

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

BULLETIN NUMBER 175.

MAY 13, 1937

1. RETAIL LICENSES EXPIRING JUNE 30, 1937 - INSTRUCTIONS

All licenses, except Seasonal Retail Consumption licenses, will expire at midnight, June 30, 1937. Licensees must obtain their renewal licenses on or before that date in order to continue business without interruption. The present forms of application will be used for all retail licenses for the next fiscal year.

Applications should be filed promptly in order that all licensees obtain their renewal licenses by July 1, 1937. A day's delay may mean that some licensee will have to close up shop.

A licensee who seeks to renew must comply with all requirements pertaining to his original application. Accordingly, he must (1) file a new application accompanied by a full annual license fee for the period from July 1, 1937 to July 1, 1938 and satisfactory evidence that a new Federal tax stamp has been obtained, and (2) publish a notice of intention once a week for two weeks successively. This is only the mechanical part of the procedure. In addition, investigation must be made by the municipal issuing authorities and hearing held, if necessary. This will require time.

Following are the prescribed forms of applications for Class C licenses.

- | | | |
|---|---|-------------------------------------|
| 1. PLENARY RETAIL CONSUMPTION LICENSE | } | Use form in Bulletin
72, Item 3. |
| 2. PLENARY RETAIL DISTRIBUTION LICENSE | | |
| 3. LIMITED RETAIL DISTRIBUTION LICENSE | | |
| 4. SEASONAL RETAIL CONSUMPTION LICENSE | | |
| 5. CLUB LICENSE: Use form in Bulletin 72, Item 4. | | |

Following are the official forms of licenses to be used:

See Bulletin 31, Items 11-15 inclusive.

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|--|---|--|
| 1. PLENARY RETAIL CONSUMPTION LICENSE, Item 11 | } | Except change
expiration date
to June 30, 1938 |
| 2. PLENARY RETAIL DISTRIBUTION LICENSE, Item 12 | | |
| 3. LIMITED RETAIL DISTRIBUTION LICENSE, Item 14 | | |
| 4. CLUB LICENSE, Item 15 | | |
| 5. SEASONAL RETAIL CONSUMPTION LICENSE, Item 13 - Change
(Summer Season) to May
1 to November 1 inclusive. | | |

Applicants should note particularly the following rules:

1. RULES APPLICABLE TO ALL MUNICIPAL RETAIL LICENSES FOR ADVERTISING "NOTICE OF INTENTION" TO APPLY FOR A LICENSE. Note particularly that application must be filed at or before the first insertion of the Notice of Intention and that a hearing is to be set when an objection is filed without the necessity of any request therefor by the applicant.

2. RULES GOVERNING THE EMPLOYMENT BY LICENSEES OF PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE OR CITIZENSHIP. Note particularly that all licensees must apply directly to the State Commissioner for permission to employ persons coming within these rules. Violation will subject the licensee to revocation of his license.

3. RULES GOVERNING THE ISSUANCE OF TRANSPORTATION INSIGNIA. Concurrently with the expiration of all municipal retail licenses (except Seasonal Retail Consumption), all transportation insignia likewise will expire. New transportation insignia must be obtained by all licensees (including Seasonal Retail Consumption licensees) who intend to transport alcoholic beverages in connection with their respective businesses. No insignia will be issued until the issuance of the license has been certified to the State Department. Only vehicles operated under commercial motor vehicle licenses are eligible to receive insignia and such vehicles must be either owned or leased by the applicant. If leased, certified copy of the lease must accompany the application. The initial insignia is furnished free of charge. All additional insignia are charged Two Dollars (\$2.00) each. Application therefor must be made direct to this Department, accompanied by cash, money order or certified check drawn to the order of D. FREDERICK BURNETT, Commissioner. Application forms for Transportation Insignia, Form 102, will be forwarded to all issuing authorities immediately to be distributed to the licensees requiring the same. These applications also must be executed forthwith and forwarded to this Department, 744 Broad Street, Newark, New Jersey, in order to operate thereunder after June 30th.

Licensees who fail to obtain their renewal licenses on or prior to June 30, 1937 will not be permitted to operate until all legal requisites have been completed and licenses actually issued.

THE LAW WILL BE ENFORCED.

D. FREDERICK BURNETT
Commissioner

DISCIPLINARY PROCEEDINGS - SALES DURING CLOSED HOURS -
RECOMMENDED PENALTIES - HEREIN OF TEMPORIZING WITH DELIBERATE
OFFENDERS.

May 8, 1937.

