

COMMISSIONER BURNETT  
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 150.

DECEMBER 3, 1936.

1. NOTICE TO LICENSEES

PREDATORY PROTECTIVE ASSOCIATIONS

November 30, 1936.

BEWARE of agents soliciting membership in racketeering organizations. Instances have been brought to my attention of so-called "Protective" Associations, whose canvassers employ strong-arm methods in obtaining membership. The technique is to appear in taverns frequently, see the licensee personally, and snoop to discover some petty violation of the Rules. They first try ordinary salesmanship such as outlining the benefits, the service, the value of an organized front. Then, they intimate they have an "in" in this office or some mysterious influence or grapevine connection - anything to impress you with their supposed powers and prowess. When repulsed, they suggest that you "think it over" and promise to come back in a day or two. They return after the tavernkeeper has let his imagination work overtime. They talk guardedly - always vaguely - of valued services they have rendered liquor dealers in trouble - of licenses issued, of transfers effected, of appeals granted, of proceedings stopped, of favorable decisions obtained. On point-blank refusal, their game is to call up this office and report the alleged infractions. When one of our investigators calls at the tavern, the proprietor becomes frightened, and imagines he is slated for a "ride". If he then "joins" he soon learns, if the violation complained of was serious, that he has been duped. If minor, and he's merely warned by the Department to desist and not repeat, the solicitor takes the credit for obtaining "mercy".

This Department is not to be capitalized or sold short. The law will be enforced without fear or favor. It was made to be obeyed. But legitimate liquor dealers need have no fear of being "railroaded" for minor infractions. You need no "influence" or "protection" here. What's more, it just doesn't work.

Voluntary association in high-class open and above-board trade organizations is one thing. Coerced membership in a "protective" association is a horse of different and darker color. Don't join any association whose solicitors make threats if you don't join, or promise if you do that you'll get something from this Department that non-members don't or can't obtain. Instead, tell us what they threaten and what they promise. Discuss your problems with us NOW. Don't let yourself be hijacked just because you've made some errors or been out of bounds at times. We'll straighten you out if you'll tell us what's wrong.

Help me to stamp out a racket which feeds on your mistakes at your expense.

D. FREDERICK BURNETT,  
Commissioner.

New Jersey State Library

2. APPELLATE DECISIONS - YORKUS v. MANALAPAN TOWNSHIP.

CHARLES YORKUS,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF MANALAPAN,	)	
	)	
Respondent	)	

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 John J. Meehan, Esq., Attorney for Appellant.  
 Bernard H. Weiser, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for renewal of plenary retail consumption license for premises located on State Highway #33, west of Millhurst, Township of Manalapan, Monmouth County.

Respondent denied the application because of a resolution limiting the number of such licenses to seven (7) and the issuance of the allotted number. This resolution was adopted at a meeting of the Township Committee held on the night of Friday, June 26, 1936.

It is important to ascertain just what happened that night of June 26th. There were before the Committee applications for six renewals and for one new license, sought by Samuel G. Forman. Appellant's application for renewal was not filed until June 30, 1936. The members of the Committee knew that appellant had held a license for the periods expiring June 30 in each year continuously since Repeal, viz., 1934, 1935, and 1936. They knew that he had advertised his notice of intention to renew for the current period expiring June 30, 1937. That fact was mentioned at the meeting. They were agreed that he had always conducted his premises satisfactorily and that in fairness he should be given a preference over the new applicant. Yet his application was missing and so was he. The limiting resolution was passed at 8:25 P. M. The clock in the meeting hall ticked on. Still the appellant did not appear. Finally, after waiting until 9:30 P. M., and no appearance having been made by appellant, the Committee granted the six renewals and the new application, and called it a day. The Township Clerk testified: "Had he been there, he would have been granted the license . . . . Had the application been in, the Committee told me he would have gotten a license and Mr. Forman would not." The Township Chairman confirmed: "If Mr. Yorkus had applied that night for a license, Mr. Forman would have been turned down. I have no objection to this man . . . . We granted the other six and Mr. Yorkus didn't appear so the only thing to do was to grant Mr. Forman's." At the next Committee meeting, a month later, when appellant's renewal application of June 30th came before it, it was denied because the quota was already full.

Appellant's explanation of his absence from the meeting is simple and direct -- he knew nothing about it. In other years, the innkeepers of the Town had rounded each other up, and together had driven leisurely to Camden for Federal stamps. Upon their return, they filed their applications and received their licenses. But this year, whether intentionally or not, appellant was left out of the party. Indeed, it was suggested at the meeting by some of the licensees that he was not going to apply for a renewal. In response to the question "What was said about Yorkus' application when they took that action in respect to the seven licenses", the Township Clerk replied: "They waited thinking he would be in, before acting on the seven; and some of the innkeepers said they understood he was not going to renew. So we had no proof and they acted accordingly."

