

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

BULLETIN 302

MARCH 14, 1939

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALE TO MINORS.

In the Matter of Disciplinary )  
Proceedings against )  
SAM STOLZ, )  
(Stolz's Log Cabin), ) CONCLUSIONS  
376 South Orange Ave., ) AND ORDER  
Newark, N. J., )

Holder of Plenary Retail Consump- )  
tion License C-1026, issued by the )  
Municipal Board of Alcoholic Bever- )  
age Control of the City of Newark. )  
----- )

Charles Basile, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.  
John J. Meehan, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant pleaded non vult to the charge of selling liquor to four minors in violation of Statute and State Rule.

On January 2, 1939, at about 9:00 P.M., Helen Vicari (aged 16), Gertrude Vicari (aged 18) and Viola Thornhill (aged 17), entered the defendant's tavern, seated themselves at a table, and were served a round of beer by the waiter. Soon thereafter they were joined by two friends, Edward Ganzler (aged 20) and Edward Sheridan (aged 24). The entire party was then served one or two rounds of beer, whereupon Helen, the youngest, left. The remaining four had one or two more rounds, and left the tavern at about 12:30 A.M. They apparently went next door to the West End Bar & Grill and there had further drinks. See Re Bachman, Bulletin Item next following.

The defendant testified that he was not on the premises at the time; that he has instructed his employees "to be very careful not to sell to any minors" under penalty of losing their jobs; that, pending disposition of this proceeding, he has suspended the waiter who was identified as the one who did the serving.

The fact that the sale and service of the beer were made by one of the defendant's waiters instead of the defendant himself presents no excuse. A licensee is strictly accountable for the violation of his employees upon the licensed premises.

Here, four minors, ranging in age from 16 to 20, were served several rounds of beer without, so far as appears, even an inquiry as to their ages.

The defendant's license will be suspended for twenty (20) days.

Accordingly, it is, on this 6th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-1026, heretofore issued to Sam Stolz by the Municipal Board of Alcoholic Beverage

Control of the City of Newark, shall be and the same is hereby suspended for a period of twenty (20) days, commencing March 10, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALE TO MINORS.

In the Matter of Disciplinary Proceedings against )

OSCAR W. BACHMAN,  
(Bachman's West End Bar & Grill), )  
372 South Orange Avenue,  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-376, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
----- )

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.  
Frederic M. P. Pearse, Esq., by Max Mehler, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant pleaded non vult, with leave "to present an explanation and also mitigating circumstances", to the charge of selling liquor to three minors in violation of Statute and State Rule.

The defendant's tavern is 107 feet long and 20 to 40 feet wide, and contains a dance floor. In addition to drinks, the defendant also serves cold cuts and sandwiches.

On January 3, 1939, Viola Thornhill (aged 17), Gertrude Vicari (aged 18), Edward Ganzler (aged 20), and Edward Sheridan (aged 24), were together in a party on the premises between 12:30 and 2:00 A.M., drinking and dancing. These persons came in from Stolz's Log Cabin, located next door, where they had previously had several rounds of beer. See Re Stolz, Bulletin Item next preceding.

The defendant admits that his waiters served at least two rounds of beer to the party. Sheridan testified that the waiter served three or four rounds.

The defendant testified that he was not on the premises at the time but had left his wife in charge; that he cautioned her and the waiter never to sell to minors but to exclude them from the premises; that almost every night he has had occasion to exclude persons who appeared to be under twenty-one; that on the night before the hearing in this proceeding as many as fifteen such persons were excluded. The waiter testified that he served beer (which he insists was only two rounds) to the party because he knew Sheridan was of age.

The defendant, despite his absence from the tavern and his instructions to his wife and the waiter, is nevertheless responsible for the sales of beer to the three minors. A licensee is

strictly accountable for the violations of his employ es upon the licensed premises. Re Stolz, supra. The fact that the defendant has had frequent occasion to exclude persons from his tavern on the suspicion of their being under age does not excuse the waiter's service of beer to the three minors on the present occasion without even so much as an inquiry as to their ages.

The only difference between Re Stolz, supra, and this case is that in the former case a sixteen year old minor was also involved.

The defendānt's license will be suspended for fifteen (15) days.

Accordingly, it is, on this 6th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-376, heretofore issued to Oscar W. Bachman 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, commencing March 10, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE BY CONSUMPTION LICENSEE VIA GROCERY STORE - 15 DAYS.

