

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

BULLETIN NUMBER 162

FEBRUARY 16, 1937.

1. LICENSEES - ADVERTISING - APPROVAL DENIED OF ADVERTISEMENT TO CONTRIBUTE FRACTION OF GROSS RECEIPTS TO RED CROSS FLOOD RELIEF - WHATEVER IS DONE WITH THE ENDORSEMENT OF THIS DEPARTMENT MUST BE UNDER ITS CONTROL - HEREIN OF CHARITY DISSOCIATED WITH COMMERCE

2/1/37

Mr. D. Frederick Burnett-

We want to contribute 10% of the gross receipts for Friday, February 5 and Saturday, February 6 to the Red Cross flood relief.

Will you permit us to post signs on our windows for the two days, also a sign on a truck.

Thanking you for an early reply.

Very truly yours

BUDDY BEVERAGE CO.

P.S. The Buddy Wine & Liquor Store, 2526 Atlantic Ave. wishes to have the same permission.

February 3, 1937.

Buddy Beverage Co.,
Atlantic City, New Jersey.

Gentlemen:

I appreciate your humane desire to respond to the call of the American Red Cross for flood relief in the sadly stricken Ohio and Mississippi valleys.

Any plan, however, which capitalizes a major disaster to stimulate the gross receipts of a liquor enterprise through appeal to the natural instincts of a sympathetic public, is disapproved.

Moreover, I have no facilities to supervise or audit such receipts. Whatever is sponsored by this Department must be under its control.

If you wish to contribute any part of your gross receipts without advertising the fact in advance, you are welcome. Or, you can obtain from the Red Cross a sealed box for direct contributions, or take up a collection among your employees, or equip each of your salesmen with a sealed box.

Rather than solicit the consuming public upon your pledge to devote part of what they pay to a worthy cause, why not suggest their direct gift to the fund of the price of a few drinks?

Charity should not be cheapened by association with commerce.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

New Jersey State Library

2.

EDUCATIONAL CAMPAIGN

The speaking engagements arranged to date are as follows:

WEEK BEGINNING JANUARY 31, 1937

Friday, February 5

Anti Saloon League of New Jersey	-	Commissioner
Banquet Room, Perri's Restaurant,		D. Frederick Burnett
25 Branford Pl., Newark, N.J. - 6:30 P.M.		

WEEK BEGINNING FEBRUARY 7, 1937

Monday, February 8

Elks B.P.O. Lodge #1454,	-	Inspector
Freehold, N.J. - 8:30 P.M.		D.J.H. Murray

WEEK BEGINNING FEBRUARY 14, 1937

Sunday, February 14

Hudson-Bergen County Retail Liquor	-	Deputy Commr.
Stores Association,		N.L. Jacobs
Hotel Astor, New York City - 8:00 P.M.		

Tuesday, February 16

Union City Lodge of Elks #1357,	-	Attorney
Central Avenue & 32nd Street,		Harry Castelbaum
Union City, N.J. - 9:00 P.M.		

Tuesday, February 16

Mayors and Chiefs of Police of	-	Commissioner
Middlesex County,		D. Frederick Burnett
Colonia Country Club,		
Colonia, N.J. - 8:00 P.M.		

WEEK BEGINNING FEBRUARY 21, 1937

Tuesday, February 23

Women's Auxiliary, Essex County Medical	-	Deputy Commr.
Society, Academy of Medicine Bldg.,		E.W. Garrett
31 Lincoln Park, Newark, N.J. - 2:45 P.M.		

WEEK BEGINNING FEBRUARY 28, 1937

Wednesday, March 3

Veritans Club at Unity Progress Club,	-	Attorney
52 Church St., Paterson, N.J. - 12 Noon		Harry Castelbaum

WEEK BEGINNING MARCH 28, 1937

Tuesday, March 30

Arlington Women's Club - Arlington	-	Inspector
		M.E. Ash

E. W. Garrett
Deputy Commissioner

Dated: February 1, 1937.

3. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - "CUT RATE" SIGNS ARE INDIRECT ADVERTISING OF PRICE AND HENCE IN VIOLATION OF THE RULES.

RULES CONCERNING MISLEADING TRADE NAMES - LICENSEES AUTHORIZED UNDER STATE LAW TO SELL ONLY AT RETAIL MAY NOT HOLD THEMSELVES OUT TO BE WHOLESALERS.

Gentlemen:

We have a Distribution license at the above address and this week one of your agents came in and told us that we would have to remove the words "CUT RATE" from a stationary transom above our display window.

