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

BULLETIN 315 MAY 9, 1939.

1. CLUB LICENSES - QUALIFICATION OF CONSTITUENT UNIT OF NATIONAL OR STATE ORDER IN ABSENCE OF COMPLIANCE WITH REQUIREMENT THAT CLUB BE IN ACTIVE OPERATION AND POSSESSION OF QUARTERS FOR THREE YEARS.

Dear Sir:

A request for a club license has been made by an Order of the Moose, which organized in the Borough of Clementon during the year 1938, but are contemplating purchasing a building in this borough to be used for a clubhouse for which they want this club license.

I have explained to them Regulations No. 7 governing the issuance of club licenses, which states they must have been in active operation in this State for at least three years and in continuous possession and use of clubhouse for the same period. However, they feel that this does not apply to them, as the Grand Lodge, which they are a part of, can comply with these requirements.

Very truly yours,
George W. Carr,
Borough Clerk.

May 2, 1939

George W. Carr,
Borough Clerk,
Lindenwold, N. J.

My dear Mr. Carr:

Club licenses may be issued to newly-formed clubs which have not been in active operation or in exclusive, continuous possession and use of a clubhouse for three years, provided the applicant is a duly enfranchised unit, chapter or member club of a national or state order, which order has been in active operation in the State for at least three years and provided, further, the unit or chapter has been duly credentialed by the national or state order to the Commissioner and has received his approval. State Regulations No. 7, Rule 2 (Pamphlet Rules, page 48).

The local Order of Moose, therefore, even though organized in the Borough of Clementon as late as 1938, would not be rendered ineligible on that account, provided club quarters are obtained and the Chapter is duly credentialed by the national or state order. See Re Lane, Bulletin 267, Item 6.

But until the local Order of Moose has obtained or has made definite arrangements for the purchase or erection of club quarters, it is not in a position to receive a license. No harm, therefore, was done the local Order in the instant case. The organization should be notified, nevertheless, that upon obtaining club quarters and upon being credentialed by the Grand Lodge and approved by the Commissioner as above outlined, its failure to meet the three years' existence and possession of clubhouse for that period will not constitute a bar to the issuance of a club license.

It must, of course, fully comply with the requisites of licensing in all other respects.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against

ACE BEVERAGE CO., INC.,
560-4 Perry St.,
Trenton, N. J.,

Holder of Plenary Retail Distribution License D-1, issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.
George Pellettieri, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

This licensee has pleaded guilty to a charge of selling liquor at his licensed premises on December 2, 1938 in violation of Rule 6 of State Regulations No. 30.

In conformity with the practice established in Re Polonsjy and Kiewe, Bulletin 308, Item 9, the license will be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 3rd day of May, 1939, ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Ace Beverage Co., Inc. by the City Council of the City of Trenton, 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. ADVERTISING - BREWERY AD ON HOUSE TRAILER - AMBULATORY ADVERTISEMENTS DISAPPROVED.

Dear Mr. Burnett:

I have a house trailer which I use for traveling purposes during the summer. A brewery has offered me a small sum of money to carry their advertisement on the sides of the trailer.

Will you please advise me as to whether or not this is legal.

Very truly yours,
E. C. Kane

May 4, 1939

E. C. Kane,
Royal Palms Hotel,
Atlantic City, N. J.

My dear Mr. Kane:

I do not enthuse over your scheme to paint a brewery advertisement on your house trailer.

A similar ambulatory advertisement was disapproved in Re Weslow, Bulletin 310, Item 6. What goes for the Model T and the Ivanhoe knight applies with equal force to your trailer. Licensees who offend will be set back appropriately.

Your summer sorties will have to be without benefit of brewery.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

May 4, 1939

Re: Case No. 271

Applicant disclosed in his application that, in 1925, he had been convicted in a Federal court for sale and possession of alcoholic beverages. However, he failed to disclose therein a conviction in 1932 for assault and battery.

At the hearing applicant testified that, in 1925, he was conducting an hotel; that immediately after his arrest for selling and possessing beer he discontinued operation of the hotel; that, as a result of his conviction in the Federal court, he was fined $200.00. There appear to be no aggravating circumstances and, in the absence thereof, this conviction does not involve moral turpitude.