March 6, 1939

Bernard J. Dunigan,  
Township Clerk,  
Woodbridge, N. J.

My dear Mr. Dunigan:

I have before me staff report and your letter of February 21st re disciplinary proceedings conducted by the Township Committee against Gurson Robinson, charged with sale of alcoholic beverages beyond the terms of his license, and note that his license was suspended for fifteen days.

According to the staff report, Robinson stored beer in the refrigerator of his grocery store adjoining his tavern and sold beer to my investigators on Sunday in the grocery store while the tavern was closed. In view of the licensee's previous record and his obvious attempt to evade the Sunday closing regulation by using his grocery store as a blind, the suspension of fifteen days seems amply justified.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the penalty imposed.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 4. DISCIPLINARY PROCEEDINGS - SLOT MACHINES AND EMPLOYMENT OF INELIGIBLE PERSONS.

March 6, 1939

Howard R. Yocum, Esq.,  
Chester Township Solicitor,  
Camden, N. J.

My dear Mr. Yocum:

I have before me staff report and your letter of February 10th re disciplinary proceedings conducted by the Chester Township Committee against Spring Hill Country Club, S-41 State Highway & Boulevard, Maple Shade, charged with possession of slot machines and employment of ineligible persons, and note that the license was suspended for 20 days.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the substantial penalty imposed.

Vigorous enforcement of the liquor law and regulations pays dividends. You should have no further trouble with this or any other licensee in Chester Township.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 5. CONSUMPTION LICENSES - NO OBJECTION TO HOLDING CLUB MEETINGS IN TAVERNS.

CONSUMPTION LICENSEES - MAY SELL AND SERVE ALCOHOLIC BEVERAGES TO MEMBERS OF CLUBS MEETING IN THE TAVERN, WITHOUT ANY ADDITIONAL LICENSE.

CLUBS - INADVISABLE TO USE THE NAME OF THE TAVERN OR OF THE TAVERN PROPRIETOR IN THE NAME OF THE CLUB, WHERE THE CLUB WILL COMPETE WITH OTHER GROUPS IN ATHLETIC CONTESTS.

CONSUMPTION LICENSEES - CLUBS USING TAVERNS FOR MEETINGS MAY HAVE A CONTAINER ON THE BACK BAR FOR CONTRIBUTIONS OF MEMBERS.

GAMBLING - LOTTERIES - "DARK HORSES" ARE NOT PERMISSIBLE IN TAVERNS.

Dear Sir:

A group of my friends are forming a club for the purpose of sponsoring social and athletic activity. They plan to hold their monthly meetings in a room at the rear of a local tavern. The owner of this tavern will be an active member of the club.

Would you kindly inform us of your ruling concerning these particulars:

1. If we were to name the club...Jack Young Social and Athletic Club or Jack's Social and Athletic Club....must the owner, Jack Young, have a special license? Is it generally advisable to title the owner's name in club headings?

2. Would we be allowed to place a bowl or container on the counter in back of the bar, with a card explaining to our members that all odd pennies thrown into the bowl will be used to pay for refreshments at a party to be given by the members when the bowl is filled?
3. May we conduct a Dark Horse at meetings in this tavern?

Yours very sincerely,  
John J. Lynch

March 6, 1939

Mr. John J. Lynch,  
North Bergen, N. J.

My dear Mr. Lynch:

There is no objection to clubs holding meetings in taverns, so long as good order is maintained and no conduct permitted which would be in violation of the State law or the State or municipal regulations. See Re DeStefano, Bulletin 227, Item 4; Re Lervison, Bulletin 210, Item 1.

It is not necessary that the proprietor of the tavern in which the meetings are held, have a special license. He may sell and serve alcoholic beverages to the club members, in the manner and to the extent the law allows, under his regular plenary retail consumption license.

It is permissible for the club to use the tavern proprietor's name, in the name of the club, viz., "Jack Young Social and Athletic Club" or "Jack's Social and Athletic Club." But if the club will compete with other groups in athletic contests it is not advisable. It is wholly out of place to use athletics and athletic contests to advertise liquor. Moreover, the club is not comprised of employees of the tavern. Nevertheless, by using its name, you advertise the tavern and hold yourselves out as representing it. That, however, is a misrepresentation. I therefore cordially advise that you use some other name than that of the licensee or of the tavern.

