STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 43. August 7, 1934.

1. MUNICIPAL ORDINANCES - VALIDITY - APPROVAL BY COMMISSIONER.

The Alcoholic Beverage Control Act, as amended and supplemented, permits each issuing authority, subject to the approval of the Commissioner first obtained, to regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted (Section 37) and, subject to rules and regulations, by resolution first approved by the Commissioner, to impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of the Act and secure compliance with the provisions thereof (Section 29).

The statute provides that the Commissioner's approval be obtained prior to the adoption of the regulations. Circumstances may possibly arise requiring immediate action by a municipality. In such an event, the Commissioner is prepared fully to cooperate. It is necessary, however, that the existence of the emergency be brought to his attention. Otherwise, regulations will be studied in the order in which they are received and will be returned as rapidly as is consonant with the extent and importance of this duty.

The following matters have not previously been generally discussed in the Bulletin:

2. LIMITATIONS OF THE NUMBER OF LICENSES AND THE HOURS OF SALE.

Many municipalities, by the authority of Section 37 of the Alcoholic Beverage Control Act, have adopted regulations limiting the number of licenses and fixing the hours between which sales may be made. Such regulations will not come up for the Commissioner's consideration until an appeal is taken therefrom. The Commissioner has, in several instances, commented thereon as follows:

> "Resolutions or ordinances which limit the number of licenses to sell alcoholic beverages at retail and the hours between which the sale of alcoholic beverages at retail may be made do not need the approval of the Commissioner to make them effective. Such regulations are expressly distinguished by the statute from those which must be first so approved such as regulations of the conduct of the business or the nature and condition of the licensed premises, or conditions to the issuance of any license deemed necessary and proper to accomplish the purposes of the Act. See Sections 29 and 37. The limitation of the number of licenses and the hours of sale is, however, made expressly subject to appeal to the State Commissioner (Section 37) who, after public hearing may at the instance of anybody aggrieved thereby, set aside, vacate and repeal the limitation complained of or change, alter, amend or otherwise modify the same (Section 38). Decision on the policy or merits of these regulations would therefore be improper at this time."

3. RESOLUTIONS ADOPTED PRIOR TO DECEMBER 6, 1933

Resolutions have been adopted pursuant to Assembly Bill No. 611 prior to its final passage and without conditioning the

resolution upon said Bill's enactment. The Commissioner has returned these resolutions with the following comment:

> "I cannot approve your resolution as it was passed before the Control Act became effective on December 6, 1933. I suggest that it be resubmitted to your governing body for its action."

Such resolutions cannot be considered for approval, having been enacted before authority to do so existed. However, where such regulations have been amended, rescinded or superseded by subsequent resolution or ordinance, they are no longer material and need not be considered further.

4. CONCERNING THE ATTEMPT TO CREATE CLASSES OF LICENSES IN ADDITION TO THOSE SPECIFIED BY THE STATUTE.

Several municipalities have attempted to create what may be called, for want of better classification, a limited retail consumption license; that is to say, a license for consumption on the licensed premises restricted to brewed malt alcoholic beverages and naturally fermented wines. The law, however, does not permit its issuance. "The creation of certain types of licenses by the Legislature by implication excludes all others." It follows that Section 13 of the statute must be interpreted to mean that only those licenses specifically mentioned therein may be issued. New types of licenses or restrictions attempted to be imposed upon existing types which would in effect convert them into such new types are void and of no effect.

5. PENALTIES - FINE, IMPRISONMENT - FOR VIOLATION OF MUNICIPAL RESOLUTIONS

The governing bodies of certain municipalities have chosen to include in their resolutions sections which purport to impose penalties for violations of the resolution. To this the Commissioner has replied as follows:

> "Your resolution purports to punish for violation of any of the provisions of your resolution by a fine or imprisonment or both. I doubt very much whether this can be accomplished lawfully by resolution. Whether it can be done by ordinance is a matter of municipal law for your own counsel to advise. I hope that such an ordinance will be sustained by the courts, for in this way co-operative enforcement can be accomplished directly by the municipality. I cordially suggest that at least you put this provision into the form of an ordinance rather than a mere resolution."

