liquor sellers from providing wine rooms or other places where females may be supplied with liquor and from permitting females to be or remain for that purpose where liquor is sold or in any place adjacent thereto or connected therewith and from em-

ploying females to wait or attend upon any person therein, and which forbade females from remaining in any such place and waiting and attending upon any person or soliciting drinks therein.

In State v. Baker, 52 Ore. 381, 92 P. 1076 (1907), the court upheld a regulation forbidding any female under 21 from remaining in retail liquor places, unless accompanied by her parent or husband or unless at an open and public restaurant. In Ex parte Smith and Keating, 38 Cal. 702 (1869), a regulation prohibiting women from remaining after midnight in places where liquor is sold at retail to the public was sustained. In Commonwealth vs. Price, 29 Ky. L. Rep. 593, 94 S. W. 32 (1906), the court upheld a regulation forbidding women from drinking at such places or from remaining there over 5 minutes, unless she is of good repute, sober and orderly at the time, and has the consent of her husband or is there because of reasonable necessity. In Walsh vs. State, 126 Ind. 71, 25 N.E. 883 (1890), the court treated as valid a regulation that liquor licenses shall be issued only to male inhabitants of the State. In Campbell vs. City of Thomasville, 6 Ga. App. 212, 64 S.E. 821, 826 (1909), the court upheld a regulation forbidding the sale of "near beer" to women. In Great Atlantic & Pacific Tea Co. vs. Danville, 367 Ill. 310, 11 N.E. (2d) 386 (1937), the court sustained a regulation forbidding issuance of a license to grocery and meat stores to sell malt beverages, on the theory that women and children frequent there.

The courts have uniformly sustained regulations which prohibit the employment of women in places where intoxicating liquor is sold to the public. Hoboken vs. Goodman, 68 N.J.L. 217 (Sup. Ct. 1902); Hoboken v. Greiner, 68 N.J.L. 592 (Sup. Ct., 1902); In re Considine, 83 Fed. 157 (D. Wash., 1897); Ex parte Hayes, 98 Cal. 555, 33 P. 337 (1893); State vs. Considine, 16 Wash. 358, 47 P. 755 (1897); Bergman v. Cleveland, 39 Ohio St. 651 (1894); State vs. Reynolds, 14 Mont. 383, 36 P. 449 (1894); 1 Woollen & Thornton, Intoxicating Liquors (1910), sec. 143; Black Intoxicating Liquors (1892), sec. 237. Also see Ex parte Felchin, 96 Cal. 360, 31 P. 224 (1892); Foster v. Board of Police Commissioners, 102 Cal. 483, 37 P. 763 (1894); Walter v. Commonwealth, 88 Pa. St. 137 (1878).

Gastenau vs. Commonwealth, 108 Ky. 473, 56 S.W. 705 (1900), in which the court held invalid a regulation forbidding women, whatever their purpose or activity, to enter or leave a building where retail liquor premises are located or to "frequent, loaf or stand around such building within fifty feet", is plainly distinguishable because it constitutes an unnecessary interference with individual liberty.

Tested by the principles above set forth, there is no question as to the constitutionality of the Orange ordinance.

2nd: Appellant contends that the ordinance is unreasonable. He argues that it arbitrarily prohibits women from being served and from drinking at the bar but fails to prevent them from standing or sitting at the bar or from being served or drinking elsewhere on the premises -- in side rooms, in back rooms and in booths -- which places are not open to the constant supervision exercised over customers at the bar. He concludes that this makes it an unreasonable and unnecessary interference with individual liberty and subjects the vendor to unreasonable prosecution. The

conclusion does not follow from the premise.

The real force of the criticism is that the job of regulation is but half done -- that it is not complete. He might as well argue that because the ordinance does not prevent service to patrons in an automobile at the curb or at ease in the parking space, the ordinance must fall because there is no supervision whatsoever over the automobile or its occupants. There is no principle that because the regulating authorities go part way in coping with a social problem, they must go all the way. It is their discretion which is to be exercised, not that of the governed. The only question is whether the ground that they have traversed supports the regulation which they have enacted -- whether the particular regulation is arbitrary or unreasonable, not whether some other regulation might or should have been made; whether the target chosen is appropriate, not whether there is something else to shoot at.

