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

BULLETIN NUMBER 164. MARCH 3rd, 1937.

1. BARS - IN PRIVATE HOMES - NO OBJECTION IF FANCY IMPELS.

Dear Sir:

I should like to know the necessary procedure for a person desiring to install a private liquor bar in his home.

Thanking you for any advice that you may offer - I am,

Yours sincerely,

MR. FRANKLIN SIMON

February 23, 1937.

Mr. Franklin Simon,
Newark, N. J.

Dear Mr. Simon:

There are no restrictions in the Alcoholic Beverage Control Act against private bars in homes. A person may serve liquor in his own home at a buffet, or table, or the piano, or the kitchen sink. So, if fancy impels, he may have a bar and a brass rail too - BUT while he may serve as he pleases, he may NEVER sell.

I am not concerned with his toys, but only that he keeps his play within the rules.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. APPELLATE DECISIONS - MEYERS vs. PLAINFIELD and LANG.

EDWARD MEYERS,)
Appellant,)
-vs-) ON APPEAL
COMMON COUNCIL OF THE CITY OF PLAINFIELD and GUSTAVE LANG,) CONCLUSIONS
Respondents.)
. . . . .)

John P. Owens, Esq., Attorney for Appellant.
William Newcorn, Esq., Attorney for Respondent Common Council of the City of Plainfield.
Edward Sachar, Esq., Attorney for Respondent Gustave Lang.

BY THE COMMISSIONER:

This is an appeal from the transfer of a plenary retail distribution license from John Chrissos at 119 Watchung Avenue,

to Gustave Lang at 241 West Front Street, in the City of Plainfield.

Respondent Lang filed his application for transfer on October 29, 1936. It was in proper form except that he had not executed the affidavit attached to the application.

Objections to the transfer having been filed, respondent Common Council, on November 16, 1936, fixed December 7, 1936 as the time for hearing, and notice of said hearing was served on or before November 19, 1936 on all the objectors, as well as the attorney who then represented them, the transferor and the appellant herein.

At that hearing on December 7, the attorney for appellant appeared and stated that he represented the objectors, but that the attorney who originally represented them had retired from the case, and that he had been unable to review the matter with that attorney and so requested an adjournment. The request was refused, and the Common Council proceeded to consider the matter on the merits and granted the transfer.

Appellant first complains because respondent refused to grant the adjournment. In Heinz vs. Atlantic Stages, 113 N.J.L. 321 (Court of E. & A. 1934), the Court said:

> "This Court will not reverse a judgment on account of a decision of the trial court in respect to either a postponement or a continuance, except where it very clearly appears that the court's discretion has been erroneously exercised."

See also May vs. Van Benschoten, 13 Misc. 268 (Sup. Ct. 1935). Appellant, having filed objections, was entitled to a hearing. Corado vs. Camden, Bulletin #159, Item 13. He cannot, however, come in at half past the eleventh hour and insist on adjournment as a matter of right.

In Suskind vs. Clifton, Bulletin #80, Item 3, appellant's attorney requested an adjournment of a revocation proceeding on the ground that he had just been called into the case and was not prepared to proceed. The request was denied. Appellant's attorney thereupon refused to participate and rested strictly upon what he believed to be his right to an adjournment. I there held:

> "There is no such right. An adjournment, if granted, is a matter of grace and not of right. It will not do for persons charged with violations of the Control Act to wait until the case is ready for trial and then engage a lawyer. The statute gives each accused person five days in which to select a lawyer who will be able to try the case when it is called."

In the instant case, the appellant knew the date fixed for hearing for nearly three weeks but, nevertheless, now claims, as ground for reversal, that he was not ready to object because he had changed lawyers. It is his privilege, if he chooses, albeit dangerous, to swap attorneys in mid-court but that is his private concern. The time of Councilmen is not to be frittered away and the public convenience stymied by successive adjournments until appellant can find a lawyer ready, able and willing to present his objections. Appellant was given his chance, but he did not take it. Opportunity doesn't ring as often as the postman. So far from abuse, the Common Council exercised a wise discretion in dispatching the public business promptly.

On the merits, appellant sets up that respondent on September 7, 1934 adopted an ordinance entitled "An ordinance to regulate the sale of alcoholic beverages in the City of Plainfield", which provided, among other things, that licenses are not transferable; that in accordance therewith the license issued to Chrissos contains the clause: "This license is not transferable"; that, therefore, the respondent Council had no power to transfer the license.