Thomas J. Wieser,
City Clerk,
Linden, New Jersey

Dear Mr. Wieser:

I have staff report and your certification of the proceedings before the Municipal Board of Alcoholic Beverage

Control of Linden against John Senyshyn, charged with having sold alcoholic beverages on Sunday before 12:00 noon in violation of your local regulation.

I note the licensee pleaded guilty and that his license was suspended for a period of two days; that the Board feels this punishment is severe because it means that the bowling alleys which are part of the licensed premises and from which a substantial revenue is received must also be closed on the dates designated.

I regret that I cannot go along with your Board on this. Suspension of the Liquor license in nowise affects the operation of the bowling alleys.

Licensees who sell during closing hours are deady conscious they are violating the law. Why temporize with deliberate offenders?

I suggest hereafter a minimum of five days for the first closing hour violation; twice that for the second offense, and revocation upon the third.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

ELIGIBILITY FOR EMPLOYMENT, RESIDENCE, FACTS EXAMINED - CONCLUSIONS

May 8th, 1937

IN RE: CASE NO. 53

The sole question presented for determination is whether applicant has been a resident of New Jersey for at least five years continuously immediately prior to submission of his written request for a ruling as to his eligibility.

In February 1931 applicant purchased a home in Finesville, Warren County, New Jersey, and within three months thereafter established his home there with his wife and other members of his family. At that time he was employed in a store in Easton, Pennsylvania, operated by a large chain store corporation, and he commuted daily between the store and his home in Finesville until some time in the Spring of 1934. At that time he received orders from his employer to take charge of one of its stores operated in Washington, D. C. He went to Washington, D. C., but the other members of his family continued to reside in Finesville until the Spring of 1936. During that two year period he boarded at various places in Washington but made visits to his family in New Jersey at least once a month. Applicant testified that he voted in Finesville in either 1934 or 1935. His automobile has always been registered in New Jersey, and he testified that he received his mail even up to the present time at Finesville; that he has always considered Finesville his legal residence. In the Spring of 1936 he rented his home in Finesville, and his entire family moved to Washington where he rented a house. He states that this action was taken for reasons of economy. All the family

stayed in Washington until September 1936, when applicant ceased work because of severe illness. He and his family returned to this State in September 1936, and rented a home in Orange, New Jersey, where they still reside. The Finesville home is still owned by applicant, but is rented out to a tenant.

Aside from the fact that his entire family left New Jersey and resided in Washington from the Spring to the Fall of 1936, the evidence would seem to indicate that applicant has been a continuous resident of this State for the past five years, despite his absence on business during a considerable portion of that time. Valentine vs. Valentine, 61 N. J. Eq. 400.

In the case of Cadwalader vs. Howell, 18 N. J. L. 138, it was determined that residence is not changed or altered by occasional absence with or without one's family if it be animo revertendi. See also Briggs vs. Stanton (Sup. Ct. 1930) 8 Misc. 363.

The nature of applicant's duties with the chain store corporation with whom he seeks re-employment in this State are such that during the sixteen years of his connection with that Company he has frequently been sent to various cities in the United States but, having established his residence in New Jersey in 1931, it follows that he continues to be a legal resident of this State until he establishes a home elsewhere animo manendi. Under the facts shown, it appears that applicant has been a legal resident of New Jersey since 1931, and that he has never established a legal residence elsewhere.

It is recommended that applicant be advised that he is eligible for employment by a licensee.

Edward J. Dorton
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - MITIGATION OF PENALTIES - POWER AND POLICY.

May 8th, 1937.

Harry Reichenstein, Secretary,
Municipal Board of Alcoholic Beverage Control,
Newark, N. J.

Dear Mr. Reichenstein:

I have letter of even date from Elias A. Kanter, Esq., to the effect that he has applied to your Board for a mitigation of the penalty inflicted against Grant Lunch Corporation for possession of illicit alcoholic beverages, but that the Board will not entertain the application without a letter from me.

In this case, your Board found the licensee guilty, and suspended its license for thirty days. The decision was sustained by me on appeal; and a Writ of Certiorari to review

my decision denied by Mr. Justice Parker of the Supreme Court. Now it comes back again to you for mitigation.

In re Bischoff, Bulletin 53, Item 5, I ruled that the issuing authority had the power, in its sound discretion, to modify a punishment or remit a penalty previously inflicted, but added: "Of course, if mercy is overplayed it may generate disrespect for the law and a belief that penalties imposed are mere gestures to be remitted after nominal punishment."

The power, therefore, exists. Whether it should be exercised in a given case is a matter for your Board to determine with care and caution. As a matter of policy, the power should be sparingly exercised, especially where the licensee has fought it out on appeal and lost. Otherwise, the impression will be bruited about that all that is necessary for a licensee to escape penalty is to keep on trying until a weak spot is finally found.