6. PENALTIES - FINE, IMPRISONMENT - FOR VIOLATION OF MUNICIPAL ORDINANCES

However, to impose such penalties as set forth in the preceding item by ordinance is another question.

> "Your ordinance purports to punish for violations of said ordinance by fine or imprisonment. While I have no objection to this Section and therefore will approve it, I have doubts as to its legal sufficiency. I hope it will be sustained by the courts, for in this way cooperative enforcement can be accomplished directly by your municipality."

7. PENALTIES - FINE, IMPRISONMENT - RECORDERS' OR MAGISTRATES' JURISDICTION UNDER THE ACT

Directly in line with the preceding two items is the Commissioner's comment upon resolutions which have attempted to confer power upon recorders or other magistrates to subject violators of either the statute or local rules and regulations to the penalties prescribed in the statute.

"I have grave doubts as to the validity of such a resolution. Frankly, I would like to be convinced of its legality and will be very glad if you will submit a memorandum, demonstrating the authority of the municipality to confer power upon its recorder or other magistrate to subject violators of either the statute or your own resolution to the penalties prescribed in the statute. Perhaps a local ordinance will be valid, making an offender liable as a disorderly person. But since the penalties prescribed in the statute are misdemeanors, I do not see how any resolution can confer power upon your local recorder or magistrate to adjudicate upon such misdemeanors."

8. MUNICIPAL REGULATIONS OBSOLETE THROUGH SUBSEQUENT AMENDMENT TO THE STATE LAW

Supplements and amendments to the state law may require corrections to municipal resolutions and ordinances. In many instances municipalities have included in their local resolutions and ordinances sections taken bodily from the state Act.

"But why include it at all? The statute covers the situation and protects you in any event. Its requirements need not be repeated in your local resolutions and ordinances. Nothing is gained thereby. The law protects you any way. On the other hand, the omission will be a positive benefit, precluding the necessity of changing your regulations each time the law itself is changed. Thus, considerable extra work will be obviated. When the regulation is contained in an ordinance, the additional expense of publication incident to its amendment is saved. Even if only a resolution, the unnecessary expense of reprinting corrected copies may be thus avoided."

Here are two examples:

Section 22 of the statute as passed December 6, 1933, sets forth certain necessary qualifications precedent to the issuance of various types of licenses to individuals, partnerships and corporations; also certain requirements concerning photostatic copies of federal licenses, permits and stamps and for the publication of a notice of intention to apply for a license. Subsequently Section 22 was amended on April 13, 1934 by Chapter 85, P.L.1934, and again on June 11, 1934 by Chapter 194, P.L.1934, whereby it is now radically different in many respects from its original form. Practically none of the municipalities which have included in part or in total the provisions of Section 22 have made subsequent changes to keep their regulations consistent with the law. Consequently, in this respect, they are often superseded or obsolete.

Again, Section 76, which as originally passed December 6, 1933 provided merely that "No license shall be issued for the sale

of alcoholic beverages within 200 feet of any church or public schoolhouse, except to hotels, clubs and fraternal organizations which own or are in actual possession of the licensed premises at the time this act became effective", now, as amended by Chapter 85, P.L. 1934, is not only materially changed but also contains several exceptions. Hence, municipal regulations which reiterated verbatim the text of original Section 76 are now incorrect.

9. CONCERNING RESERVATION OF DISCRETION

Some resolutions have provided that "the granting of any such license shall be at the discretion of the Township Committee." The intention, of course, is to reserve the power to investigate and fully determine that the issuance of a license is warranted. However, the regulation as quoted does not cover all possible circumstances. If, for instance, answers to the questions on the application indicated that the applicant had been convicted of a crime involving moral turpitude, the Township Committee would have no discretion in the matter and the license would have to be refused.

