

Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 145

OCTOBER 30, 1936.

1. ELECTIONS - GIFTS OF LIQUOR TO INFLUENCE VOTERS IS A MISDEMEANOR UNDER THE ELECTION LAW WHETHER GIVEN ON ELECTION DAY OR BEFORE OR AFTER.

October 15, 1936.

Dear Mr. Burnett:

Will you kindly advise me whether the dispensing of alcoholic beverages in any manner by individuals, clubs or organizations of any kind is permissible under the laws of this state or the rulings of your office on election day during the hours the polls are open. In other words is it lawful for any club or organization to set up places where on that day voters may be taken that they may receive alcoholic liquors.

Very truly yours,

RAYMOND E. TICE.

October 25, 1936.

Mr. Raymond E. Tice,
Williamstown, N. J.

Dear Mr. Tice:

I have your letter of the 15th.

Rule 2 Concerning Conduct of Licensees provides:

"2. No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

This rule will be strictly enforced. It applies, however, only to liquor licensees.

There is nothing to prevent a non-licensee from giving away alcoholic beverages on Election Day (or, for that matter, at any time) provided the gift is really gratuitous in every respect.

BUT beware the making of gifts to induce votes! For, if such benevolently inclined donor makes such gifts to voters he may find himself facing imprisonment for five years, or a fine of \$2,000, or both.

The Act regulating elections, P. L. 1930, Chap. 187, Sec. 25, provides:

New Jersey State Library

"If any person shall, directly or indirectly, by himself or by any other person in his behalf, give,or agree to giveor shall offer, promise or promise to procure, or endeavor to procure, any money or other valuable consideration or thing to or for any voter, or to or for any person, in order to induce any voter to vote or refrain from registering for any election, or shall corruptly do or commit any of the acts in this section mentioned on account of any such voter having voted or refrained from voting at an election, or registered or refrained from registering at an election, such person so offending shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished", etc. as aforesaid.

Among the acts mentioned is paragraph (e) which reads:

"If any person shall, directly or indirectly, give, offer or promise to give any sum or sums of money or any valuable thing in action, victuals, drink or preferment, or other considerations, by way of fee, reward, gift or gratuity, or other valuable present or reward to obtain, procure or influence the opinion, behavior, vote or abstaining from voting for the election of any delegate to any convention of any political party of this State, to nominate any candidate or candidates for member of the Legislature of this State, for any member of Congress of the United States, for electors for President and Vice-President of the United States, for Governor of this State, or for any candidate for any office in any county, city, town, township or borough in this State", etc. etc.

And again, paragraph (j) reads:

"No person shall give or agree to give for the purpose of promoting or procuring or for the purpose of opposing or preventing the election of a candidate for public office, or for the purpose of promoting or procuring or for the purpose of opposing or preventing the nomination of any person as a candidate for public office, any money or any valuable thing to be used to provide or give or to pay, wholly or in part, the expense of giving or providing any meat, drink, entertainment or provision to or for any person for the purpose of influencing that person or any other person to give or refrain from giving his vote at any election, or on account of any such person or any other person having voted or refrained from voting."

Violations of the alcoholic beverage rule should be reported to me. Violations of the Election law should be reported directly to the Prosecutor of the Pleas of the County in which the violation occurs.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. STATUTORY AUTOMATIC SUSPENSION - PETITION FOR LIFTING - DENIED WHEN PREMATURE AND INSUFFICIENT.

| | | |
|-------------------|---|----------------------------------|
| In the Matter of |) | ON PETITION FOR LIFTING OF |
| |) | STATUTORY AUTOMATIC SUSPENSION |
| SAMUEL FELSENFELD |) | BY REASON OF CONVICTION IN THE |
| |) | ESSEX COUNTY QUARTER SESSIONS |
| |) | COURT ON CHARGE OF "POSSESSION |
| |) | OF ILLICIT ALCOHOLIC BEVERAGES". |

CONCLUSIONS

BY THE COMMISSIONER:

It appears on the face of the petition that sentence has not yet been imposed upon petitioner in the criminal proceeding.