I express no opinion upon the instant case, but mention the general principles applicable so you may have them in active mind.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS - KATZNER vs. NEWARK

HYMAN KATZNER,)

Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK,)

ON APPEAL

CONCLUSIONS

Respondent.)

.....)

Irving Mandelbaum, Esq., Attorney for Appellant.
No appearance for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located on 347 Avon Avenue, Newark.

On April 15, 1937 respondent denied the license because the premises are within two hundred feet of a church and because a waiver produced by appellant was deemed to have been improperly signed. On April 23, after further investigation disclosed that the waiver had been properly signed, the three members of the Municipal Board unanimously adopted the following resolution:

"On reconsideration of the rejection of the application of Hyman Katzner, the Board feels that if they

had the right to change their previous position, they would grant the license, and orders that Commissioner Burnett be notified that on appeal they would have no objections to the granting of the license, and that he also be notified that this Board would consent to an ad-interim permit pending the appeal."

Having denied the license, respondent admittedly had no jurisdiction to reconsider its previous action. Plager vs. Atlantic City, Bulletin #80, Item 11.

At the hearing appellant introduced a communication from the Secretary of respondent stating that "there were no grounds for denial of this application in view of the fact that a church waiver has been secured."

Nothing appears before me against the character or conduct of appellant, and since respondent is satisfied that a proper waiver has been presented, I conclude that appellant is entitled to a license. Eckerle vs. Camden, Bulletin #114, Item 11.

The action of respondent, is therefore, reversed and respondent is ordered to issue the license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: May 8, 1937.

6. APPELLATE DECISIONS - DE BLASIO vs. TRENTON.

JULIA DE BLASIO,)	
Appellant,)	
-vs-)	ON APPEAL
CITY COUNCIL OF THE CITY)	CONCLUSIONS
OF TRENTON,)	
Respondent.)	

I. Herbert Levy, Esq., and Joseph J. Felcone, Esq., Attys. for Appellant
Adolph Kunca, Esq., Attorney for respondent

BY THE COMMISSIONER:

An application by appellant to transfer license No. C-42, originally issued to James Catana, for premises at 116 North Broad Street, to appellant for premises at 337 West Hanover Street, was denied on the ground that there are sufficient licensed premises in the vicinity. Hence this appeal.

Appellant owns 337 West Hanover Street. On January 21, 1935, in an appeal filed by Edward A. Sailliez who was then appellant's tenant at that address, the action of the Municipal

Board of Alcoholic Beverage Control of Trenton denying a license to Sailliez was reversed and a license was issued to him. Sailliez v. Trenton, Bulletin 60, Item 11. Sailliez obtained renewals of his license from time to time, and continued as a tenant in those premises until August 1936. He then purchased the adjoining property known as 335 West Hanover Street, and applied for a transfer of his license from 337 to 335 West Hanover Street. At that time Mrs. DeBlasio was in Europe, but her attorney appeared before respondent and asked to have the requested transfer denied or action thereon withheld until his client returned. Despite the attorney's objection, respondent transferred the license as requested by Sailliez. The attorney then requested City Council to agree that if Mrs. DeBlasio made an application to transfer an existing license to 337 West Hanover Street, her request would be granted. The City Council properly refused to bind itself to any such action, as appears from the following extract from the minutes of its meeting held on August 25, 1936, viz.:

"In answer to Mr. Levy's request to have a right reserved to the owner in case an application for a transfer to her place was filed in the future, Acting Mayor Henderson announced that such an application would have to be considered on its merits."

Thereafter, on December 10, 1936, appellant applied for the transfer of the Catana license to herself at her own location aforesaid. Her application was denied on January 26, 1937 for the reason first above stated.

It is clear that a transfer from person to person or from place to place is not an inherent privilege. The issuing authority may grant or deny such transfers in the exercise of a reasonable discretion. Van Schoick v. Howell, Bulletin 120, Item 6. Since a municipality may deny a license where the granting thereof would result in the existence of too many licensed places in a particular vicinity, Levitt v. Liberty, Bulletin 169, Item 4, so an issuing authority may refuse to transfer a license to a section already adequately serviced. Cf. Hill v. Montville, Bulletin 148, Item 9. The evidence shows that, in addition to the Sailliez license located next door to the place to which appellant seeks to transfer, there is also a consumption license outstanding for premises facing on Calhoun Street, at the northwest corner of Calhoun and West Hanover Streets. Appellant's premises are located on the south side of West Hanover Street, one door removed from the easterly side of Calhoun Street. While this section of the City is zoned for business, and while there is a garage, a service station and a few neighborhood stores on West Hanover Street, nevertheless this street still retains its residential character to a great extent. It is not by any means a strictly business district despite the fact that there is much traffic on both Calhoun Street and West Hanover Street.

