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

BULLETIN NUMBER 166. MARCH 11, 1937.

1. APPELLATE DECISIONS - McGLONE vs. JERSEY CITY

PATRICK McGLONE,)

Appellant,)

-vs-) ON APPEAL

THE BOARD OF COMMISSIONERS OF) CONCLUSIONS
THE MAYOR AND ALDERMEN OF THE
CITY OF JERSEY CITY,)

Respondent.)

. . . . . .)

Solomon & Miller, Esqs., by Abraham Miller, Esq., Attorneys for Appellant.
N. Louis Paladeau, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied to the respondent for a plenary retail consumption license. The application was denied and appeal was duly filed.

At the hearing on appeal, it was stipulated that the premises sought to be licensed were situated within two hundred (200) feet of the Lafayette Reformed Church. The church has been located at its present address for some time prior to 1876 until the present time. The premises sought to be licensed had been previously licensed for the sale of alcoholic beverages from 1890 until 1920.

Section 76 of the Control Act provides that, except in certain situations therein enumerated, no license shall be issued for the sale of alcoholic beverages within 200 feet of any church or school. Appellant claims to come within one of the exceptions which provides that the section "shall not apply * * *to the issuance and/or renewal of any license where such premises have been heretofore licensed for the sale of alcoholic beverages or intoxicating liquors, and such church or school house was constructed and/or established during the time said premises were operated under said previous license."

Appellant contends that the phrase "was established", as used in Section 76, should be construed to mean "was in existence."

The attempted interpretation is supported only by the earnestness of appellant's argument. No dictionary gives it sanction. I had occasion in Beekwilder v. Wayne Township, Bulletin #122, Item 3, to consider the term "established". I there said:

> "'Establish' means to make, erect, or found permanently, MacDonnell v. International & G. N. Ry. Co., 60 Tex. 590, 595; to make stable and firm, to fix or settle unalterably, Appeal of

Ambler (Pa.), 2 Walk. 287, 289; to permanently locate, Yazoo & M.V.R. Co. v. Baldwin, 78 Miss. 57, 29 So. 763. An 'establishment' is the place in which one is permanently fixed for residence or business; any office or place of business with its fixtures. Benjamin Rose Inst. v. Myers, 92 Ohio St. 252; 110 N.E. 924, 927, L.R.A. 1916, D 1170. 'Established' signifies stability, firmness, non-movability, set in place, recognized as set or secured on a firm basis - accepted as true."

The attempted interpretation not only does violence to ordinary usage but also in its pains to neuter "establish" - an active, virile word for doing some thing - into the passive concept of mere being, renders wholly superfluous the last twenty-two words of the section as quoted above. For, if the self-comforting interpretation of appellant is sound, viz.: that the saloon is to be excepted whenever a church "was in existence", then the statutory exception might just as well have stopped short after declaring that the section did not apply where the premises had heretofore been licensed for the sale of liquor. If that is all "establish" means, then the saloon always wins whether the church was in existence or not. In the effort to tear out a pillar, appellant would destroy the whole temple.

So far from writing something into the law that was inept and inert, the Legislature clearly provided by the quoted exception that the Section forbidding issuance of a license for the sale of alcoholic beverages within 200 feet of any church or school was not to apply if two things concurred -- (1) the premises had been heretofore licensed; and (2) the church was constructed or established during the time (italics mine) the premises were operated under such previous license. The italicized words indicate conclusively that the exception applies only where the saloon came first and the church later moved into the locality while the premises were actually being operated as a saloon.

In Berlangieri v. Newark, Bulletin #38, Item 16, the saloon arrived first and after that the school was established within 200 feet of the saloon. Since the school "moved into the nuisance", the saloon was entitled to continue operations under its license. It is the very same principle involved in this case. The result depends on the facts.

Here the church was established, not after the saloon but fourteen years before it.

Hence, since the exception does not apply, and the proposed saloon is but 178 feet from the church, the application was properly denied by the Jersey City authorities.

The action of the respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: March 4, 1937.

2. APPELLATE DECISIONS - MICHILINI vs. CLIFTON

SERAFINO MICHILINI,)

Appellant,)

-vs-) ON APPEAL

MAYOR AND COMMON COUNCIL OF THE CITY OF CLIFTON.) CONCLUSIONS

Respondent.)

. . . . . .

