

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

BULLETIN 382

FEBRUARY 1, 1940.

1. DISCIPLINARY PROCEEDINGS - FRONTING FOR DISQUALIFIED CRIMINAL - REVOCATION INDICATED AND EFFECTED NOTWITHSTANDING THAT LICENSEE HAD BEEN SINCE THROWN INTO BANKRUPTCY AND HIS LICENSE EXTENDED TO RECEIVER IN BANKRUPTCY - THIS CASE IS GOVERNED BY THE INSISTENT REASONS WHICH FROM THE PUBLIC STANDPOINT CALL FOR REVOCATION RATHER THAN BY CONSIDERATION OF A SPECULATIVE AND INDETERMINATE BENEFIT TO PRIVATE CREDITORS.

In the Matter of Disciplinary)
Proceedings against)

FRANK J. AGOSTINO,)
T/a Two Towers,)
349 Halsey Street,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License No. C-820, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Robert Inlander, Esq., Attorney for George H. Rosenstein, Esq.,
Receiver in Bankruptcy for Frank J. Agostino.
Irving Siegler, Esq., Attorney for Composite Building and Loan
Association in Liquidation.
Samuel S. Ferster, Esq., Attorney for various Creditors.
Samuel B. Helfand, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant is charged on eight counts with -

(1) through (5): Violating the Alcoholic Beverage Law (R. S. 33:1-25) by falsely stating in his applications for his 1935-6, 1936-7, 1937-8, 1938-9 and 1939-40 licenses for his tavern that no one other than himself was interested in the tavern when, in fact, James Scarano (a person disqualified from holding a liquor license or being employed by a liquor licensee in this State by reason of conviction of crimes involving moral turpitude) actually had an interest in the tavern;

(6) and (7): Permitting the said James Scarano and Anthony Garafano (a similarly disqualified person) to be connected with the tavern in a business capacity, in violation of the Alcoholic Beverage Law (R. S. 33:1-26) and Rule 1 of State Regulations No. 11; and

(8): Employing hostesses at the tavern, in violation of Section (c) of Resolution of August 29, 1934 of the Newark Board of Alcoholic Beverage Control.

The defendant - who has been holding his successive licenses for the tavern merely as a "front" for the disqualified

Scarano - pleaded guilty to all charges but the last.

To the last charge he pleaded not guilty, but does not dispute the evidence showing that hostesses were actually employed at the tavern. Instead, he contends that the Newark regulation was, in effect, abrogated by Resolution of May 24, 1939 of the Newark Board of Commissioners. See Re Reichenstein, Bulletin 319, Item 10.

It is unnecessary here to determine the merits of this contention because, irrespective of the last charge, outright revocation is indicated by the defendant's admitted guilt on the others.

The only fact that remains to be considered is that the defendant has been adjudicated a bankrupt in Federal Bankruptcy Court and his license has been extended, under R. S. 33:1-26, to the bankruptcy receiver by the Newark Board of Alcoholic Beverage Control.

Such extension to the receiver did not bar or abate these proceedings in any respect. Nor would any transfer of the license from the receiver to another have such effect. State Regulations No. 15.

However, the receiver, while not denying the State Commissioner's legal right to revoke the license, contends that no penalty should here be imposed because the license is no longer the defendant's, but is the receiver's for the benefit of the bankrupt estate; that the license has an appreciable value because of its transferability (R. S. 33:1-26) and the fact that the municipal quota on such licenses in Newark is presently filled; that the receiver may, if the license is not revoked, realize upon this value for the benefit of the bankrupt estate; that to revoke the license will not penalize the defendant, who has already been involuntarily ousted, but will, by taking the license away from the receiver, only injure the creditors.

While this argument, at first blush, seems tenable, it is, on reflection, unsound:

(1) Revocation would not, as contended, be an empty penalty against the defendant. It would disqualify him for a period of two years from holding any other liquor license or being employed by a liquor licensee in New Jersey. R. S. 33:1-31. Certainly one who has perpetrated a serious fraud upon the State by "fronting" for a disqualified criminal merits this disqualification and, in the public interest, should not be absolved merely to benefit his creditors.

(2) The Alcoholic Beverage Law puts all creditors on notice that, when extending credit, they take the risk of dealing with a debtor who will abide by the rules, and that they may not look to the license as a reachable asset. R. S. 33:1-26 specifically provides that, under no circumstances, -

".....shall a license, or rights thereunder, be deemed property, subject to lien, levy, attachment, execution, seizure for debts"

Hence creditors have no standing to complain of revocation of the license.

