

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

BULLETIN 233.

MARCH 7, 1938.

1. GAMBLING - DOOR PRIZES - THE DISTRIBUTION OF DOOR PRIZES BY MEANS OF A DRAWING IS A LOTTERY AND THEREFORE PROHIBITED.

March 1, 1938

Mr. B. L. Kohn,
Newark, N. J.

My dear Mr. Kohn:

Door prizes, I understand, are distributed by means of a drawing, each customer upon his arrival being given a ticket bearing a number, the lucky number receiving a prize.

The scheme is a lottery. It is, therefore, prohibited. It would be in violation of Regulations No. 20, Rule 6, for you to conduct such drawings on your premises and cause for the suspension or revocation of your license.

It makes no difference whether the prize is liquor or other merchandise or that the tickets are given away free. Re A & P. Bulletin 172, Item 9.

Herewith Re Reilly, Bulletin 196, Item 11, and Re Boyce, Bulletin 169, Item 2, which will show you what happens to licensees who permit lotteries to be conducted on their premises. If you value your license, don't do it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLIP JOINTS - OUTRIGHT REVOCATION INDICATED AND EFFECTED.

March 1, 1938

William A. Miller, Esq.,
City Manager,
Clifton, N. J.

Dear Mr. Miller:

I have staff report of the proceedings before the Municipal Council of Clifton against Charles Lanza and Charles Riccobono, t/a Chappy's Velvet Club, charged with (a) having permitted the service of alcoholic beverages to hostesses and entertainers at tables and at the bar, at the expense of patrons in violation of Sections 4 and 5 of your local regulations relative to licensed premises and (b) having permitted the conduct of a lottery on a licensed premises in violation of State Rule.

I note the licensees pleaded guilty to these charges and that the license was immediately revoked.

My attention has been called to a newspaper article relative to this case which quotes your municipal attorney, Mr. Dluhy, replying to a plea for leniency by counsel for the licensee, as follows:

New Jersey State Library

"The place was nothing but a clip joint, the kind of a place where you are taken over for everything you've got. They plead guilty to three of our charges. Their license should be revoked. The liquor business can't stand this type of traffic."

Mr. Dluhy is just right when he says the liquor traffic cannot stand this type of a retail establishment. As I said to the Council before, it is no pleasure for my men to be running down disreputable and predatory females that infest a few of our licensed premises. Practices such as uncovered in this place must be wiped out entirely. The sins of a few misguided licensees must not be allowed to deprive the others of the right to work out the problem of liquor control.

By the action taken by your Council, respect for law and order is vindicated.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

3. PRIZES - THE AWARDING OF A PRIZE TO THE COUPLE DANCING THE BEST IS NOT PROHIBITED - HEREIN OF BALLROOM CALISTHENICS.

PRIZES - DOOR PRIZES ARE LOTTERIES AND HENCE FORBIDDEN.

My dear Commissioner:

Chapter 436, Laws of 1933, Section 36, empowers the Commissioner to make general rules and regulations, among other things, concerning "unfair competition." I am desirous of learning whether the following is considered unfair competition, whether there is a ruling governing the situation. If so, I would appreciate a copy of the ruling and penalty imposed. The holder of a Plenary Retail Consumption License desires to give a prize valued at between one and two dollars to the best dancing couple visiting his establishment, on certain nights of the week. May he in lieu of a dance prize give a door prize valued at fifty cents to one dollar to one or two guests visiting his establishment on certain evenings?

Respectfully yours,
George G. Tartar.

March 2, 1938

George G. Tartar, Esq.,
Camden, N. J.

My dear Mr. Tartar:

There is nothing in the law or the State regulations which would prevent the holder of a plenary retail consumption license from awarding a prize for dancing to the best couple. The prohibition against giving prizes does not apply where the inducement is not the sale of alcoholic beverages for off-premises consumption. Cf. Re Brown, Bulletin 224, Item 1.

If you want to give a prize for skill in the Suzi-Q, the Big Apple, or the higher Hog-Callings, you may.

But you may not give away door prizes. They are lotteries and hence forbidden on licensed premises. See Re Kohn, Bulletin 233, Item 1.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. ENFORCEMENT DIVISION ACTIVITY REPORT FOR FEBRUARY 1 to 28, 1938, INCL.

