

and the vehicle used in its transportation are subject to confiscation. R.S. 33:1-66(c). It is determined that the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the seized property (set forth in Schedule "A", annexed hereto) be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and that it be retained for the use of hospitals, and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 27, 1939.

SCHEDULE "A"

- 50 5-gallon cans alcohol
- 1 Ford Coach, Serial No. 1753057
- N.J. 1939 Registration No. AP54B

4. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDER VACATED

In the Matter of the Seizure)
of a number of still parts, a)
quantity of denatured alcohol,)
three motor vehicles and a)
quantity of denatured alcohol,)
three motor vehicles and a)
quantity of household furniture)
at the Beacon Hill Country Club)
located on Chapel Hill Road,)
Township of Middletown, County of)
Monmouth and State of New Jersey.)

Case #5450
On Petition
CONCLUSIONS AND ORDER

.....)

Applegate, Stevens, Foster & Reussille, Esqs., by
E. Allaire Cornwell, Esq., Attorneys for Petitioners
(Bankers Trust Company and Isaac Michaels, Executors
and Trustees under the Last Will and Testament of
Elizabeth King Hosford).

BY THE COMMISSIONER:

On November 24, 1939 an order of 6 months' padlock, commencing November 30, 1939, was entered herein for premises known as the "Beacon Hill Country Club", Chapel Hill Road, Middletown Township, because of a bootleg still found there. Re Seizure Case 5450, Bulletin 364, Item 14.

At time of the hearing, the Bankers Trust Company and Isaac Michaels, joint holders (as testamentary executors and trustees) of a mortgage on the premises, contested padlock in so far as it would interfere with their eventual possession, their mortgage then being in stage of foreclosure. However, since, so far as appeared, they did not at that time or at time of disposition of the case have the right to possession, padlock was entered but with leave reserved to them, when gaining such right, to petition for removal of the padlock.

They have now filed such petition, from which it appears that on September 18, 1939 they purchased the premises at sheriff's sale in the foreclosure proceedings; that under such sale, which was duly confirmed by the Court of Chancery, they received a sheriff's deed, dated October 6, 1939, which was duly recorded with the Monmouth County Clerk on October 9, 1939; that the premises, vacant since September 18 last (the date of the sheriff's sale), are seriously in need of repairs; that they seek to have the padlock lifted in order to make these repairs and to rent or sell the property; that they were wholly innocent and unaware of the bootleg still.

I am satisfied from the petition that they are entitled to the relief sought.

Accordingly, it is ORDERED that the said order of padlock previously entered herein be and is hereby vacated, effective immediately.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 27, 1939.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - LICENSE AT SHORE SUSPENDED NEXT JUNE.

In the Matter of Disciplinary)
Proceedings against)
)
 CONGRESS HALL HOTEL CO.)
 Perry St. & Congress Place)
 Cape May, New Jersey)
)
 Holder of Plenary Retail)
 Consumption License C-88)
 issued by Judge Palmer M. Way of)
 the Court of Common Pleas for)
 Cape May County.)
)
)

CONCLUSIONS
AND
ORDER

Stanton J. MacIntosh, Esq., Attorney for the Department
of Alcoholic Beverage Control.

Congress Hall Hotel Co., by Joseph A. Kane, Assistant
Secretary-Treasurer.

BY THE COMMISSIONER:

The licensee by its Assistant Secretary-Treasurer has pleaded guilty to a charge that on or about September 9, 1939, without having first obtained a special permit so to do, it sold a pint bottle of WINDSOR Straight Bourbon Whiskey (3 years old) below the minimum consumer price published in Bulletin 540 of this Department, in violation of Rule 6 of State Regulations No. 30.

The usual punishment for this violation is ten (10) days. However, the licensee entered his plea in ample time prior to the hearing and thereby saved the

Department time and expense. It appears that the licensed premises is presently closed for the winter season and will not reopen until approximately June 1, 1940.

Accordingly, it is on this 26th day of December, 1939

ORDERED that Plenary Retail Consumption License C-88, heretofore issued by Judge Palmer M. Way of the Court of Common Pleas for Cape May County, be and the same is hereby suspended for five (5) days, effective June 15, 1940 at 12:01 A.M.

