

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

BULLETIN NUMBER 83

July 19, 1935

1. NEW LEGISLATION - AMENDMENTS TO THE CONTROL ACT.

Senate Bill #294 was approved by Governor Hoffman on June 8th, 1935, and thereby became Chapter 257 of the Laws of 1935. It is effective immediately.

1. Section 1 of the Control Act was amended by the inclusion of the following definitions:

"(aa) 'Alcohol.' Ethyl alcohol, hydrated oxide of ethyl or neutral spirits from whatever source or by whatever processes produced."

"(ss) 'Restaurant.' An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted."

It should also be noted that paragraph "(a)" defining "alcoholic beverage" was extended expressly to include "alcohol" and that paragraph "(i)" defining "illicit beverage" was extended expressly to include "alcoholic beverages, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, or possessed," in violation of the Act, and also "any alcoholic beverage possessed, kept, stored, owned or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport in violation of the provisions" of the Control Act.

Under the definition of "illicit beverage" as amended, an alcoholic beverage legitimate in origin and tax paid, may nevertheless be illicit if possessed with intent to use the same in violation of the Act.

Paragraph "(x)" defining "unlawful property" was extended to include expressly within the definition vehicles, vessels and airplanes used in unlawful alcoholic beverage activity as well as "all alcoholic beverages, fixtures, and personal property located in or upon any premises, building, yard or enclosure connected with a building in which an illicit beverage is found, possessed, stored or kept."

By virtue of the extension of paragraph "(x)" as aforesaid, hereafter when illicit beverages are found upon any premises, etc. all alcoholic beverages, even though legitimate, all fixtures and all personal property, become unlawful and may be seized pursuant to Section 64 of the Control Act. This confers upon the state enforcement agencies power similar to that now exercised by the Federal enforcement officers and will lead to more comprehensive and effective enforcement.

2. Section 2 of the Control Act was amended to read as follows:

"It shall be unlawful to manufacture, sell, possess with intent to sell, transport, warehouse, rectify, blend, treat, fortify, mix, process, bottle, or distribute alcoholic beverages in this State, except pursuant to and within the the terms of a license, or as otherwise expressly authorized, under this act; provided, however, that any drink actually intended for immediate personal consumption may be mixed by any person; and provided, further, that

"alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle from a point within this State to the extent of, not exceeding one-half ($\frac{1}{2}$) barrel, or two (2) cases containing not in excess of twenty-four (24) quarts in all, of beer, ale or porter, and five (5) gallons of wine and twelve (12) quarts of other alcoholic beverages within any consecutive period of twenty-four (24) hours, and from a point outside this State to the extent of, not exceeding one-fourth ($\frac{1}{4}$) barrel or one (1) case containing not in excess of twelve (12) quarts in all, of beer, ale or porter, and one (1) gallon of wine and two (2) quarts of other alcoholic beverages within any consecutive period of twenty-four (24) hours. If any person or persons desire to transport alcoholic beverages intended only for personal consumption in quantities in excess of those above mentioned, an application may be made to the commissioner who may, upon being satisfied of the good faith of the applicant, and upon payment of a fee of five dollars (\$5.00) issue a special permit limited by such conditions as the commissioner may impose, authorizing such transportation of alcoholic beverages in quantities in excess of those above mentioned."

This amendment clarifies the act and provides that alcoholic beverage activity shall be permissible only when under license or otherwise authorized. It reduces the quantity of liquor which may be brought into the State from a point outside the State and thus prevents the importation into the State of large wholesale quantities of liquor for personal consumption to the detriment of New Jersey licensees and with the consequent loss of revenue to the State. It leaves it open to any person having legitimate reason to apply to the Commissioner for a special permit upon payment of a fee of \$5.00, which permit shall, subject to such conditions as the Commissioner may impose, allow the importation or transportation for personal consumption of greater quantities than stated in the Act.

3. Section 5 of the Act was amended as to phraseology to eliminate any constitutional doubts, but the substance of the original section remains intact.

4. Section 6 has been amended to read:

"6. Anything hereinbefore or hereinafter to the contrary notwithstanding, in all counties of the sixth class, all the powers conferred and all the duties imposed upon issuing officials in and for each municipality in said county by this act and the rules and regulations made pursuant thereto, in respect to all the several classes of retail licenses for the sale and for the distribution of alcoholic beverages, shall reside in and be imposed upon and performed by the judge of the court of common pleas of such county, and said judge shall be empowered and under a duty to fix the fees for such licenses in and for each municipality in said county in accordance with this act and may, as regards each respective municipality, limit the number of licenses to sell alcoholic beverages at retail and the hours between which the sales of alcoholic beverages at retail may be made, prohibit the retail sale of alcoholic beverages on Sunday, provide that no more than one (1) retail license shall be granted to any person, corporation, partnership, limited partnership or association and that any one or more of the various types of retail licenses shall not be granted, and sub-

"ject to the approval of the commissioner first obtained, 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. The aforesaid limitations of number of licenses and of hours of sale shall be subject respectively to appeal to the commissioner as hereinafter provided."