The Commissioner has ruled that a proper discretion to refuse unworthy applicants resides in all issuing officials. Hence it is unnecessary to state this in a resolution or ordinance. Its omission eliminates any possible and erroneous idea that the express reservation of discretion confers any arbitrary, autocratic and capricious right to exclude applicants with or without cause.

10. CONCERNING THE EFFECTIVE DATES OF CERTAIN REGULATIONS

As already remarked upon in Item 8 <u>supra</u>, in many instances municipalities have chosen to repeat in their regulations, sections taken from the Act. Such repetition is not only unnecessary, as pointed out in Item 8, but also becomes definitely harmful when the supposed requirements of the statute are restated erroneously or changed improperly.

Thus, Section 76 has often been changed and illustrates the manner in which a statutory requirement may be altered to have a radically different effect and application. To quote:

> "The Section of your resolution which purports to repeat Section 76 of the Control Act as passed December 6, 1933 is not correct because it excepts from the two hundred foot rule hotels, clubs and fraternal organizations which owned or were in possession of the licensed premises <u>at the time of the adoption of your resolution</u>, whereas it should have read, to be consistent with the statute "at the time the aforesaid Act became effective."

The effective date in certain regulations will often control the determination of the regulation's validity. For example:

> "Your Section which limits plenary retail consumption licenses to hotels established for a period of five years <u>prior to July 1, 1934</u> cannot be approved as written. The italicized words would create a monopoly in favor of presently existing hotels and would deprive all hotels hereafter erected of the privilege. This should be corrected to read <u>prior to the date of the filing of the application</u>."

11. CERTAIN REGULATIONS, ALTHOUGH POSSIBLY DISCRIMINATORY, NOT DISAPPROVED

The Commissioner repeatedly ruled that, while different regulations may be applied to different classes of licensees, all those within the same license class must be treated alike. See Bulletin 7, item 1, Bulletin 19, item 7.

However, regulations have been adopted which except from the application of a screen ordinance the sale or service of alcoholic beverages in guest rooms or public and private dining rooms in hotels and clubs, or which prohibit the sale of alcoholic beverages on Sundays except at hotels or restaurants with meals. Such may be construed to carry out a public purpose, and being limited in their operation, do affect alike all persons similarly situated.

With respect to such regulations the Commissioner has remarked:

> "There may be room for question of regulations which seem to discriminate between members of the same license class by reason of certain favorable exceptions. However, I believe these regulations to be valid as measures properly based on the inherent police power and therefore will approve them. For the reasons outlined in Bulletin 34, item 5, all approvals by the Commissioner of resolutions or ordinances are subject, nevertheless, to appeal."

12. APPROVALS BY COMMISSIONER - SCOPE, EXTENT AND REVIEWABILITY.

A. Local regulations which may subsequently become the subject of state-wide regulations are approved until such time as a conflict between the two actually arises, when, of course, the state regulation must take precedence.

B. Whenever an approval is ex parte and persons who may be aggrieved thereby may not have been afforded an opportunity of being heard, such approval is given upon the understanding that any redetermination, resulting from any petition or application which may hereafter be filed to review such approval, may be made and is reserved.

13. APPELLATE DECISIONS - GLIBA VS. TRENTON

LOUIS GLIBA, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Irving H. Lewis, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a

prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent sets up in its answer that the premises sought to be licensed are unsuitable. Photographs introduced in evidence clearly establish the adequacy of the premises. Nor can their location in the middle of the block militate against appellant inasmuch as respondent issued other licenses for premises similarly situated. And the neighborhood is only slightly, if at all, residential.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory and unreasonable.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 4, 1934.

14. APPELLATE DECISIONS - YECK VS. TRENTON

MATTHEW YECK,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Matthew Yeck, Pro Se.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the premises sought to be licensed are unsuitable. This contention is based upon the fact that at the time of respondent's inspection of the premises they were being renovated. The premises themselves are admittedly suitable. There is no indication that the renovation would render them any less suitable. This contention is obviously without merit.