(3) The Receiver's argument, if carried to logical extreme, destroys itself: The greater the value of the license, the greater the dividends. True! Perchance it might result in creating a surplus to which the bankrupt himself, mirabile dictu, would be entitled.

(4) Transfer is not a matter of right but lies within the sound judgment of the issuing authority. Its value is therefore merely a guess. From the public standpoint the insistent reasons which call for revocation must govern this case rather than considerations of a speculative and indeterminate benefit to private creditors.

Accordingly, it is, on this 27th day of January, 1940,

ORDERED, that Plenary Retail Consumption License No. C-820, heretofore issued to Frank J. Agostino, T/a Two Towers, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective immediately.

D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE ON ELECTION DAY - CASE DISMISSED.

In the Matter of Disciplinary Proceedings against)

HERMAN J. HARRIS,)
31 William Street,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-903, issued by)
the Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)
-----)

Stanton J. MacIntosh, Esq., for the State Department of Alcoholic Beverage Control.

George R. Sommer, Esq., for the Defendant-Licensee.

BY THE COMMISSIONER:

The licensee is charged with permitting his licensed premises to be open while the polls were open for voting on Special Election Day, June 20, 1939, in violation of resolution of Newark Municipal Board of Alcoholic Beverage Control adopted September 20, 1934.

The regulation alleged to have been violated requires that retail liquor places be closed on Election days while the polls are open for voting, "provided, however, that restaurants, drug stores and establishments where the principal business is other than the sale of alcoholic beverages may remain open during the above prohibited hours for such other purpose only."

The testimony establishes that the licensee conducts a restaurant, even though in his application for license he designated his principal business as "tavern."

For the reasons stated in Re Zorn, Bulletin 358, Item 13 (decided after the instant charge was preferred and hearing held), the charge is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 27, 1940.

3. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of Seizure of six)	
50-gallon barrels and three)	Case 5649
25-gallon barrels of wine, two)	
1-gallon jugs of alcohol, one)	
2-quart bottle of whiskey, a)	ON HEARING
wine press and a grape crusher,)	CONCLUSIONS AND ORDER
at 358 Bloomfield Avenue, in)	
the City of Newark, County of)	
Essex and State of New Jersey.)	

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.
Appearance of William Notte, Esq., Attorney for Alfred Mariani and Antonio Buono later withdrawn.

BY THE COMMISSIONER:

On December 11, 1939 Alfred Mariani made an unlicensed sale of a gallon of wine and other alcoholic beverage at his premises at 358 Bloomfield Avenue in Newark. Thereafter, on December 15, agents of this Department, accompanied by Newark detectives, raided the premises, arrested Mariani and seized, among other things, 375 gallons of wine which Mariani has admitted was made by him without license or permit during the Fall of 1939.

Such illegal manufacture, as well as the unlicensed sale of the wine, renders it illicit. R. S. 33:1-1(i). Hence, I find that the wine and the other items seized on the premises constitute unlawful property. R. S. 33:1-1(y), 66(b).

Accordingly, it is ORDERED that the property seized herein, set forth in Schedule "A", be and the same is hereby forfeited under R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 29, 1940.

SCHEDULE "A"

- 6 - 50-gallon barrels of wine
- 3 - 25-gallon barrels of wine
- 2 - 1-gallon jugs of alcohol
- 1 - 2-quart bottle of whiskey
- 1 - grape crusher
- 1 - wine press

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
 SOPHIE ARONOW,)
 T/a Kaighn Cafe,)
 534 Kaighn Ave. and)
 Rear of 536 Kaighn Ave.,)
 Camden, N. J.,)
)
 Holder of Plenary Retail Consumption License C-183, issued by)
 the Municipal Board of Alcoholic Beverage Control of the City of)
 Camden.)
 -----)

CONCLUSIONS AND ORDER

Ellamarye H. Failor, for the State Department of Alcoholic Beverage Control.
 Sophie Aronow, Pro Se.

BY THE COMMISSIONER:

Defendant-licensee was charged with having sold a pint of Mount Vernon Brand Straight Rye Whiskey at less than the Fair Trade price in effect at the time.