The members of the Township Committee knew in advance that on June 26th they purposed to enact a limiting resolution. At their preceding meeting, the last Friday of May, the Township attorney had been instructed to draw such a resolution limiting the number of licenses to seven. It was then agreed that the Chairman was to introduce such resolution at the next meeting on June 26th. They knew that a new application had been filed by Forman. In fact, his was the very first filed. They knew that Yorkus was advertising his intention to apply. They knew of the manner in which licenses had been granted in previous years. Forman knew enough to get his application in quickly. The other six old licensees knew enough to get their applications in by June 26th. Everybody seemed to be in the know except Yorkus. The Committee waited a decent interval, to be sure, for Yorkus to appear. But why should they expect him to appear? They gave him no notice, no warning that he must appear. They did not tell him of their purpose to enact a limiting resolution. There was no obligation on his part to be present that particular night. He did not in fact know of the meeting or of the purpose to pass a limiting resolution. If, accidentally, he had been there, his renewal would have been granted. Why should he be deprived of a renewal without fault on his part, without a blot on his record, and without any consideration of the merits of his application which everybody knew he intended to make? Why should the incident that he was not there railroad him out of his livelihood?

As applied to appellant, the resolution is unreasonable.

Accordingly, the action of respondent is reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT,  
Commissioner.

Dated: November 26, 1936.

3. APPELLATE DECISIONS - GIBERTI v. FRANKLIN TOWNSHIP.

CHARLES GIBERTI, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF FRANKLIN, )  
Respondent )  
----- )  
CHARLES GIBERTI, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF FRANKLIN and )  
GEORGE ECKHARDT, )  
Respondents. )  
----- )

ON APPEAL  
CONCLUSIONS

Lewis S. Beers, Esq., Attorney for Appellant.  
Clark C. Bowers, Esq., Attorney for Respondents.

BY THE COMMISSIONER:

The same questions are involved in both of these cases and accordingly they are considered together. In one, appellant appeals from the denial of his application for a plenary retail consumption license for premises located in New Village, Franklin Township, Warren County; in the other, he appeals from the issuance of a plenary retail consumption license to respondent George Eckhardt for premises known as the Franklin House, in said New Village.

The Township has a population (1930 census) of 1213. It is a farming community, with the exception of three small villages, viz.: Broadway, Asbury and New Village.

Appellant first applied in 1933 for a retail consumption license. He was denied because of a resolution limiting the number of such licenses in the Township to three, only one of which was to be in New Village, and the prior issuance of such a license in New Village to one John C. Eckhardt, now deceased, a brother of the present respondent George Eckhardt.

The reasonableness of this limitation was considered and sustained in Giberti v. Franklin Township, Bulletin #38, Item #2. Its reasonableness is not attacked in the present cases but is, in fact, conceded. The issue now is who, appellant Giberti or respondent George Eckhardt, should get the license in respect to the New Village vacancy caused by the death of John C. Eckhardt.

Appellant, since his first turn-down in 1933, has applied regularly for a license year after year, 1934, 1935, and 1936, and each time has been denied by reason of the same limitation. After his unsuccessful appeal in 1934 as aforesaid, he did not appeal in 1935, but settled down to wait until John C. Eckhardt moved out or died. Eckhardt did die in January 1936, but Giberti's application was again denied. Hence these appeals.

No challenge is made of Giberti's character or of the suitability of his premises.

A bare recitation of the facts showing his qualifications, his patient waiting, his repeated applications long before the respondent George Eckhardt came into the picture, coupled with the invariable turn-downs based solely on the reason that the decedent John C. Eckhardt was first on the ground, which reason no longer subsists, create a strong natural equity in favor of Giberti. Well may he argue what use is it to stand at the head of the line if it gets him nowhere.

Now for the other side. John C. Eckhardt ever since Repeal has held a license for the Franklin House. In January 1936, he died and his brother, the respondent George Eckhardt, was appointed executor under his last Will. Pursuant to Section 23 of the Control Act, the executor was permitted to continue the licensed business for the balance of the license period, i. e., through June 30, 1936. It is conceded that George Eckhardt is, like Giberti, a highly reputable person and that his place is suitable and has been run in a proper manner.

On May 26th, 1936, George Eckhardt applied in his own name for a license for the same premises for the current fiscal year beginning July 1st. Appellant made his application on June 9th. On June 12th, the Township Committee granted George Eckhardt's application and on June 26th denied appellant's.

This is admittedly a hard case to decide. It was presented with thoroughness, fairness and obvious ability by the attorneys on each side. The facts have been brought out clearly. The difficulty lies in drawing the proper conclusions. Underlying that is the necessity of formulating the principles to be applied to this and kindred cases which undoubtedly will follow where the question is one of choice as to whom shall be awarded a license in respect to a given vacancy.

