

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

BULLETIN NUMBER 180.

JUNE 1, 1937.

1. FINAL NOTICE

Application forms for renewal licenses were sent out on May 10th, 1937. To date twenty-eight applications have come in. There are more than 7,000 State licenses and permits to be issued prior to July 1st - a physical impossibility unless applications are filed at once.

Applications will be disposed of in order as filed. Those who file too late will have to wait and cease business in the meantime.

Solicitors must have their renewal permit in hand before July 1st or else quit business. Solicitors should be instructed to submit applications immediately with duplicate photographs.

The law will be enforced strictly and arrests made whenever necessary.

This second notice is sent you as a courtesy. No further warning will be given.

Several are going to be caught short! Will it be you? If you must be dilatory, don't cry later on!

Dated May 26, 1937  
D. FREDERICK BURNETT  
Commissioner

2. SEASONAL RETAIL CONSUMPTION LICENSES - FEES - PRORATION

May 24, 1937.

George W. Carr  
Borough Clerk,  
Lindenwold, New Jersey

Dear Mr. Carr:

The fees for seasonal licenses, as well as the fees for the regular yearly licenses, should be prorated. Where application is made for the regular yearly license, the license fee is prorated from the date of issuance to the June 30th following, the end of the fiscal year. Where application is made for seasonal license, prorate the fee from the date of issuance to the end of the seasonal term which, in the case of summer seasonal licenses, is November 1st.

There are 185 days in the summer seasonal term. There being 161 days in the period from May 25th to November 1st inclusive, the fee for a seasonal license issued May 25th would be 161/185 of \$187.50, the fee for the full term, which would be \$163.18.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

New Jersey State Library

3. HOTELS - DISTINCTION BETWEEN HOTELS BASED ON NUMBER OF ROOMS DISCUSSED.

LIMITATION OF LICENSES - EXCEPTION IN FAVOR OF HOTELS.

MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - HOTELS.

May 25, 1937

Nelson S. Butera,  
Town Clerk,  
Morristown, N. J.

My dear Mr. Butera:

I have before me for consideration (1) the resolution adopted by your Mayor and Board of Aldermen providing that licenses for on-premises consumption may be granted to any hotel having not less than thirty guest rooms notwithstanding any limitation as to the number theretofore fixed and (2) the ordinance prohibiting the sale of alcoholic beverages on Sundays and election days and other prohibited days which has been introduced and passed on first reading.

I understand that the resolution and Section 3 of the ordinance were intended solely and expressly for the purpose of licensing additional hotels barred by the limitation theretofore imposed in Section 2, sub. 1, of resolution adopted August 2, 1935.

According to Section 37 of the Control Act, my approval is required only of municipal regulations which deal with the conduct of licensed businesses or the nature and condition of licensed premises. Hence, neither the resolution nor Section 3 of the ordinance are subject to my approval. I thought, nevertheless, that as a matter of courtesy I should give you my thoughts as to their validity and so I offer for your consideration the following:

The resolution provides:

"RESOLVED, that a license to sell for consumption on the licensed premises any alcoholic beverages may be granted any hotel having not less than thirty guestrooms in the Town of Morristown, notwithstanding any limitation as to the number of licenses to be granted and issued in said Town of Morristown now fixed and in force."

There is no question in my mind as to the propriety of an exception in favor of hotels. I believe that hotels as a class may be so distinguished. Hotels are vested with a quasi-public function. They are charged with the duty of accepting all proper persons as guests and of furnishing them with accommodations so far as capacity permits. They are, therefore, on that score, distinguishable from ordinary drinking places. I doubt, however, that you can qualify the exception by limiting it to a special group of hotels, that is to say, only to those which have thirty or more guest rooms. The proper criterion is whether or not the premises is a bona fide hotel. A bona fide hotel is that regardless of the number of rooms it contains. See Peck v. West Orange, Bulletin 147, Item 1 and the items cited therein.

The resolution would have been wholly proper if in place of "any hotel having not less than thirty guest rooms" it had said "any bona fide hotel."

Section 3 of the ordinance provides:

"That no more than nineteen plenary retail consumption licenses, no more than twelve retail distribution licenses, no more than four club licenses, for the retail sale of alcoholic beverages, shall be granted or issued in the Town of Morristown; provided, however, that this limitation shall not be construed to prevent the renewal of any such licenses heretofore granted and now in effect."

