

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

BULLETIN NUMBER 158.

JANUARY 13, 1937

1. SPECIAL PERMITS - INDIRECT SALE OF ALCOHOLIC REFRESHMENTS - PRESIDENT'S BALL - NECESSITY FOR SPECIAL PERMIT HOWEVER WORTHY THE OBJECTIVE OR SOUND THE AUSPICES.

January 5, 1937

Dear Sir:

You know of the parties to be given on Jan. 30th in honor of our President Franklin D. Roosevelt and to the benefit of a very just cause, namely the fight on a dreaded disease.

Therefore, we wish to inform you that we are having a Roosevelt Ball in the Somerdale Fire Hall, on Jan. 30th. Of course we are charging admission to ball, and we would like to serve beer as a refreshment. There would be no sale of beer, but we are told we need permission from your office for same. We the undersigned therefore request the sanction of your office at your earliest convenience.

Very truly yours,

THOMAS McCARTHY, CHAIRMAN

January 6, 1937.

Thomas McCarthy, Chairman,
President's Ball Committee,
Somerdale, New Jersey.

Dear Mr. McCarthy:

I have yours of the 5th. In view of the worthy cause and splendid auspices, I wish it were possible to grant the permission you request gratuitously.

Since, however, admission is to be charged, and the admission includes the refreshments, it would be an indirect sale of the beer, which must, therefore, be duly licensed.

A Special Permit is, therefore, necessary. This will cost \$10.00. Application is enclosed. The Permit, when issued, will enable you to sell beer to all in attendance, except, of course, minors. Perhaps such sale will be an added source of revenue. In any event, I am sure you will agree that the President himself would desire the law to be complied with in all respects.

With best wishes for success, I am,

Cordially yours,

D. FREDERICK BURNETT
Commissioner

2. SOLICITORS' PERMITS - REPORT ON HEARINGS HELD FOR THE HALF YEAR ENDING DECEMBER 31, 1936.

January 6th, 1937.

MEMORANDUM TO: D. Frederick Burnett, Commissioner.

FROM: Edward J. Dorton, Esq.

IN RE: Hearings on Solicitors' Permits, and Eligibility for Employment

The following hearings with reference to above matters were held between July 1st, 1936 and December 31st, 1936:

Hearings held on applications for solicitors' permits where conviction of crime was disclosed in questionnaire	6	
Pending cases -	<u>2</u>	8
Disposition -		
Applications granted - -	3	
Applications denied - -	3	
Pending - - - - -	<u>2</u>	8
Hearings held after issuance of solicitors' permits where fingerprint records subsequently disclosed conviction of crime -		3
Disposition -		
Permit surrendered - - -	1	
Revocation of permit recommended - - - -	1	
Pending - - - - -	<u>1</u>	3
Hearings held as to eligibility for employment -		5
Disposition -		
Applicant advised he is eligible for employment	2	
Applicant advised he is not eligible for employment -	2	
Pending -	<u>1</u>	5
Grand Total -		<u>16</u>

Respectfully submitted,

EDWARD J. DORTON

3. FORFEITURE PROCEEDINGS - RETURN OF CONFISCATED TOOLS OF TRADE TO TINSMITH WHO LEARNED HIS LESSON

In the Matter of the Seizure on)
 July 15, 1936, of certain alleged)
 unlawful property found in the)
 possession of one Joseph Arrico,) ON PETITION
 T/A West End Copper Works, at)
 premises known as #610-614 South)
 13th Street, in the City of Newark,) CONCLUSIONS
 County of Essex and State of)
 New Jersey.)

.....

Samuel Voltaggio, Attorney for Petitioner.

BY THE COMMISSIONER:

Joseph Arrico, residing at 294-14th Avenue, Newark, with his wife and child of four years, and conducting a tinsmith shop at 610 South 13th Street, Newark, was arrested by the Department Inspectors in July for manufacturing unlicensed stills and still parts, and everything in his shop seized as unlawful property. He was subsequently indicted, pleaded non-vult and sentenced by Judge Brennan of the Quarter Sessions to probation for five years and ordered to pay \$1.00 a week to the County.

His Petition sets forth:

"I am penniless. I have neither business, job or tools. Since getting into my present difficulties, not only have I been unable to earn anything to support my wife and child, but, have been obliged to pledge what little credit I had among my friends and acquaintances to obtain the bare necessities for the relief of my wife and child. Although my troubles were brought on by my own conduct, they are, nevertheless, crushing.