Nor, so far as the Department records show, has the Board of Commissioners of Irvington yet made any decision in the civil proceeding.

The claim that he is innocent despite the jury's finding of guilty is not a reason why the suspension should be lifted. He has been convicted by a jury of his peers. He should do penance for at least thirty days. Re: Morris, Bulletin #98, Item #10. If the liquor was poisonous, outright revocation is indicated. Bulletin #143, Item #2. Nothing on this phase appears in the petition. The petition is not specifically verified. Only a mere general affidavit is attached. It is in no wise corroborated.

The petition being premature and insufficient is, therefore, dismissed without prejudice..

D. FREDERICK BURNETT
Commissioner

Dated: October 26, 1936.

3. APPELLATE DECISIONS - PRIDE OF UNION LODGE vs. ELIZABETH.

| | | |
|---------------------------------|---|-------------|
| PRIDE OF UNION LODGE #134 |) | |
| IMPROVED BENEVOLENT PROTECTIVE |) | |
| ORDER OF ELKS OF THE WORLD, |) | |
| |) | Appellant, |
| |) | |
| -vs- |) | |
| |) | ON APPEAL |
| MUNICIPAL BOARD OF ALCOHOLIC |) | |
| BEVERAGE CONTROL OF THE CITY OF |) | CONCLUSIONS |
| ELIZABETH, |) | |
| |) | Respondent. |

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J. LeRoy Jordan, Esq., Attorney for Appellant.
Edward Nugent, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of its application, filed July 18, 1936, for a club license for premises 1171 East Grand Street, Elizabeth.

Respondent denied the application solely because it had, on June 8, 1936, adopted the following resolution:

Resolved, that no application for any type of license be accepted by the Municipal Board of Alcoholic Beverage Control after June 30, 1936."

This case depends on whether or not this resolution is reasonable in its application to appellant.

In Societa Operaia Di Mutuo Succorso Villaalba v. Trenton, Bulletin #41, Item #5, I held:

"Section 37 of the Control Act authorizes municipal issuing authorities to limit the number of licenses to sell alcoholic beverages at retail. But the numerical limitation is subject to appeal by anyone aggrieved thereby. Section 38. What should be the attitude of the appellate tribunal in attempting to solve this delicately difficult problem? The first step, often dispositive, is to determine upon whom rests the burden of proof.

"Independent of economic considerations, the social justification for a limitation of Retail Consumption Licenses is evident. Consequently, such a limitation was sustained on appeal, because the appellant failed to establish that it was unreasonable. Ryman vs. Branchburg Township Committee, Bulletin #37, Item #18. So the burden of proof is upon the appellant in the case of a Retail Distribution License to demonstrate that a community needs or will be more properly serviced by another liquor store. Colonna vs. Montclair, Bulletin #39, Item 8.

"Should the same principle apply to club licenses?

"Consumption and distribution licenses do not stand on the same footing as club licenses. In the former, the objective is commercial, in the latter fraternal. The Legislature has recognized this by providing a special license for benevolent, charitable, fraternal, social, religious, recreational and athletic organizations, if not operated for private gain. The club may not sell to the public generally

but only to bona fide members and guests and then only for immediate consumption. As against maximum and minimum fees of \$2,000. and \$200. for consumption licenses, the respective limits for club licenses are but \$150. and \$50. The obvious purpose was to recognize these clubs as a natural outlet for man's innate desire for fellowship with his own kind and to afford them the opportunity to furnish their bona fide members and guests with alcoholic beverages for a nominal fee amidst self-regulated, decent, home-like surroundings. It would be utterly un-American to allow some citizens special privilege to drink in their homes and refuse it to others. The club is but an association of several citizens; the clubhouse is in the nature of a common home. To grant the beverage privilege to one club and deny it to another, equally qualified, is unfair. It lacks both economic and social justification. True, a municipality has the power to limit the number of club licenses but the burden of proof to justify such a numerical limitation should be placed upon the municipality. It is so held."