The limitation previously enacted (resolution of August 7, 1935, Section 2, sub. 1) provides for not more than sixteen plenary retail consumption licenses and a similar exception in favor of renewals. If the Board now deems that the quota shall eventually be nineteen, instead of sixteen, well and good. It has the power to change the limitation as changing conditions warrant. Re Lamson, Bulletin 118, Item 6. But merely to provide, as you have in the ordinance, that the eventual number shall be increased by three does not establish three vacancies at the present time. According to my records, you have twenty-eight consumption licenses presently outstanding. Hence, whether you fix the ultimate quota at sixteen or nineteen makes no present difference. Unless you provide for more than twenty-eight or for some appropriate exception, no additional licenses may be issued.

Section 3 does not, then, as presently worded, accomplish your purpose. It will, however, if you add to the section a proviso similar to the resolution as I have suggested that it be corrected, viz.:

"and further provided that plenary retail consumption licenses may be granted for any bona fide hotel in the Town of Morristown notwithstanding the limitation as to the number of licenses to be granted hereinabove fixed."

You will then have created vacancies for hotels and accomplished your original purpose. The ultimate quota of plenary retail consumption licenses may be fixed at sixteen, as in the original regulation, or at nineteen, as increased by the ordinance, in the Board's discretion. Upon amendment of the ordinance as aforesaid, the resolution of February 5th should, of course, be repealed.

Sections 1 and 2 of the ordinance which limit hours of sale, for the reasons stated in Bulletin 43, Item 2, do not need my approval in the first instance in order to be effective.

Sections 4 and 5 need no approval because they do not regulate the conduct of licensed businesses or the nature and condition of licensed premises. They appear to be in proper form and hence, I suggest that they be adopted as submitted.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

4. LICENSES - ISSUANCE - SPECIAL CONDITIONS - SPECIAL CONDITION PROHIBITING TRANSFER FROM PLACE TO PLACE OF LICENSE ISSUED TO HOTEL, WHERE SUCH TRANSFER WOULD INCREASE NUMBER OF LICENSES BY REQUIRING ISSUANCE OF NEW LICENSE TO THE HOTEL, APPROVED TO GIVE EFFECT TO MUNICIPAL POLICY OF LIMITATION.

May 25, 1937

Nelson S. Butera,  
Town Clerk,  
Morristown, New Jersey.

My dear Mr. Butera:

I have before me your letter reporting the issuance of plenary retail consumption license to William Dierck for premises Hotel Dumont, 20 Community Place, subject to the special condition that the license be not transferable as to premises.

I also have your letter explaining that the special condition was imposed in order to license the hotel and at the same time prevent an opening for an additional consumption license being created by virtue of a later transfer from the hotel. My records disclose that you have presently in effect a regulation designed to reduce the number of plenary retail consumption licenses to sixteen but that there are twenty-eight now outstanding.

The right to a transfer is conferred by statute. Re Irvington, Bulletin 160, Item 5. But although licensees have that right, it is not an unqualified privilege. License issuing authorities may grant or deny transfers in the exercise of reasonable discretion. Van Schoick v. Howell, Bulletin 120, Item 6. In Ignatz v. Phillipsburg, Bulletin 167, Item 16, the local Board denied an application for transfer from a hotel on the ground that the granting of it would require, on proper application being made, the issuance of a new license to the hotel and thus increase the number of licenses outstanding, setting at naught its policy of reduction. The denial was affirmed.

In the Ignatz case, I held a refusal to transfer in derogation of a declared policy concerning the limitation of licenses, to be reasonable. The condition your Board has imposed seeks to accomplish the same purpose, giving the licensee notice in advance. It is, therefore, approved as submitted subject, of course, as in the case of all ex parte approvals, to review on appeal. See in this connection Bulletin 43, Item 12 and Bulletin 34, Item 5.

Of course, once the desired reduction in the number of licenses has been effected it will be a different story. The condition depends for its validity on the necessity of achieving a reduction in the number. When that is accomplished and vacancies exist, no further transfers can be denied on that score.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

5. MUNICIPAL ORDINANCES - OPEN VIEW - CLOSED HOURS - HOURS OF SALE - A REGULATION REQUIRING OPEN VIEW OF LICENSED PREMISES DURING CLOSED HOURS IS OF NO EFFECT WHERE THE REGULATIONS MERELY FIX HOURS OF SALE, THERE BEING NOTHING ACTUALLY REQUIRING LICENSED PREMISES TO BE CLOSED.