Now, since we are about to receive, as a result of an application, a wholesale stamp in addition to the retail one which we now hold, would we be permitted to replace the present words with "WHOLESALE AND RETAIL"?

We would also like to know what length of time you give us to remove the words "CUT RATE" from our transom, as a removal now would cause some inconvenience.

Thank you very much,

FELKO SUPPLY CO.

February 4, 1937.

Felko Supply Co.,
New Brunswick, New Jersey

Gentlemen:

The "Cut Rate" signs must be removed forthwith.

The State Rules Governing Signs and Other Advertising Matter prohibit retail licensees from directly or indirectly advertising the price of any alcoholic beverage on the exterior of the licensed premises or on the interior when visible from the street, allowing only $1\frac{1}{2}$ " x $1\frac{1}{2}$ " cards advertising prices of alcoholic beverages being sold in original containers for off-premises consumption. See Rule 3. Words such as "Cut Rate" are indirect advertising of price even though the price itself is not named and are, therefore, in violation of the Rules. See Notice re Signs of May 18, 1936, Bulletin 120, item 1; re Sindors, Inc., Bulletin 120, item 10. For what happens to licensees who disobey the Rules and the trouble and inconvenience that such violations cause them, see Parker Liquor Stores v. Jersey City, Bulletin 130, item 9. The Rules were meant to be obeyed. Violation is cause for the suspension or revocation of the license.

You may not use the word "wholesale" to advertise or describe your business. You are not a wholesaler under the State law regardless of your holding a Federal Wholesale Liquor Dealers Tax Stamp. Under Federal law, the only difference between retailer and wholesaler is the quantity of alcoholic beverages which comprises the sale. A retailer, under Federal law, is one who sells in quantities of less than five gallons to the same person at the same time; a wholesaler is one who sells in quantities of five gallons or over. Under State law, however, a retailer is one who sells to consumers and a wholesaler is one who sells for purposes of resale. The State Rules Concerning Misleading Trade Names

prohibit licensees from using any name, sign or symbol which is calculated to or may mislead the public to believe the licensee is conducting any operations or business pertaining to alcoholic beverages other than those actually being conducted by the licensee. See Rule 2.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. LICENSES - SUSPENSION - MUNICIPAL ORDER OF SUSPENSION SUPPLEMENTED BY ORDER OF STATE COMMISSIONER REQUIRING LICENSEE TO REMOVE FORTHWITH ALL LIQUOR FROM THE LICENSED PREMISES AND NOT TO HAVE OR POSSESS ANY LIQUOR THEREON DURING THE TERM OF SUSPENSION - SPECIAL PERMIT ISSUABLE TO ENABLE LICENSEE TO COMPLY WITH THE ORDER.

February 4, 1937.

Dear Commissioner:

In reply to your communication of the 3rd inst., on the Sperber restaurant matter, would advise that the facts in this case are as follows:

(1) Mr. Sperber appeared before the Council Monday night of this week and asked if there were any objections to his continuing the operation of the restaurant part of his business in the premises covered by Plenary Retail Consumption license recently suspended.

(2) The question was referred to me to determine whether Commissioner Burnett would have any objections to the request of Mr. Sperber.

(3) I spoke with your Mr. Jacobs on the phone and he stated that there would be no objections to permitting the place to remain open as a restaurant only.

(4) On Tuesday night I advise the members of the Municipal Council of the message from Mr. Jacobs, with five of the seven members of the Council present. The five agreed unanimously that there would be no objections to Mr. Sperber continuing the restaurant only provided he removed the liquor from the building entirely so as to eliminate any doubt as to what might happen should the stock of liquor be too convenient for use in the restaurant. Later Tuesday night one of the members of the Council who was not present earlier in the evening took the floor and insisted that the restaurant as well as the liquor part of the business be discontinued. That Councilman made a motion that the Sperber restaurant matter be referred to conference two weeks hence. The motion was seconded but only received two votes in the affirmative and was accordingly lost. This ended the matter leaving the original decision of the five members of the Municipal Council, as stated previously in this paragraph, the final decision.

Trusting this will give you the information desired,
I remain,

Very truly yours,
WILLIAM A. MILLER
City Manager.

February 6, 1937

William A. Miller
City Manager
Clifton, New Jersey

My dear Mr. Miller:

I have yours dated the 4th re Sperber.