Applicant also testified that, in 1932, he was arrested on a charge of assault and battery when he and another man engaged in a fist fight after arguing as to responsibility for a slight collision between their automobiles; that applicant pleaded guilty in a police court to a charge of assault and battery as a result thereof, and was fined $25.00, which later was reduced to $10.00. It appears that no question of moral turpitude is involved in this case.

As to his failure to set forth the conviction for assault and battery, applicant testified that he did not think it was a criminal offense and that, if he had thought it was a serious matter, he would have mentioned it. Having observed applicant, and considering the fact that he paid only a small fine, I believe his testimony that he had no intention of concealing the fact that he had been convicted of this crime. He was engaged in the liquor business as a retail licensee from 1933 to 1936, and his record as such licensee is clear. He now seeks to be employed as salesman for a wholesale licensee. His application for a solicitor's permit was filed on April 21st, 1939, and the issuance of the permit has been withheld since that time pending investigation of his criminal record. Hence, if any punishment should be imposed for his false affidavit, I believe that he has already been sufficiently punished.

It is recommended, therefore, that the solicitor's permit be issued.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against

STEVE MARCINCIN,
732 River Drive,
Garfield, N. J.,

Holder of Plenary Retail Consumption License No. C-4, issued by the City Council of the City of Garfield.

CONCLUSIONS AND ORDER

Charles Simoldoni, Esq., Attorney for the Licensee.
Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge of selling one pint bottle of Wilson "That's All" whiskey below the minimum retail price, in violation of State Regulations No. 30.

On February 17, 1939 Investigator Hill, of this Department, purchased a pint bottle of Wilson "That's All" whiskey for the sum of $1.10 from the licensee at the licensed premises. The minimum retail price of said item is $1.16.

Licensee's explanation is that he did not know the Fair Trade price of the item in question because he had not received the bulletins or price pamphlet and, further, that he sells only a small amount of package goods at his tavern. It is admitted that Bulletin 297, containing the Fair Trade price of the item in question, was mailed to the licensee at his licensed premises on or about January 30, 1939. Even if the licensee did not receive the bulletin which was mailed to him, he would nevertheless be responsible for the violation which occurred. Rule 4 of State Regulations No. 30 provides that all licensees shall be chargeable with notice of the price list, and alterations thereof, when published in the official bulletins. In Re Bell, Bulletin 307, Item 6. The fact that the licensee sells only a small quantity of package goods does not give him a right to ignore the Fair Trade prices which are intended to apply to all licensees.

I find the licensee guilty as charged.

There appear to be no extenuating circumstances which are worthy of consideration and I shall, therefore, suspend the license for ten days.

Accordingly, it is on this 5th day of May, 1939, ORDERED, that Plenary Retail Consumption License No. C-4, heretofore issued

to Steve Marcincin by the City Council of the City of Garfield, 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.

6. PLENARY RETAIL DISTRIBUTION LICENSES - OTHER MERCANTILE BUSINESS - THE PRIVATE INTERESTS OF COMPETING TYPES OF BUSINESSES - ADOPTION OF ORDINANCE THAT SUCH LICENSES SHALL NOT BE ISSUED FOR PREMISES ON WHICH ANY OTHER MERCANTILE BUSINESS IS CONDUCTED IS A QUESTION OF LOCAL POLICY TO BE DETERMINED SOLELY BY THE MUNICIPALITY AND IS NOT APPEALABLE TO THE COMMISSIONER.

May 5, 1939

William B. Ross, Clerk,
Kearny, N. J.

Dear Mr. Ross:

I have yours enclosing copy of resolution of the Kearny Tavern Owners' Association urging that the Town Council adopt a resolution that no plenary retail distribution license shall be issued to permit the sale of alcoholic beverages at premises where any other mercantile business is carried on. I note your request for my opinion as to what rights His Honor, the Mayor, and the members of your Council have in respect to such a regulation.

The Town Council has the legal power under R. S. 33:1-12 to make such a regulation but it must be done by ordinance and not by a mere resolution.

Whether the Council should adopt such an ordinance is a question of local policy to be determined solely by itself. No appeal lies to me whether the Council does adopt or does not adopt it.

Whether or not such an ordinance should be adopted is controversial. It has been decided both ways. There are 565 municipalities in the state of which 58 have adopted such an ordinance. In others it has been brought up and voted down. In others the question has not been raised.