Appellant is a bona fide club. It has held a yearly license since Repeal and the only Club License issued to the colored people in Elizabeth. The roster contains most of the best people of their race in the City. No objections were filed against the issuance of the license. The respondent has no objection to the conduct of their affairs and readily concedes the social desirability of granting the application. The license was denied solely because of the limiting resolution. No evidence was offered by respondent to show the reasonableness of the limitation in its application to appellant. Hence the burden of proof has not been sustained.

The Exalted Ruler of the Lodge testified that shortly prior to the expiration of the preceding license period on June 30th last, the Lodge had been suspended by the Grand Lodge because of non-payment of dues, and therefore there was no one in the suspended organization who could make application for renewal of the Club License; that a few days after the Lodge was reinstated in July, the present application was made. There was no intimation of any intent to abandon the license. It is substantially a renewal. Re: New Jersey Licensed Beverage Association, Bulletin #141, Item #2.

I hold, therefore, that the resolution is unreasonable so far as its application to appellant is concerned.

The action of respondent is reversed and respondent is directed to issue the license applied for.

D. FREDERICK BURNETT
Commissioner

Dated: October 26, 1936.

4. APPELLATE DECISIONS - SZANGER vs. NEWARK and STANCO,
TRADING AS WHITEY'S TAVERN

| | | |
|------------------------------------|---|--------------|
| JOSEPH SZANGER, |) | |
| Appellant |) | |
| -vs- |) | On Appeal |
| |) | |
| MUNICIPAL BOARD OF ALCOHOLIC |) | CONCLUSIONS. |
| BEVERAGE CONTROL OF THE CITY OF |) | |
| NEWARK, and AMEDEO STANCO, trading |) | |
| as WHITEY'S TAVERN, |) | |
| |) | |
| Respondents. |) | |

Harry Szanger, Esq., Attorney for Appellant.
 Samuel P. Bernhaut, Esq., Attorney for Respondent, Municipal Board
 of Alcoholic Beverage Control of Newark.
 William V. Azzoli, Esq., Attorney for Respondent, Amedeo Stanco,
 trading as Whitey's Tavern.

BY THE COMMISSIONER:

Appellant appeals from the renewal without restrictions of plenary retail consumption license for premises #1 Peshine Avenue, Newark.

The petition of appeal alleges that the premises have been improperly conducted in the past and prays that such conditions as are necessary to prevent the continuance of the alleged improper conduct be imposed upon the licensee.

The evidence establishes that frequent complaints have been made by neighborhood residents, principally by reason of the loud conduct and profanity of the patrons, the constant playing of music by a dance orchestra until three o'clock in the morning, and the general hilarity which accompanies so-called "amateur nights" held twice each week. The noisy character of the premises is accentuated by the use of a sound amplifier. In addition, several witnesses testified that drunken patrons were seen leaving the premises and on one occasion two intoxicated women were carried out.

While members of the Newark Police and Health Departments testified that they had made several visits to the premises and found no basis for complaints, these visits were all made after the filing of the neighborhood objections, when the conduct of the licensee and his place would, quite naturally, be guardedly conservative.

The preponderance of the evidence shows that residents in the vicinity of the licensed premises have been subjected to annoyance and distress of a character which is wholly unnecessary and out of keeping with decent, orderly maintenance of a tavern.

The respondent licensee stressed the fact that there are in the immediate neighborhood, another tavern, a factory, and railroad tracks. This does not alter the circumstances that there are still many people whose homes are in this vicinity, who work hard during the day and who are entitled to rest and quiet during

the sleeping hours of the night. These folk do not seek to terminate the license. They are willing to live and let live. They ask merely that the music and disturbances in the tavern shall cease at a reasonable hour. The fairness of such a request makes a strong appeal.

The license of respondent Amedeo Stanco is hereby modified by subjecting it to the following special conditions, hereby imposed, viz.:

1. That the licensee shall forthwith remove all sound amplifying devices from the licensed premises and thereafter desist from their use.