To: D. Frederick Burnett, Commissioner

ARRESTS:

Total number of persons	- - - - -	52
Licensees	- 6 Non-Licensees	- 46

SEIZURES:

Stillis - total number seized	- - - - -	15
Capacity 1 to 50 gal.	- - 9	
Capacity 50 gal. and over	- 6	
Motor Vehicles - total number seized	- -	5
Trucks	- 1 Passenger Cars	- 4
Alcohol		
Beverage alcohol	- - - - 461 gallons	
Mash - total number of gallons	- 4,750	
Alcoholic Beverages		
Beer, Ale, etc.	- - - - 13 gallons	
Wine	- - - - 76 "	
Whiskeys and other hard liquors	- 48 gallons	

RETAIL INSPECTIONS:

Licensed premises inspected	- - - - -	1855
Illicit (bootleg) liquor	- - - - 5	
Gambling violations	- - - - 58	
Sign violations	- - - - 88	
Unqualified employees	- - - - 100	
Other violations	- - - - 57	
Total violations found	- - - - 308	
Total number of bottles gauged	- - - -	11,301

STATE LICENSEES:

Plant control inspections completed	-	115
License applications investigated	-	22

COMPLAINTS:

Investigated and closed	- - - - -	257
Investigated, pending completion	- -	92

LABORATORY:

Number of samples submitted	- - - - -	97
Number of analyses made	- - - - -	93
Number of poison liquor cases	- - - - -	0
Number of cases of denaturants	- - - - -	3
Acetone cases	- 1	
Isopropyl "	- 2	
Number of cases of alcohol, water and artificial coloring	- - - - -	5
Number of cases of moonshine (home-made finished product of illicit still)	- 13	

Respectfully submitted,

E. W. Garrett,
Deputy Commissioner.

5. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES IN PARTICULAR SECTIONS OF MUNICIPALITY - PRINCIPLES APPLICABLE.

Dear Commissioner:

We have before us the question of limiting plenary retail distribution licenses and it appears to be the consensus of opinion among the members of the Municipal Council that some such limitation should be made, in order to properly regulate the retail sales of alcoholic beverages for consumption off the licensed premises.

To set up a numerical limitation is simple but it will not provide the proper solution for Clifton due to our large area and widely separated business districts. I was wondering if you had any regulations of other municipalities or if you would be kind enough to give me your thoughts on how we could accomplish a limitation and still provide for plenary retail distribution establishments in the various business sections if and when applications are made.

As an illustration, we feel that there are enough plenary retail distribution establishments along Main Avenue in the center of the city, but we further feel that should we limit the plenary retail distribution licenses to the present number outstanding, or less than the present number outstanding, we would be depriving the people of the Delawanna section of the city, 5.17 miles away, of the accommodations of plenary retail distribution establishments in that section. The same would apply to the business districts in other outlying sections of the city. The only lines dividing the city into parts are the ward lines and the district lines and I was wondering if it was possible to set up a limit for each ward or each district. In that way, we could prevent unfair competition with the evil of price cutting, substitutes, etc., and still not take away from the people in the outlying sections the accommodations to which they are entitled, should anyone desire to open such an establishment in those sections and give the people those accommodations.

Yours very truly,
William A. Miller,
City Manager.

William A. Miller,
City Manager,
Clifton, N. J.

March 2, 1938

My dear Mr. Miller:

There is, of course, no question of the Council's power to limit the number of licenses for the City as a whole (R.S. 33:1-40, Control Act, Sec. 37) by fixing the quota either at the number presently outstanding or at a greater or lesser amount. For form of such ordinance, see Re Sahl, Bulletin 198, Item 11.

And while there is no express power in the statute to zone municipalities finally and dispositively in respect to liquor licenses, nevertheless, where such zones have been established and were not arbitrary but were actually based on public convenience and necessity, then such zones have been honored as establishing a reasonable local policy. See Walsh v. Egg Harbor Township, Bulletin 192, Item 5; Re Smith, Bulletin 168, Item 5; Merritt v. Tabernacle, Bulletin 156, Item 3; Walsh v. Egg Harbor Township, Bulletin 146, Item 7; Re Henn, Bulletin 133, Item 6; Re Scull, Bulletin 125, Item 5; Re Wilson, Bulletin 69, Item 6; Brighton Hotel v. Loder, Bulletin 41, Item 6.