Illustrative is Hoboken vs. Goodman, supra, which not only held valid a police regulation of the sale of intoxicating drinks that women shall not be employed in connection therewith but also ruled that it was no ground of objection to such a regulation that the licensing of women as proprietors of places where intoxicating drinks may be sold is not also forbidden; or that the wife of a licensed male proprietor is allowed to sell or distribute such drinks. The court said: "We cannot say that the exceptions ought to nullify a regulation that we must concede is a wise one, namely, the debarring of women from forming part of the allurements of drinking places".

The particular regulation now under attack forbids women drinking at the bar. It has been said that "a woman has as much legal and moral right to take a drink as a man". Re Harris, Bulletin 16, Item 8. But, really, it is not a right but a privilege. She may lawfully be restricted in that privilege. So may a man. If social policy in a given municipality declares that it is better for the sake of others that she may not drink at the bar, there is nothing arbitrary in the exercise of police power to prevent her. Notwithstanding her modern emergence, the eternal verities remain. We find her at both ends of the human gamut. We prefer to idealize her in the higher register. But we may encounter her in the lower depths. She is the exemplar of refined living. Alas, she is also the more deadly of the species.

The tone and tempo of a drinking place are determined not so much by the fact whether or not women are permitted to drink at the bar but primarily upon the kind of women who visit the place. The bar has an individuality of its own, measurably distinct from the rest of the premises. It is normally frequented by men. It suggests an informal atmosphere in which all too often the usual amenities and restraints do not prevail. It invites commingling, a commonness which all too often leads to abuses inherent in liquor traffic and of which it was the objective of the ordinance to remedy.

The very fact that public opinion stands divided proves that the problem is one of policy and that, whichever way decided in a given municipality, the determination nevertheless falls within the police power. Re Harris, supra.

I conclude that the ordinance is not arbitrary or unreasonable.

3rd: Appellant contends that the penalty is excessive;

that the bartender who served the beer in question believed that the regulation was unconstitutional and therefore there was no deliberate intent to violate it.

The answer to this point is best given by Mr. Goldberg in his summation. He said:

> "This law, whether it is popular or unpopular, remains law until changed by some proper authority, and no matter how any tavern owner may feel about it personally, the only way taverns can be regulated is not by assuming that laws are constitutional or unconstitutional. The Commissioner, by approving this ordinance, gave notice to tavern owners in Orange that it was a law that should be respected like any other law; and while that law is on the books I don't think it comes with good grace on any one's part to say we are going to violate it and if we get caught we will attack it. They don't have to wait until caught to test the validity. There are several methods.
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> "This man Holderness has a good record, as far as I know; I don't think he has ever been brought up on any charges, but that I think is beside the point. This is a five-day penalty, and with all the facts taken into consideration -- especially since the bartender admits he intended to serve, that he thought it was right to serve, because he thought he constituted himself the Supreme Court -- something you and I cannot do -- so, with all these facts taken into consideration, what could the Excise Board do except show the tavern owners that while the laws are on the books they must be respected."

The action of respondent is affirmed.

Dated: June 27, 1938.

D. FREDERICK BURNETT
Commissioner.

2. LICENSE FEES - COMPARATIVE FIGURES - HUNTERDON COUNTY.

June 27, 1938.

Irvin F. Wilson,
Borough Clerk,
Stockton, N. J.

My dear Mr. Wilson:

Following are the fees for retail liquor licenses, so far as our records show, in the municipalities in Hunterdon County:

	P.R.C.	S.R.C.	P.R.D.	L.R.D.	Club
Alexandria	$225.00				
Bethlehem	200.00		200.00		
Bloomsbury	No fees	fixed			
Califon	No fees	fixed			
Clinton, Town	350.00				
Clinton, Township	300.00				
Delaware	250.00				
East Amwell	300.00		300.00		
Flemington	365.00		200.00		
Franklin	275.00		275.00		
Frenchtown	250.00				
Glen Gardner	200.00				
Hampton	200.00				
High Bridge	250.00		150.00		
Holland	No fees	fixed			
Kingwood	250.00				
Lambertville	300.00		200.00	35.00	150.00
Lebanon, Borough	360.00				
Lebanon, Township	200.00				
Milford	300.00				
Raritan	250.00				
Readington	300.00				
Stockton	365.00		200.00		
Tewksbury	275.00				
Union	250.00	187.50			100.00
West Amwell	No fees	fixed			

The fees of the Morris and Passaic County municipalities as of June 20, 1936, are in Bulletin 126, Items 1 and 2. You will find the fees of the forty-six municipalities in the State that have a population of 15,000 or over in Re Haney, Bulletin 198, Item 5.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

TRADING STAMPS - DISTRIBUTION WITH SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION, PROHIBITED.

