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

BULLETIN 339 AUGUST 3, 1939.

1. ENFORCEMENT DIVISION ACTIVITY REPORT FOR JULY, 1939

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - - - - - - - - - - - 58
Licensees - 2 Non-licensees - 56

SEIZURES: Stills - total number seized - - - - - - - - - - - - 10
Capacity 1 to 50 gallons - - - - - 4
Capacity 50 gallons and over- - - - 6

Motor Vehicles - total number seized - - - - - - - 1
Trucks - 0 Passenger Cars - 1

Alcohol
Beverage Alcohol - - - 35 Gallons

Mash - Total number of gallons - 53,376

Alcoholic Beverages
Beer, Ale, etc.- - - - - - - - - - - - - - 7 Gallons
Wine - - - - - - - - - - - - - - - - - - - 481 "
Whiskies and other hard liquor - - - - - - 71 "

RETAIL INSPECTIONS:
Licensed premises inspected - - - - - - - - - 1340
Illicit (bootleg) liquor - - - - - - 9
Gambling violations- - - - - - - - 7
Sign violations- - - - - - - - - - 23
Unqualified employees- - - - - - -253
Other mercantile business- - - - - 24
Disposal permits necessary - - - - 9
"Front" violations - - - - - - - - 3
Improper beer markers- - - - - - - 2
Other violations found - - - - - - 18

Total violations found - - - - - -348

Total number of bottles gauged- - - - - - - - 10,259

STATE LICENSEES:
Plant Control inspections completed - - - - - 65
License applications investigated - - - - - - 17

COMPLAINTS:
Investigated and closed - - - - - - - - - - 261
Investigated, pending completion 398

LABORATORY:
Analyses made - - - - - - - - - - - - - - - - 92
Alcohol and water and artificial coloring cases - - - - - - - - - - - - - - - - 30
Poison and denaturant cases - - - - - - - - 0

Respectfully submitted,

E. W. Garrett,
Chief Deputy Commissioner.

2. SALES FOR OFF-PREMISES CONSUMPTION - BEER BY THE PAIL - THE "GROWLER" CONSIDERED FROM THE ANGLE OF MINORS.

Dear Sir:

I am a tavern owner in the City of Bayonne. I would like to bring a complaint to your attention concerning the sale of beer in buckets and pitchers.

Knowing the facts, I may honestly say it places the tavern owner into many an embarrassing position time and time again.

There are many associations having minors as members; the older members buy the beer in the tavern, return to the clubhouse with it, then the youngsters pitch in to drink it and they start to "rush the bucket". Before the evening is through the minors have become inebriated, and when their parents see them in this condition, place the blame on the tavern owners, saying they are selling beer to minors, which is not true.

In many other cases a group of young fellows hanging around a car may send an older fellow in for a bucket of beer and sit in the car drinking it until they too are inebriated. Their parents also blame the tavern owner.

In bringing this to your attention I hope you may be able to do something for the tavern owner to appease the situation.

Sincerely yours,
Frank Orlowski

August 1, 1939

Mr. Frank Orlowski,
1028 Broadway,
Bayonne, N. J.

My dear Mr. Orlowski:

I have yours of July 28th and am glad you wrote me.

Perhaps you are right. No question but that it is bad for an oldster to buy a pail of beer and then share it with minors. And it's wholly understandable in such situation why tavernkeepers are thoughtlessly blamed for something they didn't do and personally deplore. That makes a tough case. And, as usually happens when something out of the ordinary occurs, the urge is to rush to make a new law about it.

The ruling permitting sale of draught beer by the pail for off-premises consumption was made over five years ago in deference to established usages and customs. Re Simandl, Bulletin 27, Item 2. So far it has worked out, I believe, fairly well.

"Rushing the growler", while hardly a hall mark of society or a cotillion figure, nevertheless has countless devotees among our sturdy workers on the roads, in the mills and at the factories, especially at noon time lunch or at home to share with the good wife in the cool of the evening. To them it is a refreshing, economical and time-honored practice. So far as it serves such utilitarian ends I think it proper. A pail of "suds" is not conducive to treating or setting up, which is where most trouble begins. Of itself, it has nothing to do with minors. Essentially it is individualistic. If it is shared, it is under control of the parent — at least, of the purchaser.