As set forth in mine of the 3rd, the suspension of his liquor license in nowise affects the operation of his restaurant as such, provided, of course, that under no circumstances may alcoholic beverages be sold thereon during the term of the suspension.

Since it appears that your Council informally, but, nevertheless, in fact, desire that during the period of suspension, he should remove all liquor from his restaurant so as to eliminate any doubt as to what might happen under temptation, I now supplement the order of suspension, heretofore entered by your Council, in manner following:

"The Order of the Mayor and Council of Clifton, of January 27, 1937, suspending the plenary retail consumption license issued to Abe Sperber for a period of sixty days effective February 1, 1937, is hereby supplemented, viz.: Said Abe Sperber shall forthwith remove all alcoholic beverages from the licensed premises and he shall not have or possess any alcoholic beverages thereon at any time during the term of said suspension.

"Special Permit to enable him to comply with this Order may be issued immediately."

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

5. RULINGS - RULINGS ARE NEVER MADE OVER THE PHONE OR OTHERWISE THAN IN WRITING SIGNED BY THE COMMISSIONER OR BY SOMEONE THEREUNTO DULY AUTHORIZED BY HIM - IN ORDER THAT A RULING BE OFFICIAL THE FACTS AND THE QUESTIONS SHOULD BE STATED IN A LETTER ADDRESSED TO THE COMMISSIONER

February 4, 1937.

Greenspan Bros. Co.,
Perth Amboy, N.J.

Gentlemen: Attention: A.R. Hoddeson

I have yours of February 1st.

I note, with interest, your statement: "Sometime ago, we received a ruling from your office over the phone to the effect that any breakage resulting during transit is subject to state tax."

In the first place, rulings are not given over the phone. They are, invariably, made in writing and signed by me or by someone thereunto duly authorized. I do not recognize nor will I be bound by any conversations you may have with persons not authorized to speak for me.

In the second place, whether breakage occurring during transit is subject to State tax is none of my business, as that is exclusively under the jurisdiction of the Beverage Tax Division of the State Tax Department, of which Mr. J. Lindsay de Valliere is Deputy Commissioner. Therefore, it should be needless to say, I have made no ruling concerning that subject, nor have I authorized anyone to do so.

Hereafter, if you wish official rulings from this Department, you will please state the facts and the conclusions in writing, addressed in each instance to me, as State Commissioner of Alcoholic Beverage Control.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - REVOCATION INDICATED AND ADMINISTERED -
THE FARMER SULLIVAN MURDER.

February 8, 1937

Edward Farry, Jr.,
Attorney for Matawan Township,
Keyport, N. J.

Dear Mr. Farry:

I have staff report of the proceedings before the Township Committee of Matawan against Sylvia Martini charged with (a) having made a false statement in securing her license by failing to disclose her real name; (b) having kept the licensed place open and sold alcoholic beverages after closing hour; (c) having permitted a racketeer to remain on the licensed premises in violation of State Rule; (d) having permitted the licensed premises to be conducted in such a manner as to constitute a nuisance; and (e) having employed or connected with the licensed business, a disqualified person.

The report states:

"On September 19, 1936 a murder occurred in the above licensed premises at about 4:30 A. M. An investigation was started by this Department revealing the following:

"At about 4:30 A. M. on September 19, 1936 six men entered the licensed premises and ordered spaghetti. While waiting to be served eight shots were fired through a window from the front porch. One struck and killed Robert J. (Farmer) Sullivan. The five men who were with him fled. Two other men and a woman were in the place at the time of the shooting. The waiter admitted having served drinks after the closing hour.

"Investigation further revealed the licensee's name is Sylvia Montefusco; that her husband who worked around the licensed premises had been convicted for a crime involving prostitution in Schenectady, New York; that he now uses the name of Joseph Martini instead of Joseph Montefusco; that he was in the kitchen preparing the spaghetti with the cook when the murder occurred.

"At the hearing Inspector Murray and Investigator Grover testified as to their investigation. Police Officer Menzel of Matawan testified that he had known Robert J. (Farmer) Sullivan, the man who had been murdered, for about four years; that he had a reputation of being a racketeer and made his living by race horse betting and other means in the same category.

"The licensee was not present at the hearing. Her husband, Joseph Martini, was present and cross-examined the witnesses. He was permitted to testify. He stated that the licensed premises were open at 4 A.M. on the day in question; that he did not know anything about the shooting until Sullivan staggered into the rear room. On cross-examination he admitted that his right name is Joseph Montefusco; that he used "Martini" for business purposes; that he was convicted of compulsory prostitution in New York State. He denied having served liquor on the licensed premises, stating that his activities were confined to washing glasses and cleaning up.