Matthew S. Trella, Esq., Attorney for Appellant.
John G. Dluhy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of an application for a plenary retail consumption license for premises known as 736 VanHouten Avenue, Clifton, New Jersey.

It is admitted that appellant is personally qualified and that his premises are suitable. Respondent denied the application because of an ordinance limiting the number of licenses.

It appears that respondent adopted the following resolution on December 15, 1936:

> "WHEREAS, there is now issued in the City of Clifton a total of 143 Plenary Retail Consumption licenses for the period ending June 30, 1937, and
>
> "WHEREAS, it is felt that this is too large a number of establishments in this City.
>
> "NOW THEREFORE BE IT RESOLVED, that no additional Plenary Retail Consumption licenses will be issued by this Council pending the adoption of a formal ordinance to this effect which is now in course of preparation by the City Counsel."

Appellant filed his application on December 18, 1936. From a notation on said application it is clear that appellant had knowledge of the contents of the resolution adopted on December 15, 1936 at the time he filed his application. On January 5, 1937 respondent passed on first reading an ordinance entitled "An ordinance to limit the number of licenses to sell alcoholic beverages at retail and fixing the license fee therefor". At the same meeting, appellant's application was denied. Said ordinance was passed on final reading on January 19, 1937. According to the terms of said ordinance, the number of plenary retail consumption licenses which may be issued and outstanding at the same time in the City of Clifton is limited to one hundred twenty-five (125), with a proviso that this limitation shall not prevent the issuance of renewals. Since the number of licenses presently outstanding in Clifton is greatly in excess of one hundred twenty-five, the ordinance, if valid, is a sufficient reason for denying appellant's application. In Franklin Stores vs. Elizabeth, Bulletin #61, Item 1, I said:

> "True, the ordinance had not been adopted at the

time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation at the time the application was denied."

Cf. Tenenbaum vs. Salem, Bulletin #109, Item 1. A similar situation was considered in Budenstein vs. Atlantic City, Bulletin #144, Item 6, wherein it was ruled:

"The fact that the ordinance was passed subsequent to the denial does not exclude it from consideration on appeal. The municipal policy exhibited by the Atlantic City ordinance, properly enunciated and in force at the time of this decision, is the true criterion on which this decision must be based rather than the factual situation as it existed at the time of the denial of the application."

Appellant presented no evidence whatsoever that the resolution was unreasonable in itself, and his sole contention seems to be that the denial of the license for this property owned by him is a personal hardship to him because he cannot rent it for other purposes. Such a reason standing alone is not sufficient to show that the ordinance is unreasonable as applied to appellant. Moran vs. West Orange, Bulletin #143, Item 8.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: March 4, 1937.

3. LICENSEES - RESIGNATION BY AN ASSISTANT PROSECUTOR OF DIRECTORSHIP IN A BREWING COMPANY.

March 3, 1937.

Hon. Thomas F. Hueston,
Elizabeth, N. J.

My dear Mr. Hueston:

I received letter yesterday from the Peter Breidt Brewing Company advising me of your resignation as a director, effective February 27th last.

No complaint has been made and no question raised at any time concerning your work as Assistant Prosecutor. In fact, we have had nothing but the best of service from you and Prosecutor David at all times. I think, however that it is in the best public interest that there should be no connection with liquor licensees by those who are charged with the duty of enforcing the law. The fact that you have done this, on your own initiative, sets a standard commanding state-wide respect.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

4. COURT DECISIONS - IN CHANCERY OF NEW JERSEY - WALSH vs. BRADLEY

LICENSES - PLEDGE - AN AGREEMENT THAT WHOEVER SHOULD PURCHASE LICENSEE'S CHATTELS ON DISTRESS OR EXECUTION WOULD HAVE AN OPTION TO BUY THE LICENSE IS VOID.

IN CHANCERY OF NEW JERSEY

Between

PATRICK J. WALSH,)
Complainant)
-and-) ON BILL, &C.
JOSEPH P. BRADLEY,)
Defendant.)
. . . . .)

February 23, 1937

Mr. Frederic C. Ritger, for the Complainant
Mr. Israel B. Greene, for the Defendant
Mr. Michael J. O'Connor, Jr. for the Petitioners.

O P I N I O N

BIGELOW, V.C.