"I respectfully appeal to your Honor, as Commissioner of this Department, to return to me only those of the articles seized which in no sense constitute unlawful possessions. I pray merely for the return of my tools and equipment which are in legitimate use by every tinsmith in the manufacture of roofing supplies, gutters, leaders, etc. I make this plea so that I may go back to my work and which I shall endeavor to pursue in an honorable and lawful way. To do so, I must have my tools. I have not the funds to buy new or even second hand tools. I do not have enough for even the necessities wherewith to keep life in my wife and child.

"The lesson has not been lost upon me and I feel heavily the punishment and consequences."

That is enough.

The prayer is granted.

D. FREDERICK BURNETT
 Commissioner

Dated: January 6th, 1936.

4. SPECIAL PERMITS - REPORT FOR THE MONTH OF DECEMBER 1936 AND COMPARATIVE TOTALS.

Report of Special Permits issued during the month of December, 1936, showing comparative totals for the fiscal years 1935-6 and 1936-7

SPECIAL PERMITS	Total Issued this month	Total Issued this year to date	Total Issued last year to date
Athletic Clubs	18	109	74
Charitable Organizations	4	32	30
Churches & affiliated organizations	27	420	324
Civic Clubs	2	56	22
Clubs fostering citizenship	1	5	4
Country Clubs	2	20	14
County Fair Associations	-	2	2
Dramatic & Singing Societies	12	60	50
Educational Societies	1	12	10
Employees Organizations	2	42	26
Fraternal Orders	37	174	116
Granges & Farmers Protective Ass'ns.	-	1	3
Hunt, racing & Kennel Ass'ns.	2	13	8
Labor Unions	5	33	26
Licensed Beverage Dealers Ass'ns.	-	4	1
Musical Organizations	1	3	11
Organizations rendering direct public service:			
Fire & Police Departments	-	6	7
Firemen's Benevolent Associations	1	5	5
Police Benevolent Associations	2	10	10
Volunteer Fire Companies	14	136	113
Parent Teachers Associations	-	13	6
Political Organizations	17	241	165
Service Clubs	3	19	7
Sick & Death Benefit Societies	27	268	195
Social Clubs	39	291	256
Sport Clubs	2	31	23
Trade Associations	-	15	6
Veterans Organizations	8	74	67
Yacht Club & Motor Boat Clubs	3	13	3
All others	1	11	14
	231	2119	1598

MISCELLANEOUS PERMITS

To consumer to import for personal consumption	52	258	88
To import to permittee's licensed premises for resale	2	10	5
To retail licensee to import for resale	-	-	4
Disposal of stock of alcoholic beverages where license is trans- ferred	37	131	16
Disposal of stock of alcoholic beverages where license not renewed	10	108	41
Disposal of stocks of alcoholic beverages where license surrendered	-	10	8
Disposal of stocks of alcoholic beverages without surrender of license	-	-	1
Disposal of stocks of alcoholic beverages where license re- voked	-	1	1

MISCELLANEOUS PERMITS (Cont'd)	Total Issued this month	Total Issued this year to date	Total Issued last year to date
Having force and effect of license:			
To licensee pending issuance of State License	-	14	38
To applicant pending appeal to Court	-	-	3
To applicant pending action upon application for retail license and issued at request of Municipal issuing authority	4	34	19
To transport alcoholic beverages	1	11	15
To individual to dispose of alcoholic beverages	-	1	1
To transport and warehouse alcoholic beverages	-	5	1
To club licensee to sell wine manufactured by its members prior to repeal	-	1	1
To limited winery licensee to sell wine manufactured prior to repeal or wine of illegal purchase or manufacture	-	1	1
To retail licensee to sell to retail licensee	-	-	5
To retail licensee to sell wine manufactured prior to repeal	-	-	1
To store for personal consumption manufactured without permit	6	23	-
To wholesale licensee to sell wine for sacramental purposes	-	6	4
To receivers and trustees to sell stocks of alcoholic beverages	-	6	10
To bailiff to sell for landlord distraining for rent	1	2	1
To legal representative to carry on business	-	2	-
To purchase for laboratory, testing and commercial purposes	-	8	5
To steamship company to purchase alcoholic beverages to be consumed outside New Jersey	-	-	1
In lieu of Solicitors and ARC permits	-	1	3
To sell warehouse receipts, certificates, contracts, etc.	-	1	7
To operate during period of suspension	-	-	1
Pending application for transfer, premises	-	1	3
To sell CCC and/or WPA Camps	1	5	-
To transport between points outside New Jersey and piers of import and export	2	26	29
To retake, previously sold	-	2	-
To give, demonstration of apparatus	1	7	-
To transport to points outside of New Jersey	22	197	-
To transport, vehicles scheduled	-	3	-
To sheriff or constable to sell under levy of execution upon judgment	1	2	1
To retake, heretofore sold by permittee	-	-	1
To retake for indebtedness	-	-	1
To retail distribution licensee to give away samples in open receptacles for on premises consumption	-	-	2

