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

BULLETIN 347. SEPTEMBER 27, 1939.

1. CANCELLATION PROCEEDINGS - 200 FEET RULE - TAVERN WITHIN PROHIBITED DISTANCE OF UKRAINIAN CHURCH AND TWO SYNAGOGUES - HEREIN OF WAIVERS AND OF BENEFICENT AMITY.

In the Matter of Proceedings to Cancel or Revoke Plenary Retail Consumption License No. C-68, expiring June 30, 1939, issued to	:	
PETER MARTINEK, 51 Hope Avenue, Passaic, New Jersey,	:	CONCLUSIONS AND ORDER
By the Board of Commissioners of the City of Passaic, and now holder of Plenary Retail Consumption License No. C-68, expiring June 30, 1940.	:	

Joseph J. Weinberger, Esq., Attorney for the Defendant-Licensee.
Ellamarye H. Fallor, Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the defendant which, for convenience, may be restated as follows:

(1) That his tavern (licensed since December 1933) is within 200 feet of the Ukrainian Holy Ascension Orthodox Church, the O'Ef Sholem Synagogue and the Chrevra Tillem Synagogue, contrary to R.S. 33:1-76; and

(2) That he suppressed such fact in his application for his 1938-9 license, contrary to R.S. 33:1-25.

Although these proceedings were instituted during the last licensing term, which expired June 30, 1939, they do not abate but remain effective against the renewal license that has been issued to the defendant for the current year. State Regulations No. 15; Re Laurence Brook Country Club, Inc., Bulletin #335, Item 6.

As to (1): The Alcoholic Beverage Control Law in general prohibits the issuance of any retail liquor license for premises within 200 feet of a church unless the church grants a waiver. R.S. 33:1-76.

The defendant's tavern is 68 feet from the Ukrainian Holy Ascension Orthodox Church, 75 feet from the O'Ef Sholem (or Hebrew Leibowitz) Synagogue, and 44 feet from the Chrevra Tillem Synagogue.

Defendant claims that these institutions came into the area at a time when a licensed tavern was being operated at de-

fendant's premises and that, hence, those premises are exempt from the 200 feet rule (see R.S. 33:1-76).

The Synagogues were built in 1911 and 1914, respectively, and the Ukrainian Church in 1925. Yet, according to search of the Passaic records, the first liquor license issued for the defendant's premises was the one granted to the defendant in December 1933. Moreover, since the Ukrainian Church was built in 1925, i.e., during the Prohibition era, a licensed liquor place obviously could not lawfully have been conducted at the defendant's premises at that time. The claim is, therefore, unfounded.

When these proceedings were instituted, the only waiver that the defendant had ever obtained was from the Ukrainian Church for his first license in December 1933. This waiver did not include the Synagogues. Moreover, it expired with the defendant's first license (see R.S. 33:1-76). It, therefore, presents no defense to these proceedings.

However, the defendant, after these proceedings were brought, obtained waivers from the Ukrainian Church and also both the Synagogues for his then existing (i.e., 1938-9) license. He also obtained such waivers for his renewal license for the present term.

In such case, where a license has been issued for a tavern within 200 feet of a church in violation of R.S. 33:1-76, but thereafter the church (for which benefit the 200 feet rule exists) grants a waiver for the license and thus shows that it is willing to have the tavern remain, I shall take no further steps to cancel the license but shall accept the subsequently obtained waiver as corrective procedure.

Accordingly, charge (1) is dismissed.

As to (2): The evidence is confusing.

The defendant, in his application for his 1938-9 license, failed to answer Question 10 which asked whether his premises are located within 200 feet of any church or schoolhouse.

The defendant, however, answered such question in his previous applications. His first application stated "waiver attached", apparently referring to the 1933 waiver of the Ukrainian Church. His 1934-5 application stated "yes" and, as to details, stated "none within the law." His 1935-6 application stated "yes" but that the application was being filed "with permission." His 1936-7 application stated "yes" and added that the applicant's premises were "licensed before church was built." His 1937-8 application stated "yes" and added "permission."