Without attempt to do the impossible and inadvisable, and lay down a full fledged rule to cover all possible future cases, some things are clear.

(1) The mere fact that the Eckhardt application was filed first and granted before the Giberti application was considered is not of itself a justification to the Township Committee. They knew at the time of the pendency of the other application. That put them on guard to be absolutely fair to both applicants and not to railroad one at the expense of the other. Yorkus v. Manalapan, Bulletin #150, Item #2.

(2) Neither is it of itself warrant for reversal that Giberti in respect to past years stood at the head of the line of applicants. The true principle in matters affected with a public interest is not who made the original and first claim, but who will serve best.

(3) The mere fact that the business was to continue in the same surname and thereby the investment was preserved and the good will kept in the family is a matter of purely private selfish interest without any regard to public service or convenience. I recognize no family dynasty as liquor licensees. If this were all, the natural equity of Giberti, as above mentioned, although equally private and selfish, would outweigh that of Eckhardt because it arose earlier in time and the Eckhardts had had several turns but Giberti had had none.

(4) The duty, then, of the license issuing authority was to consider both applications and to make its choice based on public, not on private, considerations.

(5) My duty on these appeals is to test and determine whether the issuing authority fairly and properly performed their duty. It is not a matter of my personal views or how I would have voted if I were a member of the issuing authority but, rather, whether the choice they did make was made fairly and based on reasonable and proper grounds.

The original resolution of December 8, 1933 of Franklin Township limited the number of licenses to three, with the additional provision that they were to be granted to hotels only. There was one hotel property at the time in each of the three villages in the Township. Only one hotel owner, however, John C. Eckhardt, applied for a license. Therefore, since no further hotel owners applied, on January 10, 1934, the resolution was amended by eliminating the clause "to be hotels only" and two licenses were thereafter granted, one in Broadway, the other in Asbury, to persons not operating hotels, thus filling the quota and serving public necessity and convenience in each of the three communities of the Township.

In the instant cases, it appears that the Township Committee did consider both parties at the time their applications were before the Committee.

It also appears that the original preference for hotels still persisted.

The Township Chairman testified:

"Q When you passed on his application, and Mr. Giberti's was in hand, did you consider both parties?

A We did. We didn't have any grounds to take the license away from the place that had been granted, it was run in a proper manner.

Q If there is a license in New Village, you feel that it should be at -- (witness interrupting)?

A The old hotel, whoever runs it.

"Q It has been there many years?

A Yes; and never been a complaint against it to the best of my knowledge."

And on cross-examination:

"Q You felt that this license should stay at the old Franklin House?

A In those premises.

Q So that you were licensing the place and not the man. Is that correct?

A You do license the place, that is what the license is granted for; the man applies."

Joseph Lanning, another member of the Township Committee, testified:

"THE HEARER: Prior to the death of John Eckhardt, was it operated as a regular hotel?

THE WITNESS: He had fifteen rooms furnished.

THE HEARER: Was it advertised to the public?

THE WITNESS: I don't know whether he had a sign out, but he would take care of anybody.

THE HEARER: Did he have a register there?

THE WITNESS: He did, years ago; I don't know whether he had it latterly.

THE HEARER: Would you call that a hotel as you understand it?

THE WITNESS: I would call it an old-fashioned hotel, the same as you find in any country town.

THE HEARER: Why did the committee license the hotel, the Franklin House, in preference to Mr. Giberti?

THE WITNESS: When I was elected chairman, two years ago, I ran under that resolution.

THE HEARER: What resolution?

THE WITNESS: That there be not more than three licensed places in the Township.

THE HEARER: When the George Eckhardt application came before you in 1936, there was also before you the application of Charles Giberti?

THE WITNESS: I felt that no matter who was applying for the hotel -- it didn't make any difference who the man was -- as long as he was capable to run it, it should be granted to him."

Such preference for an hotel is reasonable and, therefore, permissible. A. B. C. Holding Company v. Newton, Bulletin #58, Item #11; Latz v. Somers Point, Bulletin #146, Item #5; Petrusha v. Mine Hill, Bulletin #146, Item #8.

Appellant alleged that the action of the Township Committee was the result of political pressure and political choosing. But Lanning, one of the three Committeemen, testified:

"Q What branch of the political world are you three members?

A Republicans.

Q And George Eckhardt is what?

A A Democrat."

I find nothing in the record to indicate that the choice made by the Township Committee was arbitrary. It appears to have been made fairly and based on reasonable and proper grounds.

Accordingly, its action in denying the application of appellant and in granting the application of respondent George Eckhardt is affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: November 26, 1936.

4. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - PROSPECT DEMOCRATIC CLUB:

In the Matter of Revocation )  
Proceedings against )  
PROSPECT DEMOCRATIC CLUB, )  
39 Kelsey Avenue, )  
Trenton, N. J., )  
Holder of Club License #CB-15, )  
issued by D. Frederick )  
Burnett, State Commissioner of )  
Alcoholic Beverage Control. )  
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CONCLUSIONS  
AND ORDER

Jerome B. McKenna, Esq., Attorney for the Department of Alcoholic Beverage Control.  
John Musick, Esq., Attorney for Prospect Democratic Club of Trenton.

BY THE COMMISSIONER:

This licensee was charged with selling alcoholic beverages at retail on November 3, 1936, while the Polls were open for voting at a General Election, in violation of Rule #2 of the State Rules Concerning Conduct of Licensees and Use of Licensed Premises, which provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

The licensee pleaded guilty.

Its attorney frankly stated:

"There were quite a few people around there at dinner time and our stewards were there. They opened for

a few minutes and the few minutes led to an hour, and an hour to two or three. One of the members of the Board of Directors was there who didn't say anything about it, although the Club President advised a few members of the Board the night before that they should stay closed because it was the law. Our Election Day infraction, we believe, would not have happened if there were other responsible members of the Board of Directors around. We do really want to be law-abiding members."

This is the Club's first offense.

In view of the candid admissions and because I believe that responsible heads will see to it that it doesn't happen again, the penalty will be mitigated to five days.

It is, therefore, on this 27th day of November, 1936, ORDERED, that Club License #CB-15 issued by the State Commissioner to Prospect Democratic Club for premises located at #39 Kelsey Avenue, Trenton, N. J., be, and the same hereby is suspended for a period of five (5) days, beginning November 30, 1936.

D. FREDERICK BURNETT,  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - ANCIENT ORDER OF HIBERNIANS.

In the Matter of Revocation )  
Proceedings against )

ANCIENT ORDER OF HIBERNIANS )  
HOME ASSOCIATION, INC., )  
132 N. Warren Street, )  
Trenton, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License #CB-79, )  
issued by D. Frederick Burnett, )  
State Commissioner of Alcoholic )  
Beverage Control. )

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

Ancient Order of Hibernians Home Association, Inc., by Thomas M.  
Ryan, Vice-President, Pro Se.

BY THE COMMISSIONER:

This licensee was charged with selling alcoholic beverages at retail on November 3, 1936, while the polls were open for voting at a General Election, in violation of Rule #8 of the State Rules Concerning Conduct of Licensees and Use of Licensed Premises, which provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

The licensee pleaded "not guilty".

There is no dispute about the facts. Two Departmental investigators called at the club house at about 2:30 P. M. After showing their credentials they were admitted into the building.

Entering the barroom, they noticed several men constructing a partition and one man, who proved to be John Sullivan, at the bar drinking a glass of beer. They went up to the bar and as they did so, a bartender came in from an adjoining room and asked what they wanted. They ordered beer but were refused, the bartender saying that the bar was closed. When the investigators asked about the person who was drinking beer, the bartender told them that he was employed in a garage next door; that he had lent some tools to the men constructing the partition, and in return for his courtesy had been given a glass of beer.

This explanation was confirmed at the hearing by the testimony of several members of the club. There was no evidence that the bar was open at any time or that any alcoholic beverages other than the one glass of beer above mentioned had been served.

It will be noted that the rule prohibits all deliveries to consumers while the Polls are open. The respondent licensee is, therefore, by the statement of its own bartender, guilty of a violation.

The circumstances under which the offense was committed, however, convince me that although there was a violation of the letter of the rule, it was unwitting and without intent to evade the spirit of the regulation. The bar was actually closed. The bartender had been instructed not to serve anyone. Still, the Club is responsible for the acts of its employees. To vindicate the law some penalty must be imposed. It will be for one hour. If that is not much, neither was the offense.

It is, therefore, on this 27th day of November, 1936, ORDERED, that Club License #CB-79, issued by the State Commissioner to Ancient Order of Hibernians Home Association, Inc., for premises located at 132 N. Warren Street, Trenton, N. J., be, and the same hereby is suspended for a period of one hour, beginning November 30, 1936, at 2:30 P. M.

D. FREDERICK BURNETT,  
Commissioner.

6. BARS - LICENSED PREMISES - NO LIMIT ON THE NUMBER OF BARS PROVIDED THEY ARE SITUATED ON A LICENSED PREMISES.

My dear Mr. Burnett:

Can you give me a ruling on whether a license to sell liquor pertains to one bar or whether the owner can operate 2 bars in separate buildings which are connected.

Is it necessary to issue two licenses?

Respectfully,  
JOSEPH ZABRANSKY,  
Mayor.

November 27, 1936

Hon. Joseph Zabransky,  
Little Ferry, New Jersey.