The licensee does not dispute the fact of the sale or the price at which it was made. However, she refused to plead guilty because she insisted that she had not "purposely" sold at less than the Fair Trade price. Accordingly, a plea of not guilty was entered and testimony in support of the charge taken.

Testimony discloses that investigators of this Department visited the licensed premises and purchased a pint of Mount Vernon Whiskey for \$1.45 on July 11, 1939, at which time the Fair Trade price was \$1.65. The licensee's explanation that she had not received any price list and hence was unaware of the correct price is unavailing in the light of evidence that the price list had been mailed to her and had not been returned by the Post Office although it bore a return address. In any event, licensees are responsible for the observance of Fair Trade prices as published in the official Department Bulletin, whether or not they actually receive the price lists which are mailed by the manufacturers and wholesalers.

I find the licensee guilty as charged.

Accordingly, Plenary Retail Consumption License C-183, heretofore issued to Sophie Aronow by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 534 Kaigh Avenue and rear of 536 Kaighn Avenue, be and it hereby is suspended for a period of ten (10) days, effective February 2, 1940, at 2:00 A. M.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 29, 1940.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against
 JOSEPH FRANCIMORE,
 T/a East Trenton Liquor Store,
 468 N. Clinton Avenue,
 Trenton, New Jersey,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-3, issued by the Board of Commissioners of the City of Trenton.

Joseph Francimore, Pro Se.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on December 28, 1939, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 29th day of January, 1940,

ORDERED, that Plenary Retail Distribution License D-3, heretofore issued to Joseph Francimore, T/a East Trenton Liquor Store, by the Board of Commissioners of the City of Trenton, be and the same is hereby suspended for a period of five (5) days, effective February 2, 1940, at 2:00 A. M.

D. FREDERICK BURNETT,
Commissioner.

6. LICENSED PREMISES - GYMNASIUM - MAY NOT BE RENTED TO NUDIST CLUB.

Gentlemen:

I would like to have your permission on rather an unusual circumstance.

I am the holder of a Plenary Consumption License issued by Union City, and in connection with my tavern, I have a restaurant, bowling alleys and a fully equipped gym.

I have had request from a bona fide Nudist Club to rent the gym, on Sunday afternoons, with the absolute guarantee that no liquor, or alcoholic beverages will be served or sold to them during the time they are using the gym. There will be no one allowed to enter who is under the influence of alcohol. It is a highly reputable organization, and whatever proof of this fact will be required can be furnished.

Since my gym has a separate entrance from the tavern, on a different street, and the doors connecting the gym to the restaurant and tavern could be completely shut off during the time the gym was in use.

Since business is slow just now, would like very much to make this extra money, and anything you might do would be greatly appreciated.

Very truly yours,
William Helwig

January 30, 1940

Mr. William Helwig,
Old Heidelberg Restaurant,
Union Hill Turn Hall,
Union City, N. J.

My dear Mr. Helwig:

The safeguards you suggest seem well thought out so far as the Club itself is concerned. If the gym is closed off, no beverages allowed and only air-conditioned members admitted, no doubt the Sunday afternoon work-outs on the parallel bars and the flying trapeze will be sufficiently decorous to those inured to it.

But have you thought of your non-nudist patrons? If each comes equipped with a brace and bit or a chisel and hammer, or even a jack-knife, your doors and walls will soon look like a Swiss cheese. Crowds will mill to peek at the great undraped. Competitors will vie with bigger gyms and reserved seats. Precautions, supposedly appropriate, would probably be proffered with each project but I don't purpose to permit any tavern to convert itself into an indoor zoo for bares.

I'm all aboard for healthy athletics, but, really, a licensed tavern is no place for nudists.

Don't do it.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. CANCELLATION PROCEEDINGS - CLUB LICENSE CANCELLED BECAUSE IMPROPERLY ISSUED - HEREIN OF THE RULE THAT A CLUB MUST BE IN EXISTENCE FOR THREE YEARS IN ORDER TO HAVE A CLUB LICENSE.

In the Matter of Proceedings to)
Cancel or Revoke Club License)
No. CB-1, issued to)

MURRAY HILL COUNTRY CLUB, INC.)
Mountain Avenue and Murray)
Hill Boulevard,)
New Providence, New Jersey,)

by the Township Committee of the)
Township of New Providence.)
- - - - -

CONCLUSIONS
AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of
Alcoholic Beverage Control.
Ralph A. Corbin, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

It is charged, among other things, that the defendant, holder of a club liquor license, is disqualified under Rule 2 of State Regulations No. 7 from holding such license.