This section confers power upon Common Pleas Judges in Sixth Class Counties to fix license fees for each municipality, limit the number of licenses and the hours between which sales at retail may be made, and exercise, in behalf of the municipalities in those counties, the statutory options that no more than one retail license shall be granted to any licensee, and that any one or more of the various types of retail licenses shall not be granted. It thus eliminates the unsatisfactory condition in the original act whereunder the Judge of the Common Pleas Court issued licenses, but the power to fix fees, etc. was vested in the governing body of each municipality in such Counties. See Bulletin #71, Item #2.

5. Section 11 (3)b. of the original act was amended to read as follows:

"(3) b. Limited distillery license. The holder of this license shall be entitled, subject to rules and regulations, to manufacture, in a quantity to be expressed in said license, dependent upon the following fees, any alcoholic beverages distilled from fruit juices and rectify, blend, treat and mix, and to distribute and sell his products to wholesalers and retailers respectively licensed in accordance with this act, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be graduated as follows: To so manufacture not more than five thousand (5,000) wine gallons per annum, seven hundred and fifty dollars (\$750.00); to so manufacture not more than ten thousand (10,000) wine gallons per annum, one thousand two hundred and fifty dollars (\$1,250.00); to so manufacture without limit as to amount, two thousand five hundred dollars (\$2,500.00)."

The fee for a limited distillery license with a maximum quantity of five thousand (5,000) wine gallons per annum has been increased from \$500.00 to \$750.00. The act now provides for the issuance of a limited distillery license unlimited in quantity but limited to the manufacture of alcoholic beverages distilled from fruit juices upon payment of a fee of \$2,500.00.

6. Section 12 of the act has been amended by the creation of a new type of license, viz:

"(2) b. Wine wholesale license. The holder of this license shall be entitled, subject to rules and regulations, to distribute and sell to retailers and wholesalers, licensed in accordance with this act, any naturally fermented treated, blended, fortified and sparkling wines, and to a warehouse and salesroom. The fee for this license shall be one thousand dollars (\$1,000.00)."

7. Section 13 of the act has been amended to provide that the governing board or body of each municipality may, by ordinance, enact that no license of any particular class shall be granted within its respective municipality. Thus a municipality may determine for itself which of the five classes of retail licenses it wishes to issue and prevent by ordinance the issuance of any licenses of any other class.

Section 13 has been further amended to fix the term of summer seasonal retail consumption licenses from May 1st until November 1st instead of from May 15th to September 15th.

8. Section 19 of the act has been amended to read as follows:

"19. If the other issuing authority shall refuse to issue any license, the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application. Said applicant may within thirty (30) days after the date of service or of mailing of said notice appeal to the commissioner from the action of the issuing authority. If the other issuing authority shall issue a license, any taxpayer or other aggrieved person opposing the issuance of such license may within thirty (30) days after the issuance of said license appeal to the commissioner from the action of the issuing authority. The commissioner shall fix a time for the hearing of the appeal and before hearing the same shall give at least five (5) days' notice of the time so fixed to said applicant, such taxpayer, or other aggrieved person and other issuing authority. Where an appeal is taken from the denial of an application for the renewal of a license, the commissioner may, in his discretion, issue an order upon the respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with an interim order extending the term of the license pending the return of the order to show cause. If it shall appear upon the return of the order to show cause that the action of the respondent issuing authority is prima facie erroneous and that irreparable injury to the appellant would otherwise result, the commissioner may, subject to such conditions as he may impose, order that the term of the license be extended pending a final determination of the appeal."

9. Section 23 of the act has been amended to read as follows:

"23. All licenses shall be for a term of one year from the first day of July in each year; provided, however, that all such licenses issued prior to July first, one thousand nine hundred and thirty-four, shall expire at midnight on June thirtieth, one thousand nine hundred and thirty-four; and further provided, that the respective fees for any such license shall be prorated according to the effective date of such license and based on the respective annual fee as in this act provided. Where the license fee deposited with the application exceeds such prorated fee, a refund of the excess shall be made to the licensee. Licenses are not transferable except as hereinafter provided. A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises. No retail license of any class shall be issued to any holder of manufacturer's or wholesaler's license, and no manufacturer's or wholesaler's license shall be is-

"sued to the holder of a retail license of any class. Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor.

"In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid. Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this act.

"On application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license as to said premises, and after publication of notice of intention to apply for transfer, in the same manner as is required in case of an application for license as to said premises, the commissioner or other issuing authority may transfer, upon payment of a fee of five dollars (\$5.00), any license issued by him or it respectively to a different place of business than that specified therein, by endorsing permission upon such license.