"Verdict: Guilty on all charges.

"Sentence: License revoked."

No opinion is expressed on the merits of the case, because perchance, it may come before me by way of appeal.

I do, however, admire the thoroughness with which these proceedings were conducted and the exemplary and commensurate penalty inflicted on adjudication of guilt. I thank you and the members of the Township Committee for the splendid manner in which they have discharged an unpleasant public duty.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - REVOCATION FOR SUNDAY SALE IN VIOLATION OF LOCAL REFERENDUM - WHEN LICENSEES ACT AGAINST THE EXPRESSED WILL OF THE PEOPLE THE PRIVILEGE SHOULD BE TAKEN AWAY

February 10, 1937

Thomas C. Magee, Esq.,
Township Clerk of Marlboro,
Marlboro, N.J.

Dear Mr. Magee:

I have staff report of the proceeding before the Township Committee of Marlboro against Edward John Ludwig, t/a Dew Drop Inn, charged with having sold alcoholic beverages on Sunday, January 10, 1937, in violation of the local referendum of November 3rd, last, which resulted in prohibiting Sunday sales.

I note the licensee was adjudicated guilty and that his license was revoked.

Expressing no opinion on the merits because the case may come before me by way of appeal, I have no hesitancy in conveying to your Committeemen my wholehearted endorsement of their judgment of revocation. The people of your community by their vote decreed that no sales of liquor should be made in Marlboro on Sundays. It is not for any licensee to substitute his judgment in place of the expressed will of the people. He must abide by the law and the rules. If he does not, the privilege given him should be taken away.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. LICENSES - SUSPENSION - WHOLESALERS MAY NOT TRANSACT BUSINESS WITH SUSPENDED RETAIL LICENSEES

February 8, 1937.

Dear Sir:

One of our accounts was suspended for a sixty day period some time ago, and the suspension period ends Friday, February 12. The account has ordered merchandise from us, and our delivery day in his territory is on Wednesday, February 10th. Will you kindly wire us collect upon receipt of this letter if it is permissible for us to make a delivery of merchandise to his premises while the suspension is still in effect? Your advice in this matter will be greatly appreciated.

Yours very truly,

MAJESTIC WINE & SPIRITS, INC.

February 10, 1937.

Majestic Wine & Spirits, Inc.,
Camden, N.J.

Gentlemen:

Thank you for your inquiry of the 8th.

I have just wired you: "DONT DELIVER LIQUOR UNTIL SUSPENSION IS COMPLETED."

The reason is that a suspension destroys all the privileges of handling liquor during the term of the suspension. Re Spindel, Bulletin 89, Item 14. The liquor which your customer seeks to have you deliver today, while the suspension is still on, is undoubtedly purchased for the purpose of resale, which resale, however, he has no right to make until the suspension expires.

Wholesalers may not transact business with suspended retail licensees.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

9. LICENSES - CONVERSION FROM CLUB TO PLENARY RETAIL CONSUMPTION LICENSE - REQUIRES ADVERTISEMENT AND COMPLIANCE WITH ALL REQUIREMENTS THE SAME AS ON ANY NEW APPLICATION FOR PLENARY LICENSE.

February 6, 1937

Dear Commissioner Burnett:

George J. Keevil, former Chairman of the Township Committee of the Township of Scotch Plains, wrote you inquiring as to whether the Shady Rest Country Club could transfer their Club license to a Plenary Retail Consumption license and if the unearned portion of the fee for the club license could be applied to the fee for the consumption license.

On January 12, 1937, you wrote Mr. Keevil approving such conversion and the Shady Rest Country Club now has made application to the Township Committee for the transfer. However, they have neglected to advertise their notice of intention to transfer said license and there is a question in the minds of the Committeemen as to whether or not it is necessary to re-advertise.

Inasmuch as this matter is not covered in your Bulletin, we would appreciate your advice in this respect.

Very truly yours,
TOWNSHIP OF SCOTCH PLAINS
Charles H. Roberts,
Township Clerk.

February 10, 1937.

Charles H. Roberts,
Township Clerk,
Scotch Plains, N.J.

My dear Mr. Roberts:

I have yours of the 6th.

Strictly speaking, what the Shady Rest Country Club seeks is not a transfer of license, but rather a conversion of its present Club License into a Plenary Retail Consumption License.

