

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

BULLETIN 341

AUGUST 9, 1939.

1. ALIENS - FEDERAL TREATIES - CHANGES - NOTICE.

A list of the countries with which the United States has entered into reciprocal treaties by virtue of which citizens of those countries may not be excluded from privileges afforded to citizens of the United States, solely because they are not citizens of the United States, has heretofore been set forth in Re Guskind, Bulletin 130, Item 5.

Citizens of the countries there listed are protected by such treaties and therefore may obtain licenses and be employed by licensees provided that under the Alcoholic Beverage Law of New Jersey, R. S. Title 33, Chapter 1, they are otherwise fully qualified.

Notice of the termination of the treaty with Italy has heretofore been given in Re Woertendyke, Bulletin 304, Item 8, thereby eliminating that country from the foregoing list.

Notice is now given of the following additional treaty changes, viz.:

1. A treaty of establishment between the United States and Greece was signed on November 21, 1936 and entered into force upon exchange of ratifications at Athens on October 22, 1937. This treaty provides for most-favored-nation treatment in matters of establishment. The official citation for this treaty is 51 Stat. 230.

The treaty provides, inter alia:

"The nationals, limited liability and other corporations and associations of the United States of America and Greece respectively, shall receive in the territories of the other country treatment with respect to entry, establishment and residence which shall be, in all respects, no less favorable than the treatment which is or shall be accorded to nationals, corporations or associations of the most favored third country."

2. The treaty of Friendship, Commerce and Navigation of December 16, 1920 between the United States and Siam was superseded on October 1, 1938 by a new treaty of Friendship, Commerce and Navigation signed on November 13, 1937. Ratifications were exchanged at Bangkok on October 1, 1938.

The treaty provides, inter alia:

"There shall be constant peace and perpetual friendship between the United States of America and the Kingdom of Siam. The nationals of each of the High Contracting Parties shall be permitted to enter, travel and reside in the territories of the other, to carry on their commerce and manufacture, to trade in all kinds of merchandise of lawful commerce, to engage in religious, educational and charitable work, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential, commercial, industrial, religious and charitable purposes, and for use as cemeteries, and generally to do anything incident to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the State of residence, submitting themselves to the laws and regulations there established.

"They shall not be compelled, under any pretext whatsoever, to pay any internal charges or taxes other or higher than those that are or may be paid by nationals of the State of residence.

"The nationals of each of the High Contracting Parties shall receive, in the territories of the other, the most constant protection and security for their persons and property, and shall enjoy in this respect the same rights and privileges as are or may be granted to nationals of the State of residence on their submitting themselves to the conditions imposed upon nationals of the State of residence. They shall also enjoy in this respect that degree of protection and security that is required by international law. Their property shall not be taken without due process of law or without payment of just compensation."

3. Notice of denunciation of the 1911 treaty with Japan was given by the United States on July 27, 1939. The treaty continues in force until the time limited therein for such termination expires.

August 4, 1939

D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against
BROADWAY WOODCLIFF DELICATESSEN, INC.,
943-A Broadway,
North Bergen, New Jersey,
Holder of Plenary Retail Distribution License D-9, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, subsequently transferred to
CARL TRUE,
943-A Broadway,
North Bergen, New Jersey
during the pendency of the proceedings.
-----)

CONCLUSIONS
AND ORDER

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.
Carl True, Pro Se.

BY THE COMMISSIONER:

On June 9, 1939, Broadway Woodcliff Delicatessen, Inc. was charged with sale of an alcoholic beverage on May 20, 1939, in violation of the Fair Trade regulations. On June 15, 1939 the license of Broadway Woodcliff Delicatessen, Inc. was transferred to Carl True subject to any penalty which might be imposed in the instant proceedings. Thereafter, the transferee, Carl True, pleaded guilty in advance of hearing to the charge heretofore

preferred against his transferor, Broadway Woodcliff Delicatessen, Inc. His license will, therefore, be suspended for five days instead of the usual ten.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of plenary retail distribution license D-9 (1939-40).

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

ORDERED, that plenary retail distribution license D-9 (1939-40), heretofore issued to Carl True by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, be and the same is hereby suspended for a period of five (5) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - SICILIANO v. ASBURY PARK.