"On application made therefor setting forth the same matters and things with reference to the person to whom a transfer of license is sought as are required to be set forth in connection with an original application for license, which application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to such transfer, and after publication of notice of intention by the person to whom the transfer of license is sought, to apply for transfer in the same manner as is required in the case of an original application for license, the commissioner or other issuing authority, as the case may be, may transfer any license issued by him or it respectively to said applicant for transfer by endorsing the license. Said application and the applicant shall comply with all requirements of this act pertaining to an original application for license and shall be accompanied, in lieu of the license fee required on the original application, by a fee of ten per centum (10%) of the annual fee for the license sought to be transferred, which ten per centum (10%) shall be retained by the commissioner or other issuing authority, as the case may be, whether the transfer be granted or not, and accounted for as other license fees."

"The action of the other issuing authority in granting or refusing to grant any application for a transfer of license to a different place of business or person shall be subject to appeal to the commissioner within thirty (30) days from the date such action was taken.

"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; provided, however, that specialized technical workers, required in any business may, with the approval of the commissioner, and subject to rules and regulations, be employed although failing to qualify as to residence or citizenship; and further provided, that persons failing to qualify as to age, residence or citizenship may, with the approval of the commissioner, and subject to rules and regulations, be employed by any licensee, but such employee shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage."

Although under Section 22 of the Control Act the full amount of the fee must accompany every application for a license, under the amendment of Section 23 the applicant is entitled to a refund of the properly pro-rated portion of the amount deposited for the period until the effective date of the license. Thus there is eliminated the unfair situation whereunder an applicant who may not have received his license for a period of a month or two after filing his application is nevertheless charged for the waiting period. See Bulletin #35, Item #16.

This amendment provides for the transfer of licenses to qualified persons and sets up the mechanics to ascertain whether the proposed transferee is qualified as to person by requiring him to publish notice of intention and apply for a transfer in the same manner as is required in the case of an original application for license. The fee for the transfer of a license to another person is fixed at 10% of the annual license fee for the license sought to be transferred which shall not be pro-rated and which shall be retained by the issuing authority regardless of whether the application for transfer is granted or not.

The amendment also provides for appeals to the Commissioner from the granting or denial of an application for a transfer as to either person or place within thirty (30) days after such action.

The amendment extends the Commissioner's power to approve the employment by licensees of persons failing to qualify as to age, to persons failing to qualify as to residence or citizenship. No such employee, however, may engage in selling, soliciting or participating in the manufacture of alcoholic beverages.

A form of application for such permission has been devised and is available upon request to the Commissioner.

10. Section 28 has been amended to include expressly as grounds for revocation --

- (a) Violation of any provision of the Beverage Tax Act; and
- (b) Violation of any ordinance, resolution or regulation of any other issuing authority or governing board or body.

This merely clarifies the law.

Section 28 has been amended to provide that revocation of a license shall render the licensee ineligible to hold or receive any other license of any kind or class for a period of two years from the effective date thereof, and a second revocation permanently disqualifies the licensee from holding or receiving any other license. Thus where a licensee holds two or more licenses the revocation of one voids the others.

The surrender fee remains the same as before but the amount of the refund, if any, due upon the surrender of the license is made as of the date of such surrender. There must, however, be deducted by the issuing authority from the refund all taxes, penalties and interest due to the State Tax Department under the Beverage Tax Act. It is therefore necessary for all issuing authorities, immediately upon the receipt of an application for surrender, to communicate with the State Tax Department, Beverage Tax Division, to ascertain whether any such taxes are due and not to make any refund until a tax waiver certificate is received from the Tax Department. Refusal to grant any refund is subject to appeal to the Commissioner.

Section 28 has been further amended to provide that revocation proceedings may be instituted despite the surrender of a license.

The section has been further amended to provide that an appeal from an order suspending or revoking a license automatically stays the operation of such order unless the Commissioner shall otherwise order.

Under the amendment of Section 28 any person preferring charges against a licensee and requesting the institution of revocation proceedings may appeal to the Commissioner from the denial of the issuing authority either to institute such proceedings or from its action pursuant thereto.

All such appeals will be subject to the rules governing appeals which have been promulgated by the Commissioner.

11. Section 32 of the Act has been amended expressly to permit licensed premises to be inspected, investigated and searched without search warrant. While this power undoubtedly existed under the act without this amendment (see State vs. Schill, Bulletin #79, Item #8) nevertheless it was thought desirable as a matter of policy to include such express authority. All licensees must cooperate with the investigating officers and interference with them in the performance of their duties is a violation of the Control Act constituting a misdemeanor and ground for revocation of the license.

12. Section 34 has been amended to read as follows:

"34. The commissioner shall adopt an official seal. Copies of any act, rule, regulation, order or decision made by him and of any paper or papers filed in any office maintained by him, may be authenticated under said seal and when so authenticated shall be evidence in all courts of this State of the same weight and force as the originals thereof. For authenticating any such copy he shall receive such fees as are fixed by him, com-

Mensurate with the reasonable cost of the services rendered, to be accounted for by him as in case of license fees, as hereinbefore provided. All records and files of the department shall be open for inspection, pursuant to rules and regulations. The commissioner may certify under said seal any facts concerning the records and files of the department and said certificates shall be received as evidence in all courts of this State to prove the facts contained therein. The commissioner may certify under said seal any findings with respect to the physical properties, nature, flavor, specific gravity, purity, ingredients, proof and alcoholic content of any alcoholic beverage and that such findings are in an analysis made by a graduate chemist regularly employed by the Department of Alcoholic Beverage Control and said certificate shall be received as evidence to prove the facts contained therein."