The matter is solely one of business. It has nothing to do, as was said in the resolution, with "protecting the youth of the community." It is not a moral matter at all. It is only a question of business competition whether or not grocery stores, delicatessens and department stores shall be allowed to sell packaged liquor. Each branch of the industry naturally wants to get as much business for itself as it can. The package goods stores which sell nothing else are arrayed in keen competition against the so-called "combination merchants" which handle other lines as well as liquor. The tavern owners are also interested in driving the combination merchants out of the liquor business because their so-called consumption licenses confer the double privilege not only of selling for on-premises consumption but also of selling package goods for off-premises consumption.

The controversy being one solely of business competition and having been delegated by the Legislature to each municipality to settle each for itself, is therefore none of my business.

Hence, I express no opinion on the merits whatsoever.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against

RUDOLPH J. SCHWEINLER,
414-a Bergenline Avenue,
Union City, N. J.,

Holder of Plenary Retail Consumption License C-176, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - - -

Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

Rudolph J. Schweinler, Pro Se.

BY THE COMMISSIONER:

This licensee has pleaded guilty to a charge of selling liquor at his licensed premises on April 19, 1939 in violation of Rule 6 of State Regulations No. 30.

In conformity with the practice established in Re Polonsjy and Kiewe, Bulletin 308, Item 9, the license will be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 6th day of May, 1939, ORDERED, that Plenary Retail Consumption License C-176, heretofore issued to Rudolph J. Schweinler by the Board of Commissioners of the City of Union City, 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.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REVALUATION OF THE REFILL PROBLEM AND THE APPROPRIATE PENALTIES.

#S-210	
In the Matter of Disciplinary Proceedings against	
JOHN JACOBS, t/a MRS. JAY'S, 909-911-913 Ocean Avenue, Asbury Park, New Jersey,	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-1 issued by the City Council of the City of Asbury Park.	

Tumen & Tumen, Esqs., by Louis I. Tumen, Esq., Attorneys for the Licensee.
Walter Taylor, Esq., Attorney for the City of Asbury Park.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that (1) on August 9, 1938 he possessed illicit alcoholic beverages, namely, two one-quart bottles, full, labeled "Calvert Reserve Blended Whiskey", one one-quart bottle, partly full, labeled "Green River Blended Whiskey", and one one-quart bottle, partly full, labeled "Calvert Bar Private Stock Blended Whiskey," contrary to R.S. 33:1-50, and (2) on August 20, 1938 he sold and permitted the service of alcoholic beverages on his licensed premises to two minors, contrary to R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

As to (1): At the hearing it was stipulated as a fact that, on August 9, 1938, storekeeper-gauger Donohue, of the Alcohol Tax Unit, U. S. Department of Internal Revenue, seized the four bottles of alcoholic beverages mentioned in Charge 1 on or under the back bar of the licensed premises.

It appears from the chemist's analysis, which was introduced into evidence, that the acid content and solid content of the liquor contained in the seized bottles varied substantially from the acid content and solid content of genuine samples; that the liquor found in the seized bottles of "Calvert Reserve Blended Whiskey" contained no artificial coloring, whereas genuine samples of said product contained considerable proportions of artificial coloring; that the liquor found in the seized bottles labeled "Green River Blended Whiskey" and "Calvert Bar Private Stock Blended Whiskey" contained only a small proportion of artificial coloring, whereas the greater proportion of the coloring contained in genuine samples of said products is artificial.

I find that the contents of the seized bottles were not genuine as labeled. The licensee is guilty as to Charge 1.

The licensee conducts a high-class establishment. It is clear that he himself had nothing to do with refilling the bottles and that the refills were made without his knowledge or personal fault. It, therefore, makes a particularly difficult case in which to determine the proper penalty.

I have considered this matter carefully in the effort to determine the proper policy, not only in the instant case, but primarily because of the alarming proportions to which the refill problem has been growing. The legitimate trade is thoroughly alarmed, and properly so, because the practice undermines public confidence. The job is squarely in the lap of the liquor control authorities.

I deem, therefore, that this case calls for a revaluation of the refill problem and the appropriate penalties.

One thing is clear -- the master is responsible for the wrongdoing of his servants. A licensee is, therefore, accountable, irrespective of his personal innocence, for violations committed on the licensed premises. Liquor regulations are made to eliminate the undesirable conditions at which they are aimed. From the viewpoint of public interest, it matters little whether a violation is committed by the licensee himself or by one of his employees. However harshly this principle operates in a particular case, it is the only rule which protects the public and under which the liquor industry itself may survive.