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)

CARLO WINE & LIQUOR CO.)
163 Summit Avenue)
Union City, N. J.)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Distribution License D-14 issued by the Board of Commissioners of the City of Union City.)
)

.....

Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

Haig Turnamian, Treasurer for Carlo Wine & Liquor Co.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge that on or about September 29, 1939, without having first obtained a special permit so to do, it sold a pint bottle of WILSON "THAT'S ALL" WHISKEY below the minimum consumer price published in Bulletin 320 of this Department in violation of Rule 6 of State Regulations No. 30.

The usual punishment for this violation is ten days. The licensee entered its plea in ample time prior to hearing and thereby saved the Department time and expense.

While this is the first offense of its kind by this licensee, its record is not clear. It received a five (5) day suspension effective January 3, 1939 from the Union City authorities for Sunday sales before the opening hour. The penalty in the instant case will therefore be fifteen days less five for the plea.

Accordingly, it is on this 26th day of December,
1939

ORDERED that Plenary Retail Distribution License D-14, heretofore issued by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for ten (10) days, effective January 2, 1940 at 12:01 A.M.

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - GAMBLING - PAY-OFF ON
BAGATELLE.

December 26, 1939

Morrison, Lloyd & Morrison, Esqs.
Ridgefield Park Village Attorneys
Hackensack, N. J.

Gentlemen:

I have before me staff report and your letter of December 13th re disciplinary proceedings conducted by the Ridgefield Park Board of Commissioners against Max R. Seitzman, 202 Main Street, charged with redeeming in cash free games won on bagatelle machines, and note that on confession of guilt his license was suspended for seven days.

Please express to the members of the Board of Commissioners my appreciation for their conduct of these proceedings and the substantial penalty imposed. I understand that in addition to the suspension of the liquor license Seitzman has had his bagatelle license revoked and has also been charged with violating the bagatelle licensing ordinance.

The action of the Board of Commissioners in following this violation right down the line shows Ridgefield Park licensees that it means grim business.

Thanks also to your firm. Your advice to the Board was wholly correct and wholesomely effective.

That's the way!

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - CLOSING HOUR VIOLATION -
CASE DISMISSED BY MUNICIPALITY AFTER FINES, REPRIMAND
AND WARNING.

December 26, 1939

Edward J. Kappelmann
Green Brook Township Clerk
R.F.D. 1, Bound Brook, N. J.

My dear Mr. Kappelmann:

I have before me your letter of December 18th re

disciplinary proceedings conducted by the Township Committee against

1. Max Klimek and Edwin S. Harlin
t/a Brookside Bar and Grill
Highway 29 and Mills Road
License C-7 Mun. Rev. 147
2. Frank J. Ferraro and Michael Ferraro
t/a Rex Bar and Grill
Highway 29
License C-10 Mun. Rev. 148

I note that the licensees were charged on municipal initiative with permitting the licensed premises to be open and patrons to congregate therein after hours in violation of local ordinance, and that upon confession of guilt they were reprimanded severely and warned that repetition of the violation would result in suspension of the license.

I understand that the licensees claimed that they were trying to close their licensed premises at the time the violations were discovered by local officers, who corroborated that fact; that each partnership licensee had been previously fined Fifty Dollars by Recorder Ruh for the same violation; that the members of the Township Committee believe that the licensees needed only a violation of record to make them realize that the closing hour is to be strictly observed in future.

I am glad, the facts considered, to accept the judgment of the Township Committee and desire that you express to its members my appreciation for their conduct of these proceedings.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. NEW YEAR'S EVE PARTY - PRACTICE OF "BRINGING YOUR OWN" UPON LICENSED PREMISES DEPLORED ESPECIALLY AT A TIME WHEN A REFERENDUM FORBIDS SALES EVEN THOUGH TECHNICALLY THE REFERENDUM DOES NOT AFFECT CONSUMPTION.

December 28, 1939.

Christian N. Dell,
Chief of Police,
East Orange, N. J.

My dear Chief:

I understand from your telephone call that an East Orange licensee purposes to hold a party on New Year's Eve, starting Sunday night at 9:00 or 10:00; that those who come are to "bring their own" and that the licensee, up to midnight, will sell nothing but non-alcoholic set-ups and accessories such as soda and ginger ale; that, at midnight, the bar will be opened, and from then on until 4:00 A.M., whatever is desired in the way of alcoholic beverages may be purchased.