I conclude that the action of respondent in denying the transfer because there are sufficient licensed premises in the vicinity was not arbitrary or unreasonable.

That the decision of the Board is supported by local sentiment appears from the fact that a protest objecting to the

granting of the transfer, signed by fifty-seven residents, was filed with respondent. It is true that appellant filed with respondent a petition signed by sixty-six residents requesting that the transfer be granted, but an examination of these petitions shows that of those residing on the same side of the street, objectors resided at 339, 333, 331, 329, 327, 325½ and 321 West Hanover Street, whereas the nearest persons favoring the granting of the transfer on that side of the street resided at 315 West Hanover Street. The weight to be given to petitions is largely discretionary with the local board, but in this case the petitions seem to show clearly that the sentiment of those residing in the immediate vicinity is against the issuance of the transfer.

It does not follow that, because Mrs. DeBlasio's premises were formerly licensed, respondent must, therefore, grant the transfer of the license to her premises despite the fact that the granting of such transfer will result in the existence of too many licensed places in the immediate neighborhood. The primary consideration of the issuing authority is the protection of the public interest. Cf. Ignatz vs. Phillipsburg, Bulletin #167, Item 16.

Appellant contends that respondent was "unconsciously influenced" in this case because a municipal officer, not, however, a member of City Council, who is also a real estate agent, endeavored unsuccessfully to persuade Mrs. DeBlasio to sell 337 West Hanover Street to Sailliez and, failing therein, acted as broker in the sale of 335 West Hanover Street to him prior to the time he obtained his transfer in August 1936. A charge that a local issuing authority was improperly motivated must be proved by clear and convincing evidence. Levitt vs. Liberty, *supra*, and cases therein cited. There is no such evidence in this case. Moreover, the issue here does not concern the propriety of respondent's action in August 1936 in transferring Sailliez's license, which action cannot be tested herein for the elementary reason that Sailliez is not a party hereto. Jones vs. Sea Girt, Bulletin #167, Item 14. The sole question in this case is whether respondent acted reasonably in refusing to transfer a license to Mrs. DeBlasio on January 26, 1937. There is not even an intimation of undue influence at that time.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 10, 1937.

7. LICENSEES - CUSTOMERS - WHOLESALERS AND MANUFACTURERS MAY CHOOSE THEIR OWN CUSTOMERS - THE ACT PROHIBITING DISCRIMINATION ON ACCOUNT OF RACE, CREED OR COLOR HAS NO APPLICATION TO SUCH LICENSEES.

May 10, 1937.

Mr. Robert Nightingale,
Egg Harbor, New Jersey.

My dear Mr. Nightingale:

There is nothing in the Alcoholic Beverage Control Act which compels a wholesaler or distributor of alcoholic beverages to sell his products to any retailer. So far as the Act is concerned, wholesalers may choose their customers. It is merely a matter of business policy for each wholesaler to determine as he pleases.

The ruling made in re Dorflinger, Bulletin 136, Item 12, cites "An Act to Protect all Citizens in their Civil and Legal Rights" as prohibiting tavern-keepers, among others, from refusing to sell to anyone on account of race, creed or color. That Act, however, applies only to places of public accommodation, resort or amusement such as inns, taverns, road houses, restaurants and hotels. Hence, as regards liquor licenses, it affects only

plenary and seasonal retail consumption licensees. It does not apply to wholesalers or manufacturers. The reference made to it in re Liebmann Breweries, Bulletin 167, Item 7 was therefore misleading.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. STATUTORY AUTOMATIC SUSPENSION - PETITION FOR LIFTING - PETITION DENIED BECAUSE LIQUOR CONTAINED ACETONE - LICENSED PREMISES ARE NOT LABORATORIES TO EXPERIMENT WITH HUMAN LIVES - HEREIN OF NEAR POISON AND ITS TELL-TALE TRACES THAT POINT PATERNITY.

In the Matter of
SAMUEL FELSENFELD

On Petition for Lifting of Statutory Automatic Suspension by Reason of Conviction.

FINAL CONCLUSIONS

DURAND A. METRIONE, Esq., Attorney for the Petitioner.

BY THE COMMISSIONER:

Decision on this petition was reserved pending a determination, after hearing to be held, whether the liquor found on the licensed premises was poisonous as well as illicit (Bulletin 165, Item 2).