If, however, it is the general consensus of opinion of the tavern owners that the practice should be abolished, I shall be glad to reconsider the ruling provided the public is also heard from.

Now, as regards minors, the law provides that no alcoholic beverages shall be sold to any minor. Such sale is a misdemeanor.

The State regulations go further and provide that such beverages shall not be sold, served or delivered to minors, nor are they permitted to consume such beverages on licensed premises.

I am not so sure it is the bucket which causes the trouble. The same thing of which you complain might happen if the oldster bought beer in bottles or sealed cans. I have no more power to prevent consumption of beer by minors if they are off the licensed premises than I have to prevent their taking a glass of beer in the homes of their parents.

Let's think this thing over carefully and make sure that what is done is in the best interests of all.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

3. ADVERTISING - RULINGS AVAILABLE BY SUBSCRIPTION TO DEPARTMENT BULLETIN - ADVERTISING PLANS SHOULD BE SUBMITTED FOR APPROVAL PRIOR TO EXECUTION.

July 31, 1939

Geare-Marston, Inc.,
Philadelphia, Pa.

Gentlemen:

The principles concerning the advertising of alcoholic beverages in New Jersey have not as yet been codified into a set of formal rules. Each question as it arises is treated on its own merits, resulting in a specific ruling on the plan presented. Literally hundreds of such special rulings have been made, all of which affect future advertising of the same or similar kind.

You can procure these special rulings through a subscription to the Department bulletin. That is $3.50 per year. Thus, $21.00 will bring you all from December 6, 1933, when the law was enacted, through the current calendar year. The check is payable to my order as Commissioner.

No other source than the bulletin is official and no other will probably be up-to-date. New rulings are constantly being made. Violation may very well prejudice your client's license. Hence, the only safe course to follow, before executing any proposed advertising plan, whether newspaper or otherwise, is to submit the copy, the layouts and the other details of the arrangements in advance and have them expressly approved. There are no special requirements as to the manner of submission. Address the matter directly to the Commissioner at the address given above.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - LEWDNESS - 30 DAYS.

In the Matter of Disciplinary Proceedings against

NATHAN WILLIAMS,
375 Washington Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-913, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Nathan Williams, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on April 1, 1939 he allowed, permitted and suffered a known prostitute in and upon his licensed premises, contrary to Rule 4 of State Regulations No. 20.

The evidence shows that, on April 1, 1939, at about 2:15 A.M., Officers Kagan and Fogarty, of the Newark Police Department, saw a colored woman, Dorothy J_____, leave the licensed premises and, shortly thereafter, saw a white man, James K_____, also leave the licensed premises; that the officers saw said man and woman enter a building on Clayton Street and that, about fifteen minutes later, the police officers entered the Clayton Street building and placed the man and woman under arrest; that James K_____ later gave a statement to the police wherein he admitted that he had intercourse with the woman at the Clayton Street building; that Dorothy J_____ was subsequently found guilty of soliciting, and James K_____ found guilty of loitering. The statement given by James K_____ also sets forth that, while he was in the licensed premises on April 1st, the bartender, Nathaniel J_____, told him, "I have a girl for you", and brought to him said Dorothy J_____, who, after telling him that it was impossible to get the room upstairs, suggested that he follow her from the licensed premises.

The licensee denies that he was on the licensed premises when the alleged violation occurred, and there is no evidence that he was. The licensee further testified that he had known Dorothy

J_____ for two or three weeks prior to April 1st, and that he believed she was married to Nathaniel J_____, whom he had hired as a bartender two nights before the alleged violation.

Officer Kagan testified that, after her arrest, Dorothy J_____ stated that she was the common law wife of Nathaniel J_____, the bartender.