Ward lines or election districts, however, bear no relation to alcoholic beverage control. Re Wilson and Re Brighton Hotel, supra. Hence, no quota should be fixed based on such divisions. My suggestion is that the areas be designated by the particular streets which form their boundaries.

Decisions as to whether or not the quotas fixed for the different sections of the City or the geographical distribution is reasonable must, of course, be reserved until the limitation comes before me officially on appeal, when all interested parties can be heard and decision rendered on the merits. It will be considered at that time in the light of the principles expressed in the above mentioned rulings.

I shall be glad to go over any ordinance that you may prepare, prior to its formal introduction, to offer whatever comments or suggestions appear necessary.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - LYSAGHT v. DENVILLE.

CHARLES E. LYSAGHT,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF DENVILLE,)	
)	
Respondent)	
-----)	

Arthur M. Karl, Esq., Attorney for Appellant.
Frederick C. Henn, Esq., Attorney for Respondent.
John H. Grossman, Esq., Attorney for Objectors.
Charles Tyne, Esq., Attorney for John F. Hogan (Committeeman).

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located in the Lysaght Building, Township of Denville.

A previous application for the same kind of license at the same premises by the same applicant was denied a year ago and the denial was sustained on appeal on the ground that there was nothing in the record to impeach the good faith of the Township Committee in reaching their decision that there were a sufficient number of licenses already issued. Nor was there any error found in their determination to that effect. Lysaght v. Denville, Bulletin 163, Item 13.

The present application was denied as the result of a tie vote of 2-2 by the Township Committee, a board normally composed of 5 members but reduced, by a vacancy, to 4.

Appellant contends that one of the Committeemen who voted against his application was politically inspired; that his vote should be invalidated and the remaining vote, 2-1 in favor of the application, be taken as the true vote; that the present denial should therefore be reversed and a license directed to issue.

It is clear from the transcript that influences were exerted as well for as against appellant's application. As I said in Spanier v. Denville, Bulletin 200, Item 12:

"It is unfortunate when liquor licenses are granted or withheld by political chicanery."

Both Committeemen who voted favorably for appellant in the present case were members of the board which denied his previous application, one such Committeeman voting for the denial on that occasion. This Committeeman, although accounting for his change of vote, nevertheless testified, in effect, that the public demand is more than satisfied by the existing liquor places. Furthermore, there is indication that this Committeeman, prior to the present application, was in favor of an ordinance definitively limiting the number of consumption licenses in the municipality to the then and still outstanding number of ten.

One of the two Committeemen who voted against the present application, the one being subjected to attack was not a member of the previous board. The other Committeeman, however, presently Chairman and also Chairman of the past board, voted against both of appellant's applications because (as appears from his testimony) the Township at large and the vicinity in particular are, in his belief, amply serviced.

The net result is that, were the accusation against the Committeeman under attack taken to be true, nevertheless two of the three remaining Committeemen adhere to a belief normally warranting a denial of license - namely, that ample liquor places are outstanding to meet the public demand.

At the oral argument I indicated that the major problem confronting me on this appeal was not the truth of appellant's charge but rather the question whether or not public necessity or convenience demanded the granting of the application.

After carefully rereading the whole record, I find the burden of proof on this point is not sustained and consequently it is unnecessary to determine the truth of appellant's charge.

It appears that there are 10 consumption and 2 distribution establishments in Denville to service a normal population of 3500 and a summer population vaguely estimated at 10,000 to 20,000. Appellant's premises are located in a business section. One hundred feet from these premises there is a "package" store, of which appellant is the licensee. Within approximately 300 feet on either side of the premises, there is a consumption establishment. The remaining 8 consumption establishments in the Township are located at distances varying from some 600 feet to approximately $1\frac{1}{2}$ miles from appellant's proposed tavern.

Appellant contends, however, that his application cannot validly be denied on the ground of sufficiency of liquor establishments in the area because he plans to operate a type of business different from those now being conducted; that his business will be a popular-priced tavern and restaurant to which businessmen may resort. This same contention was urged but decided adversely on the occasion of appellant's previous application. Lysaght v. Denville, supra.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 2, 1938.

