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

BULLETIN NUMBER 238 APRIL 11, 1938.

1. DISCIPLINARY PROCEEDINGS - BOROUGH OF HALEDON - ANOTHER MISCARRIAGE OF JUSTICE.

April 5, 1938

Alexander Clifford, Borough Clerk,
408 Morrissee Avenue,
Haledon, New Jersey.

Dear Mr. Clifford:

I have staff report and your certification of the proceedings before the Borough Council of Haledon against Richard Cartotta, t/a Cedar Cliff Hotel, charged with (a) having permitted conduct of a lottery on the licensed premises, viz., the operation of a punchboard, and (b) having sold alcoholic beverages during prohibited hours in violation of the local ordinance.

The report states:

"On February 11, 1938, Investigators King and Flynn visited the licensed premises and observed two punchboards which chanced off a 'Charley McCarthy Doll' and candy. The investigators took chances on these boards.

"On February 18, 1938, the investigators again visited the licensed premises. At 3:10 A. M., the lights in the barroom were dimmed but the investigators heard the bartender remark that 'It makes the place look as if closed, but Saturday nights we never close until 5:00 or 6:00 A. M. Sunday as it is the best night we have.' At 3:30 A. M., Investigator Flynn purchased two bottles of beer which the bartender placed in a bag for him. Flynn and King were also served alcoholic beverages shortly before 3:30 A. M. which they drank and then departed.

"On February 27, 1938, they again visited the licensed premises and made purchases of alcoholic beverages at about 3:50 A. M. They then made known their identity to the licensee and his son and obtained written statements from both admitting the violations above set forth.

"Certification has been received from the Borough Clerk which, after reciting the charges above, concludes as follows:

"'Mr. Cartotta entered a plea of guilty to preferred charges, and asked the members of the Council to be lenient with him, as this was his first offence and the suspension of his license for a prolonged period would be detrimental to his restaurant business, which consisted mostly of prearranged dinners by different organizations. He stated that he was aware of the fact that it is the duty of the Council to penalize violators of Laws and Ordinances, but the lack of a protective ordinance concerning eating places would cause him to cancel several dates with organizations if forced to close by a suspension of his beverage license.

"'The Council then went into executive session and after a long discussion concerning the facts as submitted, and the character of Mr. Cartotta in the

previous conduct of his business, the effect a suspension may have on his future business, and the moral effect of a penalty to be imposed would have on other licensees, the following motion made by Councilman Foster and seconded by Councilman Hoelscher was passed by a vote of five yeas.

"'Whereas Mr. Richard Cartotta, holder of Plenary Retail Consumption License No. C-10, for the premises at 276 Belmont Avenue, Haledon, N. J., has pleaded guilty to charges of violating Rules and Regulations of the Beverage Control Commissioner, and has made promises to this Board that he will abstain from further violations, and

"Whereas, through no fault of Mr. Cartotta's a suspension of his beverage license, would be detrimental to the welfare of his restaurant by the loss of trade, be it therefore

"'Moved that his plea of guilty be accepted, and that he be given a reprimand and notice that future violations will be given full penalties, and that sentence under current charges be suspended.'"

The net result is that Cartotta goes scot-free in spite of admitted gambling and persistent disregard of your own ordinance.

Chicken-hearted administration of the law brings it into contempt.

I do not share your Council's tender solicitude for Cartotta's loss of trade if his restaurant were closed down for defying your ordinance. I presume he has kept for himself all the illicit profit he made by dimming his lights at the official closing hour and continuing to sell liquor until sun-up on Sundays. How he must "laff"!

Hence I shall handle all future charges against him directly.

And all charges against all licensees in Haledon unless there is a prompt and sincere right about face by your Council.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - NECESSITY FOR TIGHTENING UP ALL ALONG THE LINE - EDITORIAL.

The following editorial is taken from the Bergen Evening Record of April 5, 1938:

"WARNING

"D. Frederick Burnett, State Alcoholic Beverage Control Commissioner, patently exercised powers inherent in his office only after exhibiting Job-like patience with Newark's Excise Board. Termination of the Board's work was announced only after repeated warnings. If it had sincerely desired to supervise excise work efficiently and honestly in the 4 years during which it operated, it could have done so at any time. Its elimination is deserved.