This contention overlooks the effect of Chapter 257 of the Laws of 1935 which amended Section 23 of the Control Act by providing that a transfer such as the one sought herein might be granted by the local issuing authority in its discretion. In so far as the provisions of Chapter 257 of the Laws of 1935 conflict with the City ordinance of September 7, 1934, the statute supersedes the ordinance. Re Phillipsburg, Bulletin #96, Item 4. Respondent, therefore, had the power to grant the transfer applied for upon compliance with the terms of Section 23 of the Control Act as amended by Chapter 257 of the Laws of 1935, despite the provisions of its earlier ordinance.

At the hearing of the appeal, appellant waived his contention that Gustave Lang was merely a dummy for another person. Independent investigation made by this Department before the hearing failed to disclose any evidence that Lang was not the sole party in interest.

Although appellant did not raise the point before the local issuing authorities, he contended in his appeal that the transfer should not have been granted because the affidavit attached to Lang's application was not sworn to. The facts are undisputed. Lang signed his application before filing it on October 29th. He did not sign or swear to the affidavit at that time. After the above mentioned adjournment had been refused, one of the Councilmen noticed that the application had not been sworn to. He handed it to the City Clerk who called Lang's attention to the omission. Lang immediately signed the affidavit, swore to it before the City Clerk and the City Clerk signed the jurat. The Council then went into executive session, returned and granted the transfer. It is true that all applications for transfers of licenses must be signed and sworn to by the person to whom the transfer of the license is sought. Section 23 of the Control Act. Rule 3 governing transfers provides:

> "Applications for transfers of licenses to other persons, or other persons and other premises, signed and sworn to by the person to whom the transfer is sought, and bearing the consent in writing to such transfer by the licensee, must be filed with the Commissioner or other issuing authority as the case may be, at or before the first insertion of the advertisement."

The purpose of these provisions was to facilitate prosecution of those filing false applications. In this case the application was sworn to before the transfer was granted. Appellant insists, however, that the application was not sworn to prior to the first publication of the notice of intention. This, admittedly, is true. It does not follow, however, that the transfer was, therefore void. The jurisdictional requirements set forth in Section 23 of the Control Act have been substantially performed. The most that can be said is that the transferee did not strictly comply with all the requirements of

the rules. Nothing will be accomplished by requiring Lang to re-advertise his notice of intention. No one has been misled. In Methodist Episcopal Church vs. Verona, Bulletin #101, Item 5, it was ordered that the notice of intention be re-advertised because it contained the wrong address in the first publication. This ruling was based upon the fact that publication of the wrong address might mislead some persons objecting to the transfer. Here, however, the notice of intention was in proper form. The objection that the application was sworn to after, rather than before, publication of notice of intention is a mere technicality. Non-compliance did not injure or mislead appellant or anybody else. The rule was not designed for the benefit of appellant and he cannot take private advantage of it. Cf. re Kessel, Bulletin #138, Item 9; Peck vs. West Orange, Bulletin #147, Item 1, and re Fidelity and Harmony Beneficial Association, Bulletin #162, Item 14.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: February 24, 1937.

3. MUNICIPAL ORDINANCES - PRIZES - REGULATION PROHIBITING THE GIVING OF PRIZES IN CONNECTION WITH GAMES, DEVICES OR CONTESTS APPROVED.

February 23, 1937.

Alfred J. Grosso, Esq.,
Orange, New Jersey.

Dear Mr. Grosso: Re: Township of Livingston

I have before me the proposed ordinance concerning alcoholic beverages prepared for the Township of Livingston as to which you ask my approval.

* * * * *

I note with interest that Section 5 provides:

"No licensee shall give, offer to give, or permit the giving of any prize, drink, free game, or other thing of value in connection with the operation of any amusement device or the playing of any game or contest operated, played or entered into at the licensed premises."

Upon final adoption, it will be approved as submitted.

The approval herein given is subject, of course, as with all ex parte determinations, to review on appeal. See in this connection Bulletin 43, Item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - GAMBLING - ONE WEEK SUSPENSION FOR PUNCH BOARD.

February 24, 1937

H.C. Scudder, Esq.,
Attorney for Ewing Township,
Trenton, N. J.