There is nothing in the matters above recited against the law or the rules. It is deplorable practice, however, for the reasons set forth in my letter of a year ago to Nolan and Hazen, Bulletin 290, Item 1.

Since it is within the power of the licensee, there is nothing that you can do about it except to see that the representations made as to conduct on Sunday evening are strictly performed.

You might also give the licensees some friendly advice. They are pennywise and pound foolish in inviting the public to bring their own on New Year's Eve. Whatever is brought will be consumed. This will go on long after the bar is opened. Each such drink spoils a sale that the licensee otherwise might make.

It's a shortsighted licensee who allows any liquor to be consumed on a licensed place during the hours in which a referendum prohibits sales. As I wrote the Excise Board in the letter above mentioned:

"No practice should be countenanced which gives the very appearance of flaunting or defying the wishes of the majority. Licensed places, at least, ought not to be used for the very purposes to which the electorate has declared its opposition. To trifle with that sentiment is to invite disaster. The power which extinguished Sunday selling can, if exasperated, wipe out the retail industry altogether. Those who mock invite the bears."

Very truly yours,

D. FREDERICK BORNETT,
Commissioner.

P.S. I understand that the licensee in question conducts a bona fide restaurant. Under the East Orange ordinance, that is the only reason why he can be open at all on Sunday.

10. COURT DECISIONS - NEW JERSEY SUPREME COURT - THE TOWNSHIP OF DOVER VS. VAN KIRK, ET AL.

NEW JERSEY SUPREME COURT

No. 223 October Term, 1939

THE TOWNSHIP OF DOVER IN THE COUNTY)
OF OCEAN, a municipal corporation of)
the State of New Jersey,)

Prosecutor,)

-v-)

WILLIAM J. VAN KIRK and HONORABLE)
PERCY CAMP, Judge of the Ocean County)
Court of Common Pleas,)

Respondents.)

Argued October 1939 Decided

On Certiorari

For prosecutor, David A. Veeder, Howard Ewart
For respondents, Nathan L. Jacobs, Joseph A. Citta
Before Justices Parker, Bodine and Perskie.

BODINE, J. The township of Dover in Ocean County brings this writ to test the constitutionality of a statute entitled "An Act concerning alcoholic beverages, P. L. 1935 (R. S. 53:1-1 to 81), as supplemented and amended (R. S. 53:1-21), so far forth as it purports to authorize the granting of plenary retail liquor consumption licenses by the Judges of the court of Common Pleas in sixth class counties. Ocean County is a sixth class county; so also is Cape May. The Classification is predicated upon population and proximity to the Atlantic Ocean.

The gravamen of the complaint is that the legislature has taken from the municipal governing bodies in sixth class counties all power over the granting of plenary retail liquor consumption licenses, the suspension and revocation thereof, fixing license fees, making of rules and regulations concerning the conduct of the business, prohibiting or regulating Sunday sales, and other matters; and has conferred upon the Judges of the court of Common Pleas in those counties such power in violation of paragraph 11 of Section 7 of Article IV of the State constitution, which provides that the legislature shall not pass private, local or special laws regulating the internal affairs of towns and counties.

The learned counsel for the prosecutor, by an industrious use of the 1939 Legislative Manual, has made the following argument: "Ocean County has a population of 33,069 and Sussex County a population of only 27,830. Because Ocean County is a county of the sixth class, retail liquor consumption licenses in Ocean County are granted by the Judge of the Court of Common Pleas, whereas in Sussex County, with a lesser population, retail liquor consumption licenses are granted by the local governing bodies in each of the municipalities. Furthermore, while Dover Township has a population of 3,970 of the twenty-four municipalities in Sussex County, there are only two having a population as large as that of Dover Township. Nevertheless, the local governing body of every municipality in Sussex County has the power to grant retail liquor consumption licenses, to fix the fees therefor, to suspend and revoke licenses and to make regulations respecting the hours of sale, Sunday selling, and other matters pertaining to the administration of the law, all of which is denied to the governing body of the Township of Dover, in the county of Ocean."