The remaining issues are identical with those in Nobili vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #42, Item #6. They cannot be successfully invoked against appellant for the reasons therein stated.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 4, 1934.

15. APPELLATE DECISIONS - SIMONKO VS. TRENTON

LOUIS SIMONKO,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL

CONCLUSIONS

Rudolph Eisner, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Pursuant to an order entered by the Commissioner on a prior appeal, respondent issued a license to appellant for the period expiring June 30, 1934. Thereafter, appellant's application for a license for the period expiring June 30, 1935, was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied under a resolution adopted by it on May 31, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9, respondent's method of application of this limitation to appellant was arbitrary, discriminatory and unreasonable.

Respondent further contends that the premises sought to be licensed are presently unsuitable for the reason that appellant conducts another mercantile business thereon. The prior license was issued on condition that this business be discontinued prior to the sale of any alcoholic beverages upon the licensed premises. At the time the license was issued only a few weeks of the license period remained and appellant could not therefore conveniently effect the discontinuance of said business. Accordingly, although in possession of his license he did not sell any alcoholic beverages. He intends to comply with the terms of the prior condition in the event he receives a license and consents to the incorporation of said condition in the license to be issued if this appeal is successful.

The action of the respondent Board is reversed, upon the express condition, which shall be set forth upon the face of the license, that the mercantile business being conducted on the premises sought to be licensed, shall be discontinued and closed out prior to the sale of any alcoholic beverages therein.

D. FREDERICK BURNETT,
Commissioner

Dated: August 4, 1934.

16. ALCOHOLIC BEVERAGES - GIFTS - PRIZES
ALCOHOLIC BEVERAGES - LOTTERIES - ILLEGALITY

July 31, 1934

Mr. Peter Pelous,
7 Union Place,
Summit, N. J.

Dear Mr. Pelous:

I have yours of even date in which you ask: "With every

purchase sandwiches, lunch, drink of any kind, is it a violation if you give a ticket away and then on a certain picked night you draw for a prize, such as coal, food, bottle of liquor, case of beer, or in fact give away anything you like by using that method.

So far as drawing for a price of a bottle of liquor or a case of beer is concerned, it constitutes a violation of the alcoholic beverage law unless you have a liquor license. That much at least is clear.

Whether you may do so even if you have a liquor license depends on whether the drawing constitutes a lottery or any other device or method which is prohibited by law. This latter question is not one which has anything directly to do with liquor control, but concerns it only incidentally. Therefore, your question on that point should be addressed to Hon. Abe J. David, Prosecutor of Union County, Elizabeth, N. J.

Very truly yours,

D. Frederick Burnett,
Commissioner

July 31, 1934

Hon. Abe J. David,
Prosecutor of Union County,
Elizabeth, N. J.

Dear Mr. David:

Herewith copy of my letter to Mr. Pelous of even date.

Will you kindly advise me the correct answer to the question whether, assuming that he has a liquor license, the law forbids the drawing for the prize under the method which he sets forth.

Thank you.

Very truly yours,

D. Frederick Burnett,
Commissioner

August 2nd, 1934

D. Frederick Burnett, Esq.,
Commissioner, Alcoholic Beverage Control Bureau.

Dear Commissioner:

I believe the law forbids the drawing for the prize under the method which Mr. Pelous desires to employ. The case of the State v. Shorts et als, 32 N.J.L. Page 398, I think, is dispositive of the question. I have run this case down and do not find that the law has been changed.

Cordially yours,

A. J. David
Prosecutor of the Pleas.

17. MORAL TURPITUDE - WHAT CONSTITUTES - DRUNKEN DRIVING LICENSEES - UNWORTHINESS AS DISTINGUISHED FROM MORAL TURPITUDE

August 4, 1934

Paul A. Volcker, Township Manager,
Township of Teaneck, N. J.