The proper procedure is for the Club to apply for such Plenary License exactly as any other applicant and comply with all the requirements, including advertising. It is conceivable that neighbors might complain of a Plenary License and its wide privileges, although they might have no objection to a Club License and its narrow permissions. Hence, the application for a different kind of license will have to be advertised even though it is the same applicant at the same place.

All that the ruling in re Keevil, Bulletin 158, Item 11, meant was that the unearned portion of the fee for the Club License could be credited upon the payment of the fee for the Plenary License.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

10. LICENSEES - DISQUALIFICATION - A LICENSEE WHO IS ALSO A MEMBER OF A MUNICIPAL GOVERNING BODY MAY NOT SERVE ON THE POLICE COMMITTEE.

Dear Mr. Burnett:

According to our information there is a situation existing in . . . about which we desire to ask your opinion.

A Borough Councilman by the name of . . . is engaged in the liquor business and is also on the police committee of law and order. This man placed his name on a petition, on December 28, 1936, to have the saloons remain open on New Year's Eve at a later hour than that established by regular municipal ordinance.

While it is our understanding that you have already ruled that members of governing bodies who are in the liquor business may not take part in the proceedings of council while it is determining questions relating to alcoholic beverage matters it is our opinion that, by reason of his official influence, and especially by reason of his connection with the "police committee of law and order" the situation gives rise to just criticism by the citizenry as to the ethics of the case.

We would appreciate whatever comments you would care to offer in regard to this matter.

Very truly yours,
A. R. EVERSON,
Executive Secretary.

February 11, 1937

New Jersey Taxpayers Association,
Trenton, New Jersey.

Attention: A. R. Everson, Executive Secretary.
Gentlemen:

Rulings heretofore made disqualify members of municipal governing bodies, who also hold liquor licenses, from participating in matters concerning any phase of alcoholic beverage control. Thus, they may not vote upon the granting or rejecting of licenses, or sit in hearings on applications or revocations, or participate in the enactment of regulations, ordinances or resolutions concerning the liquor traffic. Whenever the subject matter affects his private interest, the licensee must withdraw entirely. See Marsteller v. Hagenbucher and Somers Point, Bulletin #95, Item #10, and the items cited therein.

Applying these principles to the instant case, a liquor licensee should not serve on the municipal police committee. Since he may not be a policeman, re Scott, Bulletin #109, Item #5, neither should he be a policeman's boss. Those entrusted with enforcement of the liquor law should have no personal or financial interest in the liquor trade. It is a vicious circle for members of a police committee, who also hold liquor licenses, to have directly under their control the very officers whose duty it is to supervise their private business. The circle is broken by severing the official position at its top.

I am therefore directing the Councilman-licensee to resign forthwith from the police committee or else surrender his license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. APPELLATE DECISIONS - BEDNARSKI v. HAMILTON TOWNSHIP.

JULIA BEDNARSKI,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HAMILTON,)	
)	
Respondent.)	

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq.,
Attorneys for Appellant.
R. James Stewart, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for 381 Whitehead Road, Trenton.

Respondent denied the application because there were, in its judgment, a sufficient number of licensed places in the immediate vicinity.

Appellant's premises consist of a private dwelling where she and her husband now reside. She planned to alter the first floor for saloon purposes. These premises are located in a section of the Township known locally as "Whitehead Manor," which admittedly is a residential section of the Township, although it is surrounded by a factory district. At present there are two licensed places near appellant's premises; one known as "Craig's" is two blocks away; the other known as "Pine Hotel" adjoins Craig's. Both of these places have been licensed since or shortly after Repeal.

The evidence shows that there are 101 registered voters in the Whitehead Manor section. It would appear that two licensed places in that section of the Township are sufficient to take care of local needs. The only evidence as to necessity is that of appellant and her husband, who testified as to the existence of the factories and traffic on Whitehead Road. The nearest factory is two blocks from appellant's premises; the next is four blocks; the others are further away. The traffic passes Craig's and Pine Hotel. Considering all the evidence, it appears that there is a mere difference of opinion. The burden is on appellant to show an abuse of discretion by respondent. This she has failed to do. Kalish v. Linden, Bulletin #71, Item #14.

Appellant alleges discrimination because five licenses have been issued in the vicinity of East State Street and Johnston Avenue, which, she claims, is a section similar in character to Whitehead Manor. The evidence shows that there are 575 registered voters in the Johnston Avenue section, more than five times as many as in Whitehead Manor. It appears also from the testimony of the Chairman of the Township Committee that these five licenses (four consumption and one club) were issued "when liquor came back" and that no new licenses have been issued lately in that vicinity. Respondent should have an opportunity to correct earlier mistakes made in licensing too many places. Murphy v. Trenton, Bulletin #76, Item #15; Crisonino v. Bayonne, Bulletin #101, Item #6.