The mere fact that the licensee was not on the licensed premises, or that he had no personal knowledge of the woman's character, is not sufficient to absolve him from responsibility, since it appears that the woman's reputation as a prostitute was known to his bartender. K. & K. Co., Inc., Bulletin 250, Item 6.

The defendant is guilty as charged.

Because this is the first offense of record against the licensee, I shall suspend his license for thirty (30) days instead of revoking the license as I would do if there was any evidence that the licensee had personal knowledge of the woman's character.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of plenary retail consumption license C-992 (1939-40).

Accordingly, it is, on this 1st day of August, 1939,

ORDERED that plenary retail consumption license C-992 (1939-40) heretofore issued to Nathan Williams by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of thirty (30) days, effective August 5, 1939, at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

5. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY RELEASED UPON ISSUANCE OF VALIDATING PERMIT.

In the Matter of the Seizure of)
John J. Downey's La Salle Sedan)
in the vicinity of 315 East 35th) ON APPLICATION FOR RETURN OF
Street, in the City of Paterson,) SEIZED PROPERTY
County of Passaic and State of) ORDER
New Jersey.)

Harry Castelbaum, Esq., for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On May 23, 1939, investigators of this Department seized John J. Downey's La Salle Sedan (which was not licensed to transport alcoholic beverages) after they discovered his son, Thomas J. Downey, (a plenary retail distribution licensee of Paterson), using the vehicle to transport two cases of beer, a bottle of gin, and two bottles of soda, intended for delivery at a designated address.

Thereafter, John J. Downey obtained the return of his motor vehicle upon payment to the Commissioner, under protest, of the sum

of $500.00, its appraised retail value. He entered into a written stipulation that the Commissioner should hold a hearing and determine whether the $500.00 (representing the La Salle Sedan) should be forfeited or returned to him, and agreed that such determination should be dispositive of any and all rights he had acquired when he made the payment.

The beer and gin, although tax paid, are technically illicit because they were transported in an unlicensed vehicle, and under the provisions of R. S. 33:1 such alcoholic beverages and the vehicle used in their transportation are subject to confiscation.

At the hearing, Thomas J. Downey appeared as a witness for his father and urged that this penalty should not be imposed because he had acted in good faith, did not consciously intend to evade the law, and could show extenuating circumstances; further, that his father did not know that he intended to use the car to transport alcoholic beverages.

Thomas J. Downey testified that his business, which he established in December 1937, is insufficient in volume to warrant his employing any help, and that until recently he closed his place of business whenever he desired to eat or had to make a delivery, consequently he made but few deliveries; that his licensed premises are in a residential section and most of his customers reside in the immediate vicinity and carry away their purchases; and that he has not made over ten deliveries during the entire period he has been in business.

This explanation cannot, of course, relieve him from disciplinary proceedings to be instituted against him.

As to the penalty to be imposed upon John J. Downey: His vehicle was not used to transport bootleg alcoholic beverages. Had it been, I would not hesitate to confiscate it. On the contrary, tax paid beverages were being transported, the offense being that the licensee used an unlicensed vehicle. As it is, I shall, therefore, entertain an application by John J. Downey for a special permit, the fee for which will be twenty-five ($25.00) Dollars, to validate the unlawful use of his vehicle in the transportation of alcoholic beverages, and, in addition, he is to pay the costs involved in the seizure of the motor vehicle.

Accordingly, it is hereby ordered that there shall be deducted from the $500.00 paid by John J. Downey (1) the sum of twenty-five dollars, to be applied as the fee for such special permit, and (2) the costs due, paid or incurred in connection with the motor vehicle. The balance of the money is to be returned to John J. Downey when the permit is issued.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 1, 1939.

6. APPELLATE DECISIONS - BUECHLER vs. PERTH AMBOY.

WILLIAM BUECHLER, :

Appellant, : ON APPEAL

-vs- : CONCLUSIONS

BOARD OF COMMISSIONERS of the CITY OF PERTH AMBOY and GEORGE GENGOR, :

Respondents. :

Joseph B. Schwartz, Esq., Attorney for Appellant.
Francis M. Seaman, Esq., Attorney for Respondent Board of Commissioners of the City of Perth Amboy.
Frederic M. P. Pearse, Esq., by Max Mehler, Esq., Attorney for Respondent George Gengor.