2. That all music, singing and other form of entertainment whatsoever shall cease at twelve o'clock midnight, except that on Sunday mornings such music, singing and entertainment may continue until two o'clock A. M.

As thus modified, the action of the respondent Municipal Board in renewing the license is affirmed.

D. Frederick Burnett
Commissioner.

Dated: October 27, 1936.

5. APPELLATE DECISIONS - SZANGER vs. NEWARK and MARECH, TRADING AS WAVERLY TAVERN.

JOSEPH SZANGER,)
Appellant)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK, and ISIDORE AND PHILIP)
MARECH, t/a WAVERLY TAVERN,)
Respondents.)

On Appeal
CONCLUSIONS.

Harry Szanger, Esq., Attorney for Appellant.
Samuel P. Bernhaut, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control of Newark.
Sidney Simandl, Esq., Attorney for Respondents, Isidore and Philip Marech, t/a Waverly Tavern.

BY THE COMMISSIONER:

This is an appeal from the renewal without restrictions of plenary retail consumption license for premises #205 Waverly Avenue, Newark.

The premises are located in the same neighborhood as that considered in Szanger v. Whitey's Tavern, Bulletin #145, Item #4, and the appellant in both cases is the same. The petition of appeal alleges that the premises have been improperly conducted in the past and prays that such conditions as are necessary to prevent the continuance of the alleged improper conduct be imposed upon the licensees.

The appellant's son and a few neighbors testified that they have been annoyed by the boisterous, noisy conduct and profanity of the patrons and that they were frequently kept awake by

music, singing and carousing in the premises. On the other hand, many witnesses, both neighborhood residents and patrons, testified to the decent, orderly manner in which the premises were conducted.

In analyzing the testimony, I find that Harry Szanger, appellant's son, patronized this tavern regularly until the Spring of this year. About two years ago, he borrowed the automobile of one of the licensees for the purpose of taking home a couple of girls. While using the car, he met with an accident and damaged it to the extent of approximately Sixty (\$60.00) Dollars. He agreed to pay the licensee for the damage and gave him his promissory note. The note was not paid. Demand for payment terminated the friendly relations between the son and the licensee.

Harry Szanger testified:

"The reason I discontinued going to Mr. Marech's saloon was, two or three weeks before I had complained to them about the noises, that it was impossible to sleep, that our tenants were complaining. I said, 'I realize that you have a business, but if we are left without our tenants we cannot pay our taxes.' The last time I complained to Isidore he said, 'Don't bother me with your complaints, if you don't like this place you don't have to come back.' I said, 'If you don't listen there is only one thing to do and that is to make complaint to the Board'; that we were friends but I hate to do it. He said, 'You can do anything you want, I am not afraid of you.' As a result, I filed the objections. I made objections previous to that time. That thing (referring to the promissory note) has been held as a threat not to bring these complaints. He said, 'If you bring action against me, I will sue you.' They have been holding that note as a threat over my head."

On cross-examination, Mr. Szanger testified:

"Q You patronized this establishment, did you not? A Yes, I did.

Q Up until when? A Two or three weeks before I filed my first objections before the Excise Board.

Q How frequently did you go in the establishment? A I was in there every evening.

Q You stayed there until the closing hour? A Till things remained quiet; I might as well stay there and drink a glass of beer.

Q You entertained friends there? A Oh, yes, I had my friends come up there.

Q And you partook of everything? A I paid.

Q But you entered into the spirit of the thing and was friendly with this gentleman? A Yes."

And, again:

"Q Shortly before you lodged these complaints, he asked you for this money, didn't he? A Yes. The way he asked, he said, 'Harry, how about paying this note?' And I said, 'Wait awhile and I will pay it.'

Q You didn't pay him? A No."

Isidore Marech, one of the licensees, testified:

"Q Do you know Harry Szanger? A For six years.

Q Was he a customer of yours? A Yes, sir.

Q Did anything happen to disturb your friendship?

A This here thing (the note) caused all the trouble when I asked about some money.

Q Is this the note? A Yes.