You may have a container on the back bar for the voluntary contributions of members, to be used to pay for refreshments for the club members at a party to be held when the bowl is filled.

I understand that a "Dark Horse" involves the raffling of a prize, the identity of which is not known to the participants, by some such method as drawing names out of a bowl or hat. Raffles are lotteries. Lotteries are prohibited on licensed premises by Rule 6 of State Regulations No. 20. Violation is cause for the suspension or revocation of the license. Don't do it. "Dark Horses" are not permissible in taverns.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

6. FOOD PRODUCTS MANUFACTURERS - NO LIQUOR LICENSE IS NECESSARY FOR THE SALE OF FOOD PRODUCTS CONTAINING ALCOHOL OR ALCOHOLIC BEVERAGES, WHERE THE PRODUCT IS NOT SUITABLE FOR BEVERAGE USE - HEREIN OF MINCE PIES.

Gentlemen:

I am writing to inquire whether there is a license required for the sale of brandied peaches or fruits of any kind. We sell preserves of various kinds and wonder if fruit partly preserved in liquor comes under your control.

While we realize that any housewife is allowed to sell her own mince pies, which of course would contain some liquor, there just might be an exception to the rule.

Sincerely yours,  
Mrs. M. B. Cornell.

March 6, 1939

Mrs. M. B. Cornell,  
Denville, N. J.

My dear Mrs. Cornell:

No license or permit is required under the State Alcoholic Beverage Law for the sale of brandied peaches, brandied fruits, food products in general preserved in liquor, or articles, such as mince pies, which are made with and therefore contain some liquor, provided the product is not suitable for beverage use. R. S. 33:1-30 (Control Act, Sec. 27). I should hardly think they would be, especially the pies. I can't imagine drinking a mince pie. But just to make sure, I deem it best that you submit samples of what you sell for analysis. It is the safest thing for you to do because I can then give you a dispositive ruling.

It is a misdemeanor to sell merchandise containing in excess of one-half of one per cent of alcohol by volume and fit for beverage use, without a license.

While on the point, I am wondering from whom you have been purchasing the alcoholic beverages with which you make your preserves. If from retail licensees, you need no permit to make the purchases. But if from wholesalers, it is wrong unless a permit has been obtained. Wholesalers under the law may sell only to licensed wholesalers or retailers. Before they could sell to you, as a food products manufacturer, the sales would first have to be covered by a permit.

The foregoing contemplates only the provisions of the State Alcoholic Beverage Law. For the Federal Law or Regulations, I suggest that you communicate directly with the Federal Bureau of Internal Revenue, Post Office Building, Newark.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - LIMITED RETAIL DISTRIBUTION LICENSEES -  
POSSESSION OF CHILLED BEER.

March 6, 1939

Samuel W. McAneny,  
Borough Clerk,  
Fanwood, N. J.

My dear Mr. McAneny:

I have before me staff report and your letter of February 23rd re disciplinary proceedings conducted by the Borough Council against Reliable Holding Co., South and Martine Avenues, charged with possession of chilled beer on premises licensed under a limited retail distribution license, and note that the license was suspended for eleven days.

Please express my thanks to the Council for its conduct of these proceedings and the wholesome penalty imposed. Substantial penalties will eventually make unnecessary these disciplinary proceedings.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 8. FAIR TRADE - PRODUCTS PURCHASED BY A WHOLESALER FROM A DISTRIBUTOR OTHER THAN THE ONE WHICH FILED A FAIR TRADE CONTRACT ARE SUBJECT TO THE PRICE FIXED IN THE CONTRACT.

Dear Commissioner:

I have a client who is engaged in the retail liquor business and desires a ruling on the following facts:

My client is about to purchase a quantity of Vintner Private Cuvee Champagne from a wholesaler; this wholesaler originally purchased the above merchandise from Alex D. Shaw & Co., who were the original sole distributors of that brand and the name of Alex D. Shaw & Co. appears on the label of this merchandise. Some time subsequent to the aforesaid purchase the sole distributor of that champagne was transferred from Alex D. Shaw & Co. to Munson Shaw, who is now the distributor. Munson Shaw has listed that champagne under the fair trade law and has posted the prices with your office. My client is desirous of finding out whether or not the listing of the brand by Munson Shaw is binding on the merchandise carrying the same name but not purchased from the aforesaid Munson Shaw since the name of Alex D. Shaw & Co. appears on the label. Will you kindly advise me whether or not the price restriction applies on this champagne in view of the fact it was purchased by a wholesaler from a concern other than that which listed the price with your Department?