BY THE COMMISSIONER:

This is an appeal from the transfer of a plenary retail consumption license from 460 Amboy Avenue to 462 Amboy Avenue, City of Perth Amboy.

Appellant is the owner of the building located at 460 Amboy Avenue, in which respondent Gengor conducted his licensed business from May 1, 1935 until March 1, 1939, at which time he moved next door, pursuant to the transfer granted on March 1, 1939 which is the subject of this appeal.

The evidence shows that, prior to November 1938, Gengor was negotiating with the then owner of 460 Amboy Avenue for a renewal of his lease; that the parties apparently were unable to agree; that, in November 1938, Gengor took an option to purchase the adjoining premises known as 462 Amboy Avenue; that, on December 9, 1938, the Board of Commissioners improperly transferred the Gengor license to include 462 as well as 460 Amboy Avenue; that Gengor, nevertheless, continued to conduct his licensed business at 460 Amboy Avenue until March 1, 1939, and did not attempt to exercise any rights under the improper transfer; that, on December 29, 1938, a deed, dated November 22, 1938, conveying 462 Amboy Avenue to George Gengor and his wife was recorded; that, on February 18, 1939, the City Clerk advised Mr. Gengor that the transfer granted to him on December 9, 1938 "had been ruled illegal by Commissioner Burnett" and that it would be necessary to reapply and give public notice if Gengor desired to use the premises at 462 Amboy Avenue; that Gengor immediately made an application for legal transfer, and such transfer was granted by the Board of Commissioners over objections of appellant's attorney on March 1,1939.

The sole contention of appellant is that said transfer was granted in violation of Section 2 of an ordinance adopted by the Board of Commissioners of the City of Perth Amboy on November 18, 1936, which provides:

"Section 2. No plenary retail consumption license or plenary retail distribution license shall be hereafter issued or transferred from place to place for the sale of alcoholic beverages within seven hundred and fifty feet of any premises licensed for the sale of alcoholic beverages by any licensee holding a plenary retail consumption license or a plenary retail distribution license. The said distance shall be measured from the nearest entrance of the nearest licensed premises to the nearest entrance of the premises sought to be licensed, to be measured in the normal way that a pedestrian would properly walk. This provision shall not be construed to affect existing licensed premises or the renewal of licenses on existing licensed premises."

In reaching a conclusion there must also be considered the effect of an amendment to said ordinance adopted on March 29, 1939. This amendment strikes out the concluding sentence of Section 2 and inserts in place thereof:

"This provision shall not be construed to affect existing licenses or the renewal thereof."

Both of the premises herein considered are located about four hundred feet from other premises for which a plenary retail consumption license is outstanding. If the Section of the ordinance in question contained only the provision preventing issuance or transfer to premises within seven hundred fifty feet of premises already licensed, and did not contain the saving clause in its last sentence, the transfer would be in violation of the terms of the ordinance and void. Gruber vs. Atlantic City, Bulletin #289, Item 5; Atlantic City Licensed Beverage Association vs. Atlantic City and Adelman, Bulletin #296, Item 6.

But it did contain a saving clause both originally and as amended. The question, therefore, narrows down to the effect thereof.

As originally enacted, the saving clause was in favor of "existing licensed premises." That, however, was improper. There is no good reason why the landlords of places presently licensed should enjoy a private monopoly or get a strangle-hold on their tenants and the lever to jack-up exorbitant rents. Re Perth Amboy, Bulletin #308, Item 2 and cases cited.

The amended version - not to affect "existing licenses or the renewal thereof" - is no better. I have heretofore disapproved it. See Re Perth Amboy, supra, where I said:

"I am satisfied that an exception allowing renewals for the same premises of licenses within 750 feet of each other at the time the regulation was adopted, as in the original Section 2, is sound. These people have made commitments, built up their businesses, and otherwise changed their positions in reliance on the licenses that were issued to them and the anticipation that barring misconduct or violation of the law, they would be allowed to renew. The exception for renewals is but fair.