At the hearing, Abraham G. Blakeley, the chemist attached to the Alcohol Tax Unit of the Internal Revenue Service, testified that he examined samples of the liquors seized upon the licensed premises of Felsenfeld. His examination disclosed that one bottle "Kessler's Private Blended whiskey," having a labeled proof of 90, was 9.1 points off proof; that it was artificially colored; that it had a different acid and solid content from that found in the genuine sample, and that it contained four-tenths of one per cent acetone by volume; that the second bottle, labeled "Old Drum Blended Whiskey, 90 proof," was 7 points off proof; that it differed too in acid and solid content from the corresponding contents of a genuine sample, and that it contained four-tenths of one per cent acetone by volume; that the third bottle, labeled "Calvert's Private Stock Blended Whiskey, 90 proof," was 3.5 points off proof, artificially colored, and containing two-tenths of one per cent acetone by volume.

The question as to whether the liquor was poisonous therefore resolves itself into inquiries as to the effect of acetone in liquor, and that, in turn, upon the quantity of acetone.

Both Dr. Blakeley and Menoth Battista, the chemist of this Department, declared that the presence of acetone in the various bottles examined indicated that they had been refilled with liquor other than genuine liquor and probably with liquor made from a special denatured alcohol known as "Formula No. 23A or G" or rubbing alcohol compound. Dr. Blakeley stated that the purpose of adding acetone to alcohol as a denaturant is to make it unfit for drinking purposes. He gave as his opinion that acetone itself is a poisonous substance but that the small percentage of acetone found in these particular liquors would not render them unfit for beverage purposes. Dr. Blakeley testified that the authorities are not in agreement as to whether acetone is poisonous; that some text books consider that acetone is not poisonous but others do because it has a slight narcotic action and also produces shortness of breath; that there are some authorities which declare that if it is injected hypodermically it is more poisonous than wood alcohol.

Upon finding this unconvincing state of the proof in the testimony, I conducted independent investigation to satisfy myself whether or not liquor containing acetone in small quantities is poisonous - that is to say, whether as the term "poisonous" is commonly used, the ingredient of acetone is noxious or deadly.

Hamilton, the author of "Industrial Toxicology" (1934), uses the following language concerning the effect of acetone:

"Dimethyl ketone, acetone, is an excellent solvent for cellulose acetate and nitrocellulose and is used in making celluloid, artificial silk and smokeless powder * * *. Kobert says no cases of poisoning from acetone have ever been reported and indeed such poisoning is hardly conceivable and this was my experience in explosive manufactures during the War when acetone was used in enormous quantities * * *. In man no cases of acute poisoning has been reported."

Albert Edel, Chemist and Toxicologist for the County of Essex, an expert in his line, who has testified in many cases throughout the State, when asked as to whether acetone would have an injurious effect on the human body if taken internally in an alcoholic beverage would not answer off-hand but, after consulting the reference books and finding the authorities divided, just as Dr. Blakeley had testified, stated that in his opinion it was utterly out of place in good liquor and was in it only as a result of tampering with the contents; that he was inclined to the belief that it was a dangerous substance and if taken in sufficient quantities would be poisonous but he was clear that as found in the minute quantities shown in this case it would have no serious effect and was not an "out and out" poison.

Dr. Harrison S. Martland, Chief Medical Examiner for Essex County and also Pathologist for the City of Newark, a well-known expert and a very busy man, kindly gave twenty minutes of his time. As in the case of Dr. Edel, Dr. Martland would not immediately state that the substance was poisonous. He consulted several reference books and in one "Alcohol and Man" by Emerson, pointed out a passage with which he seemed inclined to agree to the effect that certain substances including acetone and isopropyl were poisonous. He also was of opinion that the amounts of acetone in order to have a poisonous effect on the human system would have to be present in much larger quantities than found in this case; that no serious harm would be done by the smaller quantities which were found present; that he did not think in performing an autopsy it would be possible to pick up traces of acetone in a body; that it could only be found by analysis of the liquor.

George J. Romig, Chemist in Charge, Alcohol Tax Unit, New York, a graduate chemist of Penn State College and connected with the New York laboratory since 1923 and as Chemist in Charge since 1930, was asked:

"Would the presence of such substances in beverage liquor make the liquor poisonous? As your answer to this question might be that whether or not liquor containing these substances is poisonous would depend upon the quantities found in the said liquor, it is requested that your answer to this question give the quantities of the foregoing substances that would be required to make the liquor poisonous."