This case, turns on an Act Concerning Alcoholic Beverages, P.L. 1933, p 1180, sec. 23, as amended by P. L. 1935, p 787. Defendant is the holder of a plenary retail consumption license by virtue of which he is permitted to sell alcoholic beverages in a restaurant conducted by him in premises of which he is the lessee. On January 13, 1937, he promised complainant, "If the landlord of the premises sells by reason of any action he might bring on account of default in rent, I agree to transfer to such purchaser my license upon the payment to me of $100 in cash. Consideration for this agreement is the promise by Patrick J. Walsh (complainant) on behalf of the landlord, not to distrain or sue for rent before January 20, 1937." After that date, the landlord distrained for rent and sold to complainant the distrained goods and chattels. Complainant sues to enjoin defendant from transferring the license to anyone else and to compel him specifically to perform the agreement above quoted.

Defendant moves to dismiss the bill. Complainant asks that defendant be restrained pendente lite from consenting to a transfer of the license to anyone save complainant, John F. Murray, Jr., and Elizabeth Glennon petition to be admitted as parties defendant. They allege that on June 16, 1936, they endorsed Bradley's note for the purpose of enabling him to secure moneys to pay the license fee and that he pledged the license with them as security in order to save them harmless from their endorsement.

The statute to which I have referred enacts. "Licenses are not transferable except as hereinafter provided. * * * Under no circumstances, however, shall a license or rights there-

under be deemed property subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this act." Then follows the exception, a provision empowering the licensing authority to transfer a license from the original licensee to another person upon application in writing which "shall bear the consent in writing of the licensee to such transfer."

The pledge to Murray and Glennon violates the express words of the statute and is void.

The agreement between complainant and defendant purported to give to the purchaser at distress sale or execution sale an option to buy the license for $100. The purchaser would thereby be induced to bid not only the value of the chattels but also the value of the license in excess of $100; he would bid for both chattels and license. Thus the license would be made subject, in some degree, to the lien of the landlord and liable to execution and seizure for the debts of the licensee. This scheme is contrary to the policy of the law. The purpose of the Legislature is clear that licensees should hold their licenses free from any device which would subject the licenses to control of other persons.

Bill dismissed.

5. SOLICITORS' PERMITS --MORAL TURPITUDE--FACTS EXAMINED--CONCLUSIONS.

December 8th, 1936.

Re: Application for Solicitor's Permit - Case No. 41

Applicant, who seeks a solicitor's permit, admitted in his questionnaire that he had been convicted for possessing and selling fermented liquors subsequent to the enactment of the Alcoholic Beverage Control Act. Notice was served upon him to show cause why the permit should not be denied, and hearing was duly held.

Applicant admitted at the hearing that he was arrested in January 1935 and that, at the time of his arrest, a jug full of rye whiskey which he had manufactured and three barrels of mash were found in the cellar of his home. Subsequently, he pleaded guilty in a Court of Quarter Sessions to an indictment for possessing, manufacturing and selling illicit alcoholic beverages, and was fined the sum of $300.

At the hearing applicant further testified that for nearly seven years prior to his arrest he had been employed as a salesman for various concerns, selling furniture and pianos. Having lost his position and being in danger of losing his home, he borrowed a small still and made some whiskey which he sold to his neighbors. The still was not on the premises at the time of his arrest. He had been in this business about two months at the time he was caught. He has never been engaged in any other illegal activities either prior to or subsequent to the time of his conviction. He has been steadily employed with reputable concerns since March 1935.

Section 22 of the Control Act provides that no license shall be issued to any person who has committed two or more violations of the Act. Applicant is not disqualified by this

Section from obtaining a permit. Whether a single violation of the Act should disqualify him depends upon the circumstances. He was not engaged in large scale illegal activity, but, rather, found himself in a desperate financial condition and took a chance. He made a mistake; he has been punished. To permit this single violation to stand in his way might mean that he could never succeed in his attempt to live an upright life. Having had an opportunity to see applicant, and having heard his testimony, I believe he is genuinely repentant. I, therefore, recommend that the permit be issued.

EDWARD J. DORTON
Attorney-in-Chief

Approved:

I have had grave doubts in this case. However, the law allows him two strikes. He has but one against him. Issue the permit but go out of your way specially to warn him to watch his step.

D. FREDERICK BURNETT
Commissioner

6. SOLICITORS' PERMITS--MORAL TURPITUDE--FACTS EXAMINED--CONCLUSIONS.

March 6th, 1937.