"But to exempt existing licenses, as in the proposed amendment, is quite another matter. This, mind you, goes far beyond merely exempting presently licensed premises or renewals for the same premises. It has the effect of taking all present licenses wholly out of the scope of the principal

regulation, so that it does not apply to them at all. The result is that for all practical purposes, there will be no regulation. You have 115 plenary retail consumption and one plenary retail distribution license, or a total of 116, in the City at the present time. The numerical limitation in Section 1 of the November 18, 1936 ordinance, although erroneous in imposing a limitation in the aggregate for the reasons in my letter of February 10, 1937 to Mr. Medinets, who was then City Attorney, contemplates that no new licenses will be issued until the quota is reduced to 87. It will be a long time before you get down to that number. In the meantime, if the amendment goes through present licensees will be able to transfer about the City without restriction. The 750-foot minimum distance will be a mere gesture. The exemption will effectively nullify the principal regulation and set it at naught.

"If the Board of Commissioners wishes to wipe out the regulation, it has the power to do so. But the way to do it is by the repeal of Section 2, and not by the adoption of an emasculating amendment. I see no point to retaining an empty and meaningless regulation, the only effect and apparent purpose of which is to mislead and create a mistaken impression of municipal policy.

"Sooner or later, new licenses will be issued. Yet they will be subject to the 750-foot restriction, although the licenses in existence upon the adoption of the regulation will not. I see no reasonable basis for that. What is there that makes it bad for a new licensee to locate within 750 feet of another licensee, but acceptable for a person already holding a license to do so even though he moves across the City. Regulations must apply fairly to all. Exceptions, to be valid, must be based on reasonable distinctions, appropriately necessary in the light of the particular facts. As the proposed amendment is now drawn, applied to new licenses it is arbitrary and discriminatory, and consequently is disapproved."

If it were possible to strike from said Section 2 the words "existing licensed premises or", as set forth in the original ordinance, and the words "existing licenses or" in the amendment to said Section without destroying the plan of said Section 2, such course would be followed and the validity of the said Section would be upheld.

But this cannot be done. True, the law is well settled that, if the invalid part of an ordinance is separable, the entire ordinance will not be set aside because of such invalid section. Prinz vs. Paramus (Sup. Ct. 1938), 120 N.J.L. p. 72. The exception in favor of existing licensed premises or existing licenses is, however, so intimately bound up with the plan of the Section itself that, to exscind the words above quoted would change the plan which the Board of Commissioners intended to adopt. Under such circumstances, the law is also settled that, if part of an ordinance be void, another essential and connected part of the same is also void. Chamberlain vs. Hoboken, 38 N.J.L. 110; Avis vs. Vineland, 55 N.J.L. 285; West Jersey and Seashore Railroad Company vs. Millville, 91 N.J.L. 572; see also McGlynn vs. Grosso (Sup. Ct. 1935) 114 N.J.L. 540, wherein the Court quotes with approval the rule laid down in 43 C.J. 548, viz.:

"If the parts of the ordinance are so connected and dependent on each other as to make it apparent that the ordinance would not have been enacted unless all of the parts could have been carried into effect, the whole ordinance is inoperative and void."

Hence, I have no alternative in the present case except to set aside Section 2 of the ordinance as being improperly discriminatory and unreasonable. It is not my duty to rewrite but to construe the ordinance as written.

It follows that there is no valid provision in the ordinance which prevents the transfer of the license in question. That means, as above pointed out, that the salutary 750-foot minimum distance is, so far as Perth Amboy is concerned, naught but an empty, meaningless gesture.

The action of respondent, Board of Commissioners of the City of Perth Amboy, in granting the transfer applied for by respondent George Gengor, is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 2, 1939.