Dear Mr. Scudder:

I have staff report of the proceeding before the Township Committee of Ewing against Alfred R. Jones, charged with having conducted a lottery on his licensed premises in violation of the State Rule.

The report states:

"On December 18, 1936 Officers Morris and Whitehead of the Ewing Police Department entered the licensed premises and confiscated a punch board; also 45 boxes of candy and one radio, the prizes which were being chanced off from the punch board."

I note the licensee pleaded guilty and that his license has been suspended for one week.

Please convey to the members of the Township Committee my appreciation for their prompt and salutary action.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. DISCIPLINARY PROCEEDINGS - LOCAL CLOSING HOURS - TWO DAY SUSPENSION OVER HOLIDAYS.

February 24, 1937.

Frederic P. Reichey, Esq.,
Borough Clerk,
Bradley Beach, N. J.

Dear Mr. Reichey:

I have staff report of the proceedings before the Board of Commissioners of Bradley Beach against:

1. M. Corenna Rogers,
316-318½ Main Street,

2. Alton Twitmire,
521 Main Street,

charged with having sold alcoholic beverages on Sunday morning, January 31st last, after 2:00 A. M., in violation of your local closing rule.

I note both licensees pleaded guilty to the charge and that their licenses were suspended for a period of two days - February 21st and 22nd - which appropriately hurts because of the holiday and the eve before.

Please express to the members of the Board my appreciation for their cooperation in teaching licensees that

their privileges must not be abused and that they will be held to strict accountability. These two cases should undoubtedly prove a salutary lesson to Bradley Beach licensees.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. TRANSFER OF LICENSES - NO POWER IN MUNICIPALITY TO RETURN ANY PART OF THE FEE UPON DENIAL.

My dear Commissioner:

Recently a very poor woman by the name of Mrs. Verdiva L. Hawkins, a colored woman, made application to the City of Passaic for transfer of a retail license.

Objections were filed because of her color and, of course, she wanted to operate a cabaret and, due to no fault of her own, the application was denied. All of the Commissioners expressed a willingness to return the money but there seemed to be a hitch in the Statute which says the City shall retain it.

We do not like to see a hardship imposed on this woman and thought perhaps if the facts were explained, that a resolution could be introduced returning the money to her. Are there any objections by your department to the returning of these funds to this woman?

Very respectfully yours,

JOSEPH J. WEINBERGER
City Counsel.

February 23rd, 1937

Mr. Joseph J. Weinberger,
City Counsel,
Passaic, N. J.

Dear Mr. Weinberger:

The situation as described in Mrs. Hawkins' correspondence is that she applied for a transfer of the Plenary Retail Consumption License of Rose Goldman, 570 Main Ave., Passaic, depositing a transfer fee of $50.00 therewith; that your Board of Commissioners denied her application for such transfer of license, and that she now is requesting the full refund of the $50.00 fee deposited by her.

Section 23 of the Control Act provides that the fee for transfer of a license from person to person shall be 10% of the annual license fee for the license sought to be transferred, "which 10% shall be retained 'by the issuing authority' whether the transfer be granted or not and accounted for as other license fees." The issuing authority is given no discretion whatsoever as to whether the transfer fee may be refunded in whole or in part, thereby making it mandatory that the entire fee be retained in every case.

I sympathize with Mrs. Hawkins and heartily concur in the humane attitude of your Board of Commissioners but can see no escape from the conclusion that the express provision of the law must be followed. If you do not account for it, you will be in trouble with the State Auditor. If you do it for her, you will have to do it for all.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. RULES CONCERNING CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES - CHECKERS AND CARD GAMES - PERMISSIBLE ON LICENSED PREMISES SO LONG AS NOT USED FOR GAMBLING.

LICENSEES - EMPLOYEES - MAY PARTICIPATE IN GAMES OF CHECKERS EITHER AT TABLES OR ON THE BAR - PARTICIPATION IN CARD GAMES AT TABLES DEPRECATED - CARD GAMES ON THE BAR DISAPPROVED.

Dear Mr. Burnett:

Many tavern owners are in doubt as to whether they are permitted to play checkers or cards, games such as cribbage, pinochle, etc., with customers during their spare time in the tavern.

Most bartenders who are on duty during the day spend over half of the time waiting for customers, and have nothing to do. Some patrons too spend two or three hours in a tavern having a drink now and then, and who would like to have a sociable game of cards or checkers.