His written answer follows:

"The toxicity of acetone is very slight and occurs normally in very slight amounts in the urine and

blood, and is increased to pathological extents under certain conditions. The fact that acetone is liberated very readily by the respiratory, genito-urinary, intestinal and skin systems is one factor which prevents it from producing a toxemia unless great quantities are absorbed. Its culminative action is very slight. Some individuals who have worked in an atmosphere with 5% to 6% vapor for years, do not show any ill effects. (Dr. P. A. Davis, Assistant Medical Director with Goodyear Tire and Rubber Company, Rubber Age, May 10, 1930).

"Acetone is not poisonous nor in the least corrosive. Man and animals can tolerate considerable quantities of acetone taken internally (Laboratory Manual for the Detection of Poisons and Powerful Drugs, by Drs. Autenreith and Warren).

"Forald Sollmann (Pharmacological Laboratory of the Medical School, Western Reserve University, Cleveland, Ohio), in studying the effect of acetone in rats, found that the administration of 1.8 c.c. per kilo of acetone per day, was not fatal after four months.

"The toxicity of isopropyl alcohol toward higher animals has been investigated by D. I. Macht (A Toxicological Study of Some Alcohols, with Especial Reference to Isomers, Jour. Pharmacol. and Exper. Therap., 1920, 16, 1), Burton-Opitz (The Pharmacology of Isopropyl Alcohol Jour. Lab. and Clin. Med., 1923, 8, 382), Boruttau, H. (Die Verwendung von Isopropylalkohol zu keimtoedenden und die entwicklungshemmenden Wirkungen von Alkoholen, etc., Ztschr. f. Hygiene u. Infek., 1904, 46, 149), and a number of earlier observers. Their results obtained by various methods on a number of different animals indicate that isopropyl alcohol is somewhat more toxic than ethyl alcohol, but not more than twice as toxic as ethyl alcohol."

In answer to the same question, Stewart Berkshire, Deputy Commissioner of the Alcohol Tax Unit of the Treasury Department at Washington, for whose fairness, accuracy and clarity of opinion I have learned to have great respect, said:

"While acetone and isopropyl alcohol are probably slightly more toxic than ethyl alcohol their presence in beverage liquor in the proportions in which they are used in denatured alcohol would not render the liquor poisonous as the term is commonly used. Large quantities of rubbing alcohol containing approximately 7 per cent of acetone were used for beverage purposes during Prohibition without any more apparent deleterious effects than would be obtained from drinking undenatured alcohol. This office has not conducted any experiments to determine the approximate percentage of acetone or isopropyl alcohol that would be required in ethyl alcohol to render it poisonous. Attention is called to the fact that isopropyl alcohol is being widely sold for rubbing purposes and it has been used to a limited extent in manufacturing flavoring extracts."

In answer to the question:

"What effect would the presence of acetone or isopropyl alcohol in beverage liquor have upon the

human system if present either in small or large quantities, or if present in small quantities over a long period of time?"

Mr. Berkshire replied:

"Since this office has not conducted any physiological experiments with respect to the action of acetone or isopropyl alcohol upon the human system, it cannot make any definite statement as to the effect beverage liquor, containing small or large quantities of these substances, would have upon the human system over a long period of time. However, it is of the opinion that recovered denatured alcohol containing small quantities of acetone or isopropyl alcohol would not have any more appreciable effect upon the human system than the beverage use of ordinary alcohol. It is the understanding of this office that pure isopropyl alcohol when used as a beverage produces stupefaction or insensibility without being preceded by the sense of exhilaration ordinarily produced by ethyl alcohol.

"Acetone and denaturing grade isopropyl alcohol are used as denaturants because they impart an unpleasant odor and taste to the ethyl alcohol."

In view of the proofs and the results of my investigation, I find as the fact that the liquor seized upon the Felsenfeld premises, while illicit, was not poisonous. So far as the latter charge is concerned, he is wholly exonerated. This inquiry should not end, however, with a mere determination of whether or not the illicit liquor in question was what is technically described as poisonous.

The underlying question still remains - should the statutory automatic suspension which followed his conviction for possession of illicit alcoholic beverages be lifted?

Whence this acetone?

Dr. Blakeley, Mr. Battista and Dr. Edel have already indicated the answer.

Asked "Is there any possible way that isopropyl alcohol or acetone can get into legitimate liquor distilled at a legally authorized distillery?",

Commissioner Berkshire replied:

"It is not possible for acetone or isopropyl alcohol to be present in legitimate liquor distilled at a legally authorized distillery. Acetone or isopropyl alcohol are not produced by fermentation in distilleries making beverage liquor in accordance with the law and regulations. As acetone or isopropyl alcohol have no place or use in a legitimate distillery, the possibility of legal spirits becoming contaminated with these chemicals is so remote that it need not be considered."