The refill problem has two phases:

1. Bootleg liquor.
2. Tax-paid liquor.

1. As to Bootleg liquor: In the earlier days "illicit liquor" usually connoted "bootleg" - i. e., manufactured by liquor outlaws instead of legitimate licensees and on which, therefore, no tax had been paid.

Such was Re Morris, Bulletin #98, Item 10, where I fixed a minimum thirty days suspension, against a retail licensee, saying:

> "The licensee has been found guilty of buying and selling bootleg liquor. His action deprived both the State and the Federal Government of needed revenue. His action was unfair to his customers, who relied and had a right to rely that he was dispensing legitimate liquor without worry lest it be 'cracked' from poisoned denaturants. His action was unfair to his honest competitors, who seek to eke out a livelihood on the small profits of sale of legitimate liquor and who simply can't compete with those who dispense bootleg stuff which wholly evades the 1500% ad valorem tax which is paid by the legitimate industry for the support of government. His action undermines the basic principle of Repeal, which permits the sale of legitimate alcoholic beverages, and, as a necessary consequence, outlaws all bootleg liquor. The declared objective of the Alcoholic Beverage Control Act is to 'eliminate the racketeer and bootlegger'.
>
> "A penalty measured in money, such as a fine, merely de-

prives the cheating licensee of a part of his ill-gotten gains. He keeps the rest for himself. Fines are rather impotent to eradicate commercial violations. Aside from jail sentences, for which the bootlegger and his accessories have an understandable dislike, revocation and consequent disbarment for two years would seem the appropriate civil punishment for this kind of offense. A person licensed to sell legitimate beverages and held out to the public as worthy of confidence, proves himself unworthy when he palms off bootleg liquor upon the credulous consumer. I have no sympathy for him because his act is deliberately wrongful from the outset. It is not a case of a technical or unwitting violation, or a possible mistake.

"I am informed, however that this licensee operated only on a small scale. He took a chance and was caught. He frankly admitted his guilt. It is his first offense. The local Board recommended clemency. They believe he has learned his lesson. Punishment, while measured in terms of past performance, should be applied for its future deterrent effect. Taking into consideration that this is a case of first impression, and giving due weight to the recommendation of the local Board, I shall for the time being, fix a minimum of thirty days' suspension on this kind of case. If I err, it is on the side of mercy. If this does not suffice to wipe out the sale of bootleg liquor in licensed places, the minimum period hereby imposed will be increased and the full deterrent forces of the law applied as experience requires."

In Re Singer, Bulletin #112, Item 11, I fixed a minimum penalty of sixty days for possession of bootleg liquor by a State licensee, saying:

"The respondent, however, holds State licenses. Such licenses confer state-wide power. The privileged holders thereof are required to set an example to retailers that bootleg liquor went out of style upon Repeal. To that end, the minimum penalty for its possession by State licensees is hereby fixed at sixty days, which, if it does not prove sufficient, will be stepped up appropriately."

In Re Felsenfeld, Bulletin #175, Item 8, on finding that the only way in which the dangerous elements of acetone and isopropyl could get into liquor was because the liquor had been "cut" or the bottle refilled with recovered denatured alcohol, I refused to lift a suspension, declaring:

"It is clear that the only way in which acetone gets into liquor is because the liquor has been 'cut' or the bottle refilled with recovered denatured alcohol. The tell-tale trace of acetone remains, however skillful the cutting or the blending, to point its paternity. Such an ingredient makes liquor illicit, not only in the sense that it is not tax paid or has been diluted with water or colored with prune juice or caromel, but also in the graver significance that the adulterant is harmful to the human system, even if not technically poisonous, and even if the doctors and the chemists and the experts have not yet determined the minimum quantity necessary to produce pernicious results. The public has no way of knowing what is contained in the liquor they drink. Few would buy if they knew what they swallowed was adulterated with a celluloid or smokeless powder solvent or denatured roach exterminator or rubbing alcohol, having a harmful, and possibly poisonous, effect.