FRANK SICILIANO,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
CITY COUNCIL OF THE CITY)	
OF ASBURY PARK,)	
)	
Respondent)	
-----)	

Eugene Capobianco, Esq., Attorney for Appellant.
No Appearance on behalf of Respondent.

BY THE COMMISSIONER:

At a meeting of the City Council of the City of Asbury Park held on June 27, 1939, the following resolution was adopted:

"BE IT RESOLVED, that the application of Frank Siciliano for a Plenary Retail Consumption License for the premises, 661 Main Street, be denied on the grounds of protest from Y.M.C.A. against its issuance and because the location is near the Y.M.C.A. building."

This is an appeal from such denial.

The premises in question were the subject matter of an appeal in the case of Campbell's Tavern Inc. v. City Council of the City of Asbury Park, Bulletin 153, Item 9. There, the City Council denied the application upon two grounds, one of which was "the proximity of the premises to the Y.M.C.A." In reversing respondent's action and directing a license to issue, I said:

"In the instant case the respondent has made no appearance and there is no evidence in the record to support its decision. On the other hand, appellant has made a

prima facie case. The premises are in the midst of a business neighborhood. Royal Liquor Stores v. Trenton, Bulletin 59, Item 1. They are located in the 600 block, in which there are no other licensed places. ***

"The remaining point to be considered is the proximity of the premises to the Y.M.C.A. building on Main Street in the 600 block but across the street from the premises in question. Main Street is forty-two (42) feet wide. It has a heavy vehicular traffic. Measured in the normal way that a pedestrian would properly walk, the distance between the premises for which the license is sought, and the nearest entrance to the Y.M.C.A. on Main Street, is ninety (90) feet. While in Section 76 of the Control Act the Legislature has forbidden licensed premises within two hundred (200) feet of a church or school, no mention is made therein of Y.M.C.A. buildings. The objection of the Y.M.C.A. was placed on moral and ethical grounds and general opposition to any liquor traffic, and not on any specific complaint against the character of appellant's officers or the suitability of their place. There are already outstanding two licenses, at 702 and 704 Main Street, both of which are on the same side of the street as the Y.M.C.A. and nearly as close thereto as 601 Main Street. The Y.M.C.A. has not lodged any complaints against the operation of those places. The presumption is that appellant will conduct its premises in a proper manner. If it does not, the license may be revoked. If it does, the presence of another licensed place on the opposite side of this busy thoroughfare should create no more moral hazards for the young men who frequent the Y.M.C.A. building than do the present licensed places on the same side."

It appears that the character of the neighborhood has not changed since the denial of license in that case. No licenses have been issued in the 600 block, either on the east side of Main Street where the premises in question are located or on the west side; to the south, the nearest licensed establishment is 700 feet from the premises in question; to the north, in the 700 block, there are no licensed premises on the west side and three on the east side; in the 800 block, there is one on the west side and two on the east side. The street is still predominantly a business one.

Respondent filed no answer to appellant's petition of appeal and did not appear at the hearing. Nor did the Y.M.C.A. enter an appearance. The record is thus barren of any evidence to support the rejection of appellant's application.

It appears affirmatively, on the other hand, that the Y.M.C.A. filed no objections to the application submitted by the present appellant. Both the appellant and his attorney testified that they inquired of the Acting City Clerk whether any objections had been filed by the Y.M.C.A. or any other objector, and were advised that no objections of any kind had been filed. The attorney also testified that he had been informed by the Acting City Clerk that the City Council had refused the license because "they had taken similar action a year or two ago when an application was made by a man by the name of Campbell;" that he communicated with several members of the Board of Directors of the Y.M.C.A., who informed him that the Board had not discussed the question of making

objection to the present appellant's application for license at any of its meetings, and that, so far as they knew, no authorization had been given to anyone to file such objections on behalf of the Y.M.C.A.; that he further discussed the matter with the Mayor of the City of Asbury Park and was told that the application had been rejected "for the same reasons filed in the Campbell matter, because the Y.M.C.A. had objected to it in the Campbell matter;" that the Mayor also told him that no objections had been made to the issuance of license for the premises in question since those filed by the Y.M.C.A. at the time of the Campbell application.

No citations are necessary to support the proposition that the issuance of retail licenses is vested, in the first instance, in the discretion of the local issuing authority. Such discretion, however, must be reasonable, and not arbitrary. Where a license is denied upon the same set of facts as have already been found wanting on appeal, such action is not based upon a reasonable exercise of discretion.