Q Did you ask him for the money? A Yes, and he says, 'Don't bother me; I can put you out of business any time I feel like.' I says, 'Don't bother me no more.'

Q Did he patronize you after that? A No."

Charles Bonnett, a patron of the establishment, testified:

"Q What have you to say about Mr. Szanger speaking to Marech in your presence about their tavern?

A After he had the trouble with his car, he says to me, one night, 'I will get those fellows'. I says, 'How can you do it?'; and he says, 'Easy - for disturbing the place.' And I says, 'That's not right.' He says, 'Well, I am going to get them; I will show you how you can close this place up.' And I said, 'You have to go some.'"

Another of appellant's witnesses conducts a grocery store next to the licensed premises. She is a tenant of the appellant. It was testified that she had recently demanded from him a reduction in her rent because the tavern had begun selling sandwiches in competition with her.

In view of the matters above recited, I cannot accord much weight to the testimony of these two witnesses regarding noise and nuisance. On the other hand, the testimony that the creditor-licensee, so far from being intimidated by the announced intention of appellant's son to complain to the local Excise Board, defied him to do it, speaks eloquently of the confidence of clear conscience.

The licensees take an evident pride in the respectable manner in which the tavern is run. The orchestra is one hundred fifty feet back from the street and the adjoining wall is sound-proof. The windows of the premises are closed at midnight. Entertainments are over at 11:30 P.M.

A careful weighing of the evidence presented by both sides convinces me that there is no present necessity for imposing any special conditions upon these licensees.

Accordingly, the action of respondent Municipal Board in renewing without restrictions the license of respondents Isidore and Philip Marech, is affirmed.

Dated: October 27, 1936.

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - PETITION FOR REOPENING DENIED WHEN NO CAUSE APPEARS THEREIN WHY IT SHOULD BE REOPENED.

October 21, 1936.

John H. Kafes, Esq.,
Trenton, N. J.

Sidney Goldman, Esq.,
City Attorney,
Trenton, N. J.

Re: Frank Girard vs. City
Council of the City of
Trenton.

Gentlemen:

I have examined the petition of Frank Girard to reopen this case.

No cause appears therein why I should. The time to fight out a case is when it is set for final hearing. The petition is denied.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. APPELLATE DECISIONS - PETITION FOR REOPENING DENIED WHEN NO CAUSE APPEARS THEREIN WHY IT SHOULD BE REOPENED.

October 26, 1936.

James Mercer Davis, Esq.,
Camden, N. J.

My dear Mr. Davis: Re: Beringer vs. Camden and Mazer

I have yours of October 24th enclosing application for rehearing.

The application consists of a mere notice that the defendant, Fannie Mazer, "hereby respectfully requests a rehearing". That is all that appears. No reasons whatsoever are assigned. The case was fully heard and it has been carefully decided.

The application is denied without prejudice.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 27th, 1936.

RE: Application for Solicitor's Permit - Case No. 23.

Applicant admits in his questionnaire that he was convicted in 1920 for violation of the Prohibition Law. Report received from the office of United States Attorney for the District of New Jersey shows five convictions against a person of similar name for various violations of the National Prohibition Act. The applicant was granted a hearing for the purpose of explaining these alleged convictions and his affidavit.

At the hearing applicant swore that the first and fourth convictions appearing on the report of the United States Attorney were not convictions against him, but against another party of a similar name, and that the fifth conviction shown on said report was incorrect. With reference to this fifth conviction, the report shows that applicant pleaded guilty and was sentenced to pay a fine of \$50.00. Subsequent to the hearing, a certified transcript of the records of the District Court of the United States for the District of New Jersey was produced, which corroborates applicant. This transcript shows that said case was nolle prossed as to applicant, although two co-defendants were fined. In accordance with our procedure, applicant was fingerprinted and his fingerprint record fails to show any conviction relating to the first, fourth or fifth alleged convictions set forth in the report of the United States Attorney. I am satisfied, therefore, that the first and fourth of these alleged convictions are not convictions against applicant, and that the record of the fifth conviction is incorrect.