IN RE: Hearing No. 142

In his questionnaire filed with this Department prior to the issuance of his permit, solicitor swore he had never been convicted of any crime. Subsequently his fingerprints were taken and, as a result thereof, it was disclosed that in 1929 he had pleaded non-vult to a charge of burglary and had been placed on probation for three years and ordered to pay $1.00 a week. At the hearing solicitor testified that on the night in question he had gone out with two other young men who said they were going to rob a place where there was a lot of money. Solicitor swears that he remained in the back yard while the other two broke into a florist shop and stole a small sum of money; that he was arrested on the premises but his companions escaped at that time but were later arrested and convicted; that he was thereafter placed on probation for three years and ordered to pay $1.00 a week.

Burglary involves moral turpitude. The evidence shows that solicitor participated in the crime. The fact that only a small amount of money was taken at the time does not lessen his guilt.

It further appears that solicitor answered falsely in stating that he had never been convicted of a crime. His only explanation of his false answer is that he did not believe a person was convicted unless he was sentenced to jail. The false answer is an additional reason for revoking the permit. Eckert vs. Paterson, Bulletin #114, Item 13. It is recommended that solicitor's permit be revoked.

EDWARD J. DORTON
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

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

March 6th, 1937.

IN RE: Hearing 141.

In his questionnaire filed with this Department prior to the issuance of his permit, solicitor swore that he had never been convicted of any crime. Subsequently his fingerprints were taken and, as a result thereof, it was disclosed that in May 1936 he had pleaded non-vult to an indictment for desertion, was placed on probation for a period of five years and ordered to pay $8.00 a week for the support of his wife and two children. At the hearing solicitor testified that he had been arrested for non-support but that he had only recently obtained a position. He admitted that he had pleaded non-vult to the charge and said that, since the time of his conviction, he had been contributing $50.00 a month to his wife, with whom the children were living. His evidence was supported by a letter from the probation officer stating that he was living up to the court order.

Under these circumstances there does not appear to be any question of moral turpitude.

As to his false affidavit, solicitor explained that he did not believe the charge was a "criminal charge". The answer is false. It is recommended that solicitor's permit be suspended for a period of five (5) days.

EDWARD J. DORTON
Attorney-in-Chief.

Approved, except as to penalty. I can understand how he might think this a civil matter, e.g. like alimony. I take it he is not a Philadelphia lawyer. Of course, there is the fact of arrest. But not every arrest means a crime. A too severe penalty only throws the loss on the wife and children. A suspension of one day will be sufficient for him to meditate upon his duty to support his family and to tell the exact truth in the future.

D. FREDERICK BURNETT,
Commissioner.

8. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 6th, 1937.

IN RE: Hearing No. 143.

In his questionnaire filed with this Department prior to the issuance of his permit, solicitor swore he had never been convicted of any crime. Subsequently his fingerprints were taken and, as a result thereof, it was disclosed that he was convicted in 1932 for violation of the National Prohibition Act and that in 1935 he was convicted on a charge of bookmaking.

At the hearing solicitor testified that in 1932 he received a sentence of forty-five days in jail and paid a $350.00 fine for selling beer in a store operated by him. Referring to his arrest for bookmaking, he denied that he had ever made books

but admitted that he had been arrested after some other men had been found making bets upon his premises, and that he was subsequently fined $50.00 in a criminal court. Neither conviction involves moral turpitude. Application for Solicitor's Permit Case #23, Bulletin #145, Item 8; Application for Solicitor's Permit Case #28, Bulletin #113, Item 10.

As to his false affidavit, solicitor testified that he had not disclosed his violation of the National Prohibition Act because he had been advised that "a saloon violation was not a crime", and that he had not disclosed his conviction for gambling because he had disclosed said conviction to a local issuing authority which thereafter granted him a liquor license despite said conviction. Neither explanation fully explains his false affidavit.

It is recommended that solicitor's permit be suspended for ten (10) days because of his false affidavit.

EDWARD J. DORTON,
Attorney-in-Chief.

Approved, except as to penalty. He does not have a happy record. Strange he has so quickly forgotten the 45 days he spent in jail. His license will therefore be suspended for 45 days which will refresh his memory day by day.