7. APPELLATE DECISIONS - SEYFRIED v. CAMP.

PHILIP F. SEYFRIED,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS

HONORABLE PERCY CAMP, JUDGE OF THE COURT OF COMMON PLEAS IN AND FOR OCEAN COUNTY AND ISSUING AUTHORITY,)

Respondent)

- - - - - - - - - - - - - - - - - - - -

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Appellant.
Robert A. Lederer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of a plenary retail consumption license for the fiscal year ending June 30, 1939, for premises located seventy-five feet south of the southwest corner of Arnold Avenue and Boardwalk, Borough of Point Pleasant Beach.

In his answer respondent alleges that, subsequent to the denial of appellant's application and pending the present appeal, P. L. 1939, Chapter 61 was enacted, which, respondent contends, bars the issuance of the license sought herein.

P. L. 1939, Chapter 61 provides:

"1. No new plenary retail consumption license shall be issued within any municipality situate within a county of the sixth class unless and until the ratio of such licenses issued and outstanding to the population within a municipality shall be less than one such license to every five hundred persons resident within said municipality as determined by the last preceding Federal census."

The evidence shows that sixteen plenary retail consumption licenses have been issued in the Borough of Point Pleasant Beach, and that the population of said Borough, according to the last preceding Federal census, was 1,844. The ratio of plenary retail consumption licenses to the population of said Borough is, therefore, more than one to every five hundred persons resident within said municipality as determined by the last preceding census. Hence, the issuance of the license as applied for is prohibited by said statute. Re Sanders Cohen, Bulletin 325, Item 9; Coney v. Way, Bulletin 331, Item 8.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 2, 1939.

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on June 16, 1939 of a Ford Sedan and 45 - 5 gallon cans of alcohol contained therein, at or near the intersection of public highways designated as Routes #10 and #6, in Ledgewood, in the Township of Roxbury, County of Morris and State of New Jersey	ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On June 16, 1939, New Jersey State Troopers discovered Joseph James Laucello transporting forty-five 5-gallon cans of alcohol in Frank Lumia's Ford sedan on the public highway designated as intersection of Routes #10 and #6, Ledgewood, Roxbury Township, Morris County.

Since the cans bore no Federal stamps or other indication that the alcohol was tax paid, and since the vehicle was not licensed to transport alcoholic beverages, the Troopers seized the cans and vehicle, more fully described in Schedule "A" annexed hereto, as unlawful property under the provisions of R.S. Title 33, Ch. 1. Thereafter, the cans and vehicle were turned over to this Department and samples of the alcohol were analyzed by the Department's chemist and found to be high proof alcohol, having an alcoholic content of 91.05% by volume, fit for beverage purposes when diluted.

At a hearing held to determine whether the Ford sedan and alcohol should be confiscated, no one appeared to contest the proceedings. No cause is here shown why confiscation should not result in the instant case.

Accordingly, it is determined that the seized property constitutes unlawful property, and it is ordered that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, and that it shall 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: August 3, 1939.

SCHEDULE "A"

45 - 5 gallon cans of alcohol
1 - Ford Sedan, Engine #3290457,
1939 New York Registration #3P427

9. APPELLATE DECISIONS - MONMOUTH'S OLD MILL, INC. v. SPRING LAKE HEIGHTS.

MONMOUTH'S OLD MILL, INC., a domestic corporation,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF SPRING LAKE HEIGHTS,
Respondent

ON APPEAL
CONCLUSIONS

Schlossbach & Newman, Esqs., by Benjamin Schlossbach, Esq., Attorneys for Appellant.
No appearance for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of its application for a plenary retail consumption license for the fiscal year 1938-1939, for premises at the junction of the Old Mill Road and New Bedford Road, Borough of Spring Lake Heights.

Respondent filed no answer. Neither respondent nor any objectors appeared at the hearing.

The evidence presented by appellant shows that it is qualified to hold a license; that it has complied with all the statutory requirements concerning its application; and that the premises are suitable. On the record, I can merely surmise that the denial was based on objections filed by eight or nine people who appeared at the hearing below. There is no way to determine the validity of those objections since they have not been presented on appeal. I note, however, that the premises in question are located in open country and that the nearest objector lives about 350 feet away.