The second and third alleged convictions contained in the report of the United States Attorney require explanation. At the hearing, applicant contended that both of these convictions arose out of the one transaction; that the first conviction was subsequently set aside on appeal; that an appeal from the second conviction was sustained and applicant sentenced thereon to six months in a County jail, which sentence he served; that he referred to this conviction in his questionnaire and that, as a matter of fact, he has been convicted only once for violation of the National Prohibition Act.

Applicant's explanation is corroborated by a statement received from the attorney who represented him at that time, and also by the report received as to his fingerprint records. From all the evidence, I conclude that applicant has never been convicted of a crime involving moral turpitude, and that his answer in the questionnaire was substantially correct, although he misstated the year of his conviction.

It further appears from report of fingerprint records that applicant was arrested more than a year ago on a charge of embezzlement; disposition not given. The Prosecutor of the Pleas of the county in which said arrest took place has certified that there is no charge or indictment of any nature pending against applicant.

Under the circumstances, it is recommended that the application for solicitor's permit be granted.

Approved:

Edward J. Dorton,
Attorney-in-Chief.D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - SCHWARTZ vs. BELLMAWR.

| | | |
|------------------------|---|-------------|
| NORA SCHWARTZ, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| -vs- |) | ON APPEAL |
| |) | |
| BOROUGH COUNCIL OF THE |) | CONCLUSIONS |
| BOROUGH OF BELLMAWR, |) | |
| |) | |
| Respondent. |) | |
| |) | |

Ernest Dubin, Esq., Attorney for Appellant.

Thomas M. Madden, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of her application for a plenary retail consumption license for premises known as the Royal Oak Tavern, Bellmawr, Camden County.

Respondent contends that the appellant is merely a "dummy" for her husband Ben Schwartz, who is alleged to be the real party in interest.

Some weeks prior to the denial, the Mayor asked Ben Schwartz why the application was being made in his wife's name. Schwartz replied that "he thought some question might be raised." He added that he would be the proprietor and that his wife would help. In this statement she concurred. At the hearing on appeal Schwartz at first denied he had made such an admission. His subsequent testimony, however, was as follows:

"Q Did you tell the Mayor in the presence of your wife you were going to run the business at the Royal Oak Tavern but were going to make the application in your wife's name?

A When I went down, he asked what was the reason for putting the application in my wife's name, and I said, 'To begin with, it would be a good idea; I would have a good excuse, it belongs to the wife.'

Q In other words, you were putting the license or application in the name of your wife as a matter of convenience?

A It was part of her money.

Q But you were going to run the place?

A Yes, I was going to help her out.

Q You were going to dictate the policies of the place? (No reply)."

Schwartz admitted that he had been a bootlegger during Prohibition. In January, 1936, he pleaded guilty to a charge of uttering a

worthless check and received a six months suspended sentence. His occupations during the past ten years furnish the motive for the effort to obtain the license in the name of his wife - "pin machines, saloon business - before Repeal". After Repeal, he purchased a tavern in Egg Harbor, but the license remained in the name of "Charlie Penzi". Recently he was "connected with" another saloon which he believed was licensed in the name of "Tony Del Duca". Schwartz, however, was the "money man" and as such uttered the check for which he was indicted. It is clear that appellant's application is merely a subterfuge and that the real party in interest has not been disclosed therein. Nora Schwartz did not even appear at the hearing on appeal.

The evidence sustains respondent's contention. The license was therefore properly refused. Plager v. Atlantic City, Bulletin #80, Item #11, and cases therein cited: see also Hudson County Retail Liquor Stores Association v. Terminal Wines & Liquors, Inc., Bulletin #127, Item #1; Goodman vs. Atlantic City, Bulletin #128, Item #8; William Tell Hotel Corporation v. Ridgewood, Bulletin #65, Item #3.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: October 28, 1936.