In explanation of the lack of answer to Question 10 in the defendant's 1938-9 application, the secretary of the defendant's attorney testified that she filled out such application for the defendant; that the defendant, in response to her question whether his place was within 200 feet of a church or school, stated that there was a church within such distance but that he had already obtained a waiver from it; that she called the Passaic Clerk's office to verify this information and was advised over the telephone that a waiver by the Ukrainian Church was on file (apparently the waiver of 1933).

There is no evidence that the defendant at any time made a clean breast that his tavern was close by two synagogues as well as the Ukrainian Church.

I can understand his idea that once the church had waived he did not have to ask again, but there is no excuse for his failure to disclose his proximity to the two Jewish Synagogues, one 75 feet away, the other 44 feet, closer even than the 68 feet he was away from the church. However, they have dwelt in brotherly love -- no one complained. No one has disturbed the peace of White Passaic. Tolerance has been the password, amity the watchword. The same situation has obtained year after year ever since December 1933. When finally the tavern got into trouble, the church and both Synagogues went to its aid and waived their rights. That is their privilege. They ask no punishment for past trespasses. The waivers mean that they forgive and forget. I shall, therefore, let the situation rest as I find it.

Accordingly, the second charge is also dismissed.

D. FREDERICK BURNETT
Commissioner

Dated: September 25, 1939.

2. DISCIPLINARY PROCEEDINGS - PERMITTING BRAWL - FIFTEEN DAYS.

September 23, 1939.

Elwood G. Hoyt,
Village Clerk,
Ridgefield Park, N. J.

My dear Mr. Hoyt:

I have before me staff report and your letter of July 5th re disciplinary proceedings conducted by the Board of Commissioners against Alfred Ferrara, 54 Mt. Vernon Street, charged with employing a minor bartender and permitting a brawl on the licensed premises, and note that while the licensee was found not guilty on the first charge his license was suspended for fifteen days on the second.

Please express to the members of the Board of Commissioners my appreciation for their conduct of these proceedings and the penalty imposed. According to the staff report the dismissal of the first charge was entirely proper because the essential witness, who could prove that the licensee knowingly employed the minor bartender, was out of the State and hence his appearance was not compellable by subpoena. The fifteen-day suspension on the charge of permitting the brawl appears, under all the facts and circumstances, wholly adequate and proper.

Good work!

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - FORD vs. RIDGEWOOD.

HADLEY C. FORD and WILLIAM Z. HINSHAW, doing business as GODWIN BEVERAGE CO.,	:	
Appellants,	:	ON APPEAL
vs.	:	CONCLUSIONS
BOARD OF COMMISSIONERS of the VILLAGE OF RIDGEWOOD,	:	
Respondent.	:	

Doughty & Dwyer, Esqs., by Thomas S. Doughty, Esq., Attorneys for Appellants.
Thomas L. Zimmerman, Jr., Esq., Attorney for Respondent.
Herman C. Silverstein, Esq., Attorney for Bergen County Distribution Licensees Association, Objector.

BY THE COMMISSIONER:

Appellants appeal from the denial of a plenary retail distribution license for premises located at 27 Godwin Avenue, Ridgewood.

Application for the license was filed on June 17, 1939. The appeal herein was filed on July 6, 1939. At the time of the hearing, no action had been taken by respondent upon appellants' application. Ordinarily, these appeals may be taken only after local issuing authorities have either granted or denied a license. Where, however, the issuing authority has had reasonable opportunity to reach a determination but has failed to do so, an appeal may be taken as though a decision adverse to appellant had been rendered. But this procedure may be followed only after the issuing authority has been formally notified and requested to grant or deny the license within a designated period so that an appeal may be taken in the event the decision is adverse. Re Salsburg, Bulletin #118, Item #11. No such notice and request was given in the present case and, hence, this appeal might well be dismissed upon the ground that there was no action of respondent from which appellants might appeal.

Appellants urge, however, that this matter be considered as an appeal from an ordinance limiting the number of licenses under the provisions of R.S. 33:1-41 (Control Act, Section 38). Respondent has stated that it does not desire a "technical" decision, and that with the ordinance now in effect the application would be denied. The case will, therefore, be decided on the merits.