"Protests are inevitable. In fact, they have already started. There were, no doubt, sincere members of the Board who contributed to its downfall solely because they were of the minority.

Temporary flashes of action following one of Burnett's routine warnings indicated that at times they mustered enough strength to force the issue. But periods of activity lapsed into stagnation, laxness, and even indifference. Abolition of the Board was the proper solution.

Burnett selected the Newark Board because it had jurisdiction over the largest city and richest section of the State. Other excise boards also have been tempting Burnett's wrath; the only difference is of degree. Action in Newark should forcefully remind them that reports or advice from police and protests from the public should not be ignored. The State A. B. C. has its own investigators, its own methods of obtaining information. If its reports in Newark warranted summary action, certainly no other excise board in the State may feel secure.

The Newark decision should call an immediate halt on indifferent and lenient case work. Legitimate complaints demand investigation; and if the facts reveal violations of A. B. C. rules and regulations, offenders should be prosecuted. Nor was Burnett's decision in the Newark case punitive; Grand Jury presentments offered him every possible basis for criminal investigation, and, possibly, prosecution; he was content with ousting the Board.

Such may not be the case on other occasions. Burnett's warning and the Newark example are prophetic. Either there will be a more pronounced tendency to interpret the A. B. C. laws less liberally, or other heads will roll. The State cannot afford to have rigid A. B. C. regulation nullified by incompetents or worse in supernumerary positions."

3. COCCIOLONE v. TOWNSHIP COMMITTEE OF WEST DEPTFORD AND BENIAMINE BAFILE - PETITION TO VACATE DECISION (BULLETIN 227, ITEM 8) - DENIED WITH LEAVE TO FILE NEW PETITION.

The petition reads:

"Petition of Beniamine Bafile, of the Township of West Deptford, in the County of Gloucester and State of New Jersey respectfully shows unto your Honor that:

"1. On July 1st, 1935, he obtained a plenary retail consumption license for premises located on the Salem Pike at Mount Royal, West Deptford Township, Gloucester County, New Jersey and said license was renewed on July 1st, 1936 and again on July 1st, 1937.

"2. Prior to the last renewal, Michael Cocciolone, filed objections to the issuance of said license and after a hearing on said objections the license was issued to your present petitioner. Thereafter said Michael Cocciolone appealed to the State of New Jersey, Department of Alcoholic Beverage Control, and the action of the said Township Committee in issuing said license was reversed.

"3. He is ready, willing and able to produce additional proof to show that he had the residence required by Revised Statute Section 33:1-25, (Control Act, Section 22), which testimony he was unable to secure at the time of the hearing on the appeal.

"4. By decision of the Township Committee of the Township of West Deptford, rendered on June 25th, 1935, his

residence was determined to have been in the Township of West Deptford, for the length of time required by the Alcoholic Beverage Control Act and said decision of the Township Committee has never been appealed from and still stands in full force and effect.

"5. Said Michael Cocciolone had no right or authority to appeal from the action of the said Township Committee under the Alcoholic Beverage Control Act.

"Your petitioner therefore prays that an Order may be made vacating the conclusions entered on January 24th, 1938, so that he may present additional proof of residence in the Township of West Deptford, and to submit proof of facts and law showing that said Michael Cocciolone had no legal right or authority to appeal from the action of the Township Committee of the Township of West Deptford in issuing the license to Beniamine Bafile.

Robert C. Hendrickson

Lynwood Lord,

Attorneys of Beniamine Bafile.

MEMO TO: Commissioner Burnett
From: N. L. Jacobs

Re: Cocciolone v. Township Committee of the Township of West Deptford and Bafile

I have carefully reviewed Mr. Hendrickson's letter of March 28, 1938, pertaining to the above entitled matter, and the petition and form of order enclosed therein, and they are returned herewith.

The Conclusions in the matter of Michael Cocciolone v. Township Committee of West Deptford, et al., Bulletin 227, Item 8, were rendered on January 24, 1938 and determined that Benjamin Bafile was not resident within New Jersey for five years continuously prior to his application and was, therefore, disqualified from holding a municipal retail license under the provisions of R. S. Sec. 33:1-25 (Control Act, Sec. 22). The license issued to Bafile was accordingly set aside and declared void. The petition now filed on behalf of Bafile seeks, in effect, a vacation of the aforementioned action and a further hearing wherein he will be afforded opportunity to establish that Cocciolone had no legal authority to appeal from the Township's action in issuing the license to Bafile; and that Bafile was actually resident within New Jersey during the requisite five year period.