Appellant complied with all formal requirements at the time of filing his application for license except that he did not accompany it with the proper Federal stamp or evidence in lieu thereof. It is clear that the respondent's action was not based upon that ground. If it had been, I would have no choice except to affirm the denial. Radich v. Woodbridge, Bulletin 88, Item 4. In the present case, however, appellant testified that he did not present such evidence because he was told by the Acting City Clerk that it was not necessary to do so until a license had been granted. The advice was improper because municipal clerks have no power to waive any of the statutory requirements. However, I am satisfied that the failure to produce the Federal stamp or evidence in lieu thereof was not due to any neglect on the part of appellant and, hence, leave will be granted to appellant to correct the defect before the issuance of the license.

The action of respondent is reversed, and respondent is directed to issue a license forthwith as applied for, provided, however, that appellant shall first present to the Municipal Clerk a photostatic copy of the Federal stamp or the Federal stamp itself for inspection and approval, or an official receipt of the Federal Collector of Internal Revenue indicating that the Federal fee for such stamp has been paid.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 4, 1939.

4. FISHING BOATS - SALES ON AND DELIVERIES TO - HEREIN OF OUT-OF-STATE SALES.

August 4, 1939

Poth Brewing Company,
1801-23 North 10th Street,
Philadelphia, Pa.

Att: H. J. Twine, Sales Manager.

Gentlemen:

Alcoholic beverages may not be sold on fishing boats while the boats are docked at New Jersey piers or while in waters which are subject to the jurisdiction of this State except pursuant to proper license or permit. Alcoholic beverages may, however, be sold without such license or permit on fishing boats while in waters beyond the jurisdiction of this State. Re Booth, Bulletin 182, Item 9.

It is clear that your distributors may sell to fishing vessels which are licensed in this State or hold special permits issued by this Department.

Your problem, as I understand it, concerns the right of your distributors to sell alcoholic beverages to fishing boats, which do not hold such license or permit, for consumption in waters beyond the jurisdiction of New Jersey. Such sales are construed as out-of-State sales. The only wholesale licenses which authorize out-of-State sales are the plenary and limited export wholesale licenses. R. S. 33:1-11. A State Beverage Distributor's license does not authorize out-of-State sales. Re Congress Beverage Co., Inc., Bulletin 290, Item 15. Hence, unless your distributor held either a plenary or limited export wholesale license, it could not sell to fishing vessels holding no license or special permit.

Breweries licensed in New Jersey, however, may sell to such fishing vessels because they may sell and distribute without this State to any person pursuant to the laws of the places of such sale and distribution.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. EDUCATIONAL CAMPAIGN - REPORT

July 1, 1939

To: Commissioner Burnett
From: E. W. Garrett

Herewith list of addresses made by members of the Department in connection with Educational Campaign during the period January 1, 1939 to July 1, 1939, and the organizations before which appearances were made.

Jan.

5	Hackettstown Chamber of Commerce	Judiah Higgins
11	Bergen County Republican Committee	D. Frederick Burnett
21	Conference on Interstate Liquor Compacts, in Washington, D. C.	Nathan L. Jacobs
21	Rutgers All-State Alumni	D. Frederick Burnett
23	Cliffside Park Tavern Owners Ass'n	Sydney B. White
24	Neptune High School Sociology Class	Maurice E. Ash
27	Heywood-Tremont P.T.A. of Orange	Maurice E. Ash
30	Neptune High School Sociology Class	David J. H. Murray
31	Westwood Kiwanis Club	Stanton J. MacIntosh

Feb.

1	Irvington Optimist Club	Stanton J. MacIntosh
2	Associated Wineries of New Jersey Inc.	D. Frederick Burnett and Earle W. Garrett
8	Plainfield Liquor Dealers Ass'n	David J. H. Murray
9	Bayonne Jr. Chamber of Commerce	Robert R. Hendricks
14	Trenton Y.M.C.A.	Hobart B. Poole
16	Cranford Rotary Club	Charles Basile
17	Roselle-Roselle Park Rotary Club	Richard E. Silberman
19	Men's Club of First Presbyterian Church, Rahway	Ernest M. Tapner
21	Hudson County Young Republicans	Stanton J. MacIntosh
22	Y's Men's Club of Moorestown	Hobart B. Poole
27	Howard H. Higham Jr. Post #100 American Legion	Bayard M. Sullivan