Since denying the present application, respondent has granted a license for the present fiscal year to appellant for the same premises and no appeal therefrom has been filed.

The action of respondent in denying the application considered herein is reversed, but since the term for which the license was sought has already expired, respondent will not be required to issue a license in accordance with these Conclusions.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 3, 1939.

10. SALES TO MINORS - APPLICATION OF THE AMENDMENT - SUGGESTED FORM OF WRITTEN REPRESENTATION.

August 3, 1939

Mr. Alfred Fornaro,
Penns Grove, N. J.

My dear Mr. Fornaro:

Heretofore, the law provided that any sale of an alcoholic beverage to a minor was a misdemeanor punishable by fine or imprisonment or both, and by suspension or revocation of the license. It did not matter that the licensee had no knowledge that the purchaser was a minor. It was of no moment that he may have acted in good faith in trying to avoid such sales. As the law then stood, the mere sale constituted a violation. There was no excuse. Consequently, no statements or cards signed by customers certifying their age, relieved the licensee from responsibility or constituted a defense.

On July 18, 1939, Chapter 228, P. L. 1939 amended the law (R. S. 33:1-77) so that now, upon compliance with the conditions therein set forth, the harsh consequences of a sale to a minor may be ameliorated. It provides, in substance, a defense to a person who sells alcoholic beverages to a minor where the minor falsely represented in writing that he or she was twenty-one years of age or over provided the appearance of minor was such that an ordinary prudent person would believe him or her to be of such age, and further provided that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over.

I think that it will go a long way to help the honest licensee who, despite his efforts to avoid sales to minors, has been deliberately deceived, provided that he in turn complies fully and strictly with the three requirements above set forth.

Anyone who misrepresents his own age or the age of another person for the purpose of inducing a licensee to sell alcoholic beverages to a minor is a disorderly person under R. S. 33:1-81, and punishable by a fine not exceeding $200.00.

The written statement above required may take the following form:

NOTICE

New Jersey statutes (R. S. 33:1-81) provide:

"Any person who shall misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any licensee or any employee of any licensee to sell, serve or deliver any alcoholic beverage to a person under the age of twenty-one years shall be deemed and adjudged to be a disorderly person and upon conviction thereof shall be punished by fine not exceeding two hundred dollars."

REPRESENTATION and STATEMENT

I have read the above notice and hereby represent and state, for the purpose of inducing

_____, _____
(name of licensee) (address of licensed premises)

to sell, serve or deliver alcoholic beverages to me, that I was born on _____, 19____, and am _____ years of age.
(month) (day)

Signed_____

Residence_____

Date:_____ _____

I suggest that you have cards printed as above set forth and keep a supply on hand at all times. If you have any doubt at all that the person requesting sale, service or delivery of an alcoholic beverage is not of full age, you should require such card to be signed, for, if you lack such written statement, you have no defense if it eventuates that the person is under age.

The representation is good only for the particular occasion. It is good only in respect to the person to whom the alcoholic beverages are sold, served or delivered. As often as the question arises in your own mind or that of your bartenders or waiters, a new card must be signed and taken. There are no carry-overs.

Even after the card is signed, always remember that, as above pointed out, it is only one step toward your defense, and that it is up to you to comply with the other statutory requisites and handle the transaction with prudent judgment and in the utmost good faith.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. CONFERENCE CONCERNING WINE REGULATIONS - NOTICE.

The present regulations prohibit the sale of still wine for consumption off the premises, except in bottles or containers of six or more fluid ounces (champagne and sparkling wines, however, may be marketed in four ounce containers).

It is represented to the Department by the Associated Wineries of New Jersey, Inc. that such sale of still wine in six ounce containers is not in the public interest or conducive to the proper conduct of the wine industry and therefore proposed that the minimum standard of fill for wine shall be raised to 1/10 gallon, otherwise known as half fifth or four-fifths pint. Suggestions have also been made as to the shapes of containers.