May 25, 1937

James B. May,  
Borough Clerk,  
Rockaway, New Jersey.

My dear Mr. May:

I have before me your letter of the 15th; also the two resolutions adopted by the Council on May 13th fixing the plenary retail consumption license fee, effective July 1st next, at \$300.00 per year and requiring that during closed hours the interior of licensed premises be open to public view.

According to Section 37 of the Control Act, my approval is required only of municipal regulations which deal with the conduct of licensed businesses or the nature and condition of licensed premises.

The resolution fixing the plenary retail consumption license fee does not need my approval in order to be effective. So long as duly enacted in accordance with the statutes, it becomes legally operative without it.

The regulations requiring that during closed hours the interior of licensed places be open to public view are eminently proper and have my unqualified support. I think they are good. But as I pointed out to you in my letter of December 3, 1935, the Council's other regulations don't fix the hours during which licensed premises must be closed. They merely fix hours of sale. The thing to do is to supplement Section 7 of the Council's resolution of June 27, 1935 with a paragraph reading:

"During the hours hereinabove set forth when sales are prohibited, all licensed premises must likewise be closed."

I will then approve the regulations adopted May 13th last, requiring the unobstructed view. Until you change the June 27, 1935 regulations those of May 13th can have no effect for no hours during which the premises must be closed have been fixed.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

6. LICENSES - FEES - LICENSE FEES MAY BE PAID TO MUNICIPAL CLERK OR TREASURER AT ANY TIME BEFORE APPLICATION IS SUBMITTED BUT MUST BE IN WHEN APPLICATION IS FILED.

Dear Mr. Burnett:

Regarding your notice of May 6th relative to a full license fee accompanying the application, would say that this is going to be inconvenient, especially in the rural districts where banks are few and far between. The way they straggle in with their applications would mean having a sum of money in the house over night which I would like to avoid if possible.

Heretofore I took the application the Committee set a date for the issuing of the license and the fees were all collected at one time and turned over to the Treasurer. There being ten licenses in this Township, you can readily see that at a fee of \$300.00 each and the majority of them pay with cash, it would entail some risk.

If it can be operated as before it will be greatly appreciated, if not we will have to abide by your decision.

Very truly yours,  
George E. Bell,  
Clerk, Clinton Township.

May 25, 1937

George E. Bell,  
Clerk of Clinton Township,  
Annandale, New Jersey.

Dear Mr. Bell:

The reason that an applicant is required to pay his fee when he files his application is that the statute authorizes municipalities to retain ten per cent thereof as an investigation fee if the application is denied. If the fee isn't paid when the application is made, there will be nothing in hand out of which to collect or deduct this ten per cent. The rule, as you see, is to protect municipalities, so they don't have to whistle for their money, if perchance, an application for a license is turned down.

It is not necessary, however, that the fee be paid and the application be filed simultaneously. It is sufficient if the fee be in hand when the application is filed. The fee can be paid at any time before the application is submitted.

I suggest, therefore, that you serve notice on your licensees to pay their fees to the Township Treasurer, during his regular office hours or whatever special hours he shall designate, before submitting their applications to you. The Treasurer no doubt has facilities adequate to handle and safeguard the money. His official receipt, which the applicant may show when he files his application, would be sufficient evidence to indicate that the fee had already been paid.

Don't take any applications unless the fee has been paid in full.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

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

May 24, 1937

Re: Hearing No. 166

Permit was issued to solicitor on March 29, 1937, pursuant to his sworn application and questionnaire containing a denial of conviction of any crime. Departmental check-up through solicitor's finger prints disclosed that he had been convicted on October 31,

1932, in Linden Police Court on a charge of simple assault and battery. Accordingly, a hearing was held to discover whether solicitor's permit should be revoked.

Solicitor is a man of good appearance, 36 years of age, married 11 years, with one child and another expected shortly.