	Total Issued this month	Total Issued this year to date	Total Issued last year to date
<u>MISCELLANEOUS PERMITS (Cont'd)</u>			
Pending application for transfer person to person	1	1	1
To Executrix, pending action of issuing authority	3	3	-
All others	5	22	-
	<u>149</u>	<u>903</u>	<u>319</u>
TOTAL PERMITS ISSUED	380	3022	1917

INCOME FROM PERMITS:

Total for month of December, 1936	\$3,590.00
Total this year to date	31,210.64
Total last year to date	21,117.34

APPLICATION FOR SPECIAL PERMITS
DENIED

To deliver to unlicensed trans- porters for delivery without the State of New Jersey	-	2	-
Application not complete	-	3	-
Holder of retail license for social affair in another municipality	-	1	-
For social affair where applicant did not complete application	-	-	3
For social affair where applica- tion and/or fee was not re- ceived before period for which affair was to be held and approvals of Police and Clerk not furnished	-	6	1
Application not complete-operated	-	1	-
Denied -no release Tax Dept. - Fee forfeited	-	1	-
Approval of Issuing Authority withheld	-	2	-
Regulations do not permit issue	-	3	-
For social affair where Municipal approval was not received	-	-	2
Pending action on appeal for re- tail license	1	1	-
To transport out of the State - not completed	1	3	-
Transaction not consummated	1	3	-
For mercantile business when sought for purpose of giving to customers	-	-	1
Pending action upon application for retail license	-	-	1
For social affair where appli- cation was not properly executed	-	-	1

APPLICATIONS FOR SPECIAL PERMITS DENIED (Cont'd)	Total Denied this month	Total Denied this year to date	Total Denied last year to date
To transport out of New Jersey - transported without permit	-	2	-
For permission to filter wine	-	-	1
For social affair where Board of Education approval for use of building not furnished	-	-	1
Permit not necessary	-	14	-
Affair not to be held	-	1	-
National Guard, Aviation Division permit not necessary	-	-	1
Distraining for rent-Beverages destroyed, unfit for consump- tion	-	-	1
Disposal by assignee	-	-	1
For social affair where applica- tion and/or fee was not re- ceived before period for which affair was to be held	-	-	5
	3	43	19

Respectfully submitted
ERWIN B. HOCK
Deputy Commissioner

Dated: January 6, 1937.

5. GAMBLING - BINGO - APPLICATION OF THE RULE TO ENTERTAINMENT HALL OR ROOM ON LICENSED PREMISES.

My dear Sir:

The Mayor and Council of the Borough of Bound Brook has referred to me a copy of your ruling of December 18th, 1936, concerning the playing of bingo, etc. upon premises licensed for the sale of alcoholic beverages with the request that I obtain information for them as to the following:

1st. Is the proprietor of a licensed premises who has an entertainment hall permitted to rent out his hall to a social club, a political club or other organization for the purpose of conducting a bingo party, etc., providing he serves no alcoholic beverages in the hall or room wherein the bingo party is conducted?

2nd. Is there a different ruling appertaining to the permitting of the playing of bingo if the licensee be a fraternal organization?

Very truly yours,

GEORGE W. ALLGAIR

January 6th, 1937.

George W. Allgair, Esq.,
Somerville,
New Jersey.

Dear Mr. Allgair:

The answer to the first question, as worded, is "NO".

The answer to the second question is, likewise, "NO".

If your first question were amended to read:

"Is the proprietor of a licensed premises, who has an entertainment hall, permitted to rent out his hall to a social club or political club, or other organization, for the purpose of conducting a Bingo Party, providing that no alcoholic beverages are sold or served, or consumed in the hall or room where the Bingo Party is conducted, and further providing that there is no bar in that particular hall or room,"

then the answer would be "YES".