Yours very truly,  
Sidney Berg

March 6, 1939

Sidney Berg, Esq.,  
Elizabeth, N. J.

Dear Sir:

You ask whether a product purchased by a wholesaler from a distributor, other than the one which filed a Fair Trade contract covering that item, is subject to the price fixed in that contract.

The answer is in the affirmative. The so-called Fair Trade Act (R. S. 56:4-5, et seq.) requires only that the product be in fair and open competition and that the commodity itself contain the brand name of the producer. It is not requisite that the distributor-vendor itself establish the price, or that its name appear on the label. To adopt any other view would mean that only items sold by the particular vendor which has actually fixed the minimum price would be affected by the price so fixed. Such construction is neither authorized by the scope of the provisions of the statute, nor necessary to its operation. On the contrary, it would render nugatory the legislative intent and purpose.

Indeed, our court of last resort has held that maintained prices may be enforced by one who is not a signatory to the price fixing contract. See Schenley Products Co. v. Franklin Stores Co., 124 N. J. Eq. 100.

One further thought. You, of course, understand that the statute does not contemplate any price restriction between wholesaler and retailer. It applies only to the resale price of the retailer to the consumer.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

9. FORMS OF APPLICATION FOR RETAIL LICENSES AND LICENSE CERTIFICATE FORMS - NO CHANGES CONTEMPLATED.

March 7, 1939

Thomas J. Sweeney, Inspector,  
Department of Revenue and Finance,  
Atlantic City, N. J.

Dear Inspector Sweeney:

No changes are contemplated in either the forms of application for retail licenses or in the license certificate forms for the fiscal year 1939-1940. The forms for application may be found in Bulletin 237, Items 2 and 3, and the forms for license certificates in Bulletin 237, Items 4, 5, 6, 7 and 8.

I am glad to learn that you are making early preparations for the renewal of licenses to avoid the last minute rush.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS -  
HEREIN OF THE SUGGESTION THAT INSPECTORS SHOULD BE ACCOMPANIED  
BY A BRASS BAND WHEN MAKING INVESTIGATIONS.

March 7, 1939

Wilbur J. Bernard, Secretary,  
Municipal Board of Alcoholic  
Beverage Control,  
Orange, New Jersey.

My dear Mr. Bernard:

I have before me staff report and your letter of January 26th re disciplinary proceedings conducted by the Board against Charles J. Wille, 619-21 Langdon Street, charged with sale of alcoholic beverages during prohibited hours, and note that his license was suspended for three days.

According to the staff report, the licensee's attorney criticized the fact that my investigators did not disclose their identity until they had observed the commission of a violation rather than warning the licensee not to violate the law; that under cover investigations should be abandoned and that the investigators should try to prevent violations from occurring and thus promote the good will of licensees.

I note with interest your apt retort whether the attorney wanted the men to wear their badges when they investigated complaints!

The good will of licensees is best promoted by strict observance of the conditions on which their privilege is based. Until that is an accomplished fact, my men will have to go without sky blue uniforms and a bugle corps.

I appreciate your Board's cooperation.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

11. ADVERTISING - ADVERTISEMENT OF OFFER TO SELL AT COMPETITOR'S  
LOWEST ADVERTISED PRICE, DISAPPROVED.

March 9, 1939

Mr. David Krugman,  
Clifton, N. J.

My dear Mr. Krugman:

I have yours of March 1st requesting permission to publish an advertisement reading:

"We agree (or guarantee, or promise or will) sell our  
liquor at the lowest advertised price in the county."

You are aware, I take it, of the many liquor items that are now covered by Fair Trade contract and on which the minimum resale price has been fixed. If another retailer advertises a price below the Fair Trade minimum and violates the law, will you sell the item at that price too?

Of course, it would be very foolish on your part to do so, because a violation by a competitor would not excuse you. It would become my painful duty in that event to call the wagon for both of you.

I therefore cordially suggest that you use no such advertisement as above quoted.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - SUSPENSION FOR LICENSE DAYS AS DISTINGUISHED FROM CALENDAR DAYS.