Rule 2 of State Regulations No. 7 provides (with certain exceptions here immaterial) that no club liquor license shall be issued by any club unless it has been in active and continuous operation in New Jersey for at least three years immediately prior to the application and has, for the same period of time, been in exclusive and continuous possession and use of club quarters.

For many years the presently licensed premises were conducted by the Summit Golf Club. However, in July 1938 that club, then numbering some 130 members, dissolved and the premises were thereafter operated as a public golf course for about nine months. In March 1939 they were leased to R. J. Wylie, who established the Murray Hill Country Club, an unincorporated group, with a governing board, constitution and by-laws different from the Summit Golf Club, and with only six or ten of the members of that earlier club being included in the new organization. In June 1939, after Wylie's death, the defendant was incorporated, a new governing body formed, and a new constitution and by-laws drawn. Its application for license for the current fiscal year was filed during that same month.

It is clear that the defendant has been in existence only since March 1939, at the most, when Wylie formed his unincorporated group. The defendant's claim that it should be identified with the Summit Golf Club and hence treated as having been in existence for many years is without merit. Wylie's group, formed months after the disbanding of the Summit Golf Club, with its different members, officers and set-up, was a wholly new combination and not in anywise the same entity.

Hence, I find that the defendant, not having been in existence for three years, is disqualified from a club license.

In view that this license ought never to have been issued and must be immediately cancelled, it is unnecessary to consider the other charges.

Accordingly, it is, on this 29th day of January, 1940,

ORDERED, that Club License No. CB-1, heretofore issued to the Murray Hill Country Club, Inc. by the Township Committee of the Township of New Providence, be and the same is hereby set aside, cancelled and declared null and void, effective immediately.

D. FREDERICK BURNETT,
Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - UNSERVED PENALTY IMPOSED AGAINST INDIVIDUAL LICENSEE LAST YEAR REIMPOSED UPON CORPORATION OF WHICH HE IS NOW A STOCKHOLDER AND VICE-PRESIDENT.

In the Matter of Disciplinary Proceedings against)

FELIX ALEXANDER,)
T/a Dragon Inn,)
7829 River Road,)
Pennsauken, N. J.,)

ON RULE TO SHOW CAUSE
ORDER

Holder of Plenary Retail Consumption License C-29 for the fiscal year 1938-1939, issued by the Township Committee of the Township of Pennsauken.)
-----)

Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On May 20, 1939, license C-29, issued to Felix Alexander, was suspended for five days after he had pleaded guilty to a charge of selling liquor below the minimum retail price in violation of Rule 6 of State Regulations No. 30. Re Felix Alexander, Bulletin 318, Item 3. At that time the effective date of the suspension was reserved for future determination for the reasons set forth in Bulletin 289, Item 1.

It appearing that Felix Alexander did not renew his license for the present fiscal year but that a plenary retail consumption license had been issued for the present fiscal year for the same premises to Dragon Inn, Inc., of which corporation Felix Alexander is Vice-President and a stockholder, an order to show cause why the suspension inflicted against the license of Felix Alexander should not be imposed upon Dragon Inn, Inc. was served upon the present licensee in accordance with Bulletin 362, Item 1.

On the return of the order to show cause Felix Alexander appeared and testified that he is Vice-President of Dragon Inn, Inc., the holder of plenary retail consumption license C-29, issued to it for the present fiscal year; that he is authorized by said corporation to state that the suspension heretofore imposed may apply against the license now held by the corporation.

Accordingly, it is, on this 29th day of January, 1940,

ORDERED that plenary retail consumption license C-29, heretofore issued to Dragon Inn, Inc. by the Township Committee of the Township of Pennsauken, be and the same is hereby suspended for a period of five (5) days, effective February 2, 1940, at 3:00 A. M.

D. FREDERICK BURNETT,
Commissioner.

9. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK DENIED - PROPERTY FORFEITED.

In the Matter of the Seizure)	Case 5348
of a number of still parts at)	
96 Reservoir Avenue, in the)	ON HEARING
City of Jersey City, County of)	CONCLUSIONS AND ORDER
Hudson and State of New Jersey.)	