Is there any difference in the law to play on the bar or table, if such games are permitted? Will you also state if any of the above games are allowed in the taverns.

Very truly yours,

JACK KELLY

February 23, 1937.

Mr. Jack Kelly,
Newark, N. J.

Dear Mr. Kelly:

Checkers and card games may be played on licensed premises so long as they are not used for gambling and no gambling is permitted. Merely playing cards or checkers is not prohibited. Playing for money or drinks or other stakes, however is gambling and gambling is prohibited. It is in violation of Rules 6, 7 and 8 of the State Rules Concerning Conduct of Licensees and cause for the suspension or revocation of the license. A copy of the State rules is enclosed.

Neither checkers nor card games need be gambling games per se. Of course, both may be put to such use. Any game can be converted into a gamble. So long as they are not used for gambling, there will be no violation of the State rules.

There is nothing to prevent the proprietor or bartender from participating in a game of checkers. I would

rather, however, that the bartender does not participate in any card games nor do I want cards played on the bar. But I have no objection to playing chess or checkers on the bar.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - WEISS v. NEWARK.

ADOLPH WEISS,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent

ON APPEAL
CONCLUSIONS

Sidney Simandl, Esq., Attorney for Appellant.
Frank A. Boettner, Esq., by Raymond Schroeder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from a seven day suspension of his consumption license at premises 285 Mulberry Street, Newark.

Pursuant to stipulation, it is submitted for decision on the stenographic transcript of the proceedings before respondent and upon oral argument of both parties.

It appears from the transcript that the proceedings below were based upon a rule to show cause why the license should not be suspended or revoked for permitting undesirables to congregate in the licensed premises.

The testimony shows that appellant's premises are located on the ground floor of 285 Mulberry Street; that there is a rooming house in the upper floors of the building, which was formerly known as the Columbia Hotel; that the rooming house is operated by one "Dusks," who is in no way connected with appellant, and that appellant is in no way connected with the conduct of the rooming house.

It appears that a young woman, who was married but separated from her husband, had occupied a one-room apartment in the rooming house for a period of about six weeks prior to October 10, 1936. The owner of the rooming house testified that during that period she had never had men visit her, to his knowledge, and that he had seen nothing which would lead him to believe that she was a prostitute. On the evening of October 10, 1936, a policeman saw this woman leave appellant's tavern and take the separate entrance leading to the rooming house. Shortly thereafter a man left the tavern and went into the same entrance. About fifteen minutes later the policeman entered the rooming house, broke into the young woman's room and placed her and the man under arrest. Later the man pleaded guilty to a charge of fornication. There is sufficient evidence in the record to support a finding that the parties arrested by the police at that time had had intercourse in the room upstairs.

Revocation is not too drastic a punishment where licensees permit prostitutes or solicitation upon their premises. In re Hamilton Township, Bulletin #112, Item 8; in re Union City, Bulletin #155,

Item 4. There is nothing, however, in this case to show any immoral conduct upon the licensed premises, nor is there any evidence that there was any solicitation upon the licensed premises. In fact, that was specifically denied at the hearing below by the man who had been arrested. The young woman was not produced because apparently she left the State after this incident occurred and before the matter was heard by the local Board.

The only theory upon which the suspension can be sustained is that either the licensee or one of his employees knew, or had reason to believe, that either the man or the young woman was an undesirable person. In re Palace Chop House, Bulletin #95, Item 8. There is nothing in the record to show that the man in question was an undesirable person within the meaning of Rule 4 of Rules Concerning Conduct of Licensees and Use of Licensed Premises. Was the woman a prostitute or person of ill repute within the meaning of said Rule 4? Both appellant and his wife, who assists him in conducting the business, admitted knowing that the young woman lived alone upstairs, and that she had been in their place of business a number of times. Both testified, however, that she was apparently a woman of good character and that she had never entered their premises unescorted. The evidence shows that the man in the case first met this young woman upon the licensed premises when he asked her to dance with him, and that he had met her there again prior to October 10, 1936. There is no evidence, however, that the woman was a known prostitute or that the licensee or his wife had any reason to suspect or believe that she was. The policeman testified that she wasn't known as an undesirable person. The charge made against appellant is serious and must be established by satisfactory evidence. In re Lamerding, Bulletin #38, Item 9; Hobbs v. Lower Penns Neck, Bulletin #142, Item 5. The weight of the evidence does not support respondent's finding.