March

2	Hamilton Township Republican Club	David J. H. Murray
5	South Jersey Retail Liquor Stores Ass'n	Nathan L. Jacobs
6	Elizabeth Exchange Club	Stanton J. MacIntosh
8	New Jersey Association of Township Com- mitteemen, Cumberland Co. Branch	Frank M. Middleton
9	Westfield Lions Club	Stanton J. MacIntosh
9	Noon Forum Group of Newark Y.M.C.A.	Maurice E. Ash
13	Newark Advertising Club	D. Frederick Burnett
13	Plainfield Kiwanis Club	David J. H. Murray
13	High Bridge Borough Council	Judiah Higgins
15	Camden Lions Club	Frank M. Middleton
15	Package Store Dealers of Mercer County	David J. H. Murray
16	Exchange Club of New Brunswick	Maurice E. Ash
16	Phi Delta Phi, New York City	Maurice E. Ash
16	United Republican Club of Pennsauken Township	Frank M. Middleton
17	Kearny Women's Republican Club	Richard E. Silberman
21	DeBrier Business Men's League of Atlantic County	Simon Lippman
22	Summit Lions Club	Stanton J. MacIntosh
22	Plainfield Lions Club	Maurice E. Ash
23	Belleville Lions Club	Charles Basile
27	New Jersey Association of Township Committeemen, Salem County Branch	Emerson A. Tschupp
29	Clayton Kiwanis Club	Frank M. Middleton
30	Bergen County Retail Liquor Dealers Ass'n	Edward Lurie

April

5	Phillipsburg Rotary Club	Earle W. Garrett
5	Pleasantville Rotary Club	Simon Lippman
6	Riverside Kiwanis Club	Bayard M. Sullivan
11	Bloomfield Lions Club	Stanton J. MacIntosh
12	Cliffside Park Square Club #2	Louis Joret
16	Young Peoples Fellowship of Trinity Church of Cranford	Anthony Robbins
17	Tall Cedars of Lebanon, Forest #11, Atlantic City	William F. Chinery
17	Williamstown Rotary Club	Bayard M. Sullivan
17	Pemberton Rotary Club	Doscoe C. Lockwood
17	Washington Rotary Club	Judiah Higgins
18	South End Club of Newark	Charles Basile
18	Newark Tavern Owners Ass'n	Sydney B. White
18	Salem Exchange Club	Frank M. Middleton
20	Vineland Kiwanis Club	Frank M. Middleton
20	The First Ward Citizens Protective Association of Atlantic City	George F. Tracy
21	Trenton Police Training School	David J. H. Murray
24	South Orange Rotary Club	Maurice E. Ash
27	American Business Club of Elizabeth	Stanton J. MacIntosh
28	Chelsea Property Protective Ass'n	Simon Lippman
30	Retail Liquor Distributors Association of Atlantic City	Stanton J. MacIntosh

May

1	Maplewood Lions Club	Stanton J. MacIntosh
2	Jersey City Retail Liquor Dealers Ass'n, Inc.	D. Frederick Burnett
3	Newark Lions Club	Maurice E. Ash
4	Penns Grove Rotary Club	Bayard M. Sullivan
8	Elizabeth Elks Club	Stanton J. MacIntosh

May

- 9 Elizabeth Lions Club Earle W. Garrett
- 9 Linden Rotary Club William S. Codd
- 11 The Exchange Club of Newark Charles Basile
- 11 Camden County Real Estate Board Frank M. Middleton
- 15 Linden Tavern Keeper's Association Charles Basile
- 16 Evening Star Lodge, No. 97, F. & A.M. of Bridgeton Frank M. Middleton
- 16 Gloucester County Hotelmen's & Restaurateurs' Association Bayard M. Sullivan
- 17 Tony Galento Association of Orange D. Frederick Burnett
- 19 Disabled American Veterans of the World War, Atlantic City Chapter No. 10 George F. Tracy
- 19 Newark Academy Alumni Association D. Frederick Burnett
- 22 Lakewood Black Hawks D. Frederick Burnett
- 23 Perth Amboy Licensed Beverage Dealers, Division #24 Charles Basile
- 24 Plainfield Police Training School David J. H. Murray
- 25 Fourth Ward Women's Democratic Club of Atlantic City D. Frederick Burnett