March 9, 1939

W. Orvyl Schalick, Esq.,  
Lower Penns Neck Township Solicitor,  
Salem, N. J.

My dear Mr. Schalick:

I have before me staff report and your letter of February 28th re disciplinary proceedings conducted by the Lower Penns Neck Township Committee against

1. Penn Beach Property Owners Ass'n, Inc.,  
Penn. Beach Yacht Club, Pennsville,  
License CB-2, Rev. 1477, K-5412(c)
2. Hugh J. Seabock,  
West Side of Salem and Pennsville Road,  
Pennsville,  
License C-3, Rev. 1478, K-5412(a)
3. Trustees of Sergt. Wm. T. Whitaker,  
Post 1952, V. F. Wars, Inc.,  
S/W Side of Salem and Pennsville Road,  
Pennsville,  
License CB-1, Rev. 1479, K-5412(b)

I note that all were charged with sale or service of alcoholic beverages on Sunday, and that the license of each was suspended for five license days.

I can, of course, express no opinion on the merits because perchance the cases may come before me on appeal. I wish, however, that you would convey to the members of the Township Committee my appreciation for their conduct of these proceedings and the penalties imposed. It exactly accords with my recommendation for first offenses against hours of sale regulations. If these licensees are again found guilty, I recommend a minimum suspension of ten days for the second offense and outright revocation for the third.

It was gratifying to have the suspension imposed for five license days rather than five calendar days, inasmuch as the period of suspension covered Sunday, on which day no sales could be made anyway. It is an indication that the Township Committee is on its toes.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

13. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS.

In the Matter of Disciplinary Proceedings against )  
 )  
 WILLIAM WOODS, )  
 258 Prince Street, )  
 Newark, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-622, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
 )  
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Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.  
 Harvey Lieb, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

This case was made by the Newark Police.

The defendant pleaded non vult, with leave "to show mitigating circumstances", to the charge of selling and serving liquor to various minors in violation of Statute and State Rule.

Leeanna Lancaster, a grammar school student, aged 14, testified that she was a frequenter at the defendant's tavern; that, on various occasions during the month of November, 1938, she was there served wine and "rock and rye" by the defendant's waitress; that (more particularly) when there on November 12 with Margaret Brown, Julia Simpson and Archie O'Bryant, she was served wine and beer by the waitress; that (on the same occasion) she bought liquor at the bar with a quarter given to her by Archie; that on November 24 she bought a "rock and rye" at the bar and was served by the defendant personally; that on November 25, when there with Margaret Brown, Archie O'Bryant and Robert Williams, she was served port wine by the waitress; that a special officer in the defendant's tavern, warned by Leeanna's mother to keep her out of the premises, once asked the girl her age and she answered that she was seventeen; that the officer advised her to stay away. Leeanna further testified that she visited the tavern to dance, and that she had soda in the tavern at various times.

Margaret Brown (Leeanna's cousin), aged 18, testified that she visited the tavern during November 1938 with Leeanna and Julia; that, on several occasions, they were served "soda, wine, and rock and rye"; that she was never served by the defendant but by his waiter or waitress; that, although she cannot recall how often she had wine or "rock and rye", she had soda "practically all the time"; that she was one of the party at the tavern on November 12, which included Leeanna and Julia; that the girls on that occasion were served port wine; that (like Leeanna) she visited the tavern to dance.

Julia Simpson, aged 19, testified that she was in the tavern "several times"; that she was in the party on November 12; that she and Margaret, but not Leeanna, drank port wine on that occasion; that, however, she has seen Leeanna drinking liquor at the tables on other occasions.

Archie O'Bryant, aged 25, verified that he, Leeanna and Margaret were in the tavern on November 12; that the girls were at

a table drinking (although he does not know what); that he gave Leeanna twenty-five cents on that occasion, with which she purchased a "rock and rye" at the bar.

The defendant and his bartender testified that, although recognizing the three girls, neither had ever sold any liquor to them. The defendant further testified that he had never seen any liquor served to them; that he pleaded non vult to the present charges because his former waiter, since discharged, admitted that he (the waiter) had served the girls; that he (the defendant) realized, from the advice of his attorney, that he was responsible for the violations of his employees.