There is no objection to a Bingo Party being held on licensed premises, providing that the particular room in which the Bingo Game is conducted, does not have any bar in it, and further providing that in that room where the Bingo Game is to be played, no drinks are sold, or served, or consumed, while the games are in progress.

Enclosed is copy of the Rule itself.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - MAN-SIZED PENALTY ADMINISTERED ON FIRST OFFENSE - LICENSEES NOT ENTITLED TO FIRST BITE.

January 7, 1937

Mr. Robert V. Peabody,
Township Clerk of Pennsauken,
Pennsauken, N. J.

Dear Mr. Peabody:

I have staff report of the proceeding before the Town-Committee of Pennsauken against Mary Callari, holder of your plenary retail consumption license C-6, charged with (a) having sold alcoholic beverages to minors and (b) having sold alcoholic beverages to persons actually or apparently intoxicated.

The report states that Investigators Brooks and Wright observed the place from the outside from 9 - 11 P.M., when a car came out containing a young man and three young girls; that, on stopping the car, the Investigators ascertained that the youngster was eighteen, two of the girls sixteen, and the third eighteen; that while their statements were being taken Investigator Brooks returned to the place, accompanied by Officer Burns, of the Pennsauken Police, and observed four more young people near an automobile in the street - two boys and two girls - the boys were intoxicated and sick; the girls, one fifteen, the other nineteen, each stated that they had just come from the licensed premises where they had been served liquor.

The report further states that all the minors above mentioned testified at the hearing; that counsel for the licensee pleaded for leniency, pointing to the fact that it was the licensee's first offense; that the verdict of the Township Committee was "guilty" and that the license was suspended for sixty days.

No opinion is expressed on the merits because they may come before me on appeal.

I do, however, wish to express profound respect to the Township Committee for their prompt, red-blooded action and man-sized penalty. Clemency in such a case would have been misplaced even if it was a so-called "first offense." Corrupting licensees are not, like dogs, entitled to their first bite. This is the stuff of which drunken driving is made - cracked heads, broken bones, saddened homes. This is the dirt which honest licensees detest and protest, not only to purge their own ranks, but also to urge those trusted with enforcement to do their full duty.

A sale of liquor to a schoolgirl is a scandal.

Your Committee has done its duty well.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

January 7, 1937.

RE: Application for Solicitor's Permit - Case No. 43.

In his application for a permit applicant answered the question "Have you ever been convicted of any crime?" as follows: "No, Except minor infractions, the details of which I do not recollect." His fingerprint records disclose that he had been arrested in the latter part of 1935 on a charge of uttering worthless checks, and held for the Grand Jury. Notice was served upon the applicant to show cause why the permit should not be denied on the ground that he had been convicted of a crime involving moral turpitude, and a hearing was duly held.

At the hearing applicant testified that he had given two checks which total about \$70.00 to a concern from which he had purchased merchandise; that the Sheriff had thereafter levied upon his bank account by reason of an execution which had been issued to the Sheriff on a judgment against applicant for the sum of \$181.00. By reason of said levy, applicant's bank account was exhausted, and payment of the two checks was refused when they were

presented to the bank. Applicant was later indicted for uttering worthless checks. He was arrested, spent thirty-five days in jail pending trial, pleaded guilty and was sentenced to serve the time he had already spent in jail.

It does not conclusively appear that there was any intent to defraud at the time these checks were issued in payment of a debt previously incurred. I believe it should be concluded that, under the circumstances of this case, the crime did not involve moral turpitude.

About two and one-half years ago a municipal issuing authority refused to renew a consumption license which applicant had theretofore held because (1) he had sold alcoholic beverages during prohibited hours in violation of respondent's resolution and had been convicted therefor, and (2) he had unlawfully possessed and permitted the operation of a slot machine on the licensed premises. On appeal to the Commissioner it appeared that the conviction for selling during prohibited hours was waiting determination by the Supreme Court on a writ of certiorari, and that a slot machine had been found upon his premises. At the hearing held on this application, the testimony showed that the writ of certiorari to review the conviction for selling during prohibited hours had been allowed, but that thereafter the proceedings were discontinued by consent of both parties. As to the slot machines, applicant testified that he had been arrested for possession of these machines, but that the Grand Jury had refused to indict.

There are no convictions against applicant for crimes involving moral turpitude. It is recommended that the permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

NOT TURPITUDE
D. FREDERICK BURNETT
Commissioner

8. MUNICIPAL RESOLUTIONS - VETO POWER OF MAYOR - WHEN EXISTENT -
HEREIN OF SO-CALLED "MOTIONS" AS CONSTITUTING RESOLUTIONS.