June

- 6 Burlington Kiwanis Club Bayard M. Sullivan
- 6 Burlington County Unit of the New Jersey State Magistrates' Association Frank M. Middleton
- 7 The Atlantic City Exchange Club Stanton J. MacIntosh
- 8 Millville Kiwanis Club D. Frederick Burnett
- 8 Vineland Kiwanis Club D. Frederick Burnett
- 9 Palmyra-Riverton Y.M.C.A. Hobart B. Poole
- 15 The Townley Association of Union Charles Basile
- 19 Sea Isle City Rotary Club Schuyler Adams
- 21 Pennsauken Licensed Beverage Association Charles Basile
- 22 South Orange-Maplewood Kiwanis Club Maurice E. Ash
- 28 New Jersey Retail Liquor Package Stores Association D. Frederick Burnett

E. W. Garrett,
Chief Deputy Commissioner.

6. SEIZURES - CONFISCATION PROCEEDINGS - TRANSPORTATION WITHOUT PROPER INSIGNIA VALIDATED RETROACTIVELY BY PERMIT.

In the Matter of the Seizure of)
 Sophie Freundlich's Ford sedan,)
 six quarts of whiskey and twenty-)
 four pints of gin, at 88 Speedwell)
 Avenue, in the Town of Morristown,)
 County of Morris and State of New)
 Jersey.)
 - - - - -)

ON HEARING
CONCLUSIONS AND ORDER

Antranig K. Donigian, President of Imperial Liquor Corporation,
for Imperial Liquor Corporation.

Fritz Freundlich, Pro Se.

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

BY THE COMMISSIONER:

Investigators of this Department, making a routine inspection on November 12, 1938 of Theodore I. Kornfield's licensed premises at 88 Speedwell Avenue, Morristown, observed Fritz Freundlich, a salesman for Imperial Liquor Corporation, deliver six quarts of whiskey to the licensee. Upon questioning, Freundlich admitted that he had also intended to deliver to Kornfield twenty-four pints of gin, which were then in Sophie Freundlich's Ford sedan parked at

the curb, and that he had transported both the whiskey and the gin in the car, which bore no transit insignia. The investigators thereupon seized the gin, whiskey and Ford sedan as unlawful property under the provisions of R. S. Title 33, Chapter 1.

Thereafter, Fritz Freundlich, as principal, and New York Casualty Company, as surety, executed a bond in the penal sum of \$1,000.00 and reclaimed the Ford sedan. The gin and whiskey remained in the possession of the Department pending hearing to determine whether they should be confiscated.

At the hearing, Imperial Liquor Corporation and Freundlich urged that they should be relieved of forfeiture of the alcoholic beverages and the Ford sedan respectively because they had acted in good faith and had not consciously intended to violate the law.

Testimony shows that Kornfield, on a Saturday morning, requested immediate delivery of the gin and whiskey which he had previously ordered; that the one truck of Imperial Liquor Corporation would not be available until late in the afternoon; that the licensed transporter usually employed for other than local deliveries had no truck going to Morristown, whereupon Freundlich volunteered to make the delivery and the shipping clerk agreed, believing that no license was necessary to transport less than five gallons.

Alcoholic beverages, even though tax paid, are illicit when transported in an unlicensed vehicle. R. S. 33:1-1(i). Under the Alcoholic Beverage Law, such vehicle and the alcoholic beverages are subject to confiscation. R. S. 33:1-66(c). While I am convinced from the evidence that the employees of Imperial Liquor Corporation made an honest mistake prompted by their desire to satisfy the customer, the explanation is not an excuse but merely goes to the extent of the penalty to be imposed.

The records both of Imperial Liquor Corporation and of Fritz Freundlich are clear except for the instant matter.

Under the circumstances, the seized beverages may be returned to Imperial Liquor Corporation provided it pays, on or before October 1, 1939, the costs involved both in the seizure thereof and also of the motor vehicle by which they were unlawfully transported, and further provided that Fritz Freundlich, on or before the first day of October, 1939, applies for and completes all steps necessary to obtain a special permit to validate retroactively the unlawful transportation and pays the fee therefor, which will be twenty-five Dollars (\$25.00).