The mere fact that in this particular case the samples tested did not contain sufficient acetone by volume to cause any noticeably harmful effect is not the point. It is a pure accident that less rather than more acetone was contained in the bootleg liquor used to adulterate the genuine. Licensed places are not laboratories in which to experiment with human lives. Licensees may not escape punishment because the illicit liquor they purchase or possess happens to be concocted under a formula which renders the deleterious effect negligible. The public will suffer if other formulae or processes are not so fortunate.

"I conclude as a general principle applicable to all cases that when a licensee is convicted of the possession of liquor, illicit because it contains acetone, that good cause is not shown why the statutory automatic suspension should be lifted, however long it may have been operative."

Corollaries to the rule in the Felsenfeld case will be found in Re Grembowiec, Bulletin #178, Item 6; Re Cullen, Bulletin #182, Item 8, and Re Antico, Bulletin #195, Item 9, with the result that the minimum suspension for the possession of illicit liquor containing ingredients harmful to the human system, even though technically not poisonous, is now fixed at ninety days.

In Re P. & P. Transportation Co., Bulletin #201, Item 3, I revoked outright the license of a transporter for delivering denatured alcohol to a consignee at an illicit distillery, knowing or having reason to believe that the alcohol was to be used there for illegal purposes.

In Re Siess, Bulletin #252, Item 7, I similarly revoked the license of a retailer connected with bootlegging, and stated:

"The era of the tolerated bootlegger passed out of this State with Repeal. Licensees who now dabble in bootlegging, either on their own or as auxiliaries to others, are a dangerous menace to the alcoholic beverage industry. They stamp themselves as unfit to engage in that business and must be eliminated."

2. As to Tax-paid liquor: Recently the refill problem has taken a new turn. Cases have arisen where licensees have withdrawn (or at least claim they have) a slow selling liquor of one brand and poured it into bottles labeled with another brand for which there was a greater demand. Refilling bottles, however, is unlawful notwithstanding that the liquor is tax-paid. Re Haney, Bulletin #304, Item 13. As stated therein:

"The comprehensive legislative restrictions against rectification, blending and bottling by retail licensees are salutary in purpose and effect. They are aimed not only against the use of 'bootleg' liquor on which tax has not been paid, but also against 'refills' of all kinds. Customers are entitled to receive the liquor which they order (see Re Lane, Bulletin #231, Item #13; Re Turner, Bulletin #230, Item #3), and licensees cannot be heard to say that the liquor which they substituted was 'just as good'. If a decent measure of control is ever to be attained, retail licensees must be brought to the realization that their tampering with liquor will not go unpunished."

At the time of the last mentioned ruling made about two months ago, I was willing to go along with a lesser penalty in such cases, deeming that such conduct did not warrant the identical punishment meted out to a licensee who had been found guilty

of possessing "bootleg" liquor on which taxes due to the State and Federal governments had not been paid. In a contemporaneous case (Re Lipitz, not reported), a fifteen day suspension was administered by the liquor issuing authority with my approval. No sooner was the ruling in Re Haney, supra, published than word seemed to go around that a thirty day suspension would be imposed for bootleg but only fifteen days for refilling with legitimate liquor. The natural result has been that in recent cases the licensee, when caught with a refill, pleads that the liquor was legitimate and, of course, hopes in that way to get off with a lighter penalty.

By so pleading, licensees confess their own wrong. Whether it is true, in fact, no one can determine with accuracy -- it may be tax-paid and it may just as well be bootleg. The result is wholly against public interest. If the practice is persisted in, the whole subject of refills will get out of control. Hence, on further reflection I have concluded that the proper policy is to insist upon a minimum of thirty days suspension for refilling irrespective of whether the refill was made with bootleg or not. The refill operation is a palpable violation of the law and it makes no difference what kind of liquor is used.

Returning to the instant case: The licensee was possessed of illicit alcoholic beverages on the licensed premises. Hence, applying the foregoing principles, irrespective of whose personal fault it was, or what the refills consisted of, his license will have to be suspended for the minimum period of thirty days. If I had found that the licensee deliberately made the refills under consideration, the penalty imposed would have been in multiples of the minimum.

As to the second charge: At the hearing it was further stipulated that on Saturday, August 20, 1938, at about 11:00 P.M., two Investigators from this Department observed a waitress, who was employed on the licensed premises, serve a glass of beer each to a young lady, age 19, and a young man, age 18. It follows that the licensee is guilty as to Charge 2. For this the license will be suspended for ten days.