When appellants filed their application on June 17, 1939, ordinance 891 of the Village of Ridgewood, which was then in effect, provided that the number of plenary retail distribution licenses should be limited to thirteen and there were, at that time, thirteen of such licenses in the Village. A large chain store, which held three of such licenses, apparently had decided to renew only one of said licenses for the next fiscal year. Mayor Tonkin testified that on June 15th, two days prior to the date of the filing of appellants' application, he had instructed the Village Counsel to draft an ordinance reducing the number of distribution licenses. It appears that on June 27, 1939, ordinance 936 of the Village of Ridgewood was passed at first reading. Said ordinance provides that the number of plenary retail distribution

licenses shall be limited to eleven and said ordinance was passed on final reading at a meeting of the Board of Commissioners of the Village of Ridgewood held on July 11, 1939. There were eleven distribution licenses in the Village at the date of the hearing.

Appellants contend that the ordinance adopted on July 11, 1939 should not apply for the reason that it was passed and did not become operative until after appellants had filed their application. However, as I said in Franklin vs. Elizabeth, Bulletin #61, Item #1:

> "Whether a license should be issued is not a game of legal wits or abstract logic but, rather, solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW."

See also Tenenbaum vs. Salem, Bulletin #109, Item #1; Burdo vs. Hillside, Bulletin #191, Item #10; Duffield vs. Allenhurst, Bulletin #202, Item #1.

In cases where such an ordinance is enacted after application is filed, appellant should have an opportunity to contest the reasonableness of the municipal regulation and its application to him. Widlansky vs. Highland Park, Bulletin #209, Item #7.

Mayor Tonkin testified that, at the time he instructed the Village Counsel to draw the new ordinance, he had no knowledge that appellants intended to apply for a license, and, further, that the ordinance was passed because the members of the Board of Commissioners thought that there were a sufficient number of places in town furnishing liquor - "in fact, we have too many". It appears that the population of the Village of Ridgewood is approximately fifteen thousand (15,000).

As to the need for an additional license, appellants testified that there is a business section located westerly of the railroad, in which their premises are located, and a much larger business section located easterly of the railroad. The westerly business section contains approximately thirty-five or forty stores, including a drug store for which a distribution license has been issued, and a delicatessen which also has a distribution license. The other nine distribution licenses are located in the easterly business section. Appellants testified that they intend to conduct a store devoted exclusively to the sale of liquor, but, unquestionably, persons shopping in the westerly business district may obtain package goods in either the drug store or delicatessen. The proof falls far short of showing that the ordinance limiting the number of distribution licenses to eleven is unreasonable in itself or as applied to appellants.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 23, 1939.

4. DISCIPLINARY PROCEEDINGS - SALE ON ELECTION DAY - KEARNY LICENSEES.

September 25, 1939.

William B. Ross,
Town Clerk,
Kearny, N. J.

My dear Mr. Ross:

I have before me staff report and copies of resolutions and orders enclosed with your letter of July 7th adopted by the Town Council in disciplinary proceedings against

1. Charles Berman
208 Kearny Avenue
Rev. 1677

2. Sol Weinglass
t/a Kearny Pharmacy
238 Kearny Avenue
Rev. 1678

both charged with sale of alcoholic beverages on Special Election Day last past, and note that each had his license suspended for five days.

Please express to the members of the Town Council my appreciation for their conduct of these proceedings.

I cordially suggest that in future cases involving violation of the Election Day regulation the minimum ten-day suspension be imposed.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

5. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938)

Case No. 55 Letter

CONCLUSIONS AND ORDER

Michael Breitkopf, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In 1915 petitioner, then 21, was convicted of assault and battery and carnal abuse and released on three years probation.

In 1922 he was convicted of carnal abuse and sentenced to six months imprisonment.

Investigation indicates that in 1930 he was convicted o disorderly conduct and fined $5.

In 1938 a woman, now petitioner's wife, was convicted c false swearing in executing an application for a liquor license i this State. R.S. 33:1-25. At the same time petitioner was con-

victed of aiding and abetting her (R.S. 33:1-52) in the crime and was sentenced to six months imprisonment, sentence, however, being suspended and petitioner released on three years probation. See Re Mosque Grill, Inc., Bulletin 239, Item 3.