7. APPELLATE DECISIONS - JANDOLI v. ORANGE.

LOUIS JANDOLI,)	
	Appellant,)
-vs-		ON APPEAL
		CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF ORANGE,)	
	Respondent)

James A. Palmieri, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, the holder of a consumption license at 20 South Centre Street, Orange, appeals from a suspension of said license for sixty days.

Respondent, after a hearing duly held, imposed this punishment after finding licensee guilty on three charges which may be summarized as follows:

- (1) You did suffer or permit the storing or caching of lottery or number slips on your licensed premises and did possess or had custody of said lottery or number slips;
- (2) You did suffer or permit on your licensed premises the practice commonly known as book-making and stakeholding for the purpose of gambling;
- (3) You did engage in or allow, permit or suffer pool-selling and book-making on or about your licensed premises.

Charges (1) and (2) are alleged to be violations of Section 10 of an ordinance of the City of Orange entitled "An Ordinance to Regulate the Sale and Distribution of Alcoholic Beverages and Fixing a Penalty for Violation of the Provisions Thereof", which ordinance is now in effect. Section 10 provides:

"No licensee, his servant, agent or employee shall suffer or permit any form of gambling whatsoever on the licensed premises, nor shall any licensee, his servant, agent or employee suffer or permit the storing or caching of any gambling device, lottery or number slip or slips in and about the licensed premises, and no licensee, his servant, agent or employee shall have possession of, ownership or custody of any gambling device, lottery or number slip or slips."

Charge (3) is alleged to be a violation of Rule 7 of the State Rules Concerning Conduct of Licensees and Use of Licensed Premises, which Rule provides:

"No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises."

The case was submitted upon the transcript of the hearing held before the Municipal Board of Alcoholic Beverage Control.

On the day in question, September 29, 1937, a number of police officers of the City of Orange entered the licensed premises, which consist of a barroom in front and a rear room containing tables and chairs and a shuffle-board. Officer Brennan was the first to enter and was followed shortly thereafter by Captain Burns and other police officers. Officer Brennan testified that, when he entered, Jandoli was a few paces in front of the bar and motioned to someone in the rear room; that he (Brennan) immediately went to the rear room where he found James Chatta seated alone at one of the tables. At that time Chatta was tearing up certain slips of paper. The other officers came into the rear room shortly thereafter. They seized these slips (which represented bets on horses running that day), and \$47.20 then in Chatta's possession. They also seized from Chatta's table an Armstrong racing sheet and another paper indicating the winners of the first and second races. Later the officers found two lottery slips in Jandoli's overcoat which was hanging in some part of the licensed premises. Apparently there is no direct connection between these lottery slips and Chatta's activities on the licensed premises. Jandoli admitted ownership of the two lottery slips, but denied that he had any knowledge that there was any book-making being conducted on his premises by Chatta or anyone else. He likewise testified that he was behind the bar at the time Officer Brennan entered; that he did not signal to Chatta and that it would be impossible for him to so signal because of a partition which separated the barroom from the rear room. While Jandoli denied all knowledge of the evidence seized in the rear room, he admitted that he knew that Chatta "was in trouble before for this same thing." He also admitted that Chatta visited his premises as a customer sometimes as often as twice or three times a week.

As to the first charge: Appellant contends that his admitted possession of the two lottery slips found in his overcoat pocket is not sufficient to warrant a finding of guilt as to the first charge. He bases his contention upon the ruling made in Re Goldberg, Bulletin 163, Item 6, wherein it was held that mere possession of a lottery slip by a licensee is not a violation of Rule 6 of State Rules Concerning Conduct of Licensees. That rule provides that no licensee shall allow any lottery to be conducted or any lottery ticket to be sold or offered on or about the licensed premises. Hence that ruling properly declared that, while possession may be a link in a chain of proof of sale, it was not in itself, according to the language of the rule, an offense. That ruling, however, is out of point in the present case for this first charge is not based on State Rule 6 aforesaid but upon Section 10 of the City ordinance which expressly provides that "no licensee *** shall have possession *** or custody of any *** lottery or number slip or slips." The language is clear. The finding of guilt on the first charge is supported by the evidence.

As to the second charge: In order to maintain this charge under Section 10 of the Orange Ordinance which prohibits "any form of gambling whatsoever on the licensed premises", it would have to appear that the licensee suffered or permitted book-making to be done on his premises. There is no evidence in the record, however, to show that any gambling was being done or that book was being made. Chatta's possession of the betting slips and racing sheets shows aptitude, willingness and disposition to conduct gambling but that is as far as it goes. The apparatus for gambling was there but the gamblers were absent. Appellant cannot

be adjudged guilty of suffering or permitting something to be done when there is no proof that the act itself was done.