Accordingly, it is ORDERED that Fritz Freundlich, as principal, and New York Casualty Company, as surety, be and they hereby are released from any liability on their joint bond #348847-E, heretofore executed on November 15, 1938, in the sum of One Thousand Dollars (\$1,000.00) in favor of D. FREDERICK BURNETT, Commissioner, on condition, however, that Fritz Freundlich, on or before the 1st day of October 1939, shall apply for and complete all steps necessary to obtain such special permit and pay the aforesaid fee therefor.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 4, 1939.

7. FAIR TRADE - PACKAGING - NOT PERMISSIBLE TO SELL TWO PINTS FOR THE PRICE OF A QUART.

Dear Sir:

Will you please advise us if your Board would disapprove of a retailer selling two pints of a liquor with a Fair Trade price at the same price as the Fair Trade listing for one quart.

I do not believe that any licensee would profit by or attempt to indulge in this practice as a regular matter. My personal opinion would be that no harm would ensue if this procedure were carried out in a case where he was actually out of stock of the quarts.

Cordially yours,

Ira I. Schwarz

August 7, 1939

Schwarz Druggists, Inc.,
Newark, N. J.

Att: Ira I. Schwarz.

Gentlemen:

Prices are based in Fair Trade contracts on the package - pint, quart, fifth, gallon, as the case may be. As the size of the container increases, the price is relatively lower, e.g., the price of the pint is usually slightly in excess of half the price of the quart. The difference is compensation for handling more and smaller units.

If a retailer were allowed, for the alleged reason that he was out of quarts, to advertise or to sell pints at less than the established minimum, then he could make it appear, although giving no actual price advantage when measured by volume, that his minimum price per pint is less than his competitors - a subtlety quite unfair to accommodating retailers who make it a point to stock quarts.

As you say, perhaps there would be no great harm if a dealer were actually out of quarts, but how am I to determine that fact without taking an inventory? In order that laws be practical, they must provide simple objective tests.

Again, what is to prevent pairing off orders for pints to two different customers and calling it a quart! It is difficult enough to enforce these laws as it is, without playing into the hands of the chisellers.

While I realize full well that you and many others would scrupulously adhere to established prices except when actually out of stock, my rulings must be based on general principles and meet existing conditions.

I therefore rule that it is not permissible to sell two pints for the price of a quart under any circumstances, if it brings the unit price of a pint below the minimum established by Fair Trade listings.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - GAMBLING, EMPLOYMENT OF FEMALES AND FAILURE TO AFFORD UNOBSTRUCTED VIEW.

In the Matter of Disciplinary Proceedings against)

HARRY SCHLESINGER,)
126 Avon Avenue,)
Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-386, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Sidney Simandl, Esq., Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging, in substance, that:

1. On April 5 and April 11, 1939 he allowed gambling on his licensed premises in that he awarded drinks to persons obtaining winning scores on a bagatelle machine, contrary to Rule 7 of State Regulations No. 20;
2. On April 11, 1939 he employed a female to tend bar, contrary to a resolution adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark on August 29, 1934;
3. On April 5, 1939, between the hours of 5:50 A.M. and 7:00 A.M. he failed to draw aside the curtains or screens obscuring the view to the interior of his licensed premises, and failed to afford a free and unobstructed view to the public from the street to the interior of his licensed premises, in violation of Section 1 of Ordinance No. 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938.

Licensee pleads non vult as to the first charge, non vult "with a statement" as to the second charge, and not guilty as to the third charge.

As to Charge (1): At the hearing licensee admitted that on both dates mentioned in said charge he gave the drinks as prizes to investigators from this Department who had obtained winning scores on a bagatelle machine. That is five days.

As to Charge (2): Licensee admitted at the hearing that, on April 11, 1939, his wife tended bar and served alcoholic beverages to investigators and patrons. The statement presented by the licensee concerned an alleged interpretation given some years ago by the Municipal Board of Alcoholic Beverage Control of the City of Newark that the resolution in question did not apply to the wife of a licensee. But I have heretofore decided that the resolution prohibited the wife of a tavernkeeper from tending bar. Re Fabiano, Bulletin 313, Item 12. That is five days more.