10. APPELLATE DECISIONS - WEST MARKET REALTY CO., vs. DERRICKS, ET AL.

WEST MARKET REALTY CO., a)
corporation of the State of)
New Jersey, and LOUIS BLIWISE,)
Appellants,)

-vs-

ON APPEAL

WILLIAM DERRICKS and HENRY)
J. WILLIAMS, t/a GRAND HOTEL,)
and THE MUNICIPAL BOARD OF)
ALCOHOLIC BEVERAGE CONTROL)
OF THE CITY OF NEWARK,)
Respondents.)

CONCLUSIONS

William Greenfield, Esq., Attorney for Appellants.
Klein & Klein, Esqs., by Nathaniel J. Klein, Esq.,
Attorneys for Respondents Derricks and Williams.
Frank A. Boettner, Esq., Attorney for Respondent The Municipal
Board of Alcoholic Beverage Control of the City of Newark.

BY THE COMMISSIONER:

This is an appeal from renewal of a license to respondents Derricks and Williams, who conduct the Grand Hotel, at 78 West Market Street, Newark.

Appellant, West Market Realty Co., is the owner of two large apartment houses adjoining the licensed premises and appellant Louis Bliwise is the General Manager of said Company. At the

hearing, Mr. Bliwise and four other persons residing in the immediate vicinity testified to excessive noises outside the premises consisting of the blowing of automobile horns, laughter and talking of patrons leaving the place, which noises continued until 4:00 A. M. or 5:00 A. M. These witnesses complained also of the playing of music on the premises until the early hours of the morning.

The police report recommended rejection of the renewal. It appears, however, that this recommendation was founded upon the fact that continued complaints were being made and not upon facts disclosed by police investigation. When objections to renewal were filed, the Municipal Board of Alcoholic Beverage Control held a hearing and one of the members thereof made twenty inspections of the neighborhood in which the licensed premises are located between 11:30 P. M. and 3:30 A. M., after which the Board concluded that the objections were not substantial enough to warrant refusal of the renewal. Aside from the music, there is nothing in the record to show any annoying or improper conduct upon the premises themselves.

The evidence in this case is not sufficient to cause me to reverse the action of the Municipal Board in renewing the license, especially in view of the fact that the license was renewed upon the following conditions:

"that music in the premises cease on every day, except Saturday, at 11:30 P. M., and that on Saturday nights the playing of music was to be permitted, on condition that it would cease at one o'clock A. M. Sunday morning, and, further, that all noises within and immediately outside the licensed premises be reduced to a minimum."

The Grand Hotel is situated on a business street. There is noise from trolleys, buses and autos. The condition set forth in the license should suffice to protect the neighbors from annoyance in so far as the licensed premises are concerned. If it does not prove sufficient, sterner measures will then be in order.

The action of respondent, The Municipal Board of Alcoholic Beverage Control of the City of Newark, is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: October 28, 1936.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - ISSUING AUTHORITIES SHOULD DEFINITELY ADJUDICATE LICENSEES EITHER GUILTY OR INNOCENT.

October 29, 1936.

Mrs. Ann M. Baumgartner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Camden, N. J.

Dear Mrs. Baumgartner:

I have before me staff report and your certification of proceeding before the Municipal Board of Alcoholic Beverage Control of Camden against Francesco W. Auletto of 1135-37 South Fourth Street, charged with having possessed illicit alcoholic beverages.

The report states:

"On June 27, 1936, Inspector Kenny and Investigator Roxbury inspected the licensed premises. A test of two open bottles indicated that the contents thereof were different than as represented by their labels.

"The report of analysis of the Department Chemist disclosed that the quart bottle of whiskey, about one-fourth full, labeled 'Old Quaker Straight Rye Whiskey 90 proof' contained a blended whiskey 86 proof and was not whiskey as represented on the label. The quart bottle of whiskey about one-half full, labeled 'Schenley's Bar Blended Whiskey 90 proof' contained a blended whiskey 87 proof, being 3 proof short of the proof indicated on the label.

"The licensee stated that as a rule he did not personally handle the alcoholic beverages but depended upon the day and night bartenders; that the only explanation he could give was that, perhaps, one of the bartenders had mixed from one bottle to another or added water.

"Decision was reserved by the Board.