January 7, 1937.

Dear Sir:

As Mayor of Absecon, N.J., I need your assistance in the following matter.

The City Council of Absecon, N.J., by resolution, resolved to grant a "plenary retail consumption license" to a Mrs. Jessie Bugg Jones.

The City Clerk certified the resolution to me, and I, as Mayor immediately vetoed the resolution and returned it to the City Clerk. Thereupon certain of the Councilmen who had voted for the resolution insisted that I had no right to veto a resolution pertaining to a liquor license issuance.

In reply I quoted the first paragraph of page 20 of your "Rules, Regulations and Instructions" calling special attention to the words of line 5, same page 20, i.e., "governing body of the municipality."

I have read also from your pamphlet entitled "Alcoholic Beverage Control Act and Alcohol Beverage Tax Act, section 18, page 19." My thought is that "governing body of the municipality" means, in Absecon, the "Mayor and Common Council." Further language in your "Rules, Regulations and Instructions," section 5, page 32, indicates that the "name of Issuing Authority", or, the same thing, the "governing body of the municipality," means the "Mayor and Common Council." Kindly read Section 5, page 32, first four lines.

Section 5 of Article 12 of the Rules of Council of Absecon, N.J., reads as follows:

Sec. 5. Every ordinance or resolution passed by Common Council shall, before it takes effect, be presented duly certified by the Clerk, to the Mayor, who, if he approves the same, shall sign it; but if he does not approve it, he shall return it, with his objection, to the Clerk within five (5) days, (Sunday not included) after the presenting thereof, and if not so returned it shall take effect as if approved by him.

Whenever any ordinance or resolutions shall have been returned with objections as aforesaid to the Common Council, the said Council shall, at its first meeting thereafter, order the objections to be entered at length on its journal, and shall proceed to reconsider the same, and if on reconsideration it shall pass the Common Council by a vote of two-thirds (2/3) of all members, it shall take effect notwithstanding such objections. In all such cases the vote shall be taken by yeas and nays and entered in full on the journal.

I am Mayor. In view of all the foregoing, do I not have a right to veto, and must not the resolution need a vote of two-thirds (2/3) of all the members of Council to make the issuance of the liquor license legal?

As stated above I have already vetoed the resolution. Am I not right?

May I urge that you forward me an opinion as soon as possible because the uncertainty is causing a lot of friction. Our next meeting is Monday, the 11th.

Very truly yours,

IRA L. GIBERSON,
Mayor.

January 10, 1937.

Hon. Ira L. Giberson,
Mayor,
Absecon City, N.J.

My dear Mr. Giberson:

I have yours of the 7th. It came in yesterday when I was at Providence attending a convention of State Liquor Administrators. There is no one in the Legal Division present this Sunday.

While I haven't time, in the midst of many matters requiring instant attention today, to make any study of municipal law, and there may be some question as to whether the matter you mention is within my jurisdiction to decide, nevertheless, since you have asked for assistance, I shall be the last to turn a cold shoulder to any municipal officer asking for help in the administration of the Control Act, and shall, therefore, give you my opinion based on general principles for what it is worth if anything.

You will regard it, please, as an advisory opinion, and not as a ruling.

The Control Act (P.L. 1934, c. 85) Section 18, makes it the duty "of the governing board or body of each municipality . . . to administer the issuance" of all retail licenses within their respective municipalities. I do not mention the exception of such municipalities as shall have created municipal boards,

The State vs. City Council of Dover et al, 61 N. J. Law, p. 404 and Dey vs. Mayor of Jersey City, 19 N. J. Eq. 412, containing the following language at p. 416

"Every act must be by a vote of the members present, and, whether it is called an order, direction, or determination, it is still a resolution, because it must be resolved on, upon a motion made by some member!"

(The above is notation made by O.F.B. for his information).

If, however, the Rules of the Absecon Council are in strict accordance with your charter and those statutes, then under Section 5 of Article 12, you, as Mayor, have veto right over every ordinance or resolution passed by the Council.

The remaining question, under such assumption, is whether the issuance of a liquor license, as distinguished from resolutions generally, is subject to your veto. This, I take, is the real question at issue. The answer depends on whether the municipal determination to issue such a license constitutes an "ordinance or resolution."