(1) At the hearing on the appeal the licensee was represented by counsel and was afforded full and complete opportunity to be heard. At no time during the hearing was there any suggestion that the appellant had no standing to maintain the appeal. Nor does the petition itself disclose the basis for the present contention that he was not a proper appellant. However, the issue as to whether he was or was not a proper appellant would not be material under the principles extensively considered in East Brunswick Township Board of Adjustment v. Township of East Brunswick and Joseph Mills, Bulletin 223, Item 5. Under that ruling Bafile's license must be declared void because of his disqualification under the statutory residence requirement, without regard to the technical authority of the appellant to maintain his appeal.

(2) The petition asserts that on June 25, 1935, the Township Committee determined that Bafile was resident for the requisite period of time and that since that decision was never appealed from it remains in full force and effect. This position is wholly without merit. Where a municipality issues a license to a disqualified person, this Department will, upon its own initiative, cause its cancellation. Cf. In Re Loeb, Bulletin 206, Item 14. Furthermore, under the ruling in LaVelle v. Way, Bulletin 140, Item 1, such plea of res judicata would have no effect under the facts presented.

(3) The petition asserts that the petitioner "is ready, willing and able to produce additional proof to show that he had the residence required by Revised Statute Section 33:1-25 (Control Act, Section 22), which testimony he was unable to secure at the time of the hearing on the appeal." There is no indication in the petition as to the nature of the new evidence nor are there any facts advanced to explain why it was not produced at the trial. The controlling doctrine is set forth in In Re Dunn, Bulletin 79, Item 4, as follows:

> "The nature and materiality of the newly discovered evidence and the reasonable diligence of the applicant must appear from affidavits or other satisfactory evidence. Cf. Nightengale v. Public Service, 8 N. J. Misc. 238 (Sup. Ct. 1930). No affidavits are submitted in connection with the present application. The only indication of the nature of the newly discovered evidence is the statement in counsel's letter that it 'will corroborate the fact that my client, and no one else, is the only party in interest'. This issue was fully presented at the hearing and there was a determination directly thereon. Proper administration requires that, aside from exceptional cases where the clear interests of justice compel a contrary conclusion, determinations on appeal be final and not subject to redetermination. No such exceptional situation is here presented."

The petition in its present form does not, in any sense, meet the above requirements. It is, therefore, my recommendation that it be denied with leave to file a new petition for rehearing, to be confined to the residence issue, setting forth in complete detail the nature and effect of the new evidence sought to be produced and the reasons for the failure to discover the evidence prior to the hearing on the appeal.

Approved.

D. FREDERICK BURNETT,
Commissioner.

4. ENFORCEMENT DIVISION ACTIVITY REPORT FOR MARCH 1 TO 31, 1958, INCL.

To: D. Frederick Burnett, Commissioner

ARRESTS:

Total number of persons - - - - - - - 74
Licensees - 4 Non-Licensees - 70

SEIZURES:

Stills - total number seized- - - - - 24
Capacity 1 to 50 gal. - - - - 13
Capacity 50 gal. and over - - - 11

Motor Vehicles - total number seized- - - 7
Trucks - 1 Passenger Cars - 6

Alcohol
Beverage alcohol - - - - - 648 Gallons

Mash - total number of gallons - 56,440

Alcoholic beverages
Beer, ale, etc. - - - - - - 0
Wine - - - - - - - - - - - 2181 gallons
Whiskies and other hard liquors- 70 gallons

RETAIL INSPECTIONS:

Licensed premises inspected - - - 2965
Illicit (bootleg) liquor - - 23
Gambling violations - - - - 201
Sign violations - - - - - - 107
Unqualified employees- - - - 178
Other violations - - - - - - 76

Total violations found 585

Total number of bottles gauged - - -17,225

STATE LICENSEES:

Plant Control inspections completed - - 129
License applications investigated - - - 14

COMPLAINTS:

Investigated and closed - - - - - - - - 272
Investigated, pending completion - - - - 144

LABORATORY:

Number of samples submitted- - - - - - - 203
Number of analyses made - - - - - - - - 193
Number of poison liquor cases- - - - - - 0
Number of cases of denaturants - - - - - 2
Acetone cases - 2
Number of cases of alcohol, water and artificial coloring - - - - - - - 20
Number of cases of moonshine (home-made finished product of illicit still)- 30

Respectfully submitted,

E. W. Garrett,
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS -- SALE ON SUNDAY DURING PROHIBITED HOURS -- 5 DAYS' SUSPENSION -- HEREIN OF THE RESPONSIBILITY OF BEING THE KEEPER OF ONE'S BROTHER-IN-LAW.

In the Matter of Disciplinary Proceedings Against	:	
	:	CONCLUSIONS
AUGUST C. POMBO,		AND
120 Union Boulevard,	:	ORDER
Totowa, New Jersey.		
	:	
Holder of Plenary Retail Consumption License C-7.	:	
	:	

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.
Harry Smith, Esq., Attorney for Respondent Licensee.

BY THE COMMISSIONER:

Charges were served on August C. Pombo, a municipal licensee of Totowa Borough, to show cause before the Commissioner why his license should not be suspended or revoked, alleging that on Sunday, February 12, 1938, at approximately 10:30 in the morning, alcoholic beverages were sold at his premises in violation of a Totowa resolution (adopted April 1, 1935) forbidding sales between the hours of 3 a.m. and 1 p.m. on Sundays.

This proceeding, although of a disciplinary character generally referred by the Commissioner to the local issuing authority for action, is here conducted by the Department direct because of the ruling that no disciplinary matters shall be referred to the Borough Council of Totowa until further order. Re Totowa, Bulletin 214, item 10.

At the hearing, Investigators Wagi and Finzel testified that at 9:45 a.m., on the Sunday in question, they went to the licensee's place of business and found it closed, both front and rear; that they returned at 10:30 a.m. and found the rear door unlocked; that Investigator Wagi entered the premises, and called for and was sold a bottle of beer for 15¢ by a man tending bar (licensee's brother-in-law); that Investigator Finzel then entered, and ordered and was sold a drink of whiskey for 25¢; that the Investigators thereupon revealed their identities; that the licensee entered the premises at this time, was advised of what occurred, and ordered the place to be closed.

The licensee, under a plea of non-vult, admitted the charges and adduced no evidence in contradiction of the Investigators' testimony. He pleaded mitigating circumstances, however, and to this end testified that his brother-in-law, who made the sales, is unemployed; that he accommodates the licensee by cleaning up his premises in the morning in return for various favors from the licensee; that the licensee does not engage in Sunday sales during the forbidden hours; that he neither authorized nor was aware of the sales which were made on the occasion in question, and was resting at the time in a little room in the cellar below the licensed premises.

Blaming a liquor violation upon the waywardness of the man who cleans the premises is not a novel type of defense by a licensee who is brought up on charges. See Re Fuchs, Bulletin 178, item 9; Re Pfeiffer, Bulletin 178, item 11; Re Costanzo, bulletin 182, item 2; Re Cullen, Bulletin 182, item 8. As is here conceded by the licensee himself, this defense, even if substantiated in fact, does

not relieve him of responsibility for the violation. Licensees are answerable for the acts of their helpers or employees upon the licensed premises. In addition to the above cited cases, see Re Kneller, Bulletin 49, Item 4; Re Plog, Bulletin 178, Item 7; Re Siwek, Bulletin 180, Item 14. Accordingly, a licensee is, as here, directly responsible for Sunday sales made by a helper or employee in defiance of a local regulation. Riewerts v. Englewood, Bulletin 60, Item 9.

The licensee pleads for leniency on the ground that he is being held accountable, irrespective of his personal innocence, for the violation of another. Liquor regulations are made to eliminate undesired conditions at which they are aimed. The present regulation is designed to prevent sales of liquor in Totowa Borough during certain hours on Sunday. From the viewpoint of public interest in prohibiting such sales, it matters little whether a violation which occurs at a liquor establishment was committed by the licensee himself or by a helper. The identity of the actual offender matters little to the law-abiding licensees who, in return for their scrupulous adherence to the law, are eminently entitled to protection against the unfair competition resulting from illegal Sunday sales at other liquor establishments.