As to the third charge: This charge as above noted is based on State Rule 7, hereinbefore quoted. The exact charge is "that on September 29, 1937, you did engage in or allow, permit or suffer pool selling and bookmaking on or about your licensed premises contrary to and in violation of Rule 7", etc. As the charge is thus stated, there is nothing in the testimony to support it. In substance, it is the same as the second charge except that one is based on a local ordinance and the other on a State regulation. What was said in respect to the second charge, therefore, applies equally here. There is no proof that either pool selling or bookmaking was actually going on or being done on the licensed premises, let alone that the licensee was permitting it.

If the charge against Jandoli had been that he had allowed, permitted or suffered upon the licensed premises devices designed for the purpose of pool selling and bookmaking contrary to and in violation of Rule 7, etc., then there would be plenty in the testimony to show that Jandoli knew what Chatta was doing; that he knew that Chatta had been up for this same kind of thing before; that he knew that Chatta possessed the betting slips and the racing sheets which, certainly, are devices designed for the purpose of pool selling and bookmaking. So, too, I could readily find that Jandoli did signal to Chatta as Officer Brennan testified. Of course, it would be impossible to signal if he were behind the bar but the Officer testified distinctly that he was standing in front of the bar. But all of this leads nowhere because, in the instant case, Jandoli is not charged with permitting the presence of such pool selling or bookmaking devices upon the licensed premises. The charge made against him was confined to a single part of Rule 7 of which there was no proof of violation. The charge did not include the other part of the rule which, as the proof turned out, would have been applicable. No conviction may be broader than the charge with which a defendant is confronted. There being no evidence to support the charge which was actually made against him in respect to State Rule 7, it follows that, as in the case of the second charge, he must be acquitted on this count.

Since the finding of guilt on the first charge has been sustained, the action of respondent in suspending the license was proper. The only question that remains is one of penalty. This was the first offense of this licensee. The penalty imposed is disproportionate to the offense proven. The same course will be taken as in Trezza v. Orange, Bulletin 229, Item 7.

The action of respondent in suspending the license is affirmed. The period of suspension is hereby reduced to fifteen days.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 3, 1938.

8. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - WOMEN LICENSEES
MUST OBEY THE LAW TOO.

March 3, 1938

H. K. Colkitt, Clerk,
Township of Southampton,
Vincentown, N. J.

Dear Mr. Colkitt:

I have staff report and your certifications of the proceedings before the Township Committee of Southampton against:

1. Mrs. Mary Di Paolo, t/a Red Lion Inn
2. Ada Bell, t/a Mickey Mouse Inn
3. Lilly May Lowden, t/a Pine Acres Lodge,

all charged with (a) having sold alcoholic beverages on Sunday in violation of referendum and (b) having permitted the licensed premises to remain open on Sunday in violation of local regulation.

I note these licensees pleaded guilty to the charges and that each license was suspended for a period of five days.

Such punishment was certainly in order. The people of Southampton, by their vote, have decreed that there shall be no Sunday sales of alcoholic beverages within the boundaries of their municipality. Hence, it is not for any licensee to put herself above the will of the citizens of the municipality which granted the very privilege which was so flagrantly abused by these licensees.

Your Committee has served notice that such tactics by Southampton licensees will not be tolerated. My sincere appreciation is extended for the fine backstopping in the interest of proper law enforcement.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. RULES GOVERNING DECANTING OF WINE - REGULATIONS NO. 25 PERMIT
DECANTING SOLELY FOR ON-PREMISES SERVICE AND NOT FOR OFF-PREMISES
SELLING - LABELS DISAPPROVED.

March 3, 1938

Otto Saldarini, Esq.,
Union City, N. J.

Dear Sir:

The gummed labels you enclosed do not comply with Rule 2 of Regulations No. 25 (Rules Governing Decanting of Wine) because they contain no space for setting forth the type of wine, the date of receipt of the tax paid barrel, etc., or the signature. The label must contain all the information required by said Rule 2.