Majority rule is the primary principle of deliberative bodies such as your Common Council. The normal procedure to determine the sense of the majority is by a motion which is usually decided orally by ayes and nays, or by show of hands. A motion, made, seconded and carried, expresses the will of the majority. It is the concrete statement of a result which, after deliberation, they have resolved to put into effect. A motion is an informal resolution.

Every official action of a governing body is determined by its resolution. An ordinance is a resolution which has been enacted with certain statutory formalities such as successive readings, publication, opportunity to be heard, etc. Ordinances,

therefore, require certain formalities. There are no formalities connected with a resolution. There is no tangible distinction, therefore, between a resolution and a motion. True, formal resolutions are sometimes introduced by copious "WHEREASES" and followed by the sententious "NOW, THEREFORE, BE IT RESOLVED". But these formalities are not legally necessary to a resolution. A wholly informal motion, if made, seconded and carried by majority vote, constitutes a resolution.

No intention is exhibited anywhere in the Control Act to change the normal procedure of governing bodies in making their decisions or determinations in matters which, under the Control Act, are referred to them. Hence, the issuance of a liquor license is governed by the same rules and procedure as any other determination made by the Common Council other than an ordinance.

It would, therefore, appear that municipal determination to grant a liquor license is subject to your veto.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - MINIMUM THIRTY DAY PENALTY URGED EVEN FOR FIRST OFFENDERS.

January 11, 1937.

Mr. C. Mac D. Leed,
Acting Township Clerk,
Winslow Township,
Waterford Works, N.J.

Dear Mr. Leed:

I have staff report and your certification of the proceedings before the Township Committee of Winslow against Herman Honsell charged with (a) possession of illicit alcoholic beverages, (b) bottling alcoholic beverages for sale and (c) possession of an unregistered still.

The report is as follows:

"On August 4, 1936 at about 10:00 A.M. Investigators Briscoe and Flynn visited the licensed premises for the purpose of making an inspection. At the time the licensee was behind the bar.

"While Investigator Briscoe proceeded to the cellar to make an inspection, Investigator Flynn tested and gauged the opened bottles of alcoholic beverages on the back bar. He found two (2) particular bottles that appeared to contain alcoholic beverages other than represented on their respective labels. He found that the contents of the bottle labeled 'Monticello Rye Whiskey' contained an alcoholic beverage under the proof indicated on the label, while the

contents of the bottle labeled 'Three Feathers Whiskey' contained an alcoholic beverage several points over the proof indicated on the label. These bottles were seized.

"Investigator Flynn next inspected the second floor of the premises where in a front bedroom closet he found 2-1 gallon jugs of whiskey and 1 quart bottle of whiskey bearing no indicia of the payment of tax due thereon. These were seized.

"He next proceeded to the attic, where he found 2-30 gallon barrels containing whiskey bearing no indicia of the payment of tax, as well as a complete copper still of about 70 gallon capacity, which, however, showed no signs of recent use. All of these articles were seized.

"In questioning the licensee with reference to the seized property, he admitted to the Investigators that he owned same and further admitted having refilled the 2 bottles of alcoholic beverage seized on the back bar. He was arrested for possession of illicit alcoholic beverages, possession of an unregistered distillery and bottling alcoholic beverages for sale.

"Report of analysis of the Department Chemist disclosed that the bottle labeled 'Monticello Rye Whiskey' contained a blended whiskey 79.80 pf. and was not whiskey as represented on the label; the bottle labeled 'Three Feathers Straight Whiskey' contained a blended whiskey 94.20 pf. and was not whiskey as represented on the label.

"Analysis of samples of the alcoholic beverage taken from each of the three (3) barrels containing alcoholic beverages seized in the attic disclosed that one (1) contained a blended whiskey 86.60 pf., another a blended whiskey 131.50 pf. and the third a blended whiskey 100.90 pf.

"Decision was reserved by the Committee on the question of punishment.

"Certification from the Acting Clerk reveals that the following Resolution was entered on December 26, 1936:

'Be it Resolved by the Township Committee of Township of Winslow that having carefully reviewed the case of Herman Honsell, of Tansboro, charged with violating the Alcoholic Beverage Control Act, and in view of the fact that the Court had already suspended sentence, we administer a severe reprimand, feeling this to be sufficient punishment - it being the first offense.

'Be it further Resolved: That any further offense shall be punished by permanent revocation of license.'