D. FREDERICK BURNETT,
Commissioner.

9. REHEARING- NOT PERMISSIBLE AFTER DENIAL OF APPLICATION FOR LICENSE - WHERE NO APPEAL TO THE COMMISSIONER IS TAKEN FROM IMPROPER ISSUANCE OF LICENSE AFTER REHEARING, THE ISSUING AUTHORITY NEED NOT CANCEL THE LICENSE ON ITS OWN MOTION.

March 4th, 1937.

Board of Commissioners,
c/o Charles Swenson,
Town Clerk,
West New York, N. J.

Gentlemen:

The records of this Department indicate that on July 7, 1936 the Board of Commissioners of West New York denied an application by Joseph Deischer for plenary retail consumption license for premises located at #767 Park Avenue; that thereafter an appeal from the denial was taken to this Department; and that on September 22, 1936, a formal discontinuance of the appeal was filed by counsel for appellant. Reports of investigation now submitted to the Commissioner indicate that shortly prior to the discontinuance of the appeal, the Board reconsidered the application by Joseph Deischer and a license was issued pursuant thereto.

The reconsideration of the application was invalid. The law is well settled that the right of a deliberating body to reconsider its action on a matter of a judicial or quasi-judicial character ceases when a final determination has been reached. See Bulletin #47, Item #10, enclosed herewith. Consequently, if any taxpayer or other aggrieved person had appealed

from the granting of the license, a reversal would have been required without regard to the merits of the application. However, no appeal was taken and the present question is whether the license should be cancelled on the Board's own motion. The ruling in Bulletin #91, Item #7, indicates that this question should be answered in the affirmative, but on further consideration the Commissioner has reached a contrary conclusion. The license held by Joseph Deischer is presumably complete on its face and was issued by the body authorized to do so by the Legislature. Error in its issuance should be corrected upon direct appeal in the manner and within the limitations expressly provided by the Legislature and not collaterally. Licensees who have received their licenses in good faith and have operated their businesses pursuant thereto should not be subjected to the possibility of an attack, after the statutory time for appeal has elapsed, on the propriety of the original procedure resulting in the issuance of the license.

The Commissioner cordially recommends that, although no action need presently be taken in connection with the license held by Joseph Deischer because of the impropriety of its issuance pursuant to reconsideration, hereafter the Board should not reconsider and pass upon an application after it has once been denied orgranted except in the event of appeal and reversal.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

10. APPEALS - AFTER REVERSAL IT IS THE DUTY OF MUNICIPAL LICENSE ISSUING OFFICIALS TO HONOR AND EXECUTE FORTHWITH ORDERS IRRESPECTIVE OF PERSONAL BELIEFS - HEREIN OF THE FUTILITY OF SIT-DOWN.

March 8th, 1937.

Florence R. Morey, Clerk,
Belleville, New Jersey.

My dear Mrs. Morey:

I have yours of the 4th reporting refusal of the local Board to issue license to Samuel Vuono as directed.

The appeal was fully tried, fairly decided, and the reasons stated in black and white. It thereupon became the duty of the Board (Control Act, Section 35) to honor and execute forthwith the order irrespective of personal beliefs of the individual members.

It is an ancient, if not honorable, prerogative of losers to curse the Court, but open defiance of authority is surprising when it comes from those sworn to enforce the law. It is a sorry example of disobedience to set to their licensees.

The Sit-down will be of no avail, however, for the Legislature has happily provided for just such a situation by enacting that:

"Where any order entered by the Commissioner pursuant to any appeal. . . . . is not

honored and executed within 10 days. . . .
it shall be deemed self-executed and have
the same force and effect as though actually
complied with."

So, never mind!

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

11. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING.

In the Matter of the Application :
of NICK ALDARELLI to lift : CONCLUSIONS
suspension of his license. :
. . . . . .

John J. Meehan, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Nick Aldarelli, the holder of plenary retail consumption license C-13, heretofore issued by the City Council of Asbury Park, was arrested on March 7, 1936 and charged with having possessed illicit alcoholic beverages in his licensed premises at 1029 Springwood Avenue. His arrest resulted from an inspection by investigators of this Department, revealing that the contents of five opened bottles of whiskey taken from behind the bar contained alcoholic beverages other than as represented by their labels. The contents of all bottles were off proof and three contained blended instead of straight whiskey. The licensee was held by the Police Magistrate of Asbury Park to await action by the Monmouth County Grand Jury.