This amendment provides that certificates of the Commissioner with respect to the records of the Department and chemical analyses of alcoholic beverages by any graduate chemist regularly employed by the Department shall be admitted as evidence in court. This will facilitate the prosecution of cases without causing unnecessary inconvenience to the Commissioner and the Department chemist.

13. Section 35 has been amended to provide that any order entered by the Commissioner on appeal except on appeal from the denial of a refund, if not honored and executed within (10) days shall be deemed self-executing and shall have the same force and effect as though actually complied with.

14. Section 37 of the Act has been amended to read as follows:

"37.

The governing board or body of each municipality, may as regards said municipality, by ordinance or resolution, 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, prohibit the retail sale of alcoholic beverages on Sunday, and, subject to the approval of the commissioner first obtained, 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. The aforesaid limitations of number of licensees and of hours of sale shall be subject respectively to appeal to the commissioner as hereinafter provided. The governing board or body of each municipality shall have power to make, enforce, amend and repeal such ordinances as it may deem necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages within its municipality in violation of this act. The governing board or body of each municipality may, by ordinance, enact that no more than one retail license shall be granted to any person, corporation, partnership, limited partnership or association in said municipality and that said license shall cover only the licensed premises; provided, however, that nothing herein contained shall operate to disqualify a guardian, executor, administrator, trustee, receiver, or any other fiduciary or court officer from obtaining or from holding more than one such license in different official capacities."

The amendment of this section transfers the power to limit the number of licenses, hours of sale, and to regulate the con-

duct of the licensed business and the nature and condition of the licensed premises, from the issuing authority to the governing board or body. In addition, the governing board or body is given the power to prohibit the retail sale of alcoholic beverages on Sunday and to enact such ordinances as it may deem necessary to prevent the sale, distribution and transportation of alcoholic beverages within its municipality in violation of the Control Act.

The power to prohibit the retail sale of alcoholic beverages on Sunday is of course subject to any referendum which may be held under other provisions of the act or supplements thereto.

The express power to enact ordinances removes any doubt as to the legal right of the various municipalities to enact prohibitory ordinances, and enables them to do so and fix penalties for violations thereof. The extent of the penalties and the nature thereof must be determined from the other general acts governing the municipality, e. g., the Home Rule Act. I cordially suggest that each municipality immediately enact such ordinances and provide such penalties and summarily prosecute all offenders. Summary punishment under these municipal ordinances triable before local magistrates will be of great help in enforcement. Justice delayed is too often justice denied. Such prosecution will have no effect upon nor will it interfere in any way with State and Federal prosecutions, but merely affords one additional means of attack against bootleggers. Incidentally it will probably bring in considerable revenue to the municipalities.

15. Section 41 of the Control Act has been clarified to require the clerk of the governing board or body of each municipality in which a referendum has been held to certify the result thereof to the Commissioner even though the majority vote be in the affirmative. So long as the referendum remains effective all ordinances, resolutions or regulations inconsistent with the result of the referendum have no effect within the municipality.

16. Section 42 of the Act has been amended similarly to Section 41..

17. Section 43 of the Act has been amended similarly to Section 41.

18. Section 44 of the Act has been amended similarly to Section 41.

19. Section 48 of the Control Act has been amended to read as follows:

"48. Any person who shall manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport any alcoholic beverage in violation of this act, or who shall import, own, possess, keep or store in this State alcoholic beverages with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport alcoholic beverages in violation of the provisions of this act, or who shall own, possess, keep or store in this State any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this act, or to aid or abet

blending, treating, another in the manufacture, sale, distribution bottling, rectifying, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this act, all of which shall be violations of this act, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) and not more than one thousand dollars (\$1,000.00) or imprisonment for not less than thirty days and not more than three years, or by both such fine and imprisonment, in the discretion of the court.

"Any person who shall possess, have custody of, offer for sale or sell any illicit beverage shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100. and not more than one thousand dollars (\$1,000.00 or imprisonment for not less than thirty days and not more than three years, or by both such fine and imprisonment. in the discretion of the court

The increase of the maximum penalty to a fine of \$1,000.00 and imprisonment for three years will provide the State with a more effective weapon to combat the efforts of violators. It puts real teeth into enforcement. Experience showed that the smaller fine in the original Act did not have sufficient deterrent effect. The new provisions with reference to the maximum penalties are in keeping with the joint effort of the State and Federal authorities to wage vigorous and relentless combat against the bootlegger so to eliminate the evils of the prohibition period and to keep faith with those who favored repeal upon the promise that such evils would be eliminated.