As to your second question: Regulations No. 25 were intended to permit the drawing of wine from a larger to a smaller container solely for on-premises service as distinguished from off-premises sale. While Rule 1 of said Regulations allows the wine to be transferred to "a decanter, bottle or other container", it was not intended to permit the attachment of the usual type of lithographed labels to the bottle into which the wine has been transferred. Any other construction would make it impossible to discover violations of R. S. Sec. 33:1-78 (Section 78 of the Control Act) which remains in full force and which prohibits any person, except a person holding a brewery, distillery, winery or rectifier's license, from bottling alcoholic beverages for sale or resale.

There is enclosed copy of Bulletin 224, Item 3, which sets forth the Rules Governing Decanting of Wine (now Regulations No. 25), and the reasons why said Rules were promulgated.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. APPELLATE DECISIONS - DZIEMAN v. PATERSON

JOHN DZIEMAN,)	
	Appellant,)
-vs-		ON APPEAL
		CONCLUSIONS
BOARD OF ALDERMEN OF THE)	
CITY OF PATERSON,)	
	Respondent)
-----)	

Louis C. Friedman, Esq., Attorney for Appellant.
Salvatore D. Viviano, Esq., by George Dimond, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from an order entered by respondent suspending appellant's plenary retail consumption license for three weeks because of forbidden Sunday sales. Appellant contends, first, entrapment; secondly, that the penalty is excessive.

By resolution adopted June 28, 1935, the City of Paterson, in which appellant's tavern is located, forbids the sale of alcoholic beverages on licensed premises between the hours of 3 A. M. and 1 P. M. on Sundays.

At 9:45 A. M., Sunday, October 24, 1937, Investigators Miskovsky and Cox went to appellant's tavern to investigate complaints that illegal Sunday sales were being made. They observed two men enter an adjoining alley, knock on a rear door of appellant's premises, and gain entry into the tavern. The investigators followed the same procedure and gained admittance. Inside, they observed the aforesaid two men seated at a table drinking beer. The investigators went to the bar, where appellant's bartender asked for their order. Investigator Miskovsky called for and was sold a bottle of Wilson whiskey and also purchased and was served a round of drinks (whiskey) for himself and Investigator Cox. During this time another man entered the premises through the rear door, purchased a bottle of beer and left.

The reports of the investigators were referred to respondent; disciplinary proceedings were instituted; appellant was duly adjudged guilty of making the aforesaid sales to Investigators Miskovsky and Cox, and his license suspended as aforesaid.

The above facts contain no suggestion of entrapment. Cf. Zimmerman v. Bernards, Bulletin 228, Item 10. When those facts were disclosed by Miskovsky, who was the only witness called by appellant at the present hearing, appellant's attorney declared that "in fairness" he withdrew the contention of entrapment and relied solely upon his contention that the penalty was excessive.

The measure or extent of penalty to be imposed in a disciplinary proceeding against a municipal licensee rests within the sound discretion of the issuing authority. As I said in Eckert v. Paterson, Bulletin 114, Item 13:

"Ordinarily, the punishment to be meted out to a guilty licensee is to be determined by the local issuing authorities."

I have on infrequent occasion reduced an excessive penalty. See Trezza v. Orange, Bulletin 229, Item 7; Jandoli v. Orange, Bulletin 233, Item 7. The abuse of discretion, however, must be palpable. As I said in Robinson v. Newark, Bulletin 54, Item 2.

"....the commissioner has the power on appeal to set aside or modify a penalty imposed by a local issuing authority. Such power, however, will be sparingly exercised and only with the greatest caution."

It is true that, with reference to forbidden Sunday sales, I have on frequent occasion suggested a five-day suspension of license as the minimum penalty for a first violation. Re Linden, Bulletin 175, Item 2; Re Middlesex, Bulletin 180, Item 9; Re Lyndhurst, Bulletin 197, Item 13; Re Manville, Bulletin 198, Item 9; Re Lodi, Bulletin 222, Item 13; cf. Re South Amboy, Bulletin 219, Item 11; Re Jersey City, Bulletin 222, Item 5. But that suggestion was only a minimum. It did not preclude a local issuing authority from imposing a greater penalty within the limits of sound discretion. Cf. Re Manalapan, Bulletin 142, Item 9 (ten days applauded); Re Burlington, Bulletin 151, Item 9 (outright revocation for second offender merits emulation); Re Gloucester, Bulletin 197, Item 15 (thirty days' suspension for selling on Sunday shows determination to enforce the law in a manner to command respect); Re Gloucester, Bulletin 211, Item 13 (thirty days' suspension for Sunday sale is a penalty which brings home in no uncertain manner that rules and regulations were made to be obeyed); Re Pemberton Township, Bulletin 217, Item 9 (twenty days' suspension for sales after hours teaches cheaters that the law was made to be obeyed). The penalty inflicted in the instant case, so far from being excessive, is reasonably conservative.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 4, 1938.