On March 25, 1936 a synopsis containing all facts relative to the seizure was forwarded to the City Council of Asbury Park for proceedings directed toward the revocation or suspension of the license. On June 9, 1936 a hearing was held before the City Council. Decision was reserved but no judgment has ever been entered by the Council as a result of said hearing.

The Grand Jury returned an indictment against the said Aldarelli and on December 16, 1936 he was tried before a petit jury in the Monmouth County Court of Quarter Sessions and convicted. He was subsequently fined $150.00 and costs by Judge Knight of that court.

Under the Control Act (Reprint Section *82) his license, by reason of his conviction, became automatically suspended for the balance of its term - to June 30, 1937. Such suspension has now been in force since December 24, 1936.

A petition has been filed by Nick Aldarelli wherein he requests that the suspension of his license be lifted. Therein it is set forth that the licensee feels he has been sufficiently punished by reason of his conviction and fine on the criminal charge and the suspension of his license, which has now been in force for over two months. Petitioner relates that his livelihood and that of eight people depends upon the income from the tavern business; that he is now in arrears two months' rent and is threatened with dispossess proceedings.

Before entertaining the prayer of the petition, the attitude of the City Council of Asbury Park was requested. Cf. Re Jamouneau, Bulletin 165, Item 3. Pursuant to said request Mary E. Vaccaro, Acting City Clerk, certifies that at a regular meeting of the City Council of Asbury Park held on February 23, 1937 the following resolution was passed, viz.:

> "THAT, the suspension of Plenary Retail Consumption license C-13 of Nick Aldarelli for premises, 1029 Springwood Avenue, be lifted, subject to the approval of D. Frederick Burnett, Commissioner, Department of Alcoholic Beverage Control."

As set forth in Re Morris, Bulletin #98, Item 10, and in Re Honsell, Bulletin #164, Item 10, the policy of this Department has been that a licensee should suffer a minimum suspension of thirty days for an offense of this kind. Aldarelli has been out of business for twice that time.

I believe he has been sufficiently punished for his offense.

Accordingly, it is, on this 8th day of March, 1937, ORDERED, that the statutory suspension, now in force, be lifted, and that License C-13 heretofore issued to Nick Aldarelli by the City Council of Asbury Park, be, and it is hereby declared to be again in full force and effect.

D. FREDERICK BURNETT,
Commissioner.

12. ELECTIONS - LICENSED PREMISES - USE OF LICENSED PREMISES FOR POLLING PLACES PROHIBITED.

March 8, 1937.

Joseph Lisa,
Clerk of Chesilhurst Borough,
Waterford Works, New Jersey.

Dear Mr. Lisa:

I have your letter of February 24th re ruling made in re Lehman, Bulletin 146, item 1, discouraging the use of licensed premises as polling places.

I well understand how last October with the General Election but four days hence you could not conveniently change the polling place from Peter Hornbach's tavern, already designated. At that late hour and with insufficient notice, it might have operated to deprive late comers, unaware of the change, of their vote.

Do not, however, select any premises licensed to sell liquor for a polling place in the future. Regardless of its reputation for good conduct or of facilities to separate the part used as the polling place from the premises proper, a liquor store or tavern is no place to hold an election or tabulate the resulting vote.

Mr. Hornbach's license will be imperiled if this happens again.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. CREDIT - WHOLESALER AND RETAILER - OVER-EXTENSION OF CREDIT IS RUINOUS BUSINESS POLICY BUT NOT IN VIOLATION OF THE LAW.

March 8, 1937.

Galsworthy, Inc.,
292 Jelliff Avenue,
Newark, New Jersey.

Gentlemen: Attention: Mr. J. J. Finkel.

I have your letter of December 30th.

The credit which a wholesaler may extend to a retailer is a purely private matter which each wholesaler and retailer must work out for himself.

Over-extension of credit, like excessive discounts, is poor business policy and usually ruinous but not in violation of the law.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

14. DISCOUNT CARDS, PROFIT-SHARING COUPONS - COUPONS WHICH GIVE THE HOLDER A SPECIFIC PREDETERMINED PRICE DISCOUNT PERMISSIBLE.

March 8, 1937.

Butter & Buchal, Inc.,
26 Broadway,
Passaic, New Jersey.

Gentlemen:

I have your letter of February 25th.

I understand that you want to distribute book matches carrying the offer that the surrender of the matchbook cover shall entitle the bearer to five per cent discount on purchases over $1.00.