"We are now in receipt of a certification from the Secretary of the Board reading as follows:

'NOW THEREFORE, BE IT RESOLVED by the Municipal Board of Alcoholic Beverage Control of the City of Camden, New Jersey, that the said Francesco W. Auletto, be reprimanded and the case dismissed.'

I am puzzled by the verdict and would suggest that the certification be corrected so that our records may indicate whether or not the licensee was adjudicated guilty or not guilty. The fact that he is reprimanded would indicate that the Board was satisfied as to his guilt. Am I right in assuming that it was the intent to adjudicate him guilty and warn him against a future violation of this kind? If so, the resolution should read somewhat as follows:

"NOW, THEREFORE, BE IT RESOLVED by the Municipal Board of Alcoholic Beverage Control of Camden that the said Francesco W. Auletto be and he is hereby adjudicated guilty of the charge preferred against him; that sentence is suspended with a warning that any future violation will result in a revocation or suspension of the license."

Will you please advise me on this matter.

Incidentally, reprimands are soon forgotten and are of but slight help in law enforcement.

Very truly yours,

D. FREDERICK BURNETT

Commissioner

12. LICENSEES - EMPLOYMENT OF WOMEN - QUALIFICATION UNDER STATE LAW AND APPLICATION OF LOCAL REGULATION - HEREIN OF THE COOPERATION OF THE LOVELORN IN LAW ENFORCEMENT.

Dear Sir:

Mr. Burnett will you please let me know by return mail if there is any way to stop a girl from working in a tavern serving drinks. I have been going with a girl steady for 2 1/2 years and we intended to get married this winter. Three weeks ago we had a little quarrel. So she goes out and gets a job in a low Down Rum Hole a regular bums hang out. She told me she did it just for spite as she knew I did not drink. She would not tell me where it was but last Thursday night I just happened to walk by and she came out off the Bar Room Door with some cans of beer in her hand to deliver them to a house. So I waited for her to come back. I followed her in the place and I was more than surprised to see such a dump. I have tried to coax her to give it up. She says she likes it. She is old enough to know better. She is 46 years old and I am 56. When I met her she was down and out. I have clothed her ever since and gave her spending money, gave her presents and a nice diamond ring. I told her if she did not give up the job I would leave her. So she said go ahead. Where she works is _____.

Please let me know what can be done. I don't want her to work in such a place.

Her address is _____. Write and give her her orders to get out.

Hoping to hear from you soon,

Yours truly,

October 29, 1936.

Mr. _____,

My dear Mr. _____:

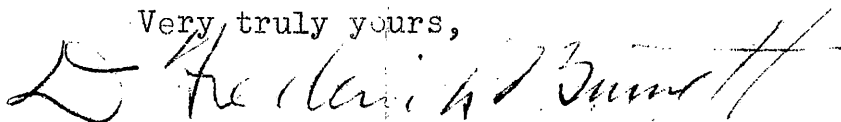
There is nothing in the Control Act or the State rules to prohibit the lady's employment by a licensee provided she is qualified to hold a license herself. That means she must be a citizen, a resident for five years, over twenty-one, must not have been convicted of a crime involving moral turpitude nor have committed two or more violations of the Act.

The Newark Excise Board have enacted that it shall be unlawful for a Retail Consumption Licensee to employ any female to tend bar, sell, or serve alcoholic beverages to patrons, where the principal business is the sale of alcoholic beverages, or to sell or serve directly over such bar, where the principal business is other than such sale or to employ any female as a hostess, where the principal business is such sale.

If she is duly qualified and there is no violation of the local rule, then, although sympathetic with your dissent from the universality of Mr. Shakespeare's "parting is such sweet sorrow", I have no power to stop her in the exercise of her prerogative. Appreciating your cooperation in enforcement, I take it, however, that you are more interested in the lady than in the law, and hence doubt if you are going about it in the right way to woo her back. But that's beyond my province. I'm only a Commissioner.

With best wishes for a happy ending, I am,

Very truly yours,



D. Frederick Burnett
Commissioner