In response to the same question, Mr. Romig replied:

"I do not know of any possible way acetone or isopropyl alcohol would get into legitimate liquor at a legally authorized distillery."

Asked:

"If those substances are found in liquor in a bar room, can you give a definite opinion as to how those substances must have been introduced into the distilled spirits?"

Commissioner Berkshire replied:

"If acetone or isopropyl alcohol are found in liquor in a barroom, it is prima facie evidence that the liquor is recovered denatured alcohol, or liquor which has been cut with recovered denatured alcohol. The possibility of genuine liquor in barrooms becoming contaminated with these substances is also so remote that it is not worth consideration, and it is unreasonable to assume that these substances would be intentionally added to taxpaid liquor."

In response to the same question, Mr. Romig replied:

"If acetone and isopropyl alcohol were found in liquor obtained in a bar room it would be an indication that redistilled denatured alcohol was used in its manufacture. The only other possibility would be the addition of these substances to legitimate liquor, which would constitute rectification."

Asked:

"From your experience as a chemist, can you say with any degree of certainty what their presence in beverage liquor indicates as to the origin and genuineness of the liquor?"

Mr. Romig replied:

"Their presence in beverage liquors indicates the use of cleaned denatured alcohol. The presence of these substances in liquor would in my opinion preclude its genuineness."

It is clear that the only way in which acetone gets into liquor is because the liquor has been "cut" or the bottle refilled with recovered denatured alcohol. The tell-tale trace of acetone remains, however skillful the cutting or the blending, to point its paternity. Such an ingredient makes liquor illicit, not only in the sense that it is not tax paid or has been diluted with water or colored with prune juice or caramel, but also in the graver significance that the adulterant is harmful to the human system, even if not technically poisonous, and even if the doctors and the chemists and the experts have not yet determined the minimum quantity necessary to produce pernicious results. The public has no way of knowing what is contained in the liquor they drink. Few would buy if they knew what they swallowed was adulterated with a celluloid or smokeless powder solvent or denatured roach exterminator or rubbing alcohol, having a harmful, and possibly poisonous, effect. The mere fact that in this particular case the samples tested did not contain sufficient acetone by volume to cause any noticeably harmful effect is not the point. It is a pure accident that less rather than more acetone was contained in the bootleg liquor used to adulterate the genuine. Licensed places are not laboratories in which to experiment with human lives. Licensees may not escape punishment because the illicit liquor they purchase or possess happens to be concocted under a formula which renders the deleterious effect

negligible. The public will suffer if other formulae or processes are not so fortunate.

I conclude as a general principle applicable to all cases that when a licensee is convicted of the possession of liquor, illicit because it contains acetone, that good cause is not shown why the statutory automatic suspension should be lifted, however long it may have been operative.

Accordingly, the petition is denied.

D. FREDERICK BURNETT
Commissioner

Dated: May 9th, 1937.

9. LICENSES - TRANSFER - WHEN NO OBJECTION WILL BE MADE BY STATE COMMISSIONER NOTWITHSTANDING AUTOMATIC SUSPENSION.

May 9th, 1937.

William M. Untermann, Esq.,
Newark, N. J.

cf 193-7 - 198-2 & 199-5

Dear Mr. Untermann:

I have your petition in behalf of Samuel Felsenfeld and Edward Machino, which bears no date but the jurat of which is dated April 10th. It appears therefrom that Felsenfeld is desirous of retiring from the tavern business completely and that Machino wishes to purchase the stock, fixtures and plenary retail consumption license from Felsenfeld conditioned upon permission to reopen the tavern and transfer the license, which permission is sought by the petition.

I have today been obliged to deny the earlier individual petition of Samuel Felsenfeld to lift the statutory automatic suspension of his license for the reasons set forth in enclosed copy of conclusions just rendered.

You will note that he is completely exonerated, however, from the charge of possessing poisonous liquor. As indicated in my previous but interlocutory decision in reference to his individual petition (Bulletin 165, item 2), I would now normally grant it if it were not for the ruling which has developed out of the inquiry concerning liquor which contained acetone and which was seized on the licensed premises. While I must deny the lifting of the automatic suspension, there is no other reason of record why his license may not be transferred, such as fraud as appeared in *Re Toma and Fraccacreta*, Bulletin 170, item 1.

Hence, I shall have no objection to the action of the Board of Commissioners of the Town of Irvington if they see fit to transfer the suspended Felsenfeld license to Edward Machino, assuming, of course, that Machino is not a "front" for Felsenfeld and that there is no privity between them except as shown by the contract of sale annexed to your petition which purports on its face to be an "out and out" sale, or any other reason that should bar such a transfer.