My dear Mr. Volcker:

I have yours of the 28th ult. The facts are very difficult on which to render a fair decision. They do show that this woman was drunk and unfit to drive an automobile. I am not in anywise minimizing that fact. It is deplorable. It is reprehensible. I am in hearty sympathy with taking away her driver's license. But the question which you ask is--does this make her guilty of moral turpitude? There is room for reasonable difference of opinion. If the issuing authority of your Township holds that she is unfit, not only to drive an automobile but also to sell liquor, I should certainly not disturb that ruling on appeal. On the other hand, if you decide that although she was convicted of drunken driving that does not constitute per se moral turpitude, I should not disturb that finding either.

In substance this is in analogy to questions which a Judge leaves to a jury to decide, after weighing all the facts, what the ultimate conclusion should be. If the question is so close that the jury could decide either one way or the other and still be reasonable, unprejudiced, fair-minded men, then the Judge will affirm the finding of the jury even though, if he had been a member of the jury, he personally would have voted the other way.

Perhaps I can go one step further: If your Township Committee concludes that she is guilty of moral turpitude then, of course, they must deny the license. If they conclude that she is not so guilty, it does not follow that they must automatically issue the license. Although the Act does not expressly say so, it is implied, I take it, that the Legislature intended that licenses should be granted only to persons who are worthy. This has been the trend of decisions, as you have probably seen, in the Bulletins. If, therefore, you conclude that just because she has been convicted of drunken driving she is not a proper person to be entrusted with the dispensation of alcoholic beverages, I think that your conclusion would be a sound one, although as I said before, opinions of reasonable men may differ on a conclusion like this, and I would therefore deem it my duty to affirm either way, whatever my personal view.

Very truly yours,

D. Frederick Burnett,
Commissioner

18. SIXTH CLASS COUNTIES - DISPOSITION OF MUNICIPAL RECEIPTS

August 6, 1934

Hon. Palmer M. Way,
Judge of the Court of Common Pleas of Cape May County,
Wildwood, New Jersey.

Dear Judge:

I have carefully considered your request for a special ruling upon the disposition of moneys received for municipal license fees by Judges of the Court of Common Pleas in each Sixth Class County. The municipalities are naturally anxious to be in receipt of the income derived from the license fees. In fact one of the boroughs in Ocean County has written me that it is badly in need of funds; that $70,000 has been collected but nothing distributed; and inquired of me what legal action to take to secure its share of the funds. Again, you and Judge Conover ought not to have to advance the necessary expenses out of your own pocket.

Senate Bill No. 359 provided a method of distributing license fees after deduction of the administrative expense. It passed the Senate, but has not yet been acted upon by the Assembly.

This matter may be fairly treated as an emergency requiring special ruling, good until the Legislature shall otherwise ordain. Under Section 36, the Commissioner is authorized to make such rulings and findings as may be necessary for the enforcement of the Act.

Therefore, unless and until the Legislature shall otherwise enact, I rule that the Judge of the Court of Common Pleas in each of the Sixth Class Counties shall appoint such assistants as he shall deem necessary to aid him in carrying out the provisions of the Alcoholic Beverage Control Act as amended and supplemented; that such assistants shall serve during the pleasure of the Judge, and shall receive such compensation as such Judge shall fix and determine and shall be paid by said Judge out of the moneys received by him as license fees, not exceeding in all 15% of the total of such license fees so received by said Judge. Such assistants shall not be subject to any of the requirements of, or entitled to any of the benefits of any of the laws of this State relating to Civil Service. It shall be the duty of each such Judge to collect and receive all fees and charges for municipal retail licenses issued by him and to remit to the several financial officers of the respective municipalities in which each licensed premise is located 85% of the license fee received for licensing such premises, quarterly beginning August 15, 1934 and retain the balance in a special fund reserved and to be applied for administration expenses. As of the 1st day of August, 1934 and quarterly thereafter, each said Judge of the Court of Common Pleas shall apportion the expenses for administration that shall remain unapportioned prior to that date among the municipalities in his county in which premises have been licensed in the ratio which the total amount of fees received from all the licensed premises in each such municipality bears to the total amount of all license fees received by him for licenses in such county.