The action of respondent is, therefore, reversed and its order of suspension set aside.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 25, 1937.

9. FORFEITURE PROCEEDINGS - SEIZED PROPERTY DECLARED UNLAWFUL AND FORFEITED - ALL PERSONAL PROPERTY FOUND ON PREMISES WHERE ILLICIT STILL WAS ERECTED DECLARED UNLAWFUL IRRESPECTIVE OF ACTUAL USE - APPLICATION BY OWNER OF SEIZED PROPERTY FOR RETURN THEREOF ON GROUND THAT SEIZURE WAS MADE WITHOUT SEARCH WARRANT DENIED.

In the Matter of the Seizure on October 1, 1936, of a still, etc. and a quantity of alcoholic beverages and three motor vehicles, on premises known and designated as #83 Neptune Avenue, in the City of Jersey City, County of Hudson and State of New Jersey.

On Hearing
CONCLUSIONS, DETERMINATION AND ORDER

Appearances:
Frank McInerney, Esq., for Luciano Tricoli and Eugene F. Tricoli.
Tricoli Realty Company, Inc., by Nicholas A. Quarterbosh, President.

On October 1, 1936, police officers of Jersey City seized a number of unregistered stills, three motor vehicles, and other personal property alleged to be unlawful property under the provisions of the "Act Concerning Alcoholic Beverages," at 83 Neptune Avenue, in the City of Jersey City. The seized property, as described in Schedule "A" annexed hereto, was turned over to this Department.

In accordance with the provisions of the Control Act, a hearing was held to determine whether the property constitutes unlawful property and should be forfeited to the State, and whether an order should be entered restricting the use of the premises. At the hearing, an appearance was entered on behalf of the registered owners of the motor vehicles, who made application for their return.

The evidence established that none of the stills were registered with the Department of Alcoholic Beverage Control, and that one of such stills was found set up for operation in the manufacture of illicit alcoholic beverages in the cellar of a dwelling erected on said premises and occupied by Frank Tricoli. William Tricoli, a brother of Frank, was one of the persons found in the dwelling.

The Ford sedan, registered in the name of Luciano Tricoli, and the Franklin sedan registered in the name of Eugene Tricoli, were found parked on the still premises. Frank Tricoli drove upon the premises in the Chevrolet sedan, registered in the name of Eugene Tricoli, while the seizure was in progress. The Chevrolet sedan contained some copper and a piece of hose adaptable for use in connection with the still.

In a signed statement introduced in evidence at the hearing, Frank Tricoli (also known as Eugene Tricoli) admitted that he had been engaged in the manufacture and sale of illicit alcoholic beverages on said premises for approximately two and one-half months, using the Franklin sedan in the delivery of such beverages. In another signed statement, also introduced in evidence at the hearing, William Tricoli (also known as Luciano Tricoli) admitted that he had participated in the operation of the illicit still.

At the hearing William Tricoli repudiated his statement, claiming that he did not know what he signed. He stated that he visited the premises for the purpose of washing his car. Frank Tricoli testified that neither the Franklin sedan nor the Chevrolet sedan had been used to transport alcoholic beverages, but otherwise made no attempt to refute his statement.

No serious attempt was or could be made to establish either William Tricoli's or Frank Tricoli's innocence. The main ground urged is that the motor vehicles contained no illicit alcoholic beverages at the time of the seizure and should therefore be returned to their owners. This contention cannot be sustained since, by the provisions of the supplement to the Control Act (P. L. 1935, c. 255; amending P. L. 1934, c. 84) under which the property was seized, all property found on the premises is declared unlawful. The use made or intended to be made of the automobiles is therefore immaterial, although there is some evidence that the Franklin sedan was used to transport alcoholic beverages and the Chevrolet sedan was used to bring equipment for the repair of the still.

Counsel further contends that the seizure was invalid because no search warrant had been obtained and prays for the return of the property on this ground. No determination need be made as to whether under the circumstances the officer should have obtained a search warrant, since the disposition of the property is not dependent upon the method of its seizure.