Dear Sir:

For almost thirty-five years has this Company been selling trading stamps to department stores, dry goods, shoes, groceries, meats and many other lines which have been using them as a medium through which to retain the good will of their customers. It is the established practice to give one trading stamp with each ten cent cash purchase. These stamps must be accumulated in quantities of 1,000 in each book and then can be exchanged for some article of value as listed in the catalogue issued by this Company. This is no game of chance, but a definite inducement offered by the merchant to all of his customers who care to accept these stamps and collect them in consideration of the trade they give the storekeeper.

In order to comply with the regulations of your Department and to advise the merchants we do business with accordingly, we would like to have a ruling regarding the following points:

1. Where a merchant sells liquor and beer exclusively on his premises, and nothing else,

is it lawful for him to give his customers trading stamps with each cash purchase?

2. In case of a merchant who conducts a grocery, meat, fruit and vegetable market, and also sells bottled liquor and beer on his premises, may he give stamps to the customers on the total amount of the purchase price, if the purchase consists of groceries, meats, vegetables and also a bottle of liquor; or must he exclude beer and liquor and give trading stamps on groceries and meats only.

Very truly yours,

Phila. Yellow Trading Stamp Company.

June 23, 1938.

Philadelphia Yellow Trading Stamp Co.,
Philadelphia, Pa.

Gentlemen:

State Regulations No. 20, Rule 20, applicable to all licensees in the State, provides, so far as pertinent to your inquiry, that no retail licensee shall, directly or indirectly, offer or furnish any gifts, coupons, premiums, or similar inducements with the sale of any alcoholic beverage, for consumption off the licensed premises.

The distribution of trading stamps, in the circumstances contemplated by the rule, is therefore prohibited.

Hence, the answer to your first question is in the negative. Liquor dealers may not give out trading stamps in conjunction with the sale of alcoholic beverages for off-premises consumption.

The answer to your second question is also in the negative. The distribution of trading stamps based on the total price of merchandise purchased, where part of the merchandise is alcoholic beverages, is the distribution of stamps in conjunction with the sale of alcoholic beverages, and would be in violation of the Rule.

There is no objection, so far as the liquor laws are concerned, to giving trading stamps with purchases of meats, vegetables and groceries.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. LICENSES - ISSUANCE - MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL IS NOT DISQUALIFIED FROM ENTERTAINING AND ACTING UPON AN APPLICATION FOR A CLUB LICENSE WHERE THE MAYOR IS A MEMBER OF THE CLUB, PROVIDED THE MAYOR IS NOT A MEMBER OF THE BOARD OF ALCOHOLIC BEVERAGE CONTROL.

MAYOR OF MUNICIPALITY ALSO HOLDING MEMBERSHIP IN ORGANIZATION HOLDING CLUB LICENSE - DISQUALIFIED FROM PARTICIPATING IN ALCOHOLIC BEVERAGE MATTERS.

Honorable Sir:

It develops that the Mayor of our Town is an

active member of Morristown Aerie #1311, Fraternal Order of Eagles, holder of Club License CB-3.

Although the Mayor holds no office in the Organization, is there any reason why this application should not be accepted by us and the license renewed in the usual way?

Yours very truly,

NELSON S. BUTERA,
Clerk, Municipal Board of
Alcoholic Beverage Control.

June 28, 1938.

Nelson S. Butera, Clerk,
Municipal Board of Alcoholic Beverage Control,
Morristown, N. J.

My dear Mr. Butera:

I have your letter re Morristown Aerie #1311, Fraternal Order of Eagles, of which I understand Mayor Potts is a member.

It is necessary, according to R.S. 33:1-20 (Control Act, Reprint, Section *18A), that where a member of the license issuing authority is also a member of a club applying for a license, that application be made to the State Commissioner. The law provides that no license shall be issued under the Act by any issuing authority to any member thereof or to any corporation, organization or association in which any member thereof is interested, directly or indirectly. See Bulletin 44, Item 11; Re Wright, Bulletin 86, Item 9; Re Passaic Elks, Bulletin 90, Item 4, and Bulletin 95, Item 4. Cf. Burak v. Irvington, Bulletin 130, Item 2.