As to the facts in this last conviction: Petitioner originally held a license for a tavern in Newark during the early days following Repeal. However, on being informed by the police that his criminal record disqualified him from a liquor license, he did not apply for a further license in his own name. Instead, he operated the tavern from at least April 1936 until his conviction in 1938 under the guise of a corporation whose stock, however, was secretly owned by him. In June 1937 his wife (not then married to him) executed a sworn application for a license on the corporation's behalf for the 1937-8 licensing year and, in order to conceal petitioner's interest in the corporation, falsely represented, among other things, that the shares of stock of the corporation were owned by herself and two other persons. It was the falsity of this statement, under oath, which led to her conviction and that of petitioner.

These facts adequately appear from signed statements which petitioner and his now wife gave to the Newark police. Their present testimony that those statements are untrue and were inveigled from them by police machination is not convincing, especially since petitioner's story that he signed his statement merely to spare his now wife any possible trouble is at odds with his story previously given in criminal court that he was drunk when he signed.

Where, as here, a person, who is disqualified from holding a liquor license because of his criminal record, procures another to swear falsely on his behalf to enable him to operate a tavern under a fraudulent scheme in evasion of the Alcoholic Beverage Control Law, his crime of aiding and abetting in such false swearing strikes at the very roots of the licensing system and stamps him as personally unfit for the liquor industry.

The petition is dismissed, with leave to reapply in 1943, after five years shall have elapsed from the date of his conviction in 1938.

D. FREDERICK BURNETT
Commissioner

Dated: September 25, 1939.

6. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938)

Case No. 65.

. . . . . .

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In April 1930, when petitioner was eighteen years and six months of age, he was arrested on a charge of receiving stolen

goods, subsequently pleaded non vult to said charge and was placed on probation for three years. Our investigation discloses that his arrest followed a charge that he had participated, with three other boys, in stripping tires from an automobile, which tires were subsequently returned to the owner of the automobile.

From 1932 until a few months ago, petitioner was employed as a truck driver by a company engaged in distributing newspapers and was unemployed at the time of the hearing. Aside from his conviction previously referred to, petitioner's record is clear except that, in the same year, he received a suspended sentence in a police court on a charge of loitering.

At the hearing three witnesses who have known petitioner for five, six and four years respectively, testified that during the time they have known him he has been a law-abiding citizen. One of these witnesses was his former employer and another is connected in business with the liquor licensee which has offered to give employment to the petitioner as a truck driver.

The Chief of Police of the municipality in which he resides has certified that there are no pending investigations or complaints against him, and the Chief of Police of the municipality in which the conviction occurred in 1930 and in which municipality petitioner has been recently employed has made a similar certification.

I am satisfied from the evidence that petitioner has conducted himself in a law-abiding manner for more than five years last past and I conclude, therefore, that his association with the alcoholic beverage industry will not be contrary to the interests of that industry.

It is, therefore, on this 25th day of September, 1939,

ORDERED that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction referred to herein be and the same is hereby removed, in accordance with R.S. 33:1-31.2 (as amended by Chapter 350, P.L 1938).

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - MISREPRESENTATION - FRONTS - LICENSE REVOKED.

September 25, 1939.

Karl B. Bieselin, Clerk,
Mullica Township,
Elwood, N. J.

My dear Mr. Bieselin:

I have before me staff report and your letter of June 26th re disciplinary proceedings conducted by the Township Committee against Lloyd F. Byrn, 565 White Horse Pike, charged with being a front for another, and note that his license was revoked.

Please express to the members of the Township Committee not only my appreciation for their conduct of these proceedings and the wholly appropriate penalty that was imposed, but also for the commendable speed and dispatch with which the proceedings were handled. You yourself are deserving of credit for bringing this matter so promptly to the attention of the Committee.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

8. CLOSING HOURS - NO PERIOD OF GRACE - NO CULINARY EXCEPTIONS.

Dear Sir:

I have a client who is the proprietor of a bar and grill in the City of Passaic. The closing hour in Passaic is 3 A. M.

My client has never violated this closing hour nor does he intend to do so. However some times it may take him until 3:05 or 3:10 A.M. to clear his place of late customers. The police officer on the beat has insisted that the place must be cleared by 3 A. M. Will you advise me as to my client's rights taking into consideration the fact that he has never nor does he intend ever to serve a drink after 3 A.M.?