Dear Mr. Zabransky:

There is nothing to prevent a licensee from having more than one bar. He may have a single bar or two bars or as many bars as he

chooses provided that in his conduct of each bar he complies in all respects with the State law and the State and municipal regulations and further provided that all of them are situated on the licensed premises. See re Steinberg, Bulletin 131, item 7.

The application for the license in each case contains a description of the licensed premises. So long as the bars are located on the premises so described, only one license is necessary to cover the operation of all of them. But a bar which is not on the premises described as the licensed premises, is not covered by the license. In such case, to bring it within the law either the licensee's present license must be transferred to cover both premises or a second license covering the separate premises must first be obtained.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

7. APPELLATE DECISIONS - VAN SCHOICK v. HOWELL TOWNSHIP.

CHARLES W. VAN SCHOICK, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF HOWELL )  
TOWNSHIP, DEER HEAD INN, INC., )  
a corporation, HERBERT J. )  
O'NEILL, t/a WHITE WAY TAVERN, )  
ETHEL C. ROUNDS, t/a QUAKER )  
REST, WILLIAM HARDY SAYRES, )  
t/a WINDMILL, )  
Respondents )

ON APPEAL  
CONCLUSIONS

Harry Sagotsky, Esq., Attorney for Appellant.  
McDermott & Finegold, Esqs., by Max Finegold, Esq., Attorneys for Respondent Township Committee of Howell Township.  
Schulman and Schulman, Esqs., by David Schulman, Esq., Attorneys for Deer Head Inn, Inc.  
Herbert J. O'Neill, Pro Se.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises known as "Village Inn" situated on Highway #33 in Howell Township.

Appellant is the same person who was the appellant in two previous appeals, each entitled Van Schoick v. Township Committee of Howell Township, one of which, Bulletin #120, item 6, was decided in favor of appellant and the other, Bulletin #127, item 9, against appellant. He is a former licensee of the Township of Howell, and is qualified to hold a license. It has been stipulated in the present case that he has complied with all the necessary statutory requirements.

The subject matter of the appeal decided in Bulletin #127, item 9 was the refusal by the Township Committee to transfer a license which appellant then held, to "Village Inn", the premises concerned in this appeal. That case was heard on June 24th, 1936 and conclusions entered on June 27th, 1936 sustaining the action of the Township Committee in refusing to transfer said license. These conclusions were based upon the belief that respondent in that case was making a legitimate attempt to cut down the number of licenses outstanding in the Township. In that case Committeeman Burdge testified as follows:

- "Q How many (licenses) did you originally issue in Howell Township?  
 A I think it was 19.  
 Q Did you place any limit on them at first?  
 A No, we did not.  
 Q Later did you put a limit on them?  
 A Yes.  
 Q When was that?  
 A About a year ago.  
 Q What is the limit now?  
 A 15.  
 Q In this particular location do you feel that a license is necessary to serve the needs of the vicinity - the public or travelling public?  
 A No, I don't.  
 Q You are satisfied that there are enough places there now?  
 A Yes."

Committeeman Barkalow testified as follows:

- "Q How many licensed places are there on this Highway 33?  
 A There are three licensed places on that Highway, open and operating, and there is one known as the 'Windmill' that is located off the Highway.  
 Q How far off the Highway?  
 A One hundred feet off the Highway.  
 Q Is it visible from the Highway?  
 A It is.  
 Q Is it located at the intersection of Highways 33 and 34?  
 A Yes, Sir."

\* \* \*

- "Q Can you tell us whether or not in your judgment there are now a sufficient number of operating licensed places to take care of the needs of your Township as well as the surrounding communities?  
 A Plenty - too many.  
 Q Your committee has been experimenting with licenses?  
 A Yes.  
 Q You issued a great many at first?  
 A Yes."

Committeeman Matthews testified as follows:

- "Q How was your vote on the refusal to transfer this license?  
 A I voted 'No more licenses on Road 33'".

Because the above testimony convinced me that the Township Committee was making an honest effort to correct unsatisfactory conditions which had previously existed because of the issuance of too many licenses, their action was affirmed.

Two days after conclusions were filed in the above mentioned case, i. e., on June 29, 1936, the Township Committee of the Township of Howell held a special meeting. At that meeting a resolution was adopted for the sale of alcoholic beverages, the pertinent portions of which are as follows:

- "1 - Number of licenses in said Township:  
 (a) Not more than eighteen (18) plenary retail consumption licenses, to be located on the premises conforming to all requirements, but divided and allotted in the following way and manner:  
 1 - Not more than seven (7) such licenses to be on State Highway #4 in the Township of Howell.

- 2 - Not more than four (4) such licenses on State Highway #33 in the Township of Howell.
- 3 - Not more than two (2) such licenses on State Highway #34 in the Township of Howell."

(The resolution provided for the issuance of five other plenary retail consumption licenses in other sections of the Township, not enumerated herein because they did not increase the number of licenses outstanding in these sections).