Your proper procedure is to apply direct for a transfer from person to person to the Irvington Board to whom I am certifying herewith this decision upon your petition.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. ELECTIONS - NO POWER TO PREVENT NON-LICENSEES FROM GIVING AWAY ALCOHOLIC BEVERAGES - BUT BEWARE OF THE ELECTION LAW - POLITICAL ORGANIZATIONS ADVISED NOT TO DISPENSE BEER OR OTHER ALCOHOLIC BEVERAGES ON ELECTION DAY UNTIL THE POLLS ARE CLOSED.

May 10, 1937.

Mr. William Hanretty,
Newark, N. J.

My dear Mr. Hanretty:

I have your letter inquiring on behalf of the Vincent J. Murphy Booster Club, if beer may be given away on Election Day, and stating that none will be sold.

The Control Act does not prevent a non-licensee from giving alcoholic beverages away on Election Day, or for that matter, at any time, provided the gift is really gratuitous in every respect.

However, "An Act to Regulate Elections" (C.187, P.L. 1930) prohibits among other things, gifts of beer or other liquor for the purpose of inducing votes. Violation subjects the offender to imprisonment for five years or fine of \$2,000. or both. Herewith is copy of ruling in re Tice, Bulletin 145, Item 1, which will give you the full details.

I advise that political organizations do not serve or dispense beer or any other alcoholic beverages on Election Day in any manner whatsoever until the polls are closed.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. SOLICITOR'S PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

May 10th, 1937.

IN RE: Hearing No. 163

Solicitor swore he was never convicted of a crime. His fingerprint records, as originally returned, disclosed that he had been convicted and received a suspended sentence on a charge of seduction. Solicitor testified at a hearing that the person convicted of seduction was his cousin, of the same name. Subsequent investigation of the records of the Police Department in the City where the arrest was made, and in the County Prosecutor's Office, confirms solicitor's statement. The State Bureau of Identification, and Federal Bureau of Investigation, have since advised that their first returns were incorrect, and have forwarded to this Department returns showing that the solicitor has never been convicted of a crime.

It is recommended, therefore, that no further action be taken in this case.

EDWARD J. DORTON,
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

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

May 8th, 1937.

IN RE: Hearing No. 164

Applicant was the holder of a solicitor's permit authorizing him to be employed by a licensee. He makes the present application for a permit to be employed by another licensee. In both applications he stated he had never been convicted of any crime. Our investigation disclosed that in 1923 applicant was arrested and pleaded guilty to obtaining goods by false pretenses.

Applicant admitted, at a hearing duly held, that he had been convicted and had been placed on probation. He stated that at the time in question he met an acquaintance who requested that he accompany him to a department store to make a purchase of some merchandise. They proceeded to the store, where this acquaintance purchased some small items of wearing apparel, requesting the salesman to charge them; that on coming out of the store this acquaintance stated that he could not use both items and gave one of them - a vest sweater - to applicant. Applicant was arrested the same day and charged as aforesaid when it developed that this acquaintance had no charge account with the store. Applicant denied that he knew the man was going to charge goods when he had no account with the store. He denied also that he had any intention of benefiting from the transaction, but said the sweater was given to him merely as a gift. At his trial, applicant was represented by a lawyer, pleaded guilty, and was placed upon probation for two years.

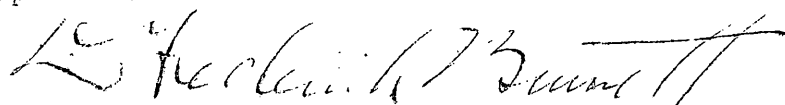
The lawyer representing the applicant was contacted in our investigation and recalled that applicant was nothing more than a boy at the time and believed he had apparently fallen into bad company.

Obtaining goods under false pretenses is ordinarily a crime involving moral turpitude. However, it appears that applicant, at the time of the transaction, was only seventeen years of age. His subsequent record is clean. Under the facts presented, I conclude that the crime for which applicant was convicted was not one involving moral turpitude. In re Application for Solicitor's Permit, Bulletin #149, Item 1.

The applicant's explanation that the reason he stated he had never been convicted of a crime was because he was a victim of circumstances, does not ring true. He knew he had been convicted. In view of his false affidavit, it is recommended that the issuance of the permit be withheld until the expiration of ten (10) days from the date hereof.

Edward J. Dorton,
Attorney-in-Chief.

Approved:



D. Frederick Burnett
Commissioner

Inspected by:

J. EDGAR

and found O. K.