On the day of the crime (some 4½ years ago), solicitor was a regular taxicab driver. His cab was hailed at Market Street, Newark, by a police officer and another man. After visiting several taverns, the police officer left the cab (without paying), and solicitor drove the remaining passenger to that passenger's home in Linden. When the cab reached there, the passenger refused to pay, claiming that the police officer alone was responsible for the fare. Argument having grown futile, solicitor went to the nearby Linden police headquarters, where he complained of the non-paying passenger outside in his cab. A police officer was detailed to investigate, but he advised that they all go to headquarters to settle the matter. Thus far, the story given by solicitor and the Linden police report do not conflict.

But the police report states that on the way to headquarters with the police officer, solicitor struck the passenger in the face, knocking him down; and that in consequence solicitor was immediately arrested and held on a charge of assault and battery.

Solicitor claims that he struck no blow at the passenger. To the contrary, he claims that the police officer who was detailed to the job, recognized the passenger as the father of a Linden police lieutenant and that the passenger, boisterous and drunk and grown brave in the presence of the policeman whom he knew, made a "grab" for solicitor and solicitor merely put his arm up to ward off any blow. When held for assault and battery, he made no counter-complaint because, so he claims, he could see that such a step would be unavailing.

Solicitor (without benefit of counsel), waived indictment and jury trial, was tried and found guilty by the Police Judge, and was fined \$25.00. Before leaving, however, he was paid his fare, either by the police lieutenant in charge of the Linden headquarters (as solicitor claims), or by the passenger at that Lieutenant's direction (as the police report states).

Discounting solicitor's story and accepting the version given by the police report, nevertheless the crime very obviously involved no moral turpitude. It was merely a simple blow arising out of an altercation between a taxicab driver and a recalcitrant passenger who refused to pay for the ride. There is no suggestion of malice, premeditation, or injury.

In Re Application for Solicitor's Permit, Case No. 39, Bulletin 147, Item 9, it was indicated that a simple assault and battery growing out of an altercation between husband and wife does not involve moral turpitude.

In Gale v. Newark, Bulletin 95, Item 6, it was ruled that assault and battery based upon excessive unpremeditated force in ejecting a person as a result of an argument over a painting bill, is not a crime involving moral turpitude.

Disposing of the question of moral turpitude, however, does not dispose of the fact that solicitor falsely swore in his application and questionnaire that he had never been convicted of a crime. He claims that in making this answer he was following advice which had once been given to him by a clerk in a liquor concern. A wise policy requires that applicants cannot take easy escape of a

false answer by crying allegiance to the advice of another. See Gale v. Newark, Bulletin 95, Item 6; Eckert v. Paterson, Bulletin 114, Item 13.

The solicitor has a clear record outside of the above mentioned conviction for assault and battery (save a small "bad check" charge which was settled). In view of that fact, and in view of the further fact that solicitor has very little to hide, I do not believe that he intended any sly concealment but merely hoped to present a clear record by omitting what he thought was an inconsequential and perhaps unfair conviction.

However, in order to show that the question whether applicant was ever convicted of a crime means just what it says and must be answered in an attitude of full revelation, it is recommended that solicitor's permit be suspended for two (2) days, effective May 29, 1937.

Nathan Davis,  
Attorney.

Approved: Sorry he did not tell the whole truth the first time for I should like to have exonerated him wholly, since I believe his story. Licensees and permittees have nothing to lose by telling the truth.

D. Frederick Burnett,  
Commissioner.

8. APPELLATE DECISIONS - LINGELBACH v. NORTH CALDWELL.

JOHN LINGELBACH,	)	
	Appellant,	)
-vs-		ON APPEAL
		CONCLUSIONS
BOROUGH COUNCIL OF THE	)	
BOROUGH OF NORTH CALDWELL,	)	
	Respondent	)
-----	)	

George S. Grabow, Esq., Attorney for Appellant.  
Walter G. Brandley, Esq., Attorney for Respondent.  
August Basile, Esq., Attorney for W. Schwerghardt, an Objector and licensee.

BY THE COMMISSIONER:

This is an appeal from the denial of transfer of a plenary retail consumption license from Joseph Funicelli to appellant for premises at 715 Main Street, Borough of North Caldwell.

In its answer respondent alleges that the application was denied because, among other reasons, "there is no necessity for the maintenance of three establishments \* \* \* on adjacent lots on Main Street."