Lastly, appellant contends that respondent was improperly motivated. Her application first came up for consideration on November 10, 1936. One Charles Brooks, employed by The Peoples Brewing Co. of Trenton, which owns the Pine Hotel, appeared and objected on the ground that there were sufficient licensed places in that neighborhood. The application was laid over a week for investigation by respondent. On November 17, 1936, respondent denied the application on that ground. The Chairman testified that respondent made its determination after independent investigation and not just because Brooks or the Brewing Company wanted to crowd appellant out of competition with the tavern owned by the brewery. Selfish objections do not come with good grace from a brewery which is allowed to retain ownership of saloon properties only because of a statutory moratorium. There is nothing, however, to show that the determination made by the Township Committee was erroneous or that it was in any way influenced by the desire of the brewery. Besides the unequivocal denial by the Chairman that this license was turned down merely because of Brooks' "say so," appellant admits that the Township Committee advised her they would cooperate if she selected another location and would grant a license if the other location were suitable. I find no evidence that respondent was improperly motivated.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 11, 1937.

12. ADVERTISING - NO RULING AGAINST SANDWICH MEN - HEREIN OF
OFFENSIVE ADVERTISING.

February 10, 1937

Dear Commissioner:

Please advise the writer whether there is any ruling against advertising a liquor store by means of having a man carry a sign on his back while walking on the street.

Yours truly,
EMPIRE LIQUOR STORE.

February 13, 1937

Empire Liquor Store,
Newark, N. J.

Gentlemen:

I have yours of the 10th.

There is no ruling against "sandwich men," providing, of course, that the text of the advertisement itself does not violate the rules and is not otherwise offensive.

A good illustration of what is meant by offensive advertising comes to hand this morning in notice of the proceedings by the Federal Alcohol Administration to revoke the license of the Julius Kessler Distilling Company, of Indiana. Their advertisements set forth statements such as: "How you can get a better job!"; "Here are true stories of men who have stepped ahead by keen thinking"; "These true stories of success prove it pays to have a bright, keen mind every minute"; "I blend my whiskey especially for men like you, who drink sensibly and want to step ahead faster"; "Be up bright and early the next morning, ready to do the kind of work that'll get you the better job you're hoping for"; "Julius Kessler has made and sold more whiskey than any other living man. He has started thousands of men on the road to business success"; "Keep keen! Keep to Kessler's!", and reproduction of pictures of two individuals, identified as "H.K.H., Ohio" and "J.L., California," accompanied by statements to the effect that said parties have improved and bettered their business connections and positions in life.

The Order to Show Cause of the Administrator declared: "all of which statements, designs and devices, separately and in conjunction with one another, are misleading in that they convey the impression that the use of the product advertised will enable the users thereof to acquire a 'bright, keen mind,' make them 'keen' thinkers, enable them to get 'the better job' and aid them 'on the road to success'".

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS - OLSEN v. LINDEN.

WALTER OLSEN, trading as)
OLSEN DINER,)

Appellant,)

-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF LINDEN,)

Respondent)

- - - - -

ON APPEAL
CONCLUSIONS

Frank J. Dougherty, Esq., Attorney for Appellant.
Lewis Winetsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license.

At the hearing on appeal, appellant admitted that the signature on the application for the license was that of his father and not his own, but stated that the application was made with his consent. Neither did appellant sign the affidavit. His father admitted that he had signed the son's name to the affidavit.

It is clear that appellant has attempted to perpetrate a fraud upon the respondent Board. Section 22 of the Control Act specifically provides that all applications shall be duly sworn to by each of the applicants except in certain situations not here involved. Appellant's action in permitting his father to sign the application and the affidavit in connection therewith is a clear violation of this Section.