"The Borough of Point Pleasant Beach in the county of Ocean has a population of 1,844, whereas the adjoining borough of Brielle, in Monmouth County, has a population of but 684. The Township of Lakewood, in the county of Ocean, has a population of 7,869, whereas the adjoining township of Howell, in Monmouth County, has a population of but 3,146."

"The township of Plumsted in the county of Ocean, has a population of 1,215, whereas the adjoining township of New Hanover, in Burlington County, has a population of but 646."

"In the borough of Point Pleasant Beach and in the townships of Lakewood and Plumsted, all in the county of Ocean, the local governing bodies have been deprived of the power to fix license fees, grant or

revoke licenses, regulate the hours of sale and Sunday selling, and the making of other regulations under the law, but the borough of Brielle, in the county of Monmouth, the township of Howell, in the county of Monmouth, and the township of New Hanover, in the county of Burlington, all adjoining the county of Ocean and having smaller populations than the adjoining municipalities in the county of Ocean, possess the power to fix license fees, grant and revoke licenses, regulate the hours of sale and Sunday selling, and the making and enforcement of other regulations in the administration of the Alcoholic Beverage Act."

It would seem therefrom that the prosecutor, deprived of a right possessed by other municipalities to regulate the sale of liquor, might well complain. The act interferes with both municipal regulation and revenue, and has no sound or general bearing upon the welfare of the people. Although the regulation of the sale of liquor is within the police power of the state, there is no apparent reason why the problem in Ocean and Cape May counties is different from the problem in adjoining counties bordering on the Atlantic Ocean.

In *Van Riper v. Parsons*, 40 N. J. L. 1, Chief Justice Beasley said, page 9: "Interdicted local and special laws are all those that rest on a false or deficient classification; their vice is that they do not embrace all the class to which they are naturally related; they create preference and establish inequalities; they apply to persons, things or places possessed of certain qualities or situations, and exclude from their effect other persons, things or places which are not dissimilar in these respects."

Legislation general in its terms, which in fact regulated only the granting of liquor licenses in the city of Lambertville and the towns of Frenchtown and Clinton in the county of Hunterdon, was held within the constitutional interdict. *Zeigler v. Gaddis*, 44 N. J. L. 363. The authorities in this state, to the effect that legislative classification to be constitutional must rest upon distinctions that are substantial and not illusory; that it must embrace all and exclude none whose conditions and wants are similar, are collected in *Raymond v. Township of Teaneck*, 118 N. J. L. 139; *Kirsch v. Dias*, 123 Id. 97.

The present act cannot be sustained as one dealing with the structure and machinery of government in general terms. *Wilson v. Fromm*, 80 N. J. L. 582; *Cole v. Corio*, 105 Id. 511.

The license in question will, therefore, be set aside but without costs.

11. SUPPLEMENT TO SPECIAL RULING ON UNCONSTITUTIONAL PROVISIONS OF ALCOHOLIC BEVERAGE LAW CONCERNING ISSUANCE OF LICENSES IN SIXTH CLASS COUNTIES - NOTICE TO MUNICIPAL CLERKS IN THESE COUNTIES AS TO HOW TO SET UP THE NECESSARY MACHINERY TO HANDLE THE ISSUANCE OF LIQUOR LICENSES BY EACH MUNICIPALITY DIRECT.

December 29, 1939.

To Municipal Clerks in Cape May and Ocean Counties except Ocean City and Dennis Township in Cape May County.

In line with the special ruling of December 27th, 1939, concerning the issuance of liquor licenses in these two counties (Bulletin 371, Item 1), copy enclosed, it is necessary that machinery be set up forthwith for the issuance of licenses in each municipality where licenses are now outstanding or which desires to issue liquor licenses itself the same as other municipalities in the State.

I am informed that the retail sale of alcoholic beverages is prohibited by deed and ordinance in Ocean City and by referendum in Dennis Township, both in Cape May County. Therefore, this notice does not apply to those municipalities.

While no licenses are presently effective in the boroughs of Cape May Point, South Cape May, West Cape May and West Wildwood, in Cape May County, and in the boroughs of Harvey Cedars, Island Beach, Island Heights and Mantaloking, in Ocean County, nevertheless there may be, if these municipalities, each for itself, so decide.