No responsibility is accepted by the State Commissioner in respect to appointments made or compensation paid, which matters are confided to the sound discretion of the respective Judges who are accountable for all expenditures directly to the several municipalities under their respective jurisdiction.

This ruling being made ex parte is subject to appeal by any municipality which considers itself aggrieved thereby.

Very truly yours,

D. Frederick Burnett,
Commissioner

19. SALE - WHAT CONSTITUTES - TOKENS

August 6, 1934

Mr. Robert H. Brauch,
666 Belmont Ave.,
North Haledon, N. J.

Dear Sir:

I have yours of August 2nd.

The fact that tokens of a nature different from coins issued by the Federal Government are redeemable over the counter does not alter the law governing the transaction. Whether customers pay for the beer with money when served or whether they first buy tickets or "checks" and exchange them for beer is merely a different and optional manner of effecting the sale. It is a sale just the same. And to sell, you need a permit.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

20. NATIONAL GUARD - ANNUAL ENCAMPMENT AT SEAGIRT - NO LICENSE REQUIRED IF SALES ARE UNDER JURISDICTION OF STATE MILITARY BOARD

August 1, 1934

Captain Thomas W. McKennon,
Chairman 114th Officer's Club Comm.,
Company D, 114th Infantry,
Elizabeth, N. J.

My dear Captain McKennon:

I have yours of the 30th ult. re club to be operated at the annual encampment of the regiment at Sea Girt, which club is restricted to the officers of the regiment and their guests.

If the club itself is making the sales of alcoholic beverages for consumption on the premises and is doing so with the consent of the State Military Board, then no license is required and you may commence sales at once. If, however, a concession has been or is to be granted to some private citizen or organization on which he or it is making a profit, then a permit will have to be obtained from the State Commissioner similar to the permit granted in respect to the Camp Exchange at Sea Girt. See Bull. 35, Item 1.

Very truly yours,
D. Frederick Burnett,
Commissioner

21. APPELLATE DECISIONS - MADONNA VS. CONOVER

LOUIS MADONNA,
Appellant
-vs-
HON. RUSSELL G. CONOVER, JUDGE OF THE COURT OF COMMON PLEAS, OCEAN COUNTY,
Respondent.

ON APPEAL
CONCLUSIONS

William W. Whitson, Esq. and John C. Barbour, Esq., Attorneys for Appellant.
Francis J. Tanner, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant conducted a place of business known as the "Green Lantern" under a Plenary Retail Consumption License for the period expiring June 30, 1934. His application for a renewal of the license for the period expiring June 30, 1935 was denied by respondent, the reason given being that "You are not running the type of place which should have a license."

Respondent contends on appeal that the application was properly denied alleging that appellant's business was improperly operated under the prior license and bears a generally bad reputation in the community. The particular incidents cited in support of these contentions are:

1. The discovery of a bottle of rum which did not contain a Federal Tax Stamp, upon the licensed premises. This was admitted. It appeared, however, that the liquor was legitimately purchased shortly after the repeal of the 18th Amendment at a time when properly licensed wholesalers habitually shipped alcoholic beverages without affixing Federal Stamps thereto, sending them instead to the purchasers in separate envelopes. The liquor was purchased from a licensed dealer and the tax thereon had been paid. The Stamp would have cost one penny. There is also testimony that other licensees were found with bottles of alcoholic beverages similarly containing no Stamp. This charge hardly seems of sufficient seriousness in and of itself to mark appellant as a person unfit to receive a license.