"NOTE: The above Resolution indicated that this licensee had pleaded guilty to the criminal charge against him for having violated the Control Act based on the above facts. Accordingly, a check was made with the Prosecutor's Office of Camden County. Information was received that such a plea had been entered.

"A certified copy of the Record of Conviction was obtained and is now in the hands of the Enforcement Division.

"As this conviction worked an automatic suspension of his license, he will be ordered to close forthwith."

I appreciate the good faith of the Township Committee in merely reprimanding the licensee as a first offender, but then threatening that any further offense would be punished by permanent revocation. I submit, however, that the better policy is to suspend the license of anyone found guilty of possessing bootleg for at least one month even if it is a first offense. Licensees are entrusted with a privilege. If worthy of it, they ought not to have to be told that it's all wrong to foist off bootleg on customers who believe it genuine; that it cheats the State of revenue; that it is utterly unfair to his fellow licensees who comply strictly with the law; that by his acts he may destroy their livelihood as well as lose his own.

There are some rules which are not so self-evident as that which prohibits the sale or possession of illicit liquor or where there may be some question of construction or application. In those cases I have no quarrel with honestly-minded mercy such as your Committee purpose, but on fundamental matters like the sale of bootleg, or sales to school girls obviously way under age, licensees are not, like dogs, to be entitled to their first bite before they can be charged with vicious practices.

Hence, I cordially commend that in all future cases of this kind, your Committee inflict a suspension of at least 30 days.

Fortunately, the criminal conviction of this licensee under Section *82 of the Control Act worked an automatic suspension of his license until the end of its term. Instructions have, therefore, been given to close him up forthwith.

I need the help of your Township Committee in enforcing the law and believe that they will, on reflection, back up in full measure the determined effort of the Department to wipe out bootleg liquor.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

10. RECAPITULATION OF ENFORCEMENT DIVISION ACTIVITY FOR THE HALF YEAR ENDING
DECEMBER 31st, 1936, Incl.

To: D. Frederick Burnett, Commissioner

January 11, 1937

	July	Aug.	Sept.	Oct.	Nov.	Dec.	TOTAL
<u>ARRESTS</u>							
Licenseses	14	15	13	6	6	2	56
Non-licenseses	147	99	97	67	78	79	567
Total Number	161	114	110	73	84	81	623
<u>SEIZURES</u>							
<u>Stills</u>							
1 to 50 Gal. capacity	31	12	20	17	17	15	112
Over 50 Gal. capacity	12	12	13	4	5	6	52
Total Number	43	24	33	21	22	21	164
<u>Motor Vehicles</u>							
Trucks	8	4	7	1	0	4	24
Pleasure Cars	5	7	18	8	12	8	58
Total Number	13	11	25	9	12	12	82
<u>Alcohol</u>							
Beverage Alcohol (Gals.)	562	260	365	74	140	78	1,479
Denatured Alcohol (Gals.)	855	1320	1990	0	360	150	4,675
<u>Commercial Solvents</u>							
Salts (lbs.)	3000	150	4000	0	0	0	7,150
Tetrachloride (Gals.)	1000	0	358	0	45	0	1,403
<u>Mash</u>							
Total Number Gallons	23905	28000	21035	5880	14710	8668	102,198
<u>Alcoholic Beverages</u>							
Beer, Ale, etc. (Bottles)	1449	852	16875	34	198	160	19,568
--- (Barrels)	5 $\frac{1}{4}$	0	0	0	0	1 $\frac{1}{2}$	6 $\frac{3}{4}$
Wine (Gallons)	1780	2270	222	173	769	1804	7,018
Whisky, hard liquor (Gals.)	706	444	521	1896	40	358	3,965
<u>RETAIL INSPECTIONS</u>							
Licensed premises inspected	1441	2564	1394	1529	1066	1927	9,931
Illicit (Bootleg) liquor	1	7	26	14	4	13	65
Gambling Violations	67	266	119	96	81	65	714
Sign Violations	28	41	65	46	33	25	238
Unqualified Employees	29	121	92	42	57	92	433
Other violations	20	90	32	24	21	26	213
Total violations found	145	545	334	222	196	221	1,663
Number of bottles gauged	6026	10006	8032	7882	5108	10105	47,159
<u>COMPLAINTS</u>							
Investigated and closed	213	257	222	402	432	469	1,995
Investigated, pending	80	59	86	191	96	375	887
<u>LABORATORY</u>							
Analyses made	241	248	273	264	158	228	1,412
Poison liquor cases	10	12	22	23	16	22	105
Samples of alcohol, water and artificial coloring	45	54	20	38	32	34	223
Samples of moonshine (home-made finished product of illicit still)	50	83	36	35	37	47	288

Respectfully submitted,

E. W. Garrett

E. W. Garrett
Deputy Commissioner

11. CLUB LICENSES - CONVERTIBLE INTO PLENARY RETAIL CONSUMPTION LICENSE UPON PAYMENT OF PRORATED FEES - HEREIN OF THE PUBLIC POLICY SERVED AND ALSO OF THE TERM "SURRENDER".