Respondent has adopted a resolution limiting the number of plenary retail consumption licenses to five. It has issued five; one in the extreme southern section, one in the central part and three (including Funicelli's) in the extreme northern section of the Borough. The latter licenses have been issued for three adjoining buildings on Main Street, which contains no other business places. The only possible justification for the existence of three licensed places in that section is that an amusement park

known as "Grandview Park" exists or existed nearby. The park is at the terminus of a bus line which runs from Paterson. Otherwise, it can scarcely be contended that it was necessary at any time to set up three licensed places, like balls on the sign of a pawnshop, to cater to the needs of approximately seventy-five people who live nearby.

When Funicelli's license was originally issued in 1935, Grandview Park was just about closing for the season. Grandview Park practically ceased operations during 1936, but respondent renewed all three licenses in July of that year. Grandview Park is now being dismantled and all its former tinsel glories have disappeared save only the dance hall and merry-go-round. Funicelli ceased to operate in February 1937. Appellant applied for the transfer about a month later.

An issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6. In Botfan v. Howell, Bulletin 64, Item 9, appellant conceded that the local residents were adequately serviced by the existing licensed places but argued that the large number of transients justified his application. In that case, however, denial of the transfer was affirmed because appellant had not sustained the burden of proof in showing that the needs of transients required an additional licensed place. In Van Schoick v. Howell, Bulletin 127, Item 9, denial of transfer was affirmed because it affirmatively appeared that existing places could take care of the local and transient trade. In the present case local needs clearly do not warrant the existence of three places on Main Street. Changed conditions at Grandview Park are sufficient to sustain respondent's contention that, presently at least, there is no need for three establishments on adjacent lots on Main Street. Hence, denial of the transfer was reasonable.

Appellant argues that if the transfer is denied, there will be only four licenses outstanding despite respondent's resolution limiting the number to five and contends, therefore, that the transfer should be granted. In Young v. Pennsauken, Bulletin 114, Item 2, I held that, despite vacancies in a limiting resolution, respondent might deny a license where in fact sufficient licenses were outstanding in the immediate vicinity of the place for which the license was sought. The same rule should apply to transfers.

This is a hard case for appellant to lose for he bears an excellent reputation, is qualified and owns the building. In a conflict, however, between his private interests and the interests of the community at large, the latter must prevail. Moran v. West Orange, Bulletin 143, Item 8. I find nothing unreasonable in respondent's determination that the best interests of the Borough will be served by cutting down the number of licensed places on Main Street.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: May 27, 1937.

9. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - FEEBLE ONE DAY PENALTIES DEPLORED AND THE MORE SO WHEN WHOLLY REMITTED.

May 27, 1937

Charles B. Tomer, Esq.,  
Borough Clerk of Middlesex,  
P. O. Bound Brook R. D. #1,  
New Jersey.

Dear Mr. Tomer:

I have staff report of the proceeding before the Borough Council of Middlesex against Herman Max Mann, charged with having sold alcoholic beverages during prohibited hours on Sunday.

The report states: "On Sunday, May 9, 1937, Investigators Wagi and Moss visited the licensed premises at about 10:00 A. M. They observed five automobiles parked outside. Moss remained outside. Wagi entered and observed eight men in front of the bar with two whiskey bottles in front of them. He also saw beer and whiskey in glasses on the bar. The licensee was behind the bar and served Wagi alcoholic beverages. A short time later Moss entered and was also served a glass of beer."

I note he entered a plea of guilty; that his license was thereupon suspended for one day, but immediately thereafter the operation of the suspension was lifted. My investigators report that this was done on account of the past good record of the licensee. The net result, however, is that he suffered no penalty at all.

I regret that I cannot go along with the Council on this. Licensees who sell during closing hours are deadly conscious that they are violating the law. I believe that the only warning they respect is a suspension.

I suggest hereafter a minimum of five days for the first closing hour violation; twice that for the second offense, and revocation upon the third.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - TWO WEEKS' PENALTY COMMANDS RESPECT.

May 27, 1937

Harold J. Schlosser,  
Borough Clerk,  
Milltown, New Jersey.

Dear Mr. Schlosser:

I have staff report of the proceeding before the Borough Council of Milltown against John Hartlander, charged with having sold alcoholic beverages on Sunday in violation of local regulation.

I note he entered a plea of guilty and that his license was suspended for two weeks.

That is indeed a penalty that commands respect for law and order in your community and should go a long way in bringing home to the licensees in Milltown that the law and the rules governing the conduct of their business, were made to be obeyed.