Henrietta Fox, Pro Se.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 11, 1939, officers of the Jersey City Police seized unregistered still parts in the bedroom and parlor of an apartment occupied by William Cortock and Matthew Cortock, in a four-family dwelling at 96 Reservoir Avenue, Jersey City. There is no evidence that the still was being operated. The seizure was adopted by this Department.

Since the still parts were not registered under the provisions of R. S. 33:2-1, they constitute unlawful property.

As to padlocking: Henrietta Fox, the owner of the realty, who resides in Brooklyn, testified at the hearing herein that she rented the apartment to the Cortocks in November 1938, at the same rental charged other tenants; that from November 1938 to April 1939 she had never entered the Cortock apartment but collected the rent at the door; that she did not at any time see the still parts, or smell alcohol, or observe anything to cause her to suspect that the still parts were in the apartment. It further appears that Mrs. Fox started proceedings to dispossess the Cortocks and that they have vacated the premises.

In view of the foregoing facts and particularly the absence of evidence that the still was being operated, I shall not order the premises padlocked.

Accordingly, it is ORDERED that the articles, itemized in Schedule "A", be and hereby are forfeited in accordance with the provisions of R. S. 33:2-5, and that they be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

Dated: January 29, 1940
D. FREDERICK BURNETT,
Commissioner.

SCHEDULE "A"

- 1 - 50 gallon copper cooker
- 2 - galvanized pails with copper coils
- 1 - 5 gallon copper cooker
- 1 - copper pipe

10. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED -
HEREIN OF THE DANGER OF TREATING A KNEE WITH HOME-MADE
REMEDIES.

In the Matter of the Seizure on	Case #5469
June 24, 1939, of a Ford sedan and	:
a quantity of alcohol contained	On Hearing
therein, in the vicinity of 146	:
Badger Avenue, in the City of Newark,	CONCLUSIONS
County of Essex and State of New	AND
Jersey.	ORDER
.....	:

Saul C. Schutzman, Esq., for Frank Tillery
 Braelow & Tepper, Esqs., by
 Benjamin D. Braelow, Esq., for Madison Finance Company of
 Jersey City
 Harry Castelbaum, Esq., for the State Department of Alcoholic
 Beverage Control

BY THE COMMISSIONER:

On June 24, 1939, Newark police officers, investigating an alleged speakeasy at 35 Lillie Street, Newark, observed a man subsequently identified as Frank Tillery, leave the premises with a package, get into an automobile and drive away. Apprehending the driver, the officers searched the car and found therein a half-gallon glass jug, three-quarters full of corn whiskey, bearing no indicia of tax payment. Tillery was arrested, and car and whiskey seized and the case subsequently adopted by this Department.

The whiskey is prima facie illicit because it bore no tax stamps, and it and the car in which it was transported are unlawful property subject to confiscation. R.S. 33:1-1(i) and (y); R. S. 33:1-66.

At the hearing, Tillery testified that he had procured the whiskey as a favor for a neighbor, who corroborated his story, testifying that she had suffered with her knee a long time; that she had tried all suggested remedies and had been informed that "still liquor" mixed with camphor was the thing, thus:

- "Q. You say you wanted to buy some alcohol for rubbing purposes. Why didn't you go to the drug store?
- A. They say that it was good in camphor.
- Q. What was good?
- A. The still stuff. I don't know its name.
- Q. What do you mean still stuff?
- A. That is what they call it.
- Q. You know that it was alcohol that you sent Frank for?

THE HEARER: Didn't they call it corn whiskey?

WITNESS: They call it still liquor. They say this still liquor is good to rub with. That's what the woman told me.

- Q. This is the first time you have had any trouble with your foot?
- A. I have been suffering with it for three years.

- "Q. Did you buy remedies at the drug store?
 A. Everything that people tell me to get I get. You know how it is, I get everything.
 Q. You have bought stuff in the drug store?
 A. Yes.
 Q. And you were told to get this still whiskey as a remedy?
 A. That's what they told me."