The last paragraph of Section 48 as amended provides that mere possession of any illicit beverage is a misdemeanor punishable by maximum penalty of a fine of \$1,000.00 and imprisonment for three years. This removes the necessity in a criminal prosecution of proving intent to sell. The requirement of proving intent placed such a difficult burden on the enforcement authorities as to render nugatory their efforts in numerous cases. There is no reason why anyone should possess any illicit beverages.

20. Section 64 has been amended to read as follows:

"64 (a) Any officer knowing, or having reasonable cause to believe that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property, including in the case of illicit alcoholic beverages within any vehicle, the vehicle containing the same, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this act and to make complaint against such persons as in other cases of misdemeanor. All property when seized shall be under the jurisdiction of the commissioner subject to this act. Any seized property shall be returned to any person claiming the same upon execution and delivery by him to the commissioner of a bond in a form and with sureties satisfactory to the commissioner in a sum double the retail value of the property, as appraised by the commissioner, conditioned, (1) to pay to the commissioner for the use of the State the full retail value of said property in case the same shall appear to have been unlawful property, and (2) in case it shall appear that said property was not unlawful property, to pay such part of the retail value thereof as may represent the value of the outstanding right, title, interest,

"lien or claim of any other person, to such other person, which bond shall be enforceable, as other obligations for payment of money, by civil action in any court of competent jurisdiction, first by the commissioner, to be instituted within one year from the date thereof, and secondly, by such other person as third party beneficiaries, at any time after final judgment in such action by the commissioner, or after the expiration of said year in case no such action shall have been instituted by the commissioner in the meantime. In lieu of such bond, the claimant to the said seized property may pay to the commissioner for the use of the State the retail value thereof in cash, as appraised by the commissioner, under protest, subject to the right of the person making the payment to recover said sum upon establishing that the property was not unlawful property by an action to be commenced within one year from the date of such payment, and not thereafter, in any court of competent jurisdiction. Said claimant may, in lieu of either remedy, bring an action of replevin for the said property against the commissioner in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of said court, said action to be commenced within thirty days from the seizure of such property and not thereafter. If the commissioner shall be satisfied that property seized was not unlawful property he may return the same to the person or place from whom the same were taken. If any seized property shall not be reclaimed within thirty days, after determination by him that such property is unlawful property, and subject to rules and regulations, the commissioner shall forfeit said property and may, in his discretion order that the seized property in whole or in part be sold, destroyed or retained for the use of hospitals and State, county and municipal institutions. The forfeiture of any seized property shall terminate all property interests therein and in any proceeds therefrom, including the interests of the owner, any conditional vendor, chattel mortgage or other lienor and all other persons. No such forfeiture, sale, destruction or retention for use of hospitals and State, county and municipal institutions shall be had except after hearing, of which notice, of not less than fifteen nor more than thirty days, shall be given by mail to all persons known or believed by the commissioner to have an interest in the seized property and by publication twice in a newspaper to be designated by the commissioner and circulating in the county where the property was seized once in each of the two consecutive calendar weeks preceding such hearing. After such hearing, the commissioner shall file his determination in the form of an order which shall be subject to review on certiorari to the Supreme Court. Service of notice of application for such writ shall operate as a stay of the commissioner's order until further order of the court or of a justice thereof. All monies received by the commissioner hereunder shall be reserved during the time allowed any person an opportunity of establishing a right thereto and shall immediately thereafter be accounted for by the commissioner as in the case of license fees received hereunder. All sales by the commissioner shall convey the commissioner's right, title and interest which shall be that of sole and absolute ownership, free and clear of all outstanding title, rights, interest and liens.

Property seized and released shall thereafter be subject to further seizure because of ownership, possession or use thereof in connection with further unlawful alcoholic beverage activities.

"(b) All alcoholic beverages, fixtures and personal property located in or upon any premises, building, yard or enclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept, are hereby declared unlawful property and shall be seized, forfeited, and disposed of in the same manner as other unlawful property seized under this section.

"(c) All alcoholic beverages manufactured, sold, imported or transported in violation of rules and regulations, together with any vehicle containing the same, are hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section.

"(d) Any contrivance, preparation, compound, tablet, substance or recipe advertised, designed or intended for use in the manufacture of alcoholic beverages for personal consumption or otherwise in violation of this act is hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section. Any person who shall advertise, manufacture, sell or possess for sale, or cause to be advertised, manufactured, sold or possessed for sale property declared unlawful under this paragraph, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), or imprisonment for not less than thirty (30) days and not more than six (6) months or by both such fine and imprisonment in the discretion of the court.

"(e) The commissioner upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this section has acted in good faith and has unknowingly violated the provisions thereof, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the commissioner.

The commissioner may, upon being satisfied that a common carrier, whose vehicle has been seized under the provisions of this act, has acted in good faith and had no knowledge at the time of the seizure, that the vehicle contained illicit alcoholic beverages, order that the seized vehicle be returned to the common carrier.