2. The death of one Charles Asaye of acute alcoholism which death respondent sought to trace to the "Green Lantern". The facts with reference to this charge were furnished principally by one of respondent's witnesses, who testified:

> "I stood in front of Novins Garage talking with Abe Novins. This Charles Asaye was not a habitual drunkard, he was a periodic. He came staggering along on the opposite side from Novins Garage and I was talking with Abe Novins and I saw it was Charlie Asaye in one of his periodic drunks and I felt sorry for him. He went into the Green Lantern, it was raining at the time, and he was in only two or three minutes when he came out. I went to my office in the Ocean House, and it was ten or fifteen minutes after that that this man came in and told me there was a dead man on my little porch."

There is no other testimony tending to trace the purchase of the alcoholic beverages inducing the death with the "Green Lantern". The evidence introduced at the hearing fails to support the charge.

3. A beating allegedly administered to one Cecil Elmer in the licensed premises. This was denied both by Elmer and the appellant. There was no evidence that the beating took place in the "Green Lantern". All the testimony indicated that it took place outside. Elmer so swore. Furthermore, an arrest for assault and battery was made not of the appellant but rather of one Ward. The only apparent connection which appellant had with this incident is that Elmer and Ward had been in the "Green Lantern" earlier in the evening and that when appellant learned from Ward that Elmer had been hurt--to quote Elmer: "If it had not been for Madonna I never would have been taken home. This man took me home." Mrs. Elmer testified Madonna "acted like a gentleman".

This charge is baseless.

4. The harboring of prostitutes upon the licensed premises. This charge is also not sustained by the evidence. These prostitutes originally came from Atlantic City and stopped at an hotel in Toms River for a period of approximately two weeks. Occasionally they visited the "Green Lantern" to dine, dance and drink, but there was no testimony to indicate that they were employed by appellant or that their conduct while in the licensed premises was in any way unseemly or immoral, nor was there any testimony that appellant was aware of the character of these women until some time after they left town. The evidence introduced at the hearing fails to sustain the charge. Cf. Matter of Lammerding, Bulletin #38, Item #9.

5. Appellant was arrested and convicted by a Justice of the Peace as a disorderly person during the early part of 1933. The circumstances do not indicate anything considered very serious at the time. Appellant had been transporting a large wooden box in his automobile at the request of an acquaintance. It was subsequently discovered that this box contained a slot machine. The Justice of the Peace testified: "While State Police were making a check-up on the highways for stolen property, they saw this car parked and made an investigation, and found slot machines in the back seat and questioned the defendant. They brought him before me, I arraigned him under the Disorderly Persons Act. I committed him to the County Jail for sixty days to give State Police a chance to check up. Later on he started talking to Trooper Galbraith, and later he came to me and said--

MR. BARBOUR: I object

As a result of the conversation with the Trooper I issued a discharge for this man.

Q What was the plea at the time the defendant appeared?

A Not guilty.

Q Was evidence taken before you?

A The Trooper's testimony.

Q What was the result of the testimony taken?

A I found him guilty.

Q And sentenced him?

A To the County Jail for sixty days.

Q No appeal taken from that?

A I discharged him the next day."

It is clear that the conviction was not for a crime involving moral turpitude and that the moral guilt, if any, of appellant was slight.

6. General noises and disturbances emanating from the licensed premises. This complaint referred to the period prior to the issuance of the license sought to be renewed. In fact it was testified to by one of the respondent's own witnesses that the "Green Lantern" was reasonably well conducted compared to similar establishments.

On the other side, several residents testified that the reputation of the "Green Lantern" was good and that the business was in all respects properly conducted. The Chief of Police so testified and stated that in his official capacity he had no objections to the issuance of the license. One of the assistant fire chiefs so testified. The Police Commissioner testified that at the time the issuance of the licenses were within his jurisdiction, he had conducted an investigation of appellant's place of business and had issued a license therefor. He further stated that he had subsequently made other investigations of appellant and his place and knew, of his own knowledge, nothing which would bar the issuance of a license which had transpired except corner gossip hereinabove dissected.

The reasons advanced by respondent for refusing to issue a license to appellant have been carefully considered. The evidence introduced at the hearing fails to substantiate the charges.

Accordingly, the action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 6, 1934.