My client has also connected with his establishment a kitchen. Until what time is he permitted to serve food? Any information you may give me will be greatly appreciated.

Very truly yours,

Rosario F. Lomauro

September 26, 1939

Rosario F. Lomauro, Esq.,
Passaic, N. J.

My dear Mr. Lomauro:

According to my records the regulation affecting the hours of sale and closing in Passaic is Section 6 of ordinance adopted May 23, 1939. It provides:

> "No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage on the licensed premises between the hours of 3:00 A.M. and 1:00 P.M., Sundays, excepting New Year's Day each year.
>
> "No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage on the licensed premises on New Year's Day of each year between the hour of 5:00 A.M. and the hour above prescribed for week-days and Sundays respectively when sales may be resumed.
>
> "During the hours when sales of alcoholic beverages are prohibited, the entire licensed premises shall also be closed.

"The hours herein fixed shall be deemed to be Eastern Standard Time, except from the last Sunday in April to the last Sunday in September, when they shall be deemed to be Eastern Daylight Saving time."

The police officer who told your client that the place must be cleared by 3:00 A. M. was exactly right. There is no period of grace. If he can inch in ten minutes, why not twenty, or two hundred? If he can't get his "bitter enders" out on time, he'd better stop selling at quarter to three or earlier, if he's catering to tree sitters or obdurate squatters. The ordinance prohibits not only service, but also consumption. Moreover the requirement that the place be closed at 3:00 A.M. means that all customers must be out by that time. It's unhealthy to a licensee to let his patrons linger later.

Nor does it make any difference that your client has a kitchen. Unlike an army, this ordinance doesn't travel on its stomach. The ordinance requires closing of the entire licensed premises during the hours when sales are prohibited. There are no culinary exceptions.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. SPECIAL WINE PERMITS FOR PERSONAL CONSUMPTION - NOTICE.

September 25, 1939.

The season is at hand when thousands of residents in New Jersey will manufacture wines in their homes for their personal consumption.

The Legislature has authorized me to issue Special Permits costing $1.00 which will allow a person to manufacture not more than two hundred (200) gallons of wine within his home for his personal use only. To manufacture such wine without first obtaining a permit is a misdemeanor, subjecting the violator to arrest and criminal prosecution and the wine to seizure.

Anyone who wishes to make wine may obtain application form and full instructions by writing me at 744 Broad St., Newark, N.J.

Since several thousand of these permits will be issued during the next two months, it is urged that applicants file their applications at the earliest possible moment.

D. FREDERICK BURNETT
Commissioner

10. CANCELLATION PROCEEDINGS - TWO HUNDRED FEET RULE - TAVERN WITHIN PROHIBITED DISTANCE OF SCHOOL.

In the Matter of Cancellation Proceedings against

CHARLES F. MILLER,
226 State Street,
Camden, N. J.

Holder of Plenary Retail Consumption License #C-70 (fiscal) year 1938-1939), issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

. . . . . .

CONCLUSIONS AND ORDER

Charles E. Kulp, Esq., Attorney for the Licensee.

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that (1) on or about June 13, 1938, in application for plenary retail consumption license C-70, he falsely stated that the premises are not within 200 feet of any schoolhouse, in violation of R.S. 33:1-25, and (2) the licensed premises are located within 200 feet of Cassidy Public School, in violation of R.S. 33:1-76.

The licensee's premises are located in the rear part of the first floor of the building on the southwest corner of State Street and Third Street; the entrance to the barroom is on Third Street.

Cassidy Public School is on the northwest corner of State Street and Third Street. The school building is set back some distance from the street lines. The plot is surrounded by an iron fence, having a gate on the State Street side.

Measurements made by Investigator Myers show that the distance between the entrance to the barroom and the school gate on State Street is 137 feet. These measurements were made along the respective building lines in accordance with the rule set forth in Aldarelli vs. Asbury Park, Bulletin 186, Item 12. A sketch introduced into evidence by the licensee shows that this distance, as measured in March 1934 by the City Engineer of the City of Camden, is 145 feet. In any event, it appears that the nearest entrance to the licensed premises is within 200 feet of the gate leading to the school, which gate constitutes the "entrance" to the school, from which the measurement is to be made. Bely vs. Bayonne, Bulletin 266, Item 4.