The distribution of discount cards, profit-sharing coupons or coupons such as your scheme contemplates, designed to give the holder a specific predetermined price advantage, are not presently prohibited either by the Alcoholic Beverage Control Act or by the State regulations. It is possible that pertinent regulations may be issued in the future. I have had them under consideration for some time. The statute confers upon me the power to regulate with respect to practices designed unduly to increase the consumption of alcoholic beverages. It seems clear that such devices are designed to increase consumption. Their use, however, in other mercantile lines is so wide that I am not yet sure that they can fairly be said to unduly increase consumption. Until contrary regulations are issued, there is nothing prohibiting the distribution of book matches with the offer that you propose.

Coupons or cards where the bonus or discount or price advantage is concealed have already been prohibited. They are essentially lotteries. See re Shinn, Bulletin 120, item 8, copy enclosed.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

15. LICENSES - FOREIGN DEALER MAY NOT SELL OR SOLICIT WITHIN THIS STATE OR SEND REPRESENTATIVES INTO THIS STATE FOR MISSIONARY OR OTHER SOLICITATION PURPOSES WITHOUT LICENSE - EXCEPTION TO THIS REQUIREMENT WILL NOT BE MADE IN FAVOR OF CERTAIN TYPE OF DEALERS FROM ONE PARTICULAR STATE IN ORDER TO ENABLE NEW JERSEY LICENSEES TO OPERATE WITHIN THAT STATE WITHOUT LICENSE.

Gentlemen:

We are now required to pay a $1,500. annual license fee to the State of Pennsylvania in order to do business in that State ("Act 399 - Approved July 18, 1935, provides that each Pennsylvania manufacturer and each non-resident manufacturer of distilled liquors and all vendors, selling distilled liquors to the Board, which are not manufactured in this Commonwealth, must make application for and be granted a permit by the Board before distilled liquors not manufactured in this Commonwealth shall be purchased from such vendor. The fee for such permit in case of a non-resident manufacturer shall be equal to that required to be paid in such State, Territory or Country by a Pennsylvania manufacturer doing business in such State, Territory or Country").

From the above law you will see that the required $1,500. payment is not the fault of Pennsylvania but is demanded only because New Jersey requires a payment of this amount from Pennsylvania manufacturers. New Jersey's Apple Brandy competitors from Delaware, Maryland, Virginia, Kentucky, California and many other States have a decided advantage in Pennsylvania over New Jersey Distillers, since they are not required to pay any reciprocity fee. In the final analysis this burden must be added to the selling price which reduces the sale of New Jersey products and also tends to promote the sale of illegitimate merchandise.

The joker of the present status of this matter is as follows: Pennsylvania manufacturers may sell their products in New Jersey without paying any fee because this could not be prohibited by you due to the importing privilege granted to New Jersey wholesalers. You have ruled that non-resident distillers cannot sell or solicit within the State, but this does not prevent the sale of their products in New Jersey and could only be stopped by the elimination of the importing privilege of New Jersey wholesalers.

The practical problems present in regulations and fees charged a fruit distiller are considerably different from those confronting a whiskey distiller. As an example, the very limited volume of business that exists in the Apple Brandy field makes a $1,500. license fee in Pennsylvania increase the cost about $.50 per case, whereas the possible business obtainable in the whiskey field would amount to only a fraction of a cent a case on whiskey and would not be serious to a whiskey distiller.

A reciprocity agreement with Pennsylvania would undoubtedly have the support of the entire New Jersey Apple Brandy distillers, since this fee as it now stands, makes it impossible for the smaller Apple Brandy distillers to even consider the solicitation of business in Pennsylvania.

Therefore the only remedy for this condition would be a no fee reciprocity ruling with Pennsylvania under the powers granted to the Commissioner by the Alcoholic Beverage Control Act, Section 36a, page 30. Since there are no plenary distillers' licenses for the manufacture of whiskey in New Jersey the ruling could justly apply only to distillers of fruit juices and would thereby eliminate the possible loss of revenue to this State from

Pennsylvania whiskey distillers. I know the Commissioner is very fair in all of his rulings and when this fact, plus the practical problem presented is taken into consideration, there should be sufficient justification for such a ruling. Further, New Jersey is known throughout the country as a leading State in the Apple Brandy field and anything that may promote this industry and assist the farmers in the consumption of their fruit will finally be to the interest of the entire State.