The disqualification is restricted by statute to cases where a member of the issuing authority is interested in the application. It does not expressly apply to other municipal officials.

The issuance of licenses in Morristown is vested in a Municipal Board of Alcoholic Beverage Control. Mayor Potts is not a member of that Board. It is true that he has voice in the appointment of the Excise Board, such appointments being made by the Board of Aldermen acting as a body, but he has no power to appoint the members himself.

I deem the interest too remote to disqualify the Excise Board from entertaining and acting upon the application.

Your inquiry raises a further question; i.e., the power of the Mayor, because of his membership in a club holding a license, to participate in alcoholic beverage matters.

The Excise Board issues the licenses. The Board of Aldermen, under the Act, is exclusively entrusted with the making of regulations, and also exercises a measure of control over liquor licensees by virtue of its supervision of the Police Department. The Mayor, I take it, has, as is generally the case in our municipalities, certain magisterial powers. For these reasons, he is barred from participation in any matter concerning any phase of alcoholic beverage control or the administration or enforcement

of the liquor laws that comes before the Board of Aldermen, and he may not sit as judge in any liquor matter coming before him. In all such cases, he has neither voice nor vote but must withdraw entirely from the proceedings. Re Ford, Bulletin 255, Item 8, and the items cited therein.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALE OF ALCOHOLIC BEVERAGES AND FAILING TO CLOSE DURING PROHIBITED HOURS - HEREIN OF CASH REGISTERS AND ROOSTERS.

In the Matter of Disciplinary Proceedings against	)	
JOSEPH B. MARTINO 366 Walnut Street Newark, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License #C-771 Issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	)	

. . . . . .

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

Joseph B. Martino, Licensee, Pro Se.

BY THE COMMISSIONER:

The defendant, a Newark licensee, is charged with selling and serving alcoholic beverages on his licensed premises on Friday, June 10, 1938, after 3 a. m., in violation of Newark Ordinance #6579, which forbids the sale or service of alcoholic beverages between 3 a. m. and 7 a. m. on weekdays (and 3 a. m. and 12 noon on Sundays) and which further forbids licensed premises, with certain exceptions here not material, to be open during those prohibited hours.

At 2:45 a. m. of the Friday in question (15 minutes before curfew time), two investigators of this Department visited the defendant's tavern to investigate a complaint that sales occurred there "after hours". Three patrons - a group of two women and a man - remained on the premises until 3:25 a. m. and were sold and served several rounds of beer by the defendant from 3 a. m. until their departure. The investigators were also permitted to remain after the curfew hour. Between 3 a. m. and 3:25 a.m the defendant readily sold and served three drinks of California Port Wine to one investigator and three drinks of Calvert's Whiskey to the other. At 3:25 a. m., when the patrons had departed, the investigators revealed their identity to the defendant and summoned the Newark police. The defendant was arrested and duly convicted

and fined $25 in police court for violation of the above ordinance.

The licensee admits the truth of the charges against him but states that he kept his tavern open and made the sales because he "didn't notice the time"; that he now keeps an alarm clock next to his cash register, set each day for 3 a. m., to remind him of the hour and to warn him to close.

The alarm might better be set a half hour ahead in order to clear out and close the place on time. A rooster or two, perched on the cash register, might be trained to announce the coming dawn and remind the last-ditch drinkers of Home and the work-a-day chores ahead. I am not so particular of the means of reminder as that the law be honored. Commending the nostalgic alarm clock, I am mindful that the defendant is guilty both of selling drinks and of keeping his tavern open during prohibited hours. Wherefore, there will be a five-day suspension for each failure to remember or a total of ten days in all.

Accordingly, it is on this 28th day of June, 1938, ORDERED that effective 3:00 A. M. (Daylight Saving Time) on June 30, 1938, plenary retail consumption license #C-771, issued to Joseph B. Martino by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for the balance of its term, expiring midnight, June 30, 1938.

And it is further ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R.S. Title 33, Chapter 1) be issued to said Joseph B. Martino to be operative before the 10th day of July, 1938, provided, however, that if such license shall have been issued to said Joseph B. Martino before the receipt by respondent of this order, then, in that event, such license shall be and the same is hereby suspended until 3 a. m. of the 10th day of July, 1938.

D. FREDERICK BURNETT
Commissioner

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - BOOKMAKING ON LICENSED PREMISES - HEREIN OF SELF-SERVING ORATIONS AND CONVENIENT BLINDNESS.