As to Charge (3): Investigators Palmieri and Emmets visited the licensed premises on April 5, 1939 at 5:50 A.M. They discovered that the curtains were drawn on the doors and on all windows, so that it was impossible to see the interior of the licensed premises. On cross-examination, the investigators admitted that they could see the interior of the premises by looking over the top of the curtains if they stood on steps which led to the premises. They insisted, however, that the interior could not be viewed by a person standing on the sidewalk. The resolution in question provides:

"***that all establishments selling alcoholic beverages by virtue of a plenary retail consumption license shall be required to draw aside the curtains or screens obscuring the view from the street to the interior at 3 o'clock A.M. or 5 o'clock A.M., the closing hours designated, as the case may be, and keep same open at least until 7 o'clock A.M. on weekdays and 12 o'clock Noon on Sundays so that a free and unobstructed view may be afforded the public from the street to the interior during the above prohibited hours."

The regulation does not contemplate that one has to be a contortionist to obtain a free and unobstructed view.

Moreover, the licensee testified:

"Q On April 5, 1939 you are accused of failing to draw your screens. Do you remember whether you drew your screens that morning?

A No; I don't believe I did. I must have forgotten."

I find the licensee guilty as to the third charge. That is an additional five days.

This proceeding was instituted during the last licensing term. Pending its determination, the defendant's then license was transferred on June 15, 1939 to Harry Schlesinger and Pauline Schlesinger. The license has been renewed for the present fiscal year by the issuance of Plenary Retail Consumption License No. C-198, for the same premises to Harry Schlesinger and Pauline Schlesinger. Under these circumstances, this proceeding, though instituted during the last licensing term, does not abate but remains effective against the license now held by said individuals. Re Zochowski, Bulletin 264, Item 10.

Accordingly, it is, on this 5th day of August, 1939,

ORDERED, that Plenary Retail Consumption License No. C-198, heretofore issued to Harry Schlesinger and Pauline Schlesinger by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, effective August 10, 1939 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - PERMITTING PROSTITUTES UPON LICENSED PREMISES - PREVIOUS ORDER VACATED.

In the Matter of Disciplinary Proceedings against)

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

ON PETITION FOR REVIEW ORDER

Holder of Plenary Retail Consumption License C-992, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

-----)

M. Richard Lifland, Esq., for Nathan Williams.

The license of Nathan Williams was heretofore suspended for thirty days on charge of permitting a known prostitute upon the licensed premises, Bulletin 339, Item 4.

Petitioner prays a review of this case on the grounds (1) that the evidence does not show that there was a known prostitute in and upon the premises; (2) that the evidence does not show that Dorothy J_____ was a prostitute at the time in question.

Accordingly, I have reviewed the evidence with these points particularly in mind.

The charge in this case was very narrowly drawn. It charged that the defendant, on or about April 1, 1939, "allowed, permitted and suffered a known prostitute in and upon your licensed premises." The proofs, of course, must correspond with the allegations.

I find, on review of the testimony, that there is not sufficient evidence to show that the woman in the case was a prostitute in fact or that she was reputed to be a prostitute. The fact that she was the common law wife of the bartender and that he gave his own wife, whether ceremonial or common law, to another man, is disgustingly revolting, but falls short of the strict proof required that the woman was given to indiscriminate lewdness. A female may live in a state of illicit intercourse with a man for years without becoming a prostitute. There is no evidence that Dorothy J_____ was indiscriminate prior to her entry upon the licensed premises nor is there any evidence of prior sexual offenses.

Consequently, the Conclusions and Order heretofore made in this case on August 1, 1939 are hereby vacated.

I am glad to say that the defendant-licensee was not on the premises at the time and knew nothing of it. He was involved in this distasteful matter only because he was the employer of the bartender in question.

D. FREDERICK BURNETT, Commissioner.

Dated: August 7, 1939.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - PENALTY VOLUNTARILY ABSORBED.

In the Matter of Disciplinary Proceedings against
 AMBROSE CLARK, JR.,
 T/a Colonial Liquor Store,
 19 E. Main Street,
 Millville, N. J.,
 Holder of Plenary Retail Distribution License D-2, issued by the Board of Commissioners of the City of Millville.

ORDER

Ambrose Clark, Jr., Pro Se.

The license of Ambrose Clark, Jr., issued for premises 19 E. Main Street by the Millville Board of Commissioners, was heretofore suspended for five days and the effective date of such suspension reserved for future determination. (Bulletin 336, Item 13).