The net result of the resolution adopted on June 29th was that, whereas the number of licenses had been reduced to fourteen by the refusal to transfer VanSchoick's license, two days after the affirmance the number of licenses was increased to eighteen. Thus, four new licenses were issued. Two of these were granted to Deer Head Inn and Herbert J. O'Neill respectively, thus increasing the number of licenses on Highway #4 from five to seven; one was issued to Ethel C. Rounds, operating as Quaker Rest, on Highway #33, thus increasing the number of licenses on said Highway from three to four, and the fourth to William Hardy Sayres, for premises on Highway #34, thus increasing the number of licenses on said Highway from one to two.

After adopting said resolution, it was moved and carried:

"that the application of Charles W. VanSchoick---- for plenary retail consumption license, be denied for reason that the number of licenses allowed by resolution of this committee are filled. \*\*\*"

The factual situation as to the location of Village Inn is set forth in the previous conclusions. The nearest licensed place is about one-half mile away. Previously the Township Committee had issued two licenses in close proximity to Village Inn, Botfan v. Howell, Bulletin #64, item 9, but neither of these is now in existence. By its action of June 29, 1936, the Township Committee placed a new licensee in close proximity to an existing licensee on Highway #34; granted a license to Deer Head Inn, Inc. within one-half mile of a place already licensed, and granted O'Neill a new license within one-quarter mile in each direction of existing licensed places. There appears to be no substantial objection to the issuance of a license to Village Inn.

The action of the Committee on June 29th in increasing the number of licenses in the Township speaks louder than their quoted words of June 24th on which I relied. There is no reason or fairness in absorbing the increase with handpicked candidates and without considering at all the application of this appellant but merely giving him the cold comfort that his application was denied because the number of licenses was already filled. When an issuing authority considers all applications and makes a choice fairly based on reasonable and proper grounds, it will be upheld. Giberti v. Township of Franklin, Bulletin #150, item 3. But not when the choice is arbitrary and unreasonably discriminatory. Yorkus v. Township Committee of Manalapan, Bulletin #150, item 2.

I find the action of respondent Township Committee in this case was arbitrary and unreasonable. Its action in denying appellant's license is, therefore, reversed. Respondent Township Committee of Howell Township is directed to issue the license as applied for.

The case is dismissed as to respondents Deer Head Inn, Inc., Herbert J. O'Neill, Ethel C. Rounds, and William Hardy Sayres because no evidence of fraud has been shown as to these licensees.

The resolution of the Township Committee of Howell Township is modified to provide for not more than nineteen (19) plenary retail consumption licenses, not more than five (5) of which shall be on State Highway #33.

D. FREDERICK BURNETT,  
Commissioner.

Dated: November 29, 1936.

3. COURT DECISIONS - UNITED STATES SUPREME COURT - STATE BOARD OF CALIFORNIA v. YOUNG'S MARKET COMPANY.

The decision of the Supreme Court of the United States just rendered might well be read in connection with two previous Bulletin items, viz.: IMPORTATION INTO NEW JERSEY OF ALCOHOLIC BEVERAGES FOR PERSONAL CONSUMPTION - DISCUSSION OF PURPOSE AND CONSTITUTIONALITY OF STATUTORY RESTRICTION (Bulletin #102, Item #7); and PENDING LEGISLATION - PROPOSED AMENDMENT OF SECTION 2 - ELIMINATION OF PRIVILEGE OF IMPORTING ALCOHOLIC BEVERAGES INTO NEW JERSEY FOR PERSONAL CONSUMPTION EXCEPT UNDER SPECIAL PERMIT (Bulletin #114, Item #1).

SUPREME COURT OF THE UNITED STATES

NO. 22 - OCTOBER TERM,  
1936

State Board of Equalization of California, et al., appellants, vs. Young's Market Company, et al.	}	Appeal from the District Court of the United States for the Southern District of California
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(November 9, 1936)

Mr. Justice BRANDEIS delivered the opinion of the Court.

This suit, brought in the federal court for southern California, challenges the validity, under the Twenty-first Amendment of the Federal Constitution, of the provisions of a statute of that State, and of the regulations thereunder, which impose a license-fee of \$500 for the privilege of importing beer to any place within its borders.<sup>1</sup> The license does not confer the privilege of selling.<sup>2</sup> Compare Premier-Pabst Sales Co. v. Grosscup, 298 U. S.