"(f) The commissioner, upon being satisfied that a person having a bona fide and valid lien upon or interest in property seized or forfeited pursuant to the provisions of this section has acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use, may, in his discretion and subject to rules and regulations, recognize the validity and priority of such claim or interest. Where the validity and priority of a lien or interest have been so recognized by the commissioner, he may (1) order, where it appears that the amount or value of said lien or interest exceeds the value of the property plus costs, that the property be returned to the innocent claimant upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the commissioner, or (2) order that the property be sold and that the amount of the lien or value of the in

terest, which amount or value shall be established to the satisfaction of the commissioner, be paid out of the proceeds of sale after having deducted therefrom the reasonable costs incurred in connection with the seizure, such costs to be determined by the commissioner."

Paragraph (a) as amended provides that all liens upon property are wiped out except as hereinafter noted in connection with paragraph (e) of this section.

Paragraph (b) expressly provides that all fixtures and personal property located in or upon any premises, etc. in which an illicit beverage is found constitutes unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property. In this connection see the discussion contained in item 5, supra.

Paragraph (c) of Section 48 extends the definition of "unlawful property" to include all alcoholic beverages manufactured, sold, imported or transported in violation of the Commissioner's rules and regulations, and provides that such beverages, together with any vehicle containing the same, shall be seized, forfeited and disposed of as other unlawful property.

Paragraph (d) prohibits the sale of preparations intended to be used in unlawful manufacture of alcoholic beverages. Thus the possession for sale of syrups, wine bricks and the like, which are expressly designed for home manufacture of alcoholic beverages, is made a misdemeanor, as is the advertising, manufacture, or sale of these articles.

Paragraph (e) of Section 48 provides that the Commissioner may return property to the owner where he is convinced that the owner acted in good faith and has unknowingly violated the provisions of the Act, upon the payment of reasonable costs to be determined by the Commissioner.

Paragraph (f) of this section provides that the Commissioner may return any seized property to a bona fide lienor when satisfied that the claimant has acted in good faith and without knowledge of the unlawful use to which the property has been put.

The discretion vested in the Commissioner by paragraphs (e) and (f) will be sparingly exercised and only in the clearest cases.

21. Section 65 has been repealed.

22. Section 73 has been amended to read as follows:

"73. The sale of receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages is prohibited, except under and pursuant to the provisions of a warehouse receipts license issued by the commissioner. The holder of such license shall be entitled to sell such warehouse receipts subject to rules and regulations and the fee therefor shall be one hundred dollars (\$100.00). No publication shall be required with respect to applications for warehouse receipts licenses."

Under Section 73 as amended no person may sell any warehouse receipt given upon the storage of alcoholic beverages except under a warehouse receipts license. Rules and regulations governing the issuance of this license will be promulgated and licenses issued. The fee for the license is \$100.00.

D. Frederick Burnett,
Commissioner

2. REVOCATION PROCEEDINGS REO DISTILLERS, INC.

IN THE MATTER OF PROCEEDINGS)	
TO REVOKE RECTIFIER AND BLENDER)	
LICENSE #R-22 ISSUED TO REO DIS-)	On Revocation
TILLERS, INC., #276-290 Jelliff)	CONCLUSIONS AND ORDER
AVENUE, NEWARK, N. J.)	
-----)	

Jerome B. McKenna, Esq., Attorney for Department,
 Samuel I. Kessler, Esq., Attorney for Reo Distillers, Inc.,
 Licensee,
 N. S. Parker, Esq., Attorney for Kraft-Phoenix Cheese Corporation,
 Owner of licensed premises.

BY THE COMMISSIONER:

Charges and notice to show cause why the rectifier and blender license #R-22 issued to Reo Distillers, Inc. #276-290 Jelliff Avenue, Newark, N. J., should not be suspended or revoked were duly served upon the licensee and Kraft-Phoenix Cheese Corporation, the owner of the licensed premises. Upon the return date of the notice, a hearing was held and the licensee and owner appeared by counsel and were afforded full opportunity to be heard.

Charges #1 to #4, inclusive, allege that the licensee failed to file reports required by the Alcoholic Beverage Tax Act, failed to pay taxes when due and failed to pay penalties imposed by the State Tax Commissioner. The licensee admitted the truth of these charges, but asserted that since the necessary reports had been filed and the taxes and penalties complained about had been paid prior to the hearing, no further penalty should be imposed. Deputy Commissioner J. Lindsay deValliere of the State Tax Department introduced records of his Department disclosing repeated violations by the licensee of the Tax Department's regulations and requested that notwithstanding the subsequent payment of the taxes and penalties, the license be revoked.

Charges #5 to #9, inclusive, allege that the licensee sold, in violation of the terms of its license, alcohol and whiskey which was not its own product but had been manufactured or rectified by others. These charges were likewise admitted by the licensee at the hearing, but its counsel asserted that the violations were committed unwittingly. As early as December 16, 1933, the Commissioner defined the processes permitted to a rectifier by the Control Act (see Bulletin #7, Item #8), and in Bulletin #55, Item #4, expressly ruled that a rectifier may not sell products which have not been processed within this State under its license. Indeed, the very name of its license should have sufficiently advised the licensee that it was not permitted to engage in the business of selling other

people's products at wholesale.