The Hearer reports that Leeanna, the youngest of the three girls, may reasonably be taken to be 17 or 18 years of age, and that Margaret and Julia, while youthful appearing, may reasonably be taken to be 21.

I find little, if anything, of actual mitigating circumstances. Sale and service of liquor was made to a 14 year old girl (Leeanna) not yet out of grammar school, and who, at most, appeared to be but 17 or 18. Although the other two girls could perhaps reasonably be taken to be 21 (and there is no evidence that any such mistake was made), the risk of their actual ages, especially in view of their youthful appearance, fell squarely on the defendant. The only effort to discover the age of any of these girls was the special officer's inquiry of Leeanna made because of her mother's complaint.

As to the defendant's contention that all sales and service to these girls were made not by him but by his employees, he was well advised that he is strictly accountable for their violations.

The defendant's license will be suspended for thirty (30) days. If it were not for his frank admission of responsibility, I would consider an even more stringent penalty. Sale and service of liquor to a grammar school girl is something that no one can countenance.

Accordingly, it is, on this 11th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-622, heretofore issued to William Woods by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of thirty (30) days, commencing March 15, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,  
Commissioner.

14. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - 15 DAYS' SUSPENSION.

March 11, 1939

Francis S. Grogan,  
Township Clerk,  
Riverside, N. J.

My dear Mr. Grogan:

I have before me staff report and your letter of March 4th re disciplinary proceedings conducted by the Township Committee

against

- 1. John Stetz,  
218 Madison Street,  
License C-5, Rev. 1545,
- 2. United Americanization League,  
St. Mihiel Drive,  
License CB-5, Rev. 1546,

I note that Stetz was charged with sale of alcoholic beverages on Sunday, and the League with having its licensed premises open before 2:00 P.M., whereupon both licenses were suspended for fifteen days.

I express no opinion on the merits of the cases, but do wish that you would convey to the members of the Township Committee my appreciation for their conduct of these proceedings and the penalty imposed in both cases.

A suspension of fifteen days certainly commands respect and will surely impress upon your licensees that the Committee means business.

Good work!

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

15. APPELLATE DECISIONS - MARRA v. CEDAR GROVE.

MICHAEL MARRA,	)	
	Appellant,	)
-vs-	)	ON APPEAL
	)	CONCLUSIONS
BOARD OF COMMISSIONERS OF THE	)	
TOWNSHIP OF CEDAR GROVE,	)	
	Respondent	)
-----	-----	)

Alexander Waugh, Esq., Attorney for Appellant.  
Samuel W. Boardman, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at corner of Pompton Avenue and Union Street, Township of Cedar Grove.

The answer sets up that the decision of respondent should be sustained for several reasons, which include the following: (1) the tavern for which a license is applied is located in a zone in which, by the zoning ordinance of said Township, no tavern license shall be granted (except where a license had been granted prior to adoption of the Township zoning ordinance).

On July 20, 1936, the Board of Commissioners of the Township of Cedar Grove adopted a zoning ordinance, the pertinent sections of which are as follows:

"SECTION 5 - USE REGULATIONS CONTROLLING INDUSTRIAL ZONES

In an industrial zone, no building or premises shall be used and no building shall be erected which is arranged, intended or designed to be used for any of the following specified trades, industries or uses:

\* \* \*

13. Dance halls, cabarets or saloons.

\* \* \*"

"SECTION 4 - USE REGULATIONS CONTROLLING BUSINESS ZONES

In a business zone no building or premises shall be used and no building shall be erected which is arranged, intended or designed to be used for any of the following specified trades, industries or uses.

\* \*

17. Any trade, industry or use prohibited in an industrial zone.

\* \* \*"

"SECTION 6 - NON-CONFORMING BUILDINGS AND USES

(a) Any non-conforming use or structure existing at the time of the passage of this ordinance may be continued upon the lot or in the building so occupied \* \* \*."

The premises in question are located in a business zone.

Since the ordinance provides only for residence zones, in which no saloon may be located, and business zones and industrial zones as set forth above, it seems that, according to the terms of the zoning ordinance, no saloons may be established in the Township except where the existence of a license at the time the ordinance was adopted would constitute a non-conforming use as defined in Section 6, or, perhaps, where the governing body of the Township has approved a recommendation made by the Board of Adjustment in a specific case that a structure or use be allowed in a district restricted against such structure or use. R. S. 40:55-39(d).