It is also represented to the Department that the restrictions pertaining to decanting are being evaded, and that the authorization to decant wine operates to the detriment of the legitimate wine industry and the public, and that the regulations allowing decanting should be abrogated.

The present regulations of the Department authorize the holder of any retail license who may sell for consumption on the premises, to transfer wine from a tax-paid barrel, cask or keg to a decanter or other container, and serve such wine for on-premises consumption, provided the decanter bears a label identifying the contents in form prescribed by the Department.

A public hearing on these matters will be held at the office of the Department at 744 Broad Street, Newark, on Thursday, August 17th, at 3:00 P.M. Daylight Saving Time.

All members of the industry and the general public are cordially invited to attend the hearing and present their views.

D. FREDERICK BURNETT,
August 3, 1939. Commissioner.

12. SEIZURES - CONFISCATION PROCEEDINGS - VACATI N OF PADLOCK ORDER.

In the Matter of the Seizure of a number of still parts on premises occupied by Leola Moore, located on Park Avenue, New Brunswick Highlands, Piscataway Township, Middlesex County and State of New Jersey.	ON SUPPLEMENTAL HEARING CONCLUSIONS AND ORDER

Alex Eber, Esq., for Leola Moore.
Harry Castelbaum, Esq., for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Conclusions and Order heretofore entered on July 5, 1939, reported in Bulletin 331, Item 6, ordered the premises of Leola Moore, on Park Avenue, New Brunswick Highlands, Piscataway Township, to be padlocked for a period of six months commencing August 5, 1939.

The order heretofore entered was made after failure of Leola Moore to appear at the hearing to determine whether the still parts found on those premises should be forfeited and the premises padlocked. Subsequent to the entry of the padlock order, Leola Moore petitioned for reopening of the case in order to contest that portion of the order imposing the padlock.

At the supplemental hearing, held in accordance with her request, it appeared that she had not attended the previous hearing because of the advice of her attorney; that the premises ordered to be padlocked were the home of her and her nineteen year old son; that she is employed as a domestic by the day and earns less than ten dollars a week; that she has "owned" the property for twelve years but is still paying for it on the installment plan; that she has never before been involved in any illicit liquor activities; and that to enforce the padlock order would require that she find other living accommodations, which she could not afford. It further appeared that the still parts in question (a seven-gallon copper cooker and two coolers and copper coils) were brought into her home by her son, to whom they were given by other persons, and who stored them in the cellar and attic without his mother's knowledge.

Under the circumstances, good cause appears why the padlock penalty should not be imposed.

Accordingly, it is ORDERED that so much of the Order heretofore made herein on July 5, 1939 as orders "that the dwelling occupied by Leola Moore on Park Avenue, New Brunswick Highlands, Piscataway Township, in the County of Middlesex and State of New Jersey, being the building in which the unregistered still parts were found, shall not be used or occupied for any purpose whatsoever for a period of six months commencing the 5th day of August, 1939, and terminating the 5th day of February, 1940." be and the same is hereby vacated and set aside.

Dated: August 3, 1939.

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - TRANSPORTING ALCOHOLIC BEVERAGES WITHOUT INSIGNIA.

In the Matter of Disciplinary Proceedings against)

ROYAL WINE & LIQUOR STORE, INC.,)
496 Clinton Avenue,)
Newark, New Jersey,) CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-123, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

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Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.
Samuel Moskowitz, Esq., Attorney for the defendant-licensee.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of transporting alcoholic beverages in and about Newark, New Jersey in the vehicle of another without transportation insignia, contrary to the provisions of R. S. 33:1-28 in violation of R. S. 33:1-2.

The penalty will be five days' suspension less two for the plea.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of Plenary Retail Distribution License D-144.

Accordingly, it is, on this 3rd day of August, 1939,

ORDERED, that Plenary Retail Distribution License D-144, heretofore issued to Royal Wine & Liquor Store, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective August 7, 1939 at midnight, Daylight Saving Time.

D. Frederick Burnett

Commissioner.