Citation of authority is unnecessary, but the case of Miner v. Larney, 87 N. J. L. 40 (Sup. Ct. 1915) is apposite. An applicant for a liquor license presented a certificate as to his reputation, containing ostensibly the signatures of twelve freeholders, required by the Inns and Taverns Act, together with his affidavit that the certificate had been signed by the requisite number of freeholders. The testimony disclosed, however, that some of the signatures were affixed by the applicant and other persons, although with the consent of the freeholders. The statute made it a misdemeanor for a person to sign the recommendation untruthfully. The court held that a certificate made in this fashion defeated the purpose of the statute, and that the affidavit submitted with it constituted a fraud on the court. The language of the court is singularly applicable:

"It is safe to say that if such a practice as that shown in the present case were to prevail, the court would be at the mercy of every unprincipled applicant that chooses to concoct a false recommendation and of every 'signer' that honestly or otherwise denies having given authority to sign for him, or would be compelled before licensing to inquire by examination of witnesses under oath, as to the genuineness or the authorization of each signature."

Appellant's brazen admission in the instant case that he had not himself signed the affidavit but had consented to having his father perform this act indicates a gross lack of moral perception. Such a person is not entitled to a license. Appellant's conduct is ample ground for denying it.

The action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 13, 1937.

14. APPELLATE DECISIONS - FIDELITY & HARMONY BENEFICIAL ASSOCIATION
OF SOUTH PLAINFIELD.

In the Matter of the Petition)	
filed by FIDELITY & HARMONY)	
BENEFICIAL ASSOCIATION OF SOUTH)	ON APPEAL
PLAINFIELD, to review condition)	CONCLUSIONS
in license.)	

 Henry M. Spitzer, Esq., Attorney for Petitioner.
 Abraham Motolinsky, Esq., Attorney for Borough of South Plainfield.
 Edmund J. Kiely, Esq., Attorney for Robert Hamilton, Objector.

BY THE COMMISSIONER:

This matter comes before me on a petition which alleges that a condition in a license issued to this Polish association was improperly inserted in said license, and that petitioner is thereby aggrieved.

The evidence shows that respondent Borough of South Plainfield issued Club License No. CB-1 to petitioner for the present fiscal year for premises located at 213-215 Hamilton Boulevard, South Plainfield. The license contains the following condition which is the subject of this review:

"Provided they find a new location suitable to the Police Committee on or before 9-1-36."

The petition states:

"Said license was subject to the condition that the licensee find a new location on or before September 1, 1936, which time has been extended by leave of the Borough Council of South Plainfield.

"The licensee is aggrieved by the condition imposed on said license for the following reasons:

(a) The condition was never approved by the Commissioner in accordance with section 29 of the Alcoholic Beverage Act.

(b) No public hearing was afforded the licensee.

(c) There is no specific condition attached to the license as to location.

(d) The petitioner has not violated any rules and regulations."

The weight of petitioner's argument is stressed on the point that the condition was not submitted for approval prior to the issuance of the license.

Such is the fact. It has never come before me until this appeal. Technically, therefore, the insertion of the condition did not meet the requirement of Section 29 at the time the license was issued. It is nothing, however, but a mere technicality. It will now be considered on the merits nunc pro tunc just as in Peck v. West Orange, Bulletin #147, Item #1.

The requirement that the new location shall be "suitable to the Police Committee" is objectionable if it means an attempt to delegate the power of the governing board to one of its committees. Re Guttenberg, Bulletin #66, Item #8. Approval by the Police Committee may well be an appropriate preliminary to final determination by

the Mayor and Council of the Borough, but it is not a proper substitute for it. To the extent of the words last quoted, the condition is disapproved.

Petitioner, however, makes no complaint because of unlawful delegation of power to the Police Committee nor does it allege that it has been aggrieved thereby. In fact, the point was not raised in the pleadings, the testimony or the briefs submitted. I shall, therefore, exscind the words last quoted on my own motion. Making this elimination the condition reads: "provided they find a new location on or before 9-1-36."

As thus recast, it corresponds exactly to appellant's own statement thereof in its petition of appeal, viz., a condition "that the licensee find a new location on or before September 1, 1936."

The testimony of noise, drunkenness and disturbance which appears in the transcript was ample to warrant the Respondent Borough in refusing to issue any renewal. Mrs. Hamilton, one of the objectors, when asked, on cross-examination, if she would be satisfied if the members of the Lodge were on good behavior, answered:

"I don't like to answer that without qualifying it. I would like to answer it this way. Knowing these people, I think it is impossible for them to continue under this suppression for any great period of time, because when they get drinking, they lose their inhibitions, and they are naturally a noisy, jovial, race, and, when under the influence of liquor they lose their inhibitions and are twice as noisy."