Accordingly, it is on this 3rd day of April, 1938, ORDERED that plenary retail consumption license C-7, heretofore issued to August C. Pombo by the Borough Council of the Borough of Totowa, be and the same is hereby suspended for a period of 5 days commencing April 7, 1938.

D. FREDERICK BURNETT,
Commissioner.

6. LICENSED PREMISES - TWO HUNDRED FEET RULE - WHAT CONSTITUTES ENTRANCE TO PREMISES - EFFECT OF PRIVATE PASSAGEWAY OR VESTIBULE.

RETAIL LICENSEES - ILLEGAL SALES - USE OF UNLICENSED PREMISES FOR DISPLAY AND SALE OF ALCOHOLIC BEVERAGES PROHIBITED.

Dear Sir:

We represent Morris Simon, who conducts a delicatessen business at No. 441 Avon Avenue (also known as 786 South 16th Street), Newark, N. J. He has owned the aforementioned premises for a great many years.

Recently he made application for transfer of a plenary retail distribution license of the City of Newark to him on the aforementioned premises. Due to the fact that Mr. Simon was unable to obtain written waiver from the Hill Presbyterian Church, which is within two hundred feet of the entrance to his store, he has been unable to go through with his application on the aforementioned license.

Mr. Simon made tentative plans with an architect to partition off a portion of the rear of his store premises in order to make a separate store with an entrance to be constructed on the South 16th Street side of his building. This entrance will bring the separate store to a point more than two hundred feet distant from the said church. Mr. Simon intends to make a connecting door from his delicatessen store into the separate liquor store for use by him and his clerks and not for the use of his customers.

We would appreciate it very much if you could let us know whether this contemplated plan conforms to the rules and regulations under the Alcoholic Beverage Control Act.

Respectfully yours,
Nathaniel J. Klein.

April 4, 1938.

Klein and Klein, Esqs.,
Newark, N. J.

Gentlemen:

I understand that the entrance to the premises as presently arranged is within two hundred feet of the Hill Presbyterian Church, but that it is proposed to partition off the rear of the premises, thereby creating a separate store with a separate entrance from the street, which entrance you say will be more than two hundred feet from the church. I note that a door will connect the liquor store in the rear with the delicatessen in the front.

If the connecting door is kept locked, the licensing of the rear portion of the premises will not be in violation of R. S. 33:1-76 (Control Act, Sec. 76), provided the entrance to the licensed premises is, as you say, more than two hundred feet distant from the entrance to the church.

The reason why the connecting door must be kept locked is to prevent any public access from the delicatessen to the liquor store. If such public access were permitted, then the entrance to the delicatessen would, to all intents and purposes, be the entrance to the licensed premises, the delicatessen proper being nothing more than a private vestibule or passageway between the street and the licensed premises. The two hundred feet distance cannot be pieced out by artificial detours created for the purpose of getting around the law. See St. Mary's Greek Catholic Church v. Manville, Bulletin 187, Item 1, a copy of which is enclosed. Of course, the licensee and his employees may have keys so that they can get from one store to the other, but under no circumstances may the public use this door.

You must caution your client to make no storage or display of alcoholic beverages off the licensed premises in the delicatessen store. Nor may the licensee or his employees accept orders in the delicatessen store and thereupon procure the beverages from the liquor store and deliver them to customers in the delicatessen store. The use of unlicensed premises as a place to advertise or take orders for the sale of liquor is prohibited. See Re Gold's, Bulletin 231, Item 8, copy also enclosed.

No subterfuge or evasion designed to circumvent the two hundred feet rule will be tolerated.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

April 5, 1938

Re: Hearing No. 216

Applicant admitted in his questionnaire and application that, in 1936, he had been convicted of the crime of assault and battery.

At a hearing, applicant testified that a constable had seized his automobile for non-payment of an installment due; that applicant called at the constable's home to get the license plates

from his car; that, during an argument between them, applicant struck the constable with his fist and was placed under arrest by a police officer who had been called by the constable. Subsequently, applicant was found guilty in a Police Court on a charge of assault and battery and fined $50.00 and costs.