It is not contended that appellant's premises are excepted from the terms of the ordinance under the Section thereof applying to non-conforming uses, or that any application has been made to the Board of Adjustment to except the specific property from the effect of the ordinance.

A liquor license may not be issued contrary to the terms of the local ordinance. Speake v. Closter (decided by the Supreme Court of this State on April 4, 1934, but not reported); Talbot v. Keppler, Bulletin 117, Item 1; Corradi v. Closter, Bulletin 219, Item 3; East Brunswick Township Board of Adjustment v. East Brunswick, Bulletin 223, Item 5; Marinaccio v. Ocean Township, Bulletin 264, Item 11; Cf. M. O'Neil Supply Co. v. Ocean, Bulletin 278, Item 1.

Appellant contends that the zoning ordinance has not been enforced because, in November 1938, a liquor license was issued to Baumgardner and Kyburz. However, it appears from the testimony of Township Clerk Monroe that the premises for which said license was issued had been licensed to other individuals prior to the adoption of the zoning ordinance, and hence it would appear that those premises were excepted from the effect of the ordinance by the Section referring to non-conforming uses which existed at the time the ordinance was adopted. In any event, the issuance of the license applied for herein would appear to be in direct conflict with the

terms of the zoning ordinance and, unless and until said ordinance is set aside by a Court of competent jurisdiction, I shall rule that no license may be issued in violation of its terms.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,  
Commissioner.

Dated: March 11, 1939.

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

In the Matter of Disciplinary Proceedings against  
FRANK JORDAN,  
Atco Avenue East of Railroad Station,  
Waterford Township,  
P. O. Atco, N. J.,  
Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Waterford.

CONCLUSIONS  
AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

Frank Jordan, Pro Se.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling, on January 26, 1939, a pint bottle of Kessler's Private Blend below the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

Defendant claims that a salesman for a wholesale liquor house had, a few days before, informed him that the Fair Trade price of this blend was \$1.00, the amount for which he sold it.

Licensees who, without checking their official lists, merely rely on salesmen's hearsay as to the correct minimum retail prices, deserve no leniency.

The defendant's license will be suspended for ten (10) days.

Accordingly, it is, on this 11th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-5, heretofore issued to Frank Jordan by the Township Committee of the Township of Waterford, be and the same is hereby suspended for a period of ten (10) 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.

17. DISCIPLINARY PROCEEDINGS - BINGO - MAY NOT BE PLAYED IN A BARROOM

In the Matter of Disciplinary Proceedings against )

BOHEMIAN BENEVOLENT & LITERARY ASSOCIATION, 56 - 19th Avenue, Newark, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-528, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.

Frank E. Krasny, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of permitting a Bingo game in violation of Rule 16 of State Regulations No. 20, which prohibits Bingo or other similar games of chance to be conducted on premises licensed for the sale of liquor either (1) in any room in which a bar for the service, delivery or sale of alcoholic beverages is located, or (2) in any other room or place while alcoholic beverages are being sold, served, delivered or consumed therein. The rule is simple, explicit and readily applied.

The defendant's premises consist of a barroom, a small adjoining room where a service bar is located, and a large meeting hall in the rear. On January 30, 1939, twelve of the participants in a Bingo game conducted in the meeting hall "played" in the small room containing the service bar.

During the progress of the game, this bar was not in use either for the display or for the sale of any liquor; nor were its beer taps connected to any keg. The defendant's steward testified that it is used about twelve times a year, on the occasion of various functions in the meeting hall, and that the last time it was used was on January 14th last.

It is not my function to decide in advance of the courts whether Bingo and these other games of chance constitute a violation of the criminal law. Until such determination is made one way or other I have tolerated it on licensed premises, but only under the strict conditions set forth in the above rule.

The rule was violated by playing the game in a room in which there was a bar. The fact that the bar was not in use or equipped with liquor at the time is immaterial. It is not within the province of licensees to make self-beneficial exceptions to the rules controlling the conduct of licensed premises. When the privilege is abused licensees will have to learn the lesson that the rules were made to be obeyed.

The defendant's license will be suspended for five (5) days.

Accordingly, it is, on this 11th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-528, heretofore issued to Bohemian Benevolent & Literary Association by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing March 16, 1939, at 3:00 A.M.

New Jersey State Library

*Frederick Bennett*  
Commissioner.