In the Matter of Disciplinary Proceedings against

HENRY KALFUS,
147 Mulberry Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-118, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

. . . . . .

Harold Simandl, Esq., Attorney for Licensee.
Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Contfol.

BY THE COMMISSIONER:

The licensee was charged with having allowed, permitted or suffered gambling and bookmaking on or about his licensed premises on April 27th and April 28th, contrary to Rule 7 of State Regulations No. 20. Notice to show cause why his license should not be suspended or revoked was served upon him and a hearing was duly held.

On April 27th, at 10:30 A. M., Investigator Williams of this Department visited the licensed premises. A short time later Investigator Anderson of this Department also entered the licensed premises. At that time John Brown was tending bar. The licensee was not present. William stood at the bar reading the horse race entries in the morning newspaper. The bartender asked him what he liked, and Williams said he was going to play a few hunches. Williams then asked the bartender "Do you think Charlie will be around today?" and the bartender answered "He should be around, around noon time." When "Charlie" (who turns out to be Charles Hirschfeld of 63 Edison Place, Newark) came into the place a short time later, Williams handed him a slip with the names of some horses written thereon, and two One Dollar bills.

On the following day at about 11:30 A. M., Williams and Anderson again visited the licensed premises. At that time the licensee was tending bar. The bartender, Brown, was off duty. Charlie came in and placed Eleven Dollars and Forty Cents on the bar in front of Williams. Apparently this was the money won from the play made the day before. At that time the licensee was serving another customer. Later the licensee came over and asked Williams if he had won that. After some drinks had been served, Williams obtained a slip of paper from the licensee and wrote out another play. In the meantime, Charlie had left the licensed premises but, when he returned, Williams handed him the slip with three One Dollar bills which had been marked by the Investigators. Investigator Anderson then summoned Officer Catena, of the Newark Police, who was waiting outside. The police officer searched Charlie, found the money, the slip and a note book in his possession, and placed him under arrest. While the evidence shows that the licensee was then tending bar, there is no evidence that he knew what the Investigator had written on the slip or that he saw the slip and money handed to Charlie. The licensee admits that Williams and Charlie were talking about horses, and testified that he called over to Charlie: "If you don't cut out talking horses, I am going to put both of you out." Charlie corroborated this testimony. Investigator Williams admitted that the licensee told him he didn't want any horse playing in the place.

I am not at all impressed with the defense. The evidence is clear that on two occasions bets were laid on horses upon the licensed premises. The licensee knew that the men were talking "horses." Everyone knows what that leads to. His self-serving statement that if such talk was not cut out, both men would be put out, is understandable as an anticipatory defense but he took it out in talking. There was no action despite his knowledge of Charlie. His oration is no protection any more than his convenient blindness to what was going on under his nose. He knew that Williams had won money. He furnished him paper on which Williams wrote out another play. True, there is nothing to prove that he saw what Williams wrote nor did he, apparently, care, but he did see "Charlie" there day after day. Both he and his bartender knew that Charlie always ran true to form in appearing around high noon, which everyone knows is the accepted

hour for the placing of bets. I do not convict him of being stupid. Everything shows he is far from that! I simply find as the fact that he suffered bookmaking on his licensed premises.

So long as the law prohibiting bookmaking is on the books, it is not going to be done in taverns.

This being the first recorded offense, the suspension will be for five days.

Accordingly, it is on this 28th day of June, 1938, ORDERED that, effective 3:00 A. M. (Daylight Saving Time) on June 30, 1938, plenary retail consumption license No. C-118, issued to Henry Kalfus by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for the balance of its term, expiring midnight, June 30th, 1938; and it is further

ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R.S. Title 33, Chapter 1) be issued to said Henry Kalfus to be operative before the 5th day of July, 1938, provided, however, that if such license shall have been issued to said Henry Kalfus before the receipt by respondent of this order, then, in that event, such license shall be and the same is hereby suspended until 3:00 A. M. (Daylight Saving Time) of the 5th day of July, 1938.

D. FREDERICK BURNETT
Commissioner

7. BALL GAMES - VENDING AND HAWKING OF LIQUOR IN STANDS - SUGGESTIONS TO LICENSE ISSUING AUTHORITIES.

Dear Mr. Burnett: Re: Lawrence Township

The holder of a Seasonal Retail Consumption License, at a base ball park in Lawrence Township, has applied to the Township Committee for permission to vend liquors, principally beer we understand, by waiter service among the spectators at the ball park.