11. LICENSEES - EMPLOYEES - PAYMENT OF WAGES IN LIQUOR.

Gentlemen:

In closing out a bar one of my clients has on hand a stock of liquor. He has no money with which to pay his help and is desirous of paying them off by giving them his stock of liquor.

Are there any regulations of the commission that preclude action of this type.

Yours very truly,

McDonough & McDonough

By A. V. McDonough

March 4th, 1938.

McDonough & McDonough, Esqs.,
Plainfield, N. J.

Gentlemen:

Att: Andrew V. McDonough, Esq.

Replying to yours of the 2nd, a retailer may sell or give away alcoholic beverages only to consumers. Hence, the plan would be objectionable if the employees were to resell the liquor. Unless they could, it wouldn't be much to keep house on or to pay rent. To be sure, they might forget their debtor a while, but I doubt if they'd forgive the debt. It would be better for all concerned if the employer sold his stock on hand and paid his help whatever he could in cash.

Aside from this, however, R.S. 34:11-4 provides for payment of wages in lawful money; R.S. 34:11-17 provides that it shall be unlawful for any person or corporation to pay their employees in store goods or merchandise and R.S. 34:11-19 provides that violation of the Section just mentioned constitutes a misdemeanor.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. LICENSEES - HOURS OF SALE - CHANGE IN REGULATIONS MAY BE MADE AT ANY TIME AND WITHOUT WAITING FOR A NEW LICENSE YEAR TO BEGIN - HEREIN OF THE POLICY OF EXERCISE OF THE POWER.

My dear Commissioner:

The January term of Grand Jury in Morris County, after reviewing the testimony of dead and injured occasioned by drinker-drivers gave it as their consensus of opinion "that the lateness of the closing hours for the sale of alcoholic beverages increases the danger of accidents upon the roads, and that earlier closing hours be provided and enforced." The Grand Jury transmitted their opinion to the governing officials of every municipality in the County.

Will you please advise me if it is legally possible for the Mayor and Council of any borough to change the closing hours of those places who have been licensed to serve alcohol beverages, particularly where such places have been operating for several years under the uniform closing hours during that time, and where such places have paid their license fee with the implied or definite understanding that they would be permitted to continue closing at a prescribed hour.

If it is permissible to change the closing hours without waiting until the new license term comes around, would you be so kind as to prepare, and forward to me as soon as possible, the form of a motion that may be used by a Mayor and Council who would be willing to change such closing hours in conformity with the Grand Jury request.

May I state in closing that I am not a teetotaler but believe the public is fed up with the increasing number of dead and maimed due to those who drink to excess and drive autos.

Sincerely yours,

Wm. A. Closter

March 5, 1938.

Hon. Wm. A. Closter,
Madison, N. J.

My dear Judge Closter:

I have yours of February 25th and am gratified by the forward-looking action taken by the Morris Grand Jury.

It is wholly within the power of every municipality to change their respective closing hours without waiting for a new license year to roll around. The regulations now in force represent what the governing body believed to be in the best interest of the public at large. If experience has shown the contrary, the regulations may be amended at any time for the right to change is founded on the same power which vested the right to enact in the first place. Re Lamson, Bulletin 118, Item 6. The existing regulations neither constitute a contract with present licensees, nor a continuing representation on which they have a right to rely, because the regulation was not enacted for their benefit but solely as an expression of the public policy then declared. Re Joseph, Bulletin 46, Item 6. The license certificate itself sets forth that it is issued subject to the provisions of all rules and regulations then or thereafter in effect. Re Leonard, Bulletin 225, Item 14.

The power therefore exists.