Hence this notice applies and is now sent to all the municipal clerks in the two counties mentioned except the two especially excepted.

I am sending you under separate cover copies of the pamphlet reprint of the Alcoholic Beverage Law (now Title 33 of Revised Statutes) the Regulations, and Bulletin 237.

As regards the law, I suggest that you examine particularly Sections 1, 2, 12, 12.1, 16, 19, 20, 22, 24, 25, 26, 31 through 35, 40 through 47.1, 49 through 53, 76, and P.L. 1939, c.234, on page 64.

As regards the Regulations, see pages 13 through 17, 18 through 29, and Regulations 2, 3, 4, 5, 6, 7, 9, 11, 14, 15, 16, and 20 through 26.

Bulletin 237 will give you the forms of applications for licenses and license certificates. This is the matter to which you should first devote your attention. The applications should be printed -- each municipality for itself -- ready on hand to give out to applicants. This is a matter of prime importance for it is the first step in the issuance of any license. Until an application is on file, the applicant cannot make newspaper publication. See Regulations No. 2. Of course, it is not necessary to print forms in respect to licenses which the governing body of the municipality may decide not to issue at all. The license certifications should be printed in stub books, and licenses may be authorized and granted by resolution

of the governing body, in conformance with the procedure set out in Regulations No. 4.

Please take up at once with the governing body of your municipality the enactment of an appropriate ordinance authorizing the issuance of licenses, fixing the annual fees therefor, and establishing such regulations as the governing body may deem necessary or proper. The statute provides for five classes of retail licenses which may be issued by the municipality. You will find the privileges these licenses confer and the minimum and maximum limits within which the fees must be fixed in R.S. 33:1-12. At present, in both counties there are but three classes of licenses:

Plenary Retail Consumption
Plenary Retail Distribution and
Club.

The fees in Cape May County are now, respectively \$350, \$350 and \$100. The fees in Ocean County are now, respectively \$500, \$365 and \$100. These need not necessarily be the fees in your municipality. Each municipality may fix the fees for itself at whatever figures it deems proper, provided that the fee for the Plenary Retail Consumption License is not less than \$200 nor more than \$2000, the fee for the Plenary Retail Distribution is not less than \$100 nor more than \$1000, and the fee for the Club License is not less than \$50 nor more than \$150.

Following, for your guidance, is a sample form of ordinance authorizing the issuance of Plenary Retail Consumption, Plenary Retail Distribution and Club Licenses:

"An ordinance concerning alcoholic beverages.

"Be it ordained by the Township Committee of the Township of Union, Ocean County, pursuant to Title 33 of the Revised Statutes of New Jersey (1937), as amended and supplemented,

"1. The fee for Plenary Retail Consumption Licenses shall be \$500 per annum.

"2. The fee for Plenary Retail Distribution Licenses shall be \$365 per annum.

"3. The fee for Club Licenses shall be \$100 per annum."

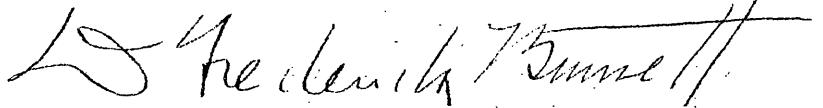
There is one other thing which the governing body of your municipality should turn over in mind and that is to enact appropriate regulations of the retail liquor business. It is not imperative that this be done immediately for my special ruling, above mentioned, continues in effect the present county regulations until the local municipal governing bodies enact their own regulations, viz.:

"All regulations governing the liquor traffic and licensees, now in force in Ocean and Cape May counties respectively, are hereby ratified, adopted and promulgated in those counties

respectively effective immediately and until they are reenacted or substitute regulations are enacted by the local governing bodies in the several municipalities in Ocean and Cape May counties and duly approved."

I cordially recommend to each municipal governing body that it submit the ordinance it proposes to adopt, prior to introduction, in which event I shall be glad to offer such constructive comments or suggestions as appear necessary.

I understand that the official Bulletins were sent to you for several years, but that this practice was later discontinued. If you will give me the number of the last in your file and of those that are missing, I will see that they are furnished immediately.



Commissioner