As to the first charge: Licensee testified that he has had a license for the premises in question since Repeal; that the local issuing authority conducted a hearing on this question about three years ago, at which time the evidence showed that the nearest entrance to the licensed premises was beyond 200 feet from the school; that licensee stated in his application for the 1938-1939 license that the premises were not within 200 feet of any school because he relied upon the previous

measurements. The chairman of the Municipal Board of Alcoholic Beverage Control of the City of Camden has advised me as follows:

> "***This question was raised at the time the license was granted and subsequently by some people in the neighborhood. The City Engineer, Thomas Daly, at my request investigated this matter and found that the place was over 200 feet away from the school. In accordance with his findings, the license was granted."

The sketch of the City Engineer, referred to above, was introduced into evidence and shows that the distance between the nearest entrance to the licensed premises and the door of the school building is 203.3 feet. This measurement was improperly made because, as pointed out above, the nearest entrance to the school is not the door of the school building, but rather the gate on State Street leading to the school grounds.

However, I am satisfied that the licensee acted in good faith and since I find that he did not knowingly make a misstatement in setting forth that his premises are not within 200 feet of any schoolhouse, I shall dismiss the first charge.

As to the second charge: It clearly appears that the premises are within 200 feet of a schoolhouse. Operation of the business must, therefore, cease immediately. Re Pasternak, Bulletin 287, Item 7.

Subsequent to the institution of these proceedings, license C-70 has expired and plenary retail consumption license C-30 has been issued to the same individual for premises known as 226 State Street (Rear) Camden. In accordance with the procedure set forth in Re McCauley, Bulletin 295, Item 10, he will be granted reasonable opportunity to apply for a transfer of his license to other premises.

Accordingly, it is, on this 25th day of September, 1939,

ORDERED that plenary retail consumption license C-30 for the present fiscal year, issued to Charles F. Miller, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for the balance of its term, effective immediately, with leave reserved to the licensee to file application with the Municipal Board of Alcoholic Beverage Control to transfer the said license to satisfactory premises in the City of Camden, and, if the application be granted, to apply to me for an order lifting the suspension heretofore imposed so that the license may be effectively transferred.

D. FREDERICK BURNETT
Commissioner

11. ALCOHOL - FOR NON-BEVERAGE PURPOSES - MEDICAL SERVICE AFFORDED BY BOARD OF EDUCATION IS A HOSPITAL SERVICE WITHIN THE LAW - HENCE ALCOHOL MAY BE PURCHASED BY BOARD FROM WHOLESALERS DIRECTLY.

September 26, 1939.

John W. Brown, Business Mgr.,
Board of Education,
Elizabeth, N. J.

Dear Mr. Brown:

The reason that you were unable to purchase alcohol from local dispensers is that package goods licensees in Elizabeth

are barred by ordinance from transacting any other mercantile business. Whence it follows that I cannot grant them a permit to carry a non-beverage side line even for the sale of alcohol for medical and laboratory purposes for that would violate the local ordinance. Pharmacies, however, are eligible for such permit but so far no pharmacy in Elizabeth has applied.

If you wish a list of qualified licensees in neighboring municipalities, just write me naming such municipalities as would be convenient and a complete list of all holders of permits in those communities will be promptly furnished.

On the other hand, in your case, it is not necessary that the alcohol be purchased from a retailer for you state that the alcohol you desire is to be used by the midical department of the Board of Education in the various medical rooms in the schools. This service I understand is given under the supervision of physicians for the treatment of school children in emergencies and where some minor injury or illness occurs.

R.S. 33:1-29 provides that hospitals may purchase and use alcoholic beverages (which includes alcohol) for dispensing to patients in accordance with physicians' orders and prescriptions without license. It also permits wholesalers to sell alcoholic beverages direct to hospitals for use as above indicated.

The medical service afforded by the Board of Education under the supervision of physicians is a hospital service within the contemplation of the Alcoholic Beverage Law.