Instead of denying the renewal outright, it was granted on condition that the Association find a new location within a set time. That of itself was favorable to the Association. It kept the license alive so that it could be transferred if a suitable location were found. The President and Secretary of petitioner were present when the members of the Common Council determined that they would impose this condition, and neither of them made any objection to the imposition of the condition at that time. Referring to the proceedings at that meeting, the Secretary testified as follows:

- "Q You heard the objections Mrs. Hamilton made?
A Yes.
Q You stood up and had something to say at the council meeting?
A Councilman Babes asked if any one have anything to say.
Q Did you have anything to say?
A The Mayor asked, so I said, 'Better to give time,' I asked for ninety days or sixty, and they decide sixty, and left it that way. Ever since I don't know what happened.
Q You did get up and speak at the Council meeting?
A Yes.
Q You had no objection to moving?
A No. Better to move than lose the license, for my part."

Petitioner accepted the license subject to the condition but did absolutely nothing, so far as the record shows, about obtaining new quarters, but operated at the old place until the time limit set in the condition had expired, and then for the first time claimed that the condition was void. It is clear that petitioner accepted the condition and received the benefit of the license. The time is up and it will now have to move.

The condition, as above modified, is hereby approved.

The condition having been violated, the license is revocable. The Mayor and Council of South Plainfield are hereby directed to institute revocation proceedings forthwith unless, within six (6) days from the date hereof, the petitioner shall move out from its present licensed location or else surrender its license.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 14, 1937.

15. REFUNDS - DENIAL BECAUSE OF ALLEGED VIOLATIONS - JUSTIFICATION
FOR REFUSAL TO MAKE REFUND MAY BE TESTED ON APPEAL.

February 15, 1937

Benjamin F. Friedman, Esq.,
Camden, New Jersey.

Dear Mr. Friedman:

I take it that the situation referred to in your letter is as follows: That Mrs. Williams was issued Plenary Retail Consumption License #C-1 by the Borough of Stratford for the fiscal year 1936-37; that her license was delivered to the Borough Council on December 17, 1936 for surrender and refund, and that the Borough Solicitor on January 28, 1937 advised you that the Borough Council had denied refund because of certain alleged violations.

The records of this Department disclose that on December 5, 1936, I forwarded a synopsis of an investigation made by this Department disclosing alleged violations of Rule 5 of Rules Concerning Conduct of Licensees and Use of Licensed Premises. My letter in connection with this matter recommended to the Borough Council of Stratford that disciplinary proceedings be instituted against this licensee directed toward the revocation or suspension of the license. Rule 5 provides:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

This Department received no acknowledgment in the matter until February 5, 1937, when R. P. Jones, Borough Clerk of Stratford, advised that Mrs. Williams had moved from this Borough and State on December 1, 1936, and had returned her license to the municipal authorities. Mr. Jones further stated that the Borough Council did not make any refund of her license fee because of the alleged violation of Rule 5.

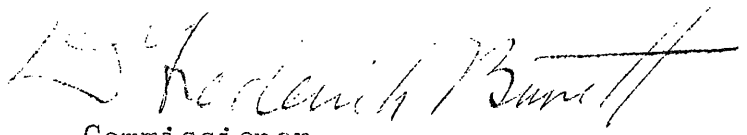
The Borough is within its rights if the Rule was, in fact, violated. Section 28 of the Control Act provides:

"No refund, except as expressly permitted by section twenty-three, shall be made of any portion of a license fee after issuance of a license; provided, however, that if any licensee, except a seasonal retail consumption licensee, shall voluntarily surrender his license, there shall be returned to him, after deducting as a surrender fee fifty per centum of the license fee paid by him, the prorated fee for the unexpired term; provided, further, that such licensee shall not have committed any violation of this act or of any rule or regulation or done anything which in the fair discretion of

the commissioner or other issuing authority, as the case may be, should bar or preclude such licensee from making such claim for refund and that all taxes and other set-offs or counterclaims which shall have accrued and shall have become due and payable to the State of New Jersey and/or any municipality have been paid. * * * The refusal of the other issuing authority to grant any refund hereunder shall be subject to appeal to the commissioner within thirty days after notice of such refusal is mailed to or served upon the licensee."

If you believe that the refusal of the Borough Council to make refund in this case was not justified, you are privileged to file an appeal in the matter with this Department within thirty days after notice of such refusal was mailed to the licensee. Enclosed is copy of our Rules Governing Appeals and a copy of our form of Notice of Appeal in connection with the denial of application for license for your information. The form of notice in your case may be drafted to follow the enclosed form by simply rewording to fit the circumstances.

Very truly yours,


Commissioner.

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