Please convey to the members of the Council and their attorney, Mr. Kuhlthau, my appreciation for their prompt and salutary action.

Cordially yours,  
D. FREDERICK BURNETT,  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SLOT MACHINES AND LOTTERIES - FIVE DAY PENALTY.

May 27, 1937

Adrian Post, Esq.,  
Town Clerk,  
Secaucus, New Jersey.

Dear Mr. Post:

I have staff report and your certification of the proceedings before the Town Council of Secaucus against Leonard Heflich charged with having possessed a slot machine and permitted a lottery to be conducted on the licensed premises in violation of State Rules.

The report states:

"On April 22, 1937, Investigators Flynn and Miskovsky inspected the licensed premises. They found therein a five-cent slot machine labeled "Blue Seal"; also a punchboard from which chances were being sold at five cents each, the prizes being candies and chocolates. The slot machine and punchboard were seized and turned over to the Secaucus Police Department."

I note the licensee pleaded guilty and that his license was suspended for five days.

That's right! Licensees must be brought to the realization that the law and the Rules and Regulations mean just what they say. To allow licensees to violate with impunity the legal safeguards which have been thrown about the conduct of their business, would be to invite a breakdown of proper control.

Please extend to the members of the Council my sincere appreciation for their splendid cooperation.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - PROSTITUTION AND IMMORAL ACTIVITIES -  
REVOCATION EFFECTED.

May 27, 1937

Edward Du Pree, Esq.,  
City Clerk,  
Paterson, New Jersey.

Dear Mr. Du Pree:

I have staff report of the proceedings before the Board of Aldermen of Paterson against Edward Vitale, charged with having permitted prostitution and immoral activities on or about the licensed premises.

The report states:

"On April 21, 1937, Investigators Boehm and King visited the licensed premises at about 8:30 P. M. They engaged the bartender in conversation. While there, they observed men come in, buy a glass of beer and when given a nod by the bartender walk to the rear of the tavern and through a door. The bartender told the investigators that there was a woman upstairs on the second floor; that the place always had this accommodation for its patrons. The investigators observed several men enter and leave the rear room.

"On April 24, 1937, Investigators Boehm and King contacted Police Officers Gordon Rodgers and John O'Brien of the Paterson Police Department and arranged for a visit to the licensed premises. King and Boehm entered at about 7:00 P. M. While they were at the bar, Officer Rodgers entered and was asked by the bartender if he wanted to go upstairs. Just then a man walked in and asked if 'Sally' was upstairs. The bartender told him 'Daisy' was up there today. This man then walked through the rear door. King followed a few minutes later. The bartender told him to wait until the other man came down. King agreed but when the bartender's back was turned, proceeded to the second floor. He heard a man and woman talking in a room. Boehm and Officer Rodgers then came upstairs. Opening the door of the room, they discovered a woman and the man they saw go upstairs from the barroom a short time before, in a compromising position.

"The licensee, the bartender and the man and woman were arrested. Police records disclosed that the woman had been previously arrested for 'prostitution.'"

I note the licensee was adjudicated guilty and that his license was immediately revoked.

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I am again complimenting the Board on its continued fine work in meting out deserved punishment on errant licensees. Assuming the facts as set forth in the report as true, the penalty of revocation was amply justified.

Filth and vice in premises licensed for the sale of liquor have no place in the present order of things.

Commendation, too, please, to Officers Rodgers and O'Brien of the Paterson Police, whose assistance was invaluable.

Cordially yours,  
D. FREDERICK BURNETT,  
Commissioner.

13. STATUTORY AUTOMATIC SUSPENSION - CONCLUSIONS AND ORDER LIFTING.

In the Matter of the Application )  
of Theodore Liwacz, Retail Licensee ) CONCLUSION AND  
of Trenton, to lift suspension of ) ORDER  
his license. )  
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Martin P. Devlin, Jr., Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

This matter comes before me on petition to lift the statutory automatic suspension now in force against Plenary Retail Consumption License C-139 heretofore issued by the City Council of Trenton to Theodore Liwacz for premises #550 Lambertson Street, Trenton, New Jersey. This suspension has been in force since May 3, 1937, and is the result of his conviction in the Mercer County Court of Quarter Sessions on a charge of having possessed illicit alcoholic beverages. (P. L. 1935, c. 254 - Control Act reprint Section \*82).