The supplement above referred to provides that all property, when seized, shall be under the jurisdiction of the Commissioner, who shall determine after a hearing whether the property constitutes unlawful property and should be forfeited to the State. Although the Act contains a provision authorizing the Commissioner to return seized or forfeited property where its owner has acted in good faith and has unknowingly violated the provisions of the Act, it contains no provision authorizing the return of such property solely because the method of seizure was allegedly improper. Under general prin-

ciples of law forfeiture is not dependent upon the validity of the seizure. Cf. United States v. Quantity of Extracts, Bottles, Etc., 54 F. (2d) 643, 645 (D. Fla. 1931), where the court said:

> "To quash the search warrant, however, is not ipso facto fatal to the libel. The right of forfeiture is not dependent upon the validity of the seizure. As a strict matter of law, a libel for forfeiture will lie, notwithstanding the illegality of the search warrant under which the seizure was made."

See also Strong v. United States, 46 F. (2d) 257 (C.C.A.1st, 1931); United States v. Various Items of Personal Property, 40 F. (2d) 422 (C.C.A. 2nd, 1930), affirmed 282 U. S. 577 (1930); Dodge v. United States, 272 U. S. 530 (1926).

The application for the return of the vehicles must, therefore, be denied.

It is, on this 19th day of February, 1937, ADJUDGED and DETERMINED that all of the seized property constitutes unlawful property and is hereby declared forfeited.

Subsequent to the hearing a verified petition praying that the premises should not be padlocked was filed by the Tricoli Realty Company, as owner of the premises in question. The property was originally purchased by Rose Tricoli, wife of Frank Tricoli, and occupied by them. Approximately ten years ago Rose Tricoli transferred title to the premises to the Tricoli Realty Company, continuing, however, to remain in possession. For the past three years the Tricolis have paid rent to Hudson Realty Company as agent for Ernest Graef, who holds a mortgage on the property. The officers and directors of the Tricoli Realty Company are the mother, sister and brother-in-law of Frank Tricoli, and the close relationship between the parties tends to refute a claim that such officers and directors were unaware of Frank Tricoli's illegal activities.

The petition of the Tricoli Realty Company will therefore be denied, but such denial shall not preclude the mortgagee, Ernest Graef, from filing a petition forthwith if he desires to enter any objection to the padlocking of the premises. The Commissioner will, therefore, reserve his determination as to whether the use of the premises shall be restricted in order that Ernest Graef may be afforded reasonable opportunity to be heard with respect to his interest in the premises.

It is further ORDERED that all of the seized property shall be retained for the use of hospitals and State, County and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

S C H E D U L E "A"

1 - 100 gal. still (two sections)
7 - Receiving tanks
1 - Steam boiler
1 - Copper gooseneck
2 - Copper columns
2 - Pumps
1 - Pre-heater
10 - 100 lb. bags Sugar

S C H E D U L E "A" (Cont'd)

3 - 5 gallon stills
Miscellaneous pipe and fittings
14 - 5 gallon cans (empty)
8 - 5 gallon cans alcoholic beverages
1 - Franklin Sedan, Serial No. 47-199811L25, Engine No. 147819, New Jersey 1936 license plates H-32179
1 - Ford Sedan, Engine No. 18-217507, New Jersey 1936 license plates H-32178
1 - Chevrolet Sedan, Serial No. 2-FA-0224147, Engine No. 5884567, New Jersey 1936 License Plates H-7715

10. AUTOMATIC STATUTORY SUSPENSION - ORDER LIFTING.

In the Matter of the Application)
of Herman Honsell to lift suspen-) CONCLUSIONS
sion of license.)

BY THE COMMISSIONER:

Herman Honsell, the holder of plenary retail consumption license C-1 issued by the Township Committee of Winslow Township, Camden County, was arrested on August 4, 1936 by investigators from this Department who visited his licensed premises on that date and seized certain illicit alcoholic beverages and an unused copper still. Honsell was indicted by the Camden County Grand Jury and subsequently pleaded non vult to a charge of having violated the terms of the Alcoholic Beverage Control Act. He was sentenced to serve six months in the Camden County Jail but the operation of his sentence was suspended.

However, under Section 82 of the Control Act, his license became automatically suspended for the balance of its term, to June 30, 1937, by reason of his conviction.

Disciplinary proceedings had before the Township Committee of Winslow resulted in an adjudication of guilt. A severe reprimand was administered but in view of the fact that it was a first offense the Committee decided to inflict no further punishment by way of suspension or revocation of the license.