The plaintiffs are domestic corporations and individual citizens of California who sue on behalf of themselves and of others similarly situated. Each is engaged in selling at wholesale at one or more places of business within the State beer imported from Missouri or Wisconsin; and has a wholesaler's license which entitles the holder to sell there to licensed dealers beer lawfully possessed, whether it be imported or is of domestic make. For that license the fee is \$50. Each plaintiff has refused to apply for an importer's license claiming that the requirement discriminates against wholesalers of imported beer; and that, hence, the statute violates both the commerce clause and the equal protection clause. The bill alleges that heavy penalties are exacted for importing, or having in possession, imported beer without having secured an importer's license; that unless enjoined defendants will enforce the statute; that enforcement would subject each of the plaintiffs to irreparable injury; and that the matter in controversy exceeds \$3000.

The several state officials charged with the duty of enforcing the statute, were joined as defendants, and made return to an order to show cause. They assert that the challenged statutory pro-

visions and regulations are valid because of the Twenty-first Amendment, ratified December 5, 1933, which provides, by Section 2:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

First. The main contention of the plaintiffs is that the exaction of the importer's license fee violates the commerce clause by discriminating against the wholesaler of imported beer. But there is no discrimination against them qua wholesalers. Everyone holding a wholesaler's license who is lawfully possessed of any beer, may sell it. The fee exacted for the privilege of selling, and the conditions under which a sale may be made, are the same whether the beer to be sold is imported or domestic, or is both. The difference in position charged as a discrimination is not in the terms under which beer may be sold. It arises from the fact that no one may import beer without securing a license therefor. What the plaintiffs complain of is the refusal to let them import beer without paying for the privilege of importation. Prior to the Twenty-first Amendment it would obviously have been unconstitutional to have imposed any fee for that privilege. The imposition would have been void, not because it resulted in discrimination, but because the fee would be a direct burden on interstate commerce; and the commerce clause confers the right to import merchandise free into any State, except as Congress may otherwise provide. The exaction of a fee for the privilege of importation would not, before the Twenty-first Amendment, have been permissible even if the State had exacted an equal fee for the privilege of transporting domestic beer from its place of manufacture to the wholesaler's place of business. Compare Case of the State Freight Tax, 15 Wall, 232, 274, 277. Thus, the case does not present a question of discrimination prohibited by the commerce clause.

The Amendment which "prohibited" the "transportation or importation" of intoxicating liquors into any state "in violation of the laws thereof", abrogated the right to import free, so far as concerns intoxicating liquors. The words used are apt to confer upon the State the power to forbid all importations which do not comply with the conditions which it prescribes. The plaintiffs ask us to limit this broad command. They request us to construe the Amendment as saying in effect: The State may prohibit the importation of intoxicating liquors provided it prohibits the manufacture and sale within its borders; but if it permits such manufacture and sale, it must let imported liquors compete with the domestic on equal terms. To say that, would involve not a construction of the Amendment, but a re-writing of it.

The plaintiffs argue that, despite the Amendment, a state may not regulate importations except for the purpose of protecting the public health, safety or morals; and that the importer's license fee was not imposed to that end. Surely the State may adopt a lesser degree of regulation than total prohibition. Can it be doubted that a state might establish a state monopoly of the manufacture and sale of beer, and either prohibit all competing importations, or discourage importation by laying a heavy impost, or channelize desired importations by confining them to a single consignee? Compare Slaughter House Cases, 16 Wall, 36; Vance v. W. A. Vandercook Co., (No. 1), 170 U.S. 438, 447. There is no basis for holding that it may prohibit, or so limit, importation only if it establishes monopoly of the liquor trade. It might permit the manufacture and sale of beer, while prohibiting absolutely hard liquors. If it may permit the domestic manufacture of beer and exclude all made without the State, may it not, instead of absolute exclusion, subject the foreign article to a heavy

importation fee? Moreover, in the light of history, we cannot say that the exaction of a high license fee for importation may not, like the imposition of the high license fees exacted for the privilege of selling at retail, serve as an aid in policing the liquor traffic. Compare Phillips v. City of Mobile, 208 U. S. 472, 479.

The plaintiffs argue that limitation of the broad language of the Twenty-first Amendment is sanctioned by its history; and by the decisions of this Court on the Wilson Act, the Webb-Kenyon Act and the Reed Amendment.<sup>3</sup> As we think the language of the Amendment is clear, we do not discuss these matters. The plaintiffs insist that to sustain the exaction of the importer's license-fee would involve a declaration that the Amendment has, in respect to liquor, freed the states from all restrictions upon the police power to be found in other provisions of the Constitution. The question for decision requires no such generalization.

Second. The claim that the statutory provisions and the regulations are void under the equal protection clause may be briefly disposed of. A classification recognized by the Twenty-first Amendment cannot be deemed forbidden by the Fourteenth. Moreover, the classification in taxation made by California rests on conditions requiring difference in treatment. Beer sold within the State comes from two sources. The brewer of the domestic article may be required to pay a license-fee for the privilege of manufacturing it; and under the California statute is obliged to pay \$750 a year. Compare Brown-Forman Co. v. Kentucky, 217 U. S. 563. The brewer of the foreign article cannot be so taxed; only the importer can be reached. He is subjected to a license-fee of \$500. Compare Kidd v. Alabama, 188 U. S. 730, 732.