22. LIMITED WHOLESALERS - RULES - NECESSARY REPORTS

To All Holders of Limited Wholesale Licenses:

LIMITED WHOLESALERS, dealing in brewed malt alcoholic beverages and/or tax paid wines only, are no longer required to submit copy of U. S. Treasury forms 338, 52-A or 52-B, effective immediately.

This does not affect the requirements of any other departments, Federal or State, with respect to the above mentioned reports.

Dated: August 7, 1934.

23. BULLETIN ITEMS - ITEMS SUPERSEDED

Rules concerning filing of reports as set forth in Bulletin 24, Item 6, are superseded by Bulletin 43, Item 22.

24. WINERIES - RULES - NECESSARY REPORTS

To All Holders of Winery Licenses:

WINERIES, where no manufacturing is being carried on and in which tax paid wines only are being handled or processed, are no longer required to submit copies of U. S. Treasury Department forms 702 or 702-A, effective immediately.

This does not affect the requirements of any other departments, Federal or State, with respect to the above mentioned reports.

Dated: August 7, 1934.

25. BULLETIN ITEMS - ITEMS SUPERSEDED

Rules concerning filing of reports as set forth in Bulletin 24, Item 7, are superseded by Bulletin 43, Item 24.

26. CORPORATIONS - CHANGES IN LIST OF STOCKHOLDERS - WHEN TO BE REPORTED.

August 6, 1934.

Gentlemen:

I have your letters wherein you state that your client contemplates the purchase of the controlling stock in --------,Inc.; that it is your client's intention upon acquiring such interest, to change the name to that of your client.

The purpose of your inquiry is to ascertain whether this proposed change of ownership and name will in anywise affect the license so held by -------, Inc.

No notice to me of such purchase is necessary, unless and until the aggregate of such change or changes of ownership of said stock, if made before the time of the application for such license, would have prevented the issuance of the license. Section 31, Alcoholic Beverage Control Act.

What that means is set forth in Section 22 of the same Act. That is, if one or more of the officers or members of the Board of Directors or any holder, directly or indirectly, whether through an intermediary corporation or otherwise, of ten percent or more in beneficial interest of the capital stock of the corporation would fail to qualify as an individual applicant in all respects except as to citizenship, residence or age, e.g., convicted of a crime involving moral turpitude or who had committed two or more violations of the Act, then no license of any class could be granted, and the effect of such change of ownership would be to instantly make the license subject to revocation.

On the other hand the change of the corporation name must be duly certified to me so that our records show at all times the true names of all licensees and noted upon the original license

Very truly yours,

D. Frederick Burnett,
Commissioner

27. LICENSES - NECESSITY - TRADE SERVICES

August 7, 1934

Gentlemen:

I have your inquiry of July 19th whether you would in any way violate the Department regulations by operating without a liquor license under your purposed plan "to assist the wholesaler in the profitable development of his Rum Department by rendering a service based on our past practical experience precisely as though we were the salaried employee of said wholesaler. We will ourselves neither buy nor sell rums or liquor or in any way become part of the transaction other than the imparting of our specialized knowledge for the benefit of our employer."

If your language were taken literally - "precisely as though we were the salaried employee" and "for the benefit of our employer"--(which I take to be mere sales talk); there would be a serious question under Section 23 which provides: "No person who would fail to qualify as a licensee under this act shall be knowingly employed by or connected in any business capacity whatsoever with the licensee". If your real purpose is not employment but rather to sell a trade service, somewhat like certain services in reference to stocks and bonds--a service which neither buys nor sells but merely advises what to buy, how much to pay, and when to act, there is no relationship of master and servant, nor employment or business connection within the meaning of the Control Act and yo need no liquor license to conduct this form of business. If your re purpose, however, is to effect a cooperative buying organization fo wholesalers, or in anywise to act as an employee of wholesalers, approval is withheld.

I also have yours of July 30th. Please do not say with "your full consent". Everything depends on the facts.

Very truly yours,

Commissioner