Charges #10 to #12, inclusive, allege that the licensee knowingly employed Isadore Rappaport, a person who could not qualify as a licensee because of criminal convictions, had suppressed his criminal record in the application filed by it and had knowingly misstated in its application that he had not been convicted of any crime. The licensee admitted the employment of Rappaport and records introduced in evidence established that he had been convicted in 1925 of conspiracy to violate the National Prohibition Act, and in 1927 of grand larceny - second degree. The testimony of Isaac Raskin and Philip Kull, officers of the licensee, disclosed that no substantial investigation of the record of Rappaport had ever been made and that, despite their present knowledge of his record, he is still employed by the company in the collection of accounts receivable. This employment is in flagrant violation of the express provision of the Control Act.

Charge #13 alleges that on or about the 5th day of November, 1934, the licensee shipped approximately 638 packages of distilled spirits to Augusta, Georgia, in violation of the laws of Georgia, and contrary to the terms of its license. At the hearing counsel for the licensee stated that indictments before the Federal Court had been returned against the licensee and several of its officers and requested that no testimony be taken in this connection pending the determination of the Federal proceedings. Pursuant to this request, no evidence was introduced on the 13th charge.

In view of all of the foregoing there must be a finding of guilty on each of the first 12 charges, with a consequent revocation of the license. Furthermore, the licensed premises should be disqualified in order to insure that neither the licensee nor any of its officers, directors or stockholders will use the premises for alcoholic beverage purposes during the period of disqualification. In order to avoid an unwarranted penalty upon the owner and to eliminate economic waste, the disqualification should be accompanied by a provision enabling occupancy of the premises for alcoholic beverage purposes by a person or corporation not in anywise connected with the present licensee or its members.

The license held by Reo Distillers, Inc. has expired and no application for renewal thereof has been made. Under the Commissioner's regulations revocation proceedings are not barred and do not abate by the expiration of the license. See Bulletin #80, Item #8. Furthermore, the hearing in this matter was held prior to the expiration of the license and decision was deferred until after such expiration solely in order to permit counsel to submit a memorandum. At the hearing counsel expressly consented that decision be made after the expiration of the license and waived any objection to such action.

It is, on this 15th day of July, 1935,

ORDERED that rectifier and blender license #R-22 issued to Reo Distillers, Inc. for premises #276-290 Jelliff Avenue, Newark, N. J. be and the same hereby is revoked, effective immediately; and it is further

ORDERED that the licensed premises #276-290 Jelliff Avenue, Newark, N. J. be and they hereby are declared ineligible to become the subject of any further license of any kind or class un-

der the Control Act, during a period of two (2) years from the date hereof, provided, however, that the Commissioner will entertain an application at any time during said period for removal of the disqualification upon filing of proof satisfactory to the Commissioner that the premises are sought to be licensed by an applicant in nowise connected directly or indirectly with the present licensee, Reo Distillers, Inc., or any of its officers, directors or stockholders.

D. Frederick Burnett,
Commissioner

3. LICENSE APPLICATION HEARING - Re Cranford American Legion Holding Co., Inc.

In the Matter of Application of)
the Cranford American Legion Holding)
Co., Inc. for a Club License for)
premises situated at Riverside Drive)
and Casino Avenue, Cranford, N. J.)
-----)

CONCLUSIONS OF
COMMISSIONER

A. Leonard Roberts, Esq., For Applicant,
Samuel A. Morrison, Esq., For Objectors.
Carl H. Warsinski, Esq., For Township of Cranford.
Roger C. Aldrich, Objector Pro Se.
Gilbert E. Crogan, For the Department

CONCLUSIONS OF COMMISSIONER:

This matter comes on for hearing upon application for a club license for premises at Riverside Drive and Casino Avenue, Cranford.

The application was made to the State Commissioner because one of the members of applicant is also a member of the Township Committee of Cranford. P. L. 1934, Chap. 44.

The rules, Bulletin 75, item 13, provide that all such applications must be accompanied by a copy of a resolution adopted by the issuing authority of the municipality in which it is intended that the licensed premises be situated, setting forth that the issuing authority has no objection to the issuance of the license applied for and consents thereto and is not aware of any circumstances or legal provisions or local ordinances which would prohibit the issuance of the license.

So far from complying with this rule, the resolution of the Township Committee accompanying the application reads:

"Resolved, that this Committee hereby expresses itself as opposed to the issuance of such license, on the grounds that the premises in which liquor is proposed to be sold under said license is in a strictly residential neighborhood, zoned against business by local zoning ordinance and such issuance has been protested against by great numbers of the residents living in the immediate neighborhood."