Hence, I rule that the medical department of your Board may purchase alcohol for such purpose direct from licensed New Jersey wholesalers without permit or license.

Enclosed is a list of State wholesalers.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE FORFEITED AS TO OWNER BUT LIEN ALLOWED.

In the Matter of the Seizure of a Chrysler Sedan owned by Carl Brooks, and a quantity of alcohol found therein, in the vicinity of 123 Cacciola Place, in the Town of Westfield, County of Union, and State of New Jersey.	Case No. 5375 On Hearing CONCLUSIONS AND ORDER

David Schneider, Esq., Attorney for Carl Brooks
Emanuel Rouvet, t/a Cranford Motor Sales, Pro Se
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 28, 1939, investigators of this Department searched a house at 123 Cacciola Place, Westfield, on a complaint

that unlawful acoholic activities were being carried on therein. Carl Brooks, who was then unknown to the investigators, was present while the search was being made.

When the investigators left the building they observed a Chrysler sedan parked in front of the house. They searched the vehicle, and found therein a quantity of colorless alcohol, apparently illicit, because it was in a bottle labeled "Frontier Bourbon Whiskey 90 Proof". The investigators then seized the vehicle and alcohol as unlawful property under the provisions of R.S. Title 35, Chapter 1.

After the investigators ascertained that Carl Brooks was the owner of the vehicle, he was arrested on the charges of possessing and transporting illicit alcoholic beverages. Since then, he has pleaded non vult to said charges and has been fined one hundred dollars. The alcohol was subsequently analyzed by the Department's chemist and found to be alcohol and water with a crude taste and aroma, fit for beverage purposes, having an alcoholic content of 38.30% by volume.

Carl Brooks appeared at the hearing held to determine whether the Chrysler sedan and the alcohol should be forfeited, and requested the return of the motor vehicle, claiming to be innocent of any wrongdoing. Emanuel Rouvet, who trades as Cranford Motor Sales, appeared and sought recognition of a lien which he claims upon such vehicle, asserting that he is an innocent lienor.

Since the bottle labled "90 Proof Whiskey" was refilled with crude alcohol, such alcohol is illicit. Under the statute, illicit alcohol and the motor vehicle in which it is contained, are subject to forfeiture. It is determined that the seized property constitutes unlawful property, and it is forfeited in accordance with the provisions of R.S. 33:1-66.

Under the law, forfeiture of the motor vehicle terminates all property interests therein. To avoid undue hardship to an innocent owner, the legislature has provided that I may return such property to an owner who has satisfied me of his innocence. I have consistently required that such innocence be established by clear and convincing proof.

Carl Brooks claims that he had no knowledge of and was not responsible for the presence of the illicit alcohol in his car. He testified that he resided at 129 Cacciola Place and at first insisted that he parked his car in front of 123 Cacciola Place and entered his home, at which time the alcohol was not in the car; that he remained in his home all evening and later discovered that his car had disappeared. However, under cross-examination, he changed his story and admitted that he had not remained in his home during the entire period but had visited the house at 123 Cacciola Place and was present when the investigators entered. When questioned as to what efforts he made to find his car after he discovered that it had disappeared, he stated he did nothing except to consult his lawyer on the following morning. Brooks' mere assertion that he had not placed the illicit alcohol in his car and was unaware of its presence, does not convince me of his innocence, especially in view of the conflict in his testimony and his apparent unconcern when he discovered the loss of his car. Therefore, his Chrysler sedan will not be returned to him.

As to the lien claim: To establish its validity, Emanuel Rouvet produced a motor vehicle bill of sale for the vehicle in question, executed by Carl Brooks as purchaser under a conditional sales contract, and testified that $99.00, representing the balance of the purchase price of $130.00, is due and owing to him; that he investigated Carl Brooks' employment, residence and other pertinent matters and ascertained that Brooks had been employed for over ten years by the Thatcher Furnace Company, and was apparently of good character.

I am therefore satisfied that Emanuel Rouvet, trading as Cranford Motor Sales, has acted in good faith and has a valid lien on the Chrysler sedan to the extent of $99.00, which I will allow, subject to the payment of the costs involved in connection with the seizure of the vehicle.