We have not applied for our Pennsylvania license for 1937 and have refrained from doing so in the hope that you can find a satisfactory solution to give us relief from this condition. It is imperative that we have prompt action in this matter as the purchasing agent for the Pennsylvania Liquor Control Board cannot issue purchase orders to us until this matter is settled.

Very truly yours,

LAIRD & COMPANY.

March 9th, 1937.

Laird & Company,
Scobeyville, New Jersey.

Gentlemen:

This Department has given much thought to the problems incident to the doing of business within this State by foreign dealers. The suggestion was early advanced that, through cooperative action between the States, a dealer licensed in one State might be permitted to do business, at least to some extent, in other States without obtaining additional licenses. Several conferences with officials of other States were held, but they merely led to the conclusion that no satisfactory basis for such cooperative action could be reached. Thereafter, this Department adopted the rule that no dealer, whether foreign or local, could sell or solicit within this State or employ representatives within this State for missionary or other solicitation purposes without a license. This rule placed foreign dealers on a parity with local dealers, aided considerably in the collection of taxes on all alcoholic beverages sold within this State, and resulted in substantial revenue from license fees.

Your letter refers to the statute of the Commonwealth of Pennsylvania, which provides in effect that the license fee payable by a manufacturer of another State for doing business in Pennsylvania shall be the same as that imposed by such other State upon a Pennsylvania manufacturer for doing business therein. You suggest that the New Jersey rule be abrogated in so far as dealers in apple brandy from the State of Pennsylvania are concerned, in order to enable you to do business within Pennsylvania without paying a license fee. It may well be doubted whether the statutory provision to which your letter refers (Section 36(a) - P.L. 1935, c. 254) was ever intended to sanction the doing of business within New Jersey by dealers from one particular State without license. In any event, however, sound considerations of policy and administration compel the rejection of your suggestion. Adoption thereof would not advance any interests of liquor control, but would merely permit one or more New Jersey licensees to operate in a neighboring State without paying a license fee. At any later date other types of licensees could, with much justification, request the same special privilege under similar circumstances, with the result that many foreign dealers now licensed would be enabled to do business within New Jersey without a license. The substantial advantages of the present rule would consequently be nullified.

You are advised that the Commissioner has declined to modify his general rule to the effect that no dealer, whether local or foreign, may sell or solicit the sale of alcoholic beverages within this State, or employ representatives within this State for missionary or other solicitation purposes without a license.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

16. APPELLATE DECISIONS - BUDD LAKE MARKET, INC. vs.MT.OLIVE TOWNSHIP.

BUDD LAKE MARKET, INC., a corporation,	:	
Appellant,	:	ON APPEAL ON REHEARING
-vs-	:	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MT. OLIVE,	:	
Respondent.	:	

Robert M. Dix, Esq., Attorney for Appellant.
William A. Hegarty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On January 22, 1937, Conclusions were filed (Bulletin #160, Item 6) reversing respondent's denial of appellant's application for plenary retail distribution license. Thereafter, petition for rehearing was filed and granted, and hearing pursuant thereto was held on February 15, 1937.

The Commissioner's original determination was based upon the finding that there was substantial local sentiment for a package goods store and that, although the Township was well supplied with taverns, there was no package goods store within its territorial limits. The petition for rehearing questioned the existence of such local sentiment and, in addition, asserted that a statement in the Commissioner's Conclusions to the effect that there was no licensed place of business within three-quarters of a mile of appellant's place of business was erroneous. At the hearing on February 15, 1937, testimony was taken with respect to both of these items. This testimony served to re-affirm rather than negative the adequate evidence supporting the original finding that there was substantial local sentiment in favor of a package goods store. It did, however, establish that there are several places of business near appellant's premises operating under consumption licenses. These licensed places are all operated as taverns and restaurants. In none is there any display of bottled goods or any department devoted to package goods trade. They do not, in any substantial sense, satisfy the purposes of a package goods store. Consequently, their presence in the locality does not affect the original determination that the licensing of a package goods store was warranted by considera-

tions of public convenience and necessity. See Goldberg vs. Livingston, Bulletin #163, Item 2.

The denial of appellant's application is reversed and respondent is directed to issue the license applied for in accordance with the Conclusions heretofore filed.

Commissioner.

Dated: March 10, 1937.