Without going into the questions arising out of the zoning ordinance or of the alleged non-conforming use or of the existence of the clubhouse or the operation of the club previous to the adoption of the zoning ordinance, the application must be denied because the rule has not been complied with. The object of the law which requires application to be made to the State Commissioner when a member of an applicant for a license is also a member of the municipal governing body or other license issuing authority is to eliminate self-interested decisions. The object of the rule requiring municipal consent in such cases is not to escape but to enforce local sentiment. The action of the Township Committee in refusing to approve the issuance of a license in a residential neighborhood is reasonable. Hence, the rule must be enforced.

The application is denied.

D. Frederick Burnett,
Commissioner

Dated: July 15, 1935.

4. APPELLATE DECISIONS - SMOCK VS. HARDING TOWNSHIP

THEODORE B. SMOCK,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HARDING (MORRIS)	
COUNTY),)	
Respondent)	

Theodore B. Smock, Appellant, Pro Se.
Ralph E. Shaner, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at Mt. Kemble Avenue, Harding Township.

Section 22 of the Control Act provides that a photostatic copy of all federal licenses, permits and/or stamps necessary to the lawful conduct of the business, or evidence in lieu thereof, satisfactory to the commissioner, must accompany the license application.

Appellant admitted he had not obtained, or paid the necessary fee for, a federal tax stamp, prior to the filing of the application or the disposition thereof by respondent. Consequently no license could be issued upon the application presented by appellant. Burd v. Mine Hill, Bulletin #38, Item #7; Manning v. Sandyston, Bulletin #48, Item #2; American Legion v. Palmyra, Bulletin #48, Item #4; Andreach v. Keansburg, Bulletin #73, Item #14.

The appeal is therefore dismissed, without prejudice, however, to appellant's right to file a new application in accordance with the Act.

D. Frederick Burnett,
Commissioner.

Dated: July 16, 1935.

5. APPELLATE DECISION - MICHAEL MACKIEWICZ vs. JERSEY CITY

MICHAEL MACKIEWICZ,)	
Appellant,)	
-vs-)	ON APPEAL
THE BOARD OF COMMISSIONERS OF)	CONCLUSIONS
THE MAYOR AND ALDERMEN OF JERSEY)	
CITY)	
Respondent)	

Edward M. Salley, Esq., Attorney for Appellant.
N. Louis Paladeau, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of appellant's plenary retail consumption license.

Respondent contends that the license was properly revoked because (1) appellant possessed illicit beverages with intent to sell the same in violation of Section 48 of the Control Act; and (2) appellant violated respondent's local rules and regulations by filing with respondent a false report of purchases of alcoholic beverages.

The alleged illicit liquor was not found on the licensed premises but in adjoining or nearby rooms in the same building. The licensed premises consist of a store on the ground floor of a four-story apartment house owned by the wife of appellant. On the opposite side of a common hallway is a vacant store, behind which are a kitchen and bedroom.

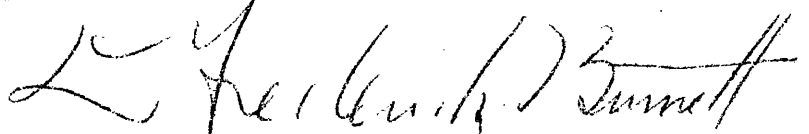
On April 8th, 1935, two Jersey City police officers, assigned to investigate complaints that appellant was selling bad liquor, entered the kitchen and there found one Anthony Peplowski. He stated that the "boss", meaning appellant, let him sleep there because he was unemployed. Noticing a locked cupboard, the officers asked Peplowski for the key. He told them that the "boss" had it. At this juncture, appellant himself entered the kitchen. Although he denied having the key to the cupboard, it was found, on frisking him, in his vest pocket. Inside the cupboard were 28 pint bottles of illicit beverages and 2 pint bottles of coloring matter. When appellant was asked where he bought the liquor, he replied, "I won't tell you for a thousand dollars". At Police Headquarters he admitted ownership of the liquor, but when arraigned, pleaded not guilty and was held in bail for the Grand Jury.

Appellant now claims he did not own the liquor and had no control over it or over the room in which found, but that the two rooms in back of the vacant store had been rented out to Peplowski and one Rutkowski at a rental of \$6.00 per month.. Rutkowski has disappeared and cannot be located. Peplowski, in an effort to "take the rap" for appellant, testified that he had purchased five gallons of alcohol for \$5.00 in December, 1934 and mixed it with water and coloring matter, and bottled it for his own consumption in old or second-hand bottles found in the "dumps". This story is discredited because he has been unemployed, has had no income for a considerable time, and the bottles and labels are new and the crowns all match the labels. Moreover, in many material respects his testimony conflicts with appellant's. Thus, despite appellant's denial, Peplowski admits he gave appellant the key to the cupboard before the seizure was made.

I find the appellant guilty on the first count.

It is therefore unnecessary to consider the evidence on the second count.

The action of respondent is affirmed.



D. Frederick Burnett,
Commissioner.

Dated: July 17, 1935.