The facts in this case are briefly as follows:

Theodore Liwacz was arrested on July 8, 1936, after an inspection of his licensed premises by Investigators from this Department revealed the presence of illicit alcoholic beverages. On July 9, 1936, he was arraigned before the Police Magistrate of Trenton and fined \$200.00 as he had pleaded guilty to a charge of having violated a section of the Trenton ordinance forbidding the possession of illicit alcoholic beverages.

A synopsis containing all of the facts relative to the seizure was forwarded to the City Council of Trenton for revocation proceedings. A hearing was held before the Council on September 29, 1936, and testimony taken. Decision was reserved. On October 19, 1936, his license was suspended for a period of ten days after he had been adjudicated guilty on the charge of having possessed illicit alcoholic beverages.

In the meantime the Grand Jury of Mercer County returned an indictment against this licensee for having violated Section 48 of the Alcoholic Beverage Control Act (possession of illicit alcoholic beverages) to which indictment, Liwacz, on April 26, 1937, entered a plea of guilty in the Mercer County Court of Quarter Sessions. On April 30, 1937, he was sentenced to probation for a period of one year and ordered to pay costs in the sum of \$42.25.

On May 3, 1937, Investigators Perry and Grover of this Department, after having obtained a certified copy of the record of conviction, proceeded to his licensed premises and ordered same closed. They picked up his license and turned it over to the City Clerk of Trenton.

In addition to the penalties as above set forth, petitioner states that he was obliged to pay the State Tax Department,

Beverage Tax Division, the sum of \$54.94 as a tax on the illicit alcoholic beverages; also that he paid the sum of \$42.96 to the Collector of Internal Revenue, United States Treasury Department, as the Federal tax.

Liwacz' petition for a lifting of the suspension sets forth that he is the owner of the building containing the licensed premises; that he resides there with his wife and six children and derives his sole support and livelihood from the business that is conducted therein. He frankly admits that during the "Prohibition era" he was illegally engaged in the sale of alcoholic beverages and states that the illicit liquor seized had been in his possession since that time but that no part of same was ever used in the pursuit of his business as a licensee.

I have heretofore ruled that it is the policy of this Department in cases involving possession of illicit alcoholic beverages, that a minimum penalty of thirty days' suspension of the license should be imposed. See re Morris, Bulletin 98, Item 10; re Honsell, Bulletin 164, Item 10; re Aldarelli, Bulletin 166, Item 11; Liwacz has already served the ten-day suspension inflicted by the City Council of Trenton; in addition thereto, he has now been closed since May 3, 1937, making a total of thirty-four days.

I am of the opinion that by reason of this period of suspension, coupled with the other penalties set forth above, that he has learned his lesson and has now been sufficiently punished.

Accordingly, it is on this 27th day of May, 1937, ORDERED, that the statutory suspension now in force be lifted, and that Plenary Retail Consumption License C-139 heretofore issued to Theodore Liwacz by the City Council of Trenton be and it is hereby declared to be, again in full force and effect.

D. FREDERICK BURNETT,  
Commissioner.

14. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - OUTRIGHT REVOCATION FOR SECOND OFFENSE.

In the Matter of Disciplinary )  
Proceedings against )  
MARY SIWEK, )  
106 Lentz Avenue, )  
Newark, New Jersey, )  
Holder of Plenary Retail Con- )  
sumption License No. C-586, )  
issued by the Municipal Board )  
of Alcoholic Beverage Control )  
of the City of Newark. )  
- - - - - )

CONCLUSIONS  
AND ORDER

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

Frank J. Pietrucha, Esq., Attorney for Respondent Licensee and Leon Spryszanski, Owner of Licensed Building.

BY THE COMMISSIONER:

Disciplinary proceedings were instituted against licensee after a report of the results of a Federal investigation was forwarded to this Department, and after independent investigation by this Department revealed that licensee had misstated a material

fact in her application and was employing a person disqualified by reason of the fact that he had been convicted of a crime involving moral turpitude.

Charges served on the licensee contained four counts:

- 1 - Possession of illicit beverages contrary to Section 48 of the Control Act.
- 2 - Possession of illicit beverages adulterated with isopropyl alcohol and acetone, in violation of Rule 10 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises.
- 3 - Knowingly misstating a material fact in her application for a license in that she had sworn she was never convicted of a crime and never convicted of or committed any violation of the Alcoholic Beverage Control Act.
- 4 - Knowingly employing a person disqualified by reason of having been convicted for the crime of embezzlement - a crime involving moral turpitude.