It now appearing that the licensee is desirous of serving said suspension and getting it over with regardless of the ultimate determination of the constitutionality of Chapter 208 of the Laws of 1938 and the Fair Trade regulations adopted pursuant thereto;

It is, therefore, ORDERED, that plenary retail distribution license D-2, heretofore issued to Ambrose Clark, Jr., t/a Colonial Liquor Store, for premises 19 E. Main Street, Millville, N. J., by the Board of Commissioners of the City of Millville, be and the same is hereby suspended for a period of five days effective August 14, 1939 at noon, Daylight Saving Time.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 7, 1939.

11. SPECIAL PERMITS - INDIRECT SALES VIA ADMISSION FEE CHARGED - PERMIT NECESSARY IN SUCH CASE.

Dear Sir:

I am Vice-President of a social club called the Widows and Widowers. We have a social twice a month and what we would like to know is can we serve beer free of charge, the members pay an admission to the club.

As the weather is getting warm, the members thought a glass of beer and sandwich would go very good, but we do not want to do this and get ourselves in trouble, so will you please advise us as to the matter.

Thanking you for whatever help you may give us,

Respectfully,
Mary V. Tononey,
Vice-President.

August 8, 1939.

Mary V. Tomoney, Vice-President,
Widows' and Widowers' Club,
558 Newark Avenue,
Jersey City, N. J.

My dear Mrs. Tomoney:

Your plan won't do as long as your members have to pay an admission fee to participate in the refreshments. For then the beer is not really free of charge. Its service, under such circumstances, is an indirect sale and therefore requires a special permit, the fee for which, good only for one day, is \$10.00.

I doubt if you would care to go to this expense for your regular sittings, but you might bear in mind that you can get a permit for some special occasion or celebration or even a drive for new members, as the permit is broad enough to include sales to outsiders.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

12. ALCOHOL - SPECIAL PERMITS - HEREIN OF DISPOSAL PERMITS AS
DISTINGUISHED FROM PERMITS TO POSSESS AND SELL.

August 8, 1939

Bond Wine & Liquor Store,
Camden, N. J.

Gentlemen:

I have yours of August 1st and find that Section 15 of alcoholic beverage ordinance adopted by the Camden Board on December 27, 1934, as amended June 27, 1935, provides that plenary retail distribution licenses shall not be issued to permit the sale of any alcoholic beverages in or upon any premises in which any other mercantile business is carried on.

It is, therefore, not possible, for the reasons in notice of July 28, 1939 (Bulletin 338, Item 1), for you, as the holder of a plenary retail distribution license, to obtain a permit to possess and sell alcohol.

As authorized in the notice, you may return such alcohol as you now have on hand to the manufacturer or wholesaler from whom it was purchased, without special permit, and therefore without any expense so far as this Department is concerned, provided the return is effected prior to September 1, 1939. I cordially suggest that you adopt this procedure.

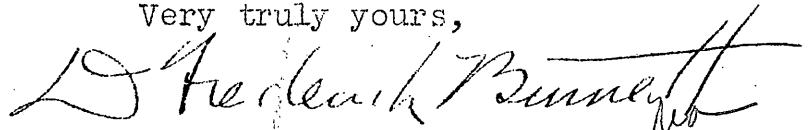
I would not grant a permit to dispose of the alcohol by way of retail sales to consumers. For such a disposal permit would be the equivalent, except for the fact that it would cover only your present limited inventory, of the regular permit to possess and sell, and this you are precluded from obtaining because of the ordinance aforesaid. Moreover, any such permit would have to be limited to a very short period of time in order that the non-conforming business conducted thereunder would be terminated at an early date.

The disposal permit contemplated in the notice is for the sale of the entire inventory in one lot to another retailer qualified to possess and sell alcohol, or to a manufacturer or wholesaler other than the one from whom the alcohol was purchased, or to a wholesaler of pharmaceuticals, or to some other person qualified under the law to make the purchases.

If you will effect the return as aforesaid, you will obviate not only the expense of the disposal permit, but also the necessity of finding a purchaser.

If, however, you are unable to effect such return, and will find your purchaser and write me giving his name and address and information as to the licenses or permits he holds authorizing him to engage in the purchase and sale of alcohol, or as the case may be, I shall be glad to send you the form of application for the disposal permit.

Very truly yours,


Commissioner.