In its exercise, effort should be made to attain cooperative action by neighboring communities. Unless closing hours are substantially uniform, all that will result, as a practical matter, is to drive patronage away from the local trade into some adjoining municipality of more liberal bent. The automobile is no respecter of municipal boundary or even county lines. Why not, then, an informal convention of the municipal officials of adjacent municipalities in endeavor to agree on a common closing hour?

The wording of the revised regulation should follow the same form now in force in each different municipality, the only difference being the changing of the specified hours. Of course, if the present regulation was established by ordinance, as distinguished from resolution, any amendment must likewise be by ordinance.

Thanks for your continued and valued cooperation.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

13. LICENSEES - EMPLOYEES - NON-RESIDENT PHARMACIST - HEREIN A CLARIFICATION OF THE RESIDENCE REQUIREMENT.

Dear Sir:

According to the rules and regulations no person is permitted to work in a liquor store unless they have been a resident of Jersey City for five years.

We have just engaged a new pharmacist who is registered by the New Jersey State Board of Pharmacy but before we definitely hire him we would like to know if it is permissible to do so, as this man is a resident of New York State. Of course his job is merely filling prescriptions and waiting on customers at the Drug Counter.

Trusting you will give this your personal attention, we are,

Respectfully yours,

Sinder's, Inc.

Sinder's, Inc.,
Jersey City, N. J.

March 6, 1938.

Gentlemen:

You seem to have the importance of residence in Jersey City somewhat exaggerated. It is not true that no one may work in a liquor store unless he has been a resident of that city for five years. While such a requirement, no doubt, would have its points, and certainly be educational, it has not, at present writing, been made a part of the law.

Hence, if the pharmacist whom you contemplate employing is an American citizen and of full age, he may be employed by you notwithstanding that he is a resident of New York State, and he may sell packaged liquor as well as fill prescriptions and serve your customers at the drug counter, providing only that he apply for and receive the statutory Special Permit from the State Commissioner which allows such employment by such a non-resident.

Enclosed are application forms for such permit which should be executed in duplicate. Upon receipt thereof, it will be given immediate attention.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. DISCIPLINARY PROCEEDINGS - SALES AFTER CLOSING HOURS - SUSPENDED SENTENCE.

March 5, 1938.

Walter Beisch, Secretary,
Municipal Board of Alcoholic Beverage Control,
North Bergen, N.J.

Dear Mr. Beisch:

I have staff report and your certification of the proceedings against the Red Robin Grill, Inc., charged with having sold alcoholic beverages after 2:00 A.M. in violation of your local regulation.

I note the licensee pleaded guilty to the charge and that sentence was suspended.

My investigators report that in announcing the suspended sentence, Chairman Marcy issued a statement to the effect that a new regulation is now in force in North Bergen which fixes the deadline for sales of alcoholic beverages at 3:00 A.M. instead of 2:00 A.M. as heretofore; further, that he warned this licensee to obey strictly the new closing hour regulation.

Believing that, perhaps, this licensee and all North Bergen licensees were lulled into a false sense of security by the passive attitude of your Board as to violations of the old 2:00 A. M. closing hour regulation, I am inclined to let the matter rest in its present position until such time as it can be ascertained if strict compliance will be demanded by your Board of its new regulation.

There should certainly be no reason for warnings in the future.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

15. LIMITED WINERY LICENSEES - MAY IMPORT NATURALLY FERMENTED BUT NOT FORTIFIED WINES - BUT MAY NOT SELL SUCH IMPORTATIONS UNLESS SAME ARE BOTTLED OR REBOTTLED BY THE LICENSEE SO AS TO CONSTITUTE IT "HIS PRODUCT."

March 5, 1938.

H.S. Dorf & Co., Inc.,
Newark, N. J.

Gentlemen:

In reply to your letter of February 17th, there is nothing in the State law or the rules and regulations of this Department which would prohibit the holder of a limited winery license from importing any naturally fermented wines or fruit juices from foreign countries. Of course, such licensee could not handle fortified wines.

The imported naturally fermented wines or fruit juices would have to be bottled or rebottled by the licensee so as to constitute it "his product"; otherwise, said wines could be sold only pursuant to a wholesaler's license.

There are enclosed copies of Re Richards, Bulletin 129, Item 4 and Re Tomasello, Bulletin 212, Item 6, which refer to the privileges granted to the holders of limited winery licenses.

Very truly yours,

New Jersey State Library

D. Frederick Burnett
Commissioner

HENDRICKSON