As to the first and second counts, an Inspector of the Alcohol Tax Unit, Internal Revenue Service, testified that he found a bottle of liquor in the stock room in back of the bar, which tested under proof. The certificate of the chemist attached to said Alcohol Tax Unit was introduced into evidence. The certificate disclosed that the seized bottle was labeled "Blended Whiskey 90 proof" and was found to be 78.7 proof; that the bottle contained isopropyl alcohol and a small quantity of acetone, and appeared to contain completely denatured alcohol, Formula 10, which had been manipulated.

The licensee testified that she and a bartender whom she employed were the only persons who had access to the liquor upon the licensed premises; that she never tampered with the contents of the seized bottle; that she had known the bartender for ten years and discharged him shortly after the Federal investigation had been made. The bartender was not produced as a witness. Licensees, however, are responsible for what goes on upon the licensed premises. In Re Kneller, Bulletin 49, Item 4.

On the evidence I find the licensee guilty on the first two counts, namely, possession of illicit alcoholic beverages in violation of Section 48 of the Control Act, and guilty of possession of alcoholic beverages adulterated with isopropyl alcohol and acetone in violation of Rule #10 of the Rules Concerning Conduct of Licensees and Use of Licensed premises.

As to the third count, the evidence shows that on February 12, 1935 licensee was arrested in the City of Newark and charged with possession of illicit alcohol in violation of the provisions of Section 48 of the Alcoholic Beverage Control Act; that on February 20, 1935 she was found guilty of said charge in the Family Court of the City of Newark and was sentenced to pay a fine of \$200.00 or to serve sixty days in jail; that, despite said conviction, she swore in an application for a renewal of her license on June 9, 1936 that she had never been convicted of any crime and that she had never been convicted of or committed any violation of an Act entitled "An Act Concerning Alcoholic Beverages," (P.L. 1933, c. 436), or of any amendments thereto or supplements thereof. As to her false affidavit, licensee testified that the application in question was made out by "one of those fellows that hangs around the City Hall;" that she had told him she had paid a \$200.00 fine; that she cannot read and that she depended upon him to put down the truth.

The notary was not produced at the hearing, and licensee's testimony is entirely uncorroborated. Licensees are to obey the law and make applications which are absolutely true. Gale v. Newark, Bulletin 95, Item 6.

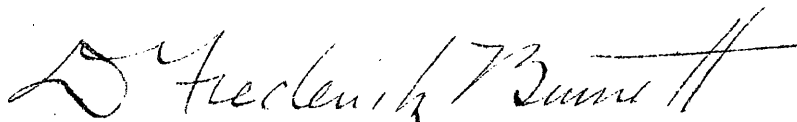
On the evidence I find the licensee guilty on the third count contained in the charges.

This renders it unnecessary to consider the fourth count.

Since these findings adjudicate the licensee guilty of having committed a second violation of the Control Act, the license should be revoked. In Re Sedlak, Bulletin 178, Item 12. Such revocation is likewise based upon the fact that she has been found guilty of knowingly misstating a material fact under oath in her application for renewal of her license. That alone is ground for revocation. Section 22 of the Control Act.

In considering whether the revocation should render the licensed premises ineligible to become the subject of any future license of any kind or class under this Act during a period of two years from the effective date of revocation, I find that the licensed building is owned by Leon Spryszanski, the present husband of the licensee. He testified that he was in no way connected with the business and conducts a wood yard at these premises. At the time of the arrest of the licensee in February 1935, the illicit alcohol was found upstairs in these same premises. Under the circumstances the premises should be rendered ineligible.

It is therefore, on this 28th day of May, 1937, ORDERED, that Plenary Retail Consumption License No. C-586, heretofore issued to Mary Siwek by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked effective May 31, 1937, and further that said revocation shall render the licensed premises, 106 Lentz Avenue, Newark, New Jersey ineligible to become the subject of any further license of any kind or class during a period of two years from the effective date of the revocation.



D. Frederick Burnett,  
Commissioner.

Inspected by: E. E. B. ANDERSON and found O. K.
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