Application is now made by Herman Honsell to lift the suspension which has been in force since January 12, 1937.

There are no aggravating circumstances in this case. Honsell admitted his guilt, claiming, however, that the copper still found in the attic of his house had not been used for years. The investigators testified that it showed no signs of recent use. He admitted that the liquor was illicit, claiming that he had not used same in his business.

The good reputation of Honsell is attested to by the members of the Township Committee of Winslow and also by the Pastor of the church attended by Mr. Honsell. The members of the Township Committee, through their attorney, have expressed their desire that the suspension of Honsell's license be lifted to the end that he be allowed to resume business.

The policy of this Department, as set forth in Re Morris, Bulletin 98, Item 10, is that licensees should suffer a minimum

suspension of thirty days for an offense of this kind. Honsell has been out of business for over thirty days.

I believe that he has been sufficiently punished for his offense.

Accordingly, it is, on this 25th day of February, 1937, ORDERED, that the statutory suspension be lifted, and that License C-1, heretofore issued to Herman Honsell by the Township Committee of Winslow, be, and it is hereby declared to be again in full force and effect.

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - BAWDY HOUSE - IMMORAL ACTIVITIES - HEREIN OF FICTITIOUS NAMES ON REGISTER.

February 25, 1937.

Clarkson A. Cranmer, Esq.,
Counsellor at Law,
Somerville, N. J.

Dear Mr. Cranmer:

I have staff report and your letter of February 18, 1937 relative to proceedings before the Township Committee of Franklin (Somerset County) against Morris Feltenstein, t/a Maple Park House, charged with (a) having permitted immoral activities on the licensed premises; and (b) having failed to assist my investigators in an inspection of his licensed premises.

I note that while the charges were pending and before hearing the licensee surrendered his license.

The report states:

"On November 21, 1936 Investigators Perry, Roxbury and Grover visited the licensed premises at about 11:15 P. M. They observed about six automobiles parked outside. Contacting Morris Feltenstein, the licensee, they informed him that they were about to make an inspection. The first thing attracting their attention was that notwithstanding the fact that there were six parked automobiles outside no patrons were found either at the bar or in the dining room. The Investigators asked for the hotel register, which was produced. The licensee stated his colored waiter had charge of this register. Questioning of the licensee about the register elicited from him the statement 'that he was in wrong; that he rents rooms to couples without taking time to have them registered, leaving it up to someone else, who neglected to put anything in the book for a period of time.'

"The investigators then requested that they be allowed to inspect the rooms. The licensee refused to allow them to do so, stating he had guests of a very high type and that if he was to permit them to see the rooms it would undoubtedly scare the guests to death.

"Feltenstein then requested that the Investigators accompany him to a small room on the second floor, where he

stated he would make a written statement. He pleaded with the investigators 'as man to man, be good fellows and I will give you each $100.00 if you will pass it up and forget it.' A statement was prepared under the supervision of Feltenstein wherein it was set forth that rooms had been rented to five couples that night and were paid for at the rate of $2.50 a room; that they were not required to register. Feltenstein balked on signing the statement unless the number of rooms occupied was changed from five to two. After considerable talk he finally refused to sign any written statement.

"The investigators seized the hotel register, which clearly disclosed, from entries therein, that it was in no way accurate and was more in the nature of a joke than anything else. Typical entries were:

"'I am not Man and Wife, Los Angeles, Calif.'
'Mr. and Mrs. Do-Well, Scranton, Pa.'

"The investigators left the premises at about 2:10 A. M. November 22, 1936, and during the time they were there the licensee repeatedly offered them $300.00 to overlook the matter.

"The apparent purpose of the licensee in taking the men to the second floor was to allow his patrons who were in the rooms to leave, because upon the return to the second floor an inspection of the rooms revealed that they were vacant. Upon leaving the investigators discovered that all automobiles that had been parked outside when they entered, had disappeared.

"The hearing date in the above matter was set by the Franklin Township Committee for January 13, 1937, and adjourned at request of counsel for the licensee until February 3, 1937. On that date it was again adjourned but set peremptorily for February 17, 1937."

Permit me to thank you and the Township Committee of Franklin for your prompt and effective action in this case.