Whereupon Frank Tillery got himself into deep trouble. This is the gist of his story:

- "Q. She told you to go there and buy the alcohol?
 A. Yes.
 Q. Did she tell you where to go?
 A. Yes.
 Q. To Lillie Street?
 A. Yes.
 Q. And when you got there you knocked on the door and the lady came to the door and you said you wanted some corn whiskey?
 A. That is right.
 Q. That is what you asked for, corn whiskey?
 A. Yes.
 Q. But corn whiskey is a drink?
 A. Some people use it for different things. They use it for rubbing.
 Q. You use alcohol for rubbing?
 A. Yes.
 Q. When you ask for corn whiskey you generally want to drink it?
 A. I did not want to drink it, I got it for her.
 Q. Did you ever buy liquor before or alcohol?
 A. No.
 Q. Don't you drink?
 A. Yes, I drink Government whiskey.
 Q. When you want a drink you buy Government whiskey. What do you mean; you buy it in a saloon or liquor store?
 A. I mean I buy it with a license.
 Q. And you know that to buy liquor at some place from somebody that has no license is breaking the law, don't you?
 A. Yes.
 Q. Did you give that any consideration when you went to the Lillie Street address to buy the whiskey?
 A. I wasn't thinking.
 Q. And when Mrs. Johnson sent you to buy some alcohol for her at the Lillie Street address, didn't you think it strange that she didn't send you to a liquor store for it?
 A. No, I didn't think of that."

I am authorized to return seized property only to a person who in good faith has unknowingly violated the law. Although Tillery's neighborly motives may have been the best, and the therapeutic values of "still liquor" be undisputed, he committed the violation with his eyes wide open. He knew what he was doing - he himself drinks only "Government whiskey". His offense is not what he drank but what he transported. His request for return of the car is denied.

However, Madison Finance Company of Jersey City appeared at the hearing and established itself as a bona fide lienor of the car, by virtue of a chattel mortgage it holds as security for a loan originally made in 1937. Testimony shows that reasonable credit investigation was made at the time, nor is there any indication that a more searching investigation would have disclosed

any fact to put the lienor upon suspicion since this appears to be Tillery's first difficulty with the law. Accordingly, I shall allow its lien for \$75.43, subject to costs of seizure and storage of the automobile.

The State Commissioner of Finance has advised that the State of New Jersey has no use for the vehicle in the event that the lien claim is allowed.

Accordingly, it is ORDERED that the alcoholic beverages described in Schedule "A" annexed hereto are forfeited, to be sold, destroyed or retained for the use of hospitals and State, County and municipal institutions.

It is further ORDERED that the automobile described in said Schedule "A" may be returned to Madison Finance Company of Jersey City provided it pays, within 30 days of the date hereof, the costs incurred in connection with the seizure herein.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 30, 1940

SCHEDULE "A"

- 1 - container of alcohol
- 1 - Ford Sedan, Engine 1248522,
1939 N. J. Registration FM541

11. DISCIPLINARY PROCEEDINGS - MISLABELING BEER TAPS - MISTAKEN LENIENCY.

January 30, 1940

A. D. Bolton,
City Clerk,
Passaic, N. J.

My dear Mr. Bolton:

I have before me staff report and your letter of January 24th re disciplinary proceedings conducted by the Board of Commissioners against Mary Magda, 66 Passaic Street, charged with mislabeling a beer tap, and note that despite her confession of guilt, sentence was suspended.

As I get the picture, a tap at the bar was labeled "MC" (Mt. Carmel), but the line was tapped to a barrel of cheaper beer which the licensee claimed had been tapped by mistake.

That's what they all say!

What's the use of having labels anyway if the customer only gets what the licensee chooses to give him?

I was intrigued to read the urge that no suspension be imposed because "the mighty should be merciful." It hath a familiar ring. I suppose there's still mileage in it. It would be better if the mighty knew the score and who made it.

Mistaken leniency in matters of this sort leads to more serious violations.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDER MODIFIED.

In the Matter of the Seizure)	Case 5199
on January 3, 1939, of a still)	
at 16 Quitman Street, in the)	ON PETITION
City of Newark, County of Essex)	ORDER
and State of New Jersey.)	
-----)	

Max Shapiro, Esq., Attorney for Milton Binstock, Petitioner.

BY THE COMMISSIONER:

On January 8, 1940, Conclusions and Order were entered herein whereby, among other things, it was ordered that the second floor apartment and attic of the dwelling at 16 Quitman Street, in the City of Newark, should not be used or occupied for any use whatsoever for a period of six (6) months, commencing the 8th day of February, 1940. Re Seizure Case 5199, Bulletin 376, Item 2.

Milton Binstock subsequently filed a petition herein, reciting that he is one of the officers and the principal stockholder of Binco Holding Co., the owner of said premises, wherein he prays that the aforesaid padlock order be vacated in its entirety.