The license, as at present issued, does not allow him this privilege, and it is our recollection that regulations have been made by you preventing the soliciting of sales in this manner. The application seems to provide for the bottled beer to be opened into containers by the waiters and not for delivery in the original container, which would doubtless be contrary to the statute which prevents it being consumed from original containers under a Retail Consumption License.

Please let me know what rulings, if any, have been made regarding this matter.

Very truly yours,

HARVEY T. SATTERTHWAITE

Attorney of the Township
of Lawrence in the County
of Mercer.

June 28, 1938.

Harvey T. Satterthwaite, Esq.,
Attorney for Lawrence Township,
Trenton, New Jersey.

My dear Mr. Satterthwaite:

No rulings have heretofore been made re vending of alcoholic beverages in the stands at ball parks.

Regulations 20, Rule 3 prohibits solicitation from house to house but that is as far as it goes. It was made because of frequent complaints from householders, some of whom objected on principle or scruple, the others because they did not want to be exposed to high pressure sales promotion in their own homes.

There is no objection to a refreshment booth on the grounds or at the back of or underneath the stands. But that is quite different from allowing drinking in the stands. For the hundred who think they cannot go a couple of hours without, there are a thousand who prefer to devote their undivided attention to the game while it is on. There is always the seventh inning.

The hawking of beer through the stands lowers the tone of the place and is distracting and irritating to the fans who are "wets", let alone the "drys". Baseball is the game of Young America! Let us save the stands at least from getting sloppy!!

I cordially suggest that you confine the drinking to a particular and specified portion of the ball park as at present. I leave it to your discretion to condition the license to such rules as experience shows to be advisable. No State Rule will be promulgated unless it becomes necessary.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - DAVALOS vs. CAMDEN.

FRANK DAVOLOS, Appellant,	)	
-vs-	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL of the CITY OF CAMDEN, Respondent.	)	CONCLUSIONS

. . . . . .

Angelo D. Malandra, Esq., Attorney for Appellant.
Edward V. Martino, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from an order of respondent entered on March 9, 1938, which suspended for fifteen days License No. C-53 for premises located at the northeast corner of 5th and Walnut Streets, Camden. The suspension was imposed after a hearing duly held at which appellant was found guilty of violating Rule 5 of Regulations No. 20, which provides:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

It is difficult to reconcile the testimony of various witnesses as to exactly what happened on the evening in question. The best I can make of it is that one John Marchione entered the premises about 8:30 P. M. and one Michael Narcisso entered a short time later; that they remained in the barroom until about 10:00 P. M. when they left; that, during the time they were in the barroom, John was accused of stealing a bottle of wine, as a result of which appellant told them to leave and not come back. Whatever happened between 9:00 P. M. and 10:00 P. M., it is admitted that Marchione and Narcisso were in the rear room of the licensed premises at about midnight. Appellant testified that shortly thereafter he ordered them to leave the rear room because they were using profane language. Marchione, Narcisso and appellant then re-entered the barroom and a scuffle between the three of them took place there, after which Marchione and Narcisso were taken from the barroom to the street by the bartender and another customer. It is admitted that about this time Narcisso was struck on the head by a bottle thrown by appellant, as a result of which he required medical treatment. It is impossible to determine whether the bottle was thrown during the scuffle just described, or within a short time thereafter when, as appellant says, the two men, who had been evicted, returned and started to throw glasses at him. In any event, at about 12:30 A. M. Narcisso went to a hospital where his head injury was treated. Marchione accompanied him to the hospital and both returned to the licensed premises about 1:00 A. M. They testified that they returned to obtain their overcoats and hats; that, shortly after they then entered the barroom, appellant drew a gun from beneath the bar and fired one shot which went wild; that Narcisso thereupon attempted to jump over the bar and was hit in the upper part of the leg by a second bullet fired from the gun. Appellant's version of this last occurrence is altogether different. He testified that when these men returned from the hospital and entered the barroom, they began to throw glasses; that his head was cut with a glass; that Narcisso jumped over the bar and pulled open a drawer which Narcisso, who had worked on the premises, knew contained a gun; that appellant scuffled with Narcisso to obtain possession of the gun, during which scuffle two shots were fired, the second of which struck Narcisso in the leg.