I note that the attorney for Feltenstein asks for a rebate on the amount paid for the license fee. There is no rebate due on this license for the following reason:

Section 28 of the Control Act, which provides for refunds upon surrender of a license, among other things, states:

> "No refund, except as expressly permitted by section twenty-three, shall be made of any portion of a license fee after issuance of a license; PROVIDED, HOWEVER, that if any licensee, except a seasonal retail consumption licensee, shall voluntarily surrender his license, there shall be returned to him, after deducting as a surrender fee fifty per centum of the license fee paid by him, the prorated fee for the unexpired term; PROVIDED, FURTHER, that such licensee shall not have committed any violation of this act or of any rule or regulation or done anything which in the fair discretion of the commissioner or other issuing authority, as the case may be, should bar or preclude such licensee from making such claim for refund***."

Therefore, Feltenstein having paid $250.00 for his license, there is immediately deducted $125.00, and, in addition, the prorated earned fee. As the prorated earned fee is greater in this case - the license having been in force for over seven months - than the balance of $125.00 there is no refund due. In other words, if a license is effective for more than half of the period for which it is issued, the licensee is not entitled to any refund. Then again, even if Feltenstein's license had not been in force for six months, this is a typical case where the issuing authority could, in its sound discretion, very well have refused a refund, as provided in the above section, by reason of the violations charged against this licensee.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

12. CONVICTION OF CRIME - EFFECT OF RESTORATION OF CITIZENSHIP AS DISTINGUISHED FROM PARDON.

February 27, 1937

Edward A. Tanski, Esq.,
Camden, New Jersey.

Dear Sir:

You inquire whether a person who has been convicted of a crime, whereby he lost his right of franchise and subsequently was granted restoration to citizenship by the Court of Pardons of this State, is eligible for a license.

Chancellor Walker in In Re Court of Pardons, 3 N. J. Misc. 585 (1925) distinguishes between "the gracious act of remitting the forfeiture of the right of suffrage to the end that that right might be thereby restored without the pardoning of the offense or remitting any of the other penalties incident to the conviction," and a full pardon "the effect of which is to make the offender a new man, to acquit him of all forfeiture annexed to that offense for which he obtains his pardon." Strictly speaking, the mere restoration of citizenship would not remove the other penalties incident to the conviction and, therefore, in such a case disqualification under Section 22 would still remain. If, however, your client has obtained a full pardon, he is not thereafter disqualified from holding a license because of his previous conviction.

There is enclosed herewith Bulletin #160, Item 8, which discusses the effect of the full pardon.

Of course, your client must otherwise be fully qualified under the provisions of Section 22 of the Control Act before he can obtain a license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Edward J. Dorton,
Attorney-in-Chief.

13. ENFORCEMENT DIVISION ACTIVITY REPORT FOR FEBRUARY 1 to 28, 1937.

To: D. Frederick Burnett, Commissioner.

ARRESTS: Total number of persons - - - 77
Licensees - - 2 Non-Licensees - - 75

SEIZURES: Stills - total number seized - - - 18
1 to 50 gal. capacity - 7 Over 50 gal. capacity - 11

Motor Vehicles - total number seized - 8
Trucks - 2 Pleasure cars - 6

Alcohol
Beverage alcohol - - - 72 Gallons
Denatured alcohol - - - 0 Gallons

Mash - Total number of gallons - 15,632 Gallons

Alcoholic Beverages

Beer, Ale, etc. - - - - - - - -	124 Bottles
Wine - - - - - - - - - - - -	5 Gallons
Whiskies and other hard liquor - -	82 Gallons

RETAIL INSPECTIONS:

Licensed premises inspected - - - -	2205
Illicit (Bootleg) liquor - - - -	9
Gambling violations - - - - - -	84
Sign violations - - - - - - -	24
Unqualified employees - - - - -	135
Other violations - - - - - - -	58
Total violations found - - - - -	310

Total number of bottles gauged - - - - - - 13,309

COMPLAINTS:

Investigated and closed - - - - -	300
Investigated, pending completion - -	406

LABORATORY:

Number of samples submitted - - - -	133
Number of analyses made- - - - - -	124
Number of poison liquor cases - - -	4
Number of cases of alcohol, water and artificial coloring - - - - - -	12
Number of cases of moonshine (Home-made finished product of illicit still)- - - - - - - -	25

Respectfully submitted,
E. W. GARRETT,
Deputy Commissioner.