Under the circumstances, which are substantially corroborated by the police report, the crime does not involve moral turpitude. Re Hearing No. 166, Bulletin 180, Item 7.

Applicant has never been convicted of any other crime. It is recommended that his application for solicitor's permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

8. LICENSES - INTEREST IN LICENSED PREMISES - WHEN NEW LICENSE MAY BE ISSUED FOR VACATED PREMISES - LOSS OF INTEREST IN LICENSED PREMISES DOES NOT VOID THE LICENSE WHICH MAY SUBSEQUENTLY BE SURRENDERED OR TRANSFERRED, UPON PROPER APPLICATION, TO NEW PREMISES.

MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - WHERE THE REGULATION SPECIFIES THE TERM DURING WHICH IT SHALL BE IN EFFECT, IT AUTOMATICALLY EXPIRES AT THE END OF THAT TERM.

Dear Sir:

July 1, 1937, the Township Committee of Hohokus Township issued plenary retail consumption license C-8 to Anthony B. Gillott, State Highway No. 2, Mahwah, New Jersey.

On January 1, 1938, Mr. Gillott discontinued the sale of alcoholic beverages from the location on State Highway No. 2, known as Ramapo River Inn, and has not conducted any business in Hohokus Township since. Can the Township Committee declare this license null and void and issue a new license to a new tenant who wishes to lease the Ramapo River Inn?

The Township passed a resolution in 1936 and allowed only twelve plenary retail consumption licenses in the Township. Will this resolution affect the issue of another license?

Yours very truly,
R. F. Dator.

April 4, 1938

R. F. Dator, Clerk,
Township of Hohokus,
Mahwah, N. J.

Dear Sir:

Under the circumstances outlined in your letter, it would not be possible for the Township Committee to declare the Gillott license null and void. Of course, no use can be made by Gillott of his license unless there is a licensed premises to which it can apply. But he has not surrendered his license nor is there any cause to forfeit it, and he has a right to retain it and apply for a transfer to new premises if he wishes.

The question as to whether a new license should be issued to a new tenant for the Ramapo River Inn depends on whether or not Gillott retains any present estate or interest in the Ramapo River Inn. If he does, so long as that interest continues no other license can be granted for those premises. If he does not, a new tenant may apply for a new license provided, of course, he is personally qualified and all other prerequisites are complied with. See Re Morrissey, Bulletin 228, Item 7 for a discussion of the problem.

The foregoing is aside from the question of the effect of a limiting ordinance or resolution. Our records show that your Township Committee passed a resolution on June 22, 1936 reading in part as follows:

> "NOW, THEREFORE, be it resolved that the number of plenary retail alcoholic beverage consumption licenses granted by this Township during the year beginning July 1, 1936 and ending June 30, 1937 be limited to eleven;
>
> "AND BE IT FURTHER RESOLVED that no more than eleven of such plenary retail alcoholic beverage consumption licenses be in force and effect in this Township at the same time during said period."

You will note that this resolution expired by its terms on June 30, 1937. No subsequent resolution or ordinance of the Township limiting the number of licenses has been certified to this Department. From this it would appear that there is presently no Township resolution or ordinance limiting the number of licenses to be issued. Hence, in so far as the resolution of June 22, 1936 is concerned, it would not prevent the issuance of another license in the Township.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. LICENSES - ISSUANCE - TRANSFER - FAILURE OF APPLICANT OR LANDLORD TO PAY DEBTS IS NOT CAUSE FOR DENIAL OF ISSUANCE OR TRANSFER OF LICENSE - THE AUTHORITY TO ISSUE LICENSES IS NOT TO BE USED IN AID OF PARTIES TO CIVIL DISPUTES.

Dear Mr. Burnett:

Plenary retail consumption license No. 8 was issued by the Township of Hohokus on July 1st, 1937 to my client, Mr. Gillott. His lease expired January 1st, 1938. He posted security in the sum of $500 with his landlord, William Drobesh. There is a balance of $250 due my client on account of said security. The landlord has refused to return the security and an action is pending for same at the present time. In the meanwhile my client is carrying and holding his license. The landlord has refused to purchase same and so has his new tenant, William Eichorn. Both the landlord and the tenant state that they do not have to purchase the said license from him but can purchase someone else's license for other premises and use same in connection with their premises.