Reversed.

#### Footnotes

1. The lower courts have differed on this question. See Triner Corporation v. Arundel, 11 F. Supp. 145; Premier-Pabst Sales Corporation v. Grosscup, 12 F. Supp. 970; General Sales & Liquor Co. v. Becker, 14 F. Supp. 348. See also the following decisions: Premier-Pabst Sales Co. v. McNutt, D. Ind., January 4, 1935 [Indiana, Par. 9001]; Pacific Fruit & Produce Co. v. Martin, W. D. Wash., Southern Div., February 28, 1936 [General, Par. 9005]; Philip Blum & Co. v. Henry, E. D. Wis., March 28, 1936 [General, Par. 9006].
2. Constitution of the State of California, Art. XX, Sec. 22, as amended November 6, 1934; Alcoholic Beverage Control Act, June 13, 1935, Chap. 330, Sec. 2, (k); Sec. 3; Sec. 5, (8), (13); Sec. 6, (d) (f); Sec. 7; Sec. 49; Secs. 10, 11; Sec. 31; Rules of State Board of Equalization, Rule 9 (a) (e).
3. E. g., In re Rahrer, 140 U. S. 545; Scott v. Donald, 165 U. S. 58; Vance v. W. A. Vandercook Co. (No. 1), 170 U. S. 438; Clark Distilling Co. v. Western Maryland Ry. Co., 242 U. S. 311; Seaboard Air Line Ry. v. North Carolina, 245 U. S. 298; McCormick & Co., Inc. v. Brown, 287 U. S. 131.

9. SOLICITORS' PERMITS - DISHONEST SALESMEN - THE PROPER FORUM TO ESTABLISH DISHONESTY IS A CRIMINAL COURT - UNTIL DULY PROVEN DISHONEST THEY CANNOT BE BLACKLISTED BY THIS DEPARTMENT.

December 1, 1936.

F. D. & M. Beverage Co. Inc.,  
Jersey City, N. J.

Gentlemen:

I have yours of the 18th re \_\_\_\_\_.

I note your statements that you have checked him short in his collections and "We do not think men who prove themselves dishonest should be eligible for salesman's permit".

Neither do I.

But before I may lawfully deny a man a solicitor's permit, he must have been proven to be dishonest. Every man is presumed innocent until proven guilty. The proper place to establish that is in a criminal court.

Hence while I am highly sympathetic and determined to keep the industry purged of dishonest persons, I cannot count anyone out or prevent reemployment until guilt has been established in the proper forum.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

10. SOLICITORS' PERMITS - INDEBTEDNESS OF SALESMEN - THE PROPER FORUM TO COLLECT DEBTS IS A CIVIL COURT - SALESMEN ARE NOT TO BE COERCED INTO PAYMENT OF THEIR DEBTS BY HOLDING UP ISSUANCE OF THEIR PERMITS.

December 1, 1936.

California Grape Products Company,  
New York City.

Gentlemen:

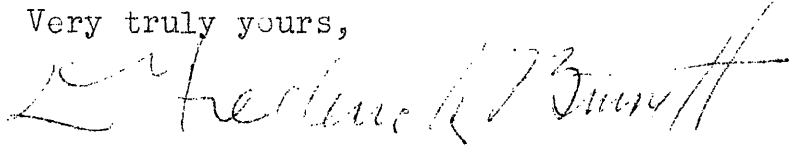
Kindly refer to yours of November 20th re \_\_\_\_\_, in which you allege that he is indebted to you for money advanced in excess of his commissions and by which you inquire the attitude of the Department in such cases.

For reasons expressed in re F.D. & M. Beverage Co., Bulletin #150, Item 9, this Department will not take cognizance of a criminal charge on the mere report of a former employer, or anybody's say-so until the person who is accused has been confronted with the charges, had a chance to defend himself and his guilt has been established. The proper forum in which to establish dishonesty is a criminal court.

In your case, you allege a mere civil indebtedness. This Department is not a Collection Agency. If your former agent is indebted to you, your plain remedy is to establish your claim in a civil court and collect it in the orderly processes of the law. The fact that he is indebted to a former employer is, of course, something which every subsequent employer

would naturally take into consideration on his application for employment. But it is of no moment to me in determining whether he is entitled to a Solicitor's Permit and a chance to earn a livelihood which might, incidentally, result in quicker payment of his indebtedness to you than if he were denied it. Certainly he is not to be coerced by me into payment of his debt to you.

Very truly yours,

A handwritten signature in cursive script, reading "D. Frederick Burnett". The signature is written in dark ink and is positioned to the right of the typed name.

D. Frederick Burnett  
Commissioner