Dear Mr. Burnett:

The Township of Scotch Plains, the latter part of June, 1936, issued a Club license in due form to the Shady Rest Country Club. Prompted by a desire to avoid criticism or prosecution because of sale to individuals not members of the club, request has been made to convert the present Club license into a Retail Consumption License.

According to such rulings as we find coming from your Department, we find it is necessary for this organization to surrender their present club license and suffer a loss for the remaining portion of the term, which, on the surface, does not seem quite fair.

I am, therefore, writing to ask if our understanding is correct and if, in this transaction which is a bona fide one, it would not be possible for the Township to credit the unused portion of the fee to the converted consumption license.

Yours very truly,

George J. Keevil,
Chairman

January 12, 1937

George J. Keevil, Chairman,
Township Committee,
Scotch Plains, New Jersey

Dear Mr. Keevil:

The inferences you have drawn from previous rulings are correct. The new question calling for decision is whether the unearned portion of the fee for a club license may be credited upon its conversion into a plenary retail consumption license.

Re: Bright, Bulletin 45, item 6, decided that a seasonal license was not convertible into a plenary license. That decision was based on two grounds: (a) that refund to a seasonal licensee was expressly forbidden by statute; (b) that to permit such conversion would allow the licensee to gamble at the expense of the municipality -- if the venture proved profitable he would be at liberty by paying a very small sum to extend his limited four months' privilege issued at a high rate into a

whole year at a much lower rate but if it were unprofitable then the municipality would get nothing.

Re: Duffy, Bulletin 103, item 1, ruled that a plenary retail consumption license could not be converted into a plenary retail distribution license because the privileges afforded were substantially different.

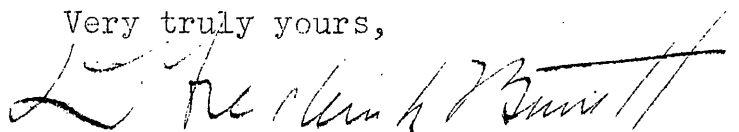
On the other hand, in Re: Gooderham & Worts, Bulletin 97, item 3, a plenary wholesale license was ruled convertible into a plenary export wholesale license upon payment of the prorated portion of the additional fee at a greater rate. Those two licenses, while different, afforded similar privileges in nature, viz.: to sell at wholesale. The applicant for the export license was seeking a greater privilege for which he had to pay more money, and at a higher rate, not less; it was expansion, not contraction. There was no gambling on results by the licensee at the expense of the State. Public policy was promoted by the conversion.

It is good policy for clubs to hold plenary retail consumption licenses and thereby reduce the work of enforcement in seeing to it that they do not transgress the narrow privilege limits of a club license. I have advocated such conversion. Re: White Beeches Golf and Country Club, Bulletin 126, item 15. Such a licensee pays more money at a higher rate, not less, into the municipal treasury; there is no gambling at the expense of the municipality. The privileges, while different, are both in nature the same, viz.: to sell for consumption on premises. It is not, except on bare technicality, a surrender in any sense. There is no intention to abandon or desist from the retail sale of liquor. The whole effort is to acquire a greater privilege in that very line. Surrender connotes quitting, giving up, relinquishment. It implies a finality of intent not to carry on any longer. A general who discarded old weapons of limited range for new of greater power would hardly be thought in the mood to surrender.

Therefore, such conversion may be effected and the unearned portion of the fee for the club license credited upon the plenary retail consumption license.

The other rulings hereinbefore mentioned are reaffirmed, and also Re: Duffy, Bulletin 25, item 4. The latter involves the converse of the present. A plenary retail consumption license ought not to be converted into a club license except upon deduction of the full surrender fee. Such a conversion is down the line, not up. The municipality gets less money and at a lesser rate. No public policy is served. The conversion is sought to reduce the applicant's expense; if effected it increases the police burden.

Very truly yours,



D. Frederick Burnett,
Commissioner