During the past five years the said landlord has had a number of tenants, and all of the tenants have had a great deal of difficulty with him because of his unreasonable and arbitrary manner, and his deliberate attempts to fleece his tenants. We have

been informed that either the landlord or the tenant have applied or are applying to you for permission to use someone else's license for said premises. My client has spoken to Mr. Devine, a member of the local board, and he has approved of my client's conduct and in no uncertain terms has heartily disapproved of the methods and tactics of Mr. Drobesh.

May we ask that you and the State Board take no action in the matter. We believe that if the landlord or his tenant cannot get another license for said premises until that of my client expires, he will then be able to obtain a refund of his security and also the balance due on his license.

Very truly yours,
Sidney Mayer.

April 4, 1938

Sidney Mayer, Esq.,
Suffern, New York.

Dear Sir:

The proper place to settle the controversy between your client and Mr. Drobesh as to the $250.00 balance alleged to be due is in the legal action which you say is pending.

The question as to whether any license should be transferred is primarily a question to be decided, not by me, but by the local issuing authority. Mr. Dator, the Clerk of Hohokus Township, has written to me with reference to the situation which confronts the Township Committee in this case, and I have answered his letter today, enclosing copy herewith. (Bulletin 238, Item 8).

I have heretofore ruled that a transfer of a license may not be refused because of the failure of a transferror to pay private debts. Re Rhodes, Bulletin 176, Item 5. So, in the present case, the Township Committee should be guided by the public welfare in considering whether a license should be transferred to or a new license issued for the Drobesh premises. The transfer of another license to or application for a new license for said premises should not be denied solely to force Mr. Drobesh to refund your client's security or to force anyone to buy your client's license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. REGULATIONS 20, RULE 2 - ELECTION DAY CLOSING - THE RULE APPLIES TO SPECIAL ELECTIONS TO ADOPT COMMISSION FORM OF GOVERNMENT.

April 4, 1938

Joseph Gardiner, Clerk,
Saddle River Township,
Rochelle Park, N. J.

Dear Sir:

It has come to my attention, through the press, that Tuesday, April 12, 1938, has been set for a special election to decide whether your present Township Committee form of government should be abolished and the commission form adopted.

Rule 2 of Regulations No. 20 provides:

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

In Re Cobb, Bulletin 230, Item 7, I decided that this rule applied to elections for the recall of Commissioners.

The reason for the rule applies to a special election to decide whether a commission form of government shall be adopted in your township. I therefore construe it to apply.

If, therefore, the newspaper account is correct, the sale of alcoholic beverages on April 12, 1938 while the polls are open, must cease. Please see that notice of this Rule is personally served on each retail licensee in your township in ample time in advance of the election.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. LICENSES - AUTOMATIC SUSPENSION OF LICENSE OF CORPORATION UPON CONVICTION OF OFFICER OF VIOLATION OF THE ACT - THE SUSPENSION IS EFFECTIVE FOR THE BALANCE OF THE TERM UNLESS THE COMMISSIONER IN HIS DISCRETION AND FOR GOOD CAUSE SHOWN SHALL OTHERWISE ORDER.

April 4, 1938

John F. Harris, Chief of Police,
Newark, N. J.

Re: Mosque Grill, Inc.
49 Orchard Street

Dear Chief Harris:

I have yours of April 2nd transmitting report of Deputy Chief Sebold and notice received by him from Michael Breitkopf, Esq., counsel for the licensee, demanding that the consumption license picked up by the Police immediately following the conviction of Mary Latowski be returned.

The refusal of Deputy Chief Sebold to return the license was in order as the Statute provides that the suspension of a corporate liquor license, automatically effected upon conviction of an officer, remains in full force throughout the entire term of the license unless, in the State Commissioner's discretion and for good cause shown, the suspension be lifted.

The application for return should, therefore, be made direct to me and I have so advised Mr. Breitkopf, as per copy enclosed.

Thanks for your helpful cooperation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

April 4, 1938

Michael Breitkopf, Esq.,
Newark, N. J.

Re: Mosque Grill, Inc. - 49 Orchard Street

Dear Mr. Breitkopf:

John F. Harris, Chief of Police, has transmitted to me your demand for the return of license.