I am further satisfied, from an appraisal made of the vehicle, that its sale will not realize a sum sufficient to cover the costs and the amount allowed in favor of Emanuel Rouvet. Accordingly, the Chrysler sedan will be returned to him if he pays the costs aforementioned.

It is ordered that the illicit alcohol be destroyed.

D. FREDERICK BURNETT
Commissioner

Dated: September 26, 1939.

13. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - LIEN DENIED - PADLOCK DENIED.

In the Matter of the Seizure of a still and a Buick Coupe on premises occupied by Benedetto Mazza, located on Union Avenue, in the Borough of Kenilworth, County of Union, and State of New Jersey.	CASE #5257 On Hearing CONCLUSIONS AND ORDER

. . . . . .

Adolph Ulbrich, Esq., Attorney for Kenilworth Building & Loan Association.
Samuel Krieger, Assistant Manager of Equitable Loan Service, for Equitable Loan Service
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On February 14, 1939, investigators of this Department discovered an unregistered alcohol distillery being operated in the attic of Benedetto Mazza's dwelling on Union Avenue, Kenilworth. As the seizure was being made, Benedetto Mazza and Joseph Duarte Gomes arrived on the premises in Gomes' Buick Coupe. Both admitted to the investigators that they participated in the operation of the still and the sale of illicit alcohol, and were arrested.

The investigators seized the still equipment, the Buick Coupe, and the other items set forth in Schedule A, annexed hereto, as unlawful property under the provisions of R.S.Title 33, Chapter 2.

At a hearing held to determine whether the seized property should be forfeited and the premises padlocked, Kenilworth Building & Loan Association appeared for the purpose of avoiding padlocking of the premises. Equitable Loan Service appeared for the purpose of seeking recognition of the lien which it claims upon the Buick Coupe, and no one appeared to claim the balance of the property seized.

It is determined that the seized property constitutes unlawful property.

As to the lien claim: The only proof presented by the Equitable Loan Service as evidence of the validity of its lien was a chattel mortgage dated June 20, 1938, which it held covering the motor vehicle, given to it by Joseph Gomes to secure the sum of one hundred dollars. No proof was presented as to the balance, if any, that was due upon the mortgage, nor as to what, if any, investigation the lien claimant had made concerning Joseph Gomes' employment, residence, and other pertinent matters before it accepted the mortgage. Gomes had, in fact, been convicted in 1936 on a charge of violating the Control Act, and had paid a fine of one hundred dollars.

Proof of the amount due upon an alleged lien claim, and that an adequate investigation was made of the character and identity of the person creating the lien, is essential before such claim may be allowed. Cf. Bulletin 116, Item 9, and Bulletin 165, Item 8. Since Equitable Loan Service has not presented such proof, its claim is denied.

As to padlocking: Counsel for the building and loan association, and Mr. Ruth, its agent in charge of the premises, testified that the association held a mortgage on the premises, had instituted foreclosure proceedings, and had taken possession of the dwelling, which was vacant. On December 30, 1939, a woman, who stated that her name was Dorothy Mandel, but who, in fact, was the wife of Benedetto Mazza, rented the premises after her references had been investigated by a representative of the association. Mr. Ruth was present when she took possession of the premises in January, 1939, and observed the usual household furniture being moved into the building. He visited the premises later in January, and again shortly before the date of the seizure, and did not at any time observe any suspicious activities to indicate that a still had been installed in the building.

Mrs. Mandel (Mazza) vacated the premises after the seizure, and the association rented them to another tenant, whom the association investigated and found to be a responsible individual, employed by a manufacturing concern located in Kenilworth. Good cause has been shown why the premises should not be padlocked.

Accordingly it is ORDERED that the seized property set forth in Schedule "A" be and hereby is forfeited, in accordance with the provisions of R.S. Sec. 33:2-5, 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.

Dated: September 26, 1939. Commissioner

SCHEDULE "A"

1 -	100 gallon cooper cooker
1 -	25 gallon galvanized cooler
2 -	gas burners and stand
1 -	Myers pump
1 -	Bag salt
13 -	50 gallon barrels with mash
1 -	10 gallon keg alcohol
1 -	Buick Coupe, Serial #2586084, Engine #2749764, 1938 New Jersey Registration U40088.