The petition sets forth various reasons why relief should be granted, many of which have been considered and disposed of in the Conclusions and Order previously filed. The new matter contained in the petition consists of a statement by Milton Binstock that he was not advised at the hearing that it would be necessary for him to institute dispossess proceedings against the tenant, Lillie Banton, and that he was of the belief that he would be advised by this Department as to whether or not it was urgently necessary to remove the tenant; and further, that after entry of the Conclusions and Order on January 8, 1940, dispossess proceedings were instituted against Lillie Banton who, pursuant thereto, vacated the premises in question on January 22, 1940.

The petition further states that padlocking of the second floor would work an undue hardship because there is only one steam boiler in the premises, the expense of which is shared by the tenant of the first floor and the tenant of the second floor, and further, because the pipings therein are subject to freezing and breaking during the winter months. I am not impressed by the statements as to the heating arrangements or the possibility of damage to the water pipes since these matters would have to be taken care of by the landlord in the event that the second floor became vacant for reasons other than the padlocking of the premises. However, it now appears that petitioner has belatedly cooperated with the Department to the extent of removing a law-breaker from the premises. Under the circumstances, I shall reduce the period of padlocking from six months to one month.

Accordingly, the final paragraph of Conclusions and Order dated January 8, 1940, is hereby amended to read as follows:

"It is further ORDERED that the second floor apartment and attic of the dwelling at 16 Quitman Street, City of Newark, being the premises in which the illicit still was found, shall not be used or occupied for any use whatsoever for a period of one (1) month, commencing the 8th day of February, 1940."

D. FREDERICK BURNETT,
Commissioner.

Dated: January 30, 1940.

13. RETAIL LICENSEES - PERMISSIBLE TO SERVE ON REPUBLICAN OR DEMOCRATIC COUNTY COMMITTEE.

January 30, 1940

Mr. Frank Orechio,
Nutley, N. J.

My dear Mr. Orechio:

There is nothing in the Alcoholic Beverage Law or Regulations which would prevent a tavern owner from being a member of the Republican County Committee - or, for that matter, the Democratic Committee.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. LICENSES - RENEWALS - THE STATUTE NOW DEFINES RENEWALS AND THEREBY PRECLUDES THE ESTABLISHMENT BY MUNICIPALITIES OF ANY LOCAL RULE INCONSISTENT THEREWITH.

January 30, 1940

Henry Bersch,
Borough Clerk,
Dumont, N. J.

My dear Mr. Bersch:

I have before me Ordinance No. 374, amending Section 15(a) of Ordinance No. 364, adopted February 23, 1937.

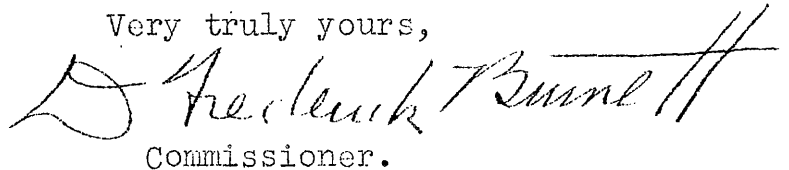
To the extent that Section 15(a), as amended, limits the number of plenary retail consumption licenses, it appears to be in proper form.

It further provides that application for renewal must be made within 15 days of date of expiration of the preceding license, the application otherwise to be classified as an application for a new license. Now this was wholly proper prior to August 2, 1939, but it cannot be done now. The reason is that on August 2, 1939, Chapter 281, P.L. 1939 became law. See Bulletin

344, Item 10. It provides that any license issued to replace a previous license shall be deemed a renewal, provided two things occur; namely, (1) the license is of the same class and type, covers the same premises and is issued to the same person as held the expiring license, and (2) the application is filed with the proper issuing authority not later than 30 days after the commencement of the new license term. It is mandatory. Since the law, as it now stands, declares that in such event the application shall be deemed a renewal, it follows that the municipality may not enact by ordinance or otherwise, either additional or lesser requirements.

I therefore cordially recommend that at early convenience you amend Section 15(a) by striking out all that portion beginning with the word "provided" in line 6. It is not necessary to include in the ordinance a definition of "renewal" as that is fully covered by Chapter 281, P. L. 1939, aforesaid.

Very truly yours,

A handwritten signature in cursive script, reading "Frederick Bunnell". The signature is written in dark ink and is positioned above the typed name "Commissioner".

Commissioner.