Enclosed is copy of my letter to the Chief which explains the procedure. You will find it set forth in R.S.33:1-31.1 (P. L. 1935, c. 254).

I note that your clients claim that the license was unlawfully taken and is unlawfully detained. These allegations will be carefully considered on their merits upon receipt of a petition addressed to me according to the above Statute.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. RULES GOVERNING THE DECANTING OF WINE - LABELING OF DECANTERS - THE LABEL MUST SPECIFY, AMONG OTHER THINGS, THAT THE CONTENTS HAVE BEEN WITHDRAWN FROM TAX PAID CONTAINERS REGARDLESS OF THE FACT THAT THE FEDERAL REGULATIONS DO NOT REQUIRE IT.

Dear Sir:

In your Bulletin No. 224, Item 3, are embodied rules governing the decantering of wine. The label prescribed therein is very much like that formerly required by Treasury Decision 2667 which, however, we have been advised is no longer in effect and under the federal law, it is not now necessary to indicate on the decorative containers that the contents have been withdrawn from tax-paid containers.

Under the circumstances, is it your intention to still require the label referred to in Rule 2 of rules governing the decantering of wines, which became effective January 1, 1938, in New Jersey?

Very truly yours,
Austin, Nichols & Co., Inc.

April 4, 1938

Austin, Nichols & Co., Inc.,
Brooklyn, N. Y.

Gentlemen:

Treasury Decision #2667, requiring stamps on each bottle of wine, is apparently no longer in effect in view of Federal Regulations No. 7 relating to the production, fortification, tax payment, etc. of wine which was approved October 6th, 1937. Said Regulations No. 7 now provide that whenever a proprietor proposes to tax-pay and remove wine, he shall, prior to such removal, securely affix to each cask, barrel or other immediate container,

except bottles of a capacity of one gallon or less, or to each case or to the shipping container (except railroad tank cars) stamps denoting payment of the internal revenue tax thereon.

While, under Federal regulations, it may not be necessary to indicate on the decorative containers that the contents have been withdrawn from tax-paid containers, under State Regulations No. 25 such requirement is necessary in order to identify the contents of an open decanter, bottle or other container kept on the licensed premises.

I feel that every possible precaution should be taken so that Regulations No.25 will not result in substituting home-made for tax-paid wine. Hence, I have no present intention of amending the State Regulations.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. LICENSES - ISSUANCE - POSTPONEMENT BY MUNICIPAL LICENSE ISSUING AUTHORITY OF ACTION ON APPLICATION UNTIL TWO DAYS ELAPSE AFTER SECOND PUBLICATION, APPROVED.

Dear Sir:

I represent the transferee of a license who has published the transfer of the license from person to person and from place to place twice, according to law. The last day of publication was one day prior to the meeting of the Board of Commissioners in West New York.

At the meeting, the Board of Commissioners refused to act upon the transfer and their only objection was that the last day of insertion was not two days before the meeting. They advised me that under the rules of your department, two days must lapse between the last day of insertion and the date of the issuance.

I have been unable to find such a rule and I respectfully request an opinion from your department in this regard.

Moreover, no other objections were voiced by the Board as to investigation or desirability of the premises or fitness of character, except as above stated.

Very truly yours,
Anthony J. Valicenti.

April 8, 1938

Anthony J. Valicenti, Esq.,
West New York, N. J.

My dear Mr. Valicenti:

I note that the West New York Board of Commissioners laid over your client's application for transfer until the next meeting because the second publication of notice of application had been made only the day before. The reason, I understand, was that two full days had not elapsed since the second publication.

While the regulations do not require that no action be taken on applications where no protests have been made until two days after the second publication, I have made special rulings encouraging it. See for example Re Novack, Bulletin 174, Item 6.

The purpose of the notice of application is not accomplished merely by its publication. It is required in order that anyone deeming that good reason exists for the denial of the license or the transfer, may have the opportunity of filing objections and a chance to be heard. Objectors must, therefore, be allowed a reasonable time after publication of the notice in which to file their protests. If they do, then they must be afforded an opportunity to be heard.

The action of the Board in requiring two full days between second publication and issuance was wholly proper.

Very truly yours,

Commissioner.