It is unnecessary to attempt to reconcile all the testimony. Appellant admits that at some time during this eventful evening he threw a bottle which severely injured one of his customers. In a written statement given on the day following this occurrence, appellant admitted that Narcisso and Marchione had given him plenty of trouble for some time back and had previously threatened him. He admits also that, despite these facts, he permitted these men to frequent his premises practically every night. On the evening in question, he allowed them to remain in his place for at least three hours. When finally a disturbance occurred, appellant seems to have taken the law into his own hands. Not until after the shooting occurred were the Camden police notified of any disturbance, or requested to assist in preserving order.

Appellant is guilty of violation of Rule 5 of Regulations No. 20 in that he permitted disturbances and brawls upon the licensed premises. Appellant was extremely fortunate to receive only a fifteen day suspension under the circumstances of this case.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 29, 1938.

9. APPELLATE DECISIONS - ROZGONYI vs. FIELDSBORO.

ANNA ROZGONYI,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF FIELDSBORO,) CONCLUSIONS
Respondent.)

. . . . . .

James M. Davis, Jr., Esq., Attorney for the Appellant.
Jay B. Tomlinson, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

Appellant's plenary retail consumption license was suspended by respondent for ten days pursuant to its finding, on

charges duly preferred and heard, that appellant on Sunday, May 15, 1938, obstructed the view from the sidewalk into her barroom, contrary to local regulation. Hence, this appeal.

The regulation provides:

> "There shall be no obstruction by way of curtains or otherwise which will conceal the view of the interior of any place where alcoholic beverages are sold, from the street or sidewalk, during the hours when the sale of alcoholic beverages is prohibited." (Sec. 5 of Ordinance of December 7, 1937, as amended February 7, 1938).

Appellant makes no attack against the regulation. It was approved by me on February 15, 1938, pursuant to R.S. 33:1-40 (Control Act, Sec. 37), which, while enabling municipalities to adopt such regulations, requires that they shall be approved by the State Commissioner. In view of its manifest purpose and effect to prevent clandestine sales from occurring during forbidden hours, it is - at least in the instance, as here, of an ordinary barroom - a clearly reasonable regulation. See Meehan vs. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906) aff'd 75 N.J.L. 557 (E. and A. 1907), sustaining a municipal regulation that "the interior of the bar or business room in which liquors and other intoxicating drinks are sold or served under any license ... shall, during such time as such sales are prohibited by law, be open to full view from the public street"; Croker vs. Camden Board of Excise, 73 N.J.L 460 (Sup. Ct. 1906), similarly sustaining a municipal regulation making it unlawful for any saloonkeeper to permit any curtain or screen in front of his bar on days when sales of liquor are prohibited; Re Loyal Order of Moose, Bulletin 107, Item 4; Re Rockaway, Bulletin 180, Item 5. Cf. Thorne v. Kearny, 100 N.J.L. 228 (Sup. Ct. 1924) aff'd sub. nom. Thorne vs. Casale, 101 N.J.L. 418 (E. & A. 1925).

Appellant contends, however, that the evidence fails to sustain the charge against her.

Her barroom is located at a corner on Fourth and Washington Streets in Fieldsboro, a few feet above street level. A double-door (with glass panes on the upper half) and 2 ordinary sash-windows (approximately 4-1/2 feet wide, 8-1/2 feet tall, and 4-1/2 feet above the sidewalk) face Fourth Street, and a third and similar window faces Washington Street. When unobstructed, these windows and door-panes allow full and easy view into the barroom from the sidewalk. Appellant, however, maintains woolen curtains over the lower half of the windows and of the door-panes which, when drawn, screen the interior of appellant's premises from view from the sidewalk.

On Sunday, May 15, 1938, appellant's barroom was closed, in accordance with a local regulation prohibiting licensed premises from remaining open and alcoholic beverages from being sold on Sundays. (See Sec. 3 of Ordinance adopted December 7, 1937.) However, the barroom curtains were completely drawn, except for a space of 12 to 17 inches between the two halves of the curtain at one of the windows on Fourth Street. The Chief of Police of Fieldsboro testified that only a corner of the bar was visible through this opening from the sidewalk.

There can be no gainsaying that appellant violated the regulation. She herself, at the hearing before respondent, conceded that she was guilty "in a way" -- i. e., guilty with the explanation that she had drawn the curtains because she wanted "privacy". It is exactly this "privacy", which is a breeding-ground for sales or operation during prohibited hours that the regulation was designed to prevent.

The action of respondent is affirmed.

June 30, 1938.

Commissioner