Accordingly, it is on this 8th day of May, 1939

ORDERED that Plenary Retail Consumption License No. C-1, heretofore issued to John Jacobs, t/a Mrs. Jay's, by the City Council of the City of Asbury Park, be and same is hereby suspended for a period of forty (40) days, commencing May 11, 1939 at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS -- SALES TO MINORS -- THE RESPONSIBILITY OF LICENSEES.

May 8, 1939

Richard W. Berkstresser
Wall Township Clerk
Belmar, R.D.#1, N. J.

My dear Mr. Berkstresser:

I have before me staff report, findings of fact, and resolution and order adopted by the Township Committee in disciplinary proceedings conducted against Alice Haley, t/a Apple Tree Tavern, Remsen Mill Road, Glendola, charged with sale of alcoholic beverages to minors and permitting excessive noise on the licensed premises, and note that her license was suspended for five days on the first charge, while the second charge was dismissed on grounds with which I concur, viz: "It is significant that there had been no complaints by neighbors or persons living in the vicinity of the licensed premises."

I note with interest and profit that part of your formal findings concerning the sale to minors, viz:

> "The Township Committee is inclined to believe that many of the defendant's witnesses were mistaken as to the facts. On the other hand, from the testimony of the A. B. C. Investigators and the infants themselves, it is apparent that the minors did consume beer on the licensed premises and that the beer was served by the licensee. Taking the defendant's testimony in its best light, to wit: - That she set down a tray of beer on one end of the table and the same was passed to the minors by others. It is apparent that inadequate precautions were taken by the licensee to prohibit the consumption of the beer by the minors.
>
> "A liquor license is a special privilege vested with a possible interest and licensees must be held fully responsible for all that occurs on the premises. This licensee knew that two of the persons seated at the table were not of age and it was her duty to take particular care that they did not consume any alcoholic beverages. This, we feel, the licensee did not do and even if beer was not served by the licensee to the minors, it was testified by all that an appreciable length of time elapsed between the serving of the beer and the apprehension of the licensee by the A. B. C. agents. Therefore, we feel that the licensee should have known that the minors were partaking of the beer. It was, therefore, her duty to see to it that the beer was taken from the minors. In connection with this, see in re: Bondi, Bulletin 156, Item 10, Wayne Township vs. Donahue, Bul. 206, Item 7.
>
> "However, after considering all the evidence, the

Committee finds it a matter of fact that beer was served to the minors and, therefore, finds the licensee guilty of the charge.

J. Norman Cuttrell, Chairman
Alfred C. Chapman
Calvin Wooley."

There is nothing to add except the suggestion that, in future cases involving sale to minors, the minimum penalty of ten days' suspension be imposed.

Thank you all for your cooperation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - GAMBLING - DICE BY EXPERTS.

May 6, 1939

Thomas J. Wieser, Secretary,
Municipal Board of Alcoholic Beverage Control,
Linden, N. J.

My dear Mr. Wieser:

I have before me staff report and your letter of April 11th re disciplinary proceedings conducted by the Municipal Board against Linden Colored Democratic Club, Inc., 1305 Baltimore Avenue, charged with permitting a dice game for money. I note that both a stick man and a cut man were working and that when the players became aware of the presence of the investigators, the game broke up, the dice disappeared as did the cut man, together with the house cut in a bandanna. I also note that its license was suspended for twenty days, with a remission of five days because of its plea of guilty.

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

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CLUB LICENSE OPERATED AS FRONT FOR AN INDIVIDUAL - REVOCATION INDICATED AND EFFECTED.

May 6, 1939

John H. Talmadge,
Borough Clerk,
Madison, N. J.

My dear Mr. Talmadge:

I have before me staff report and your letter of April 19th re disciplinary proceedings conducted by the Mayor and Council against Rose City Social and Political Club, 52 Cook Avenue, the holder of a club license, charged with operating as a front for an individual, and note that its license was revoked.

Expressing no opinion on the merits, I nevertheless wish that you would convey to the Mayor and Council my appreciation for the conduct of these proceedings and the penalty imposed.

According to the staff report, the club had no real existence and was so loosely organized that the nominal president had to ask the real owner of the business whether he was still president. Under a set-up such as this, outright revocation was clearly indicated.

Whether the premises should be disqualified in any case depends upon whether the issuing authority finds that the owner of the property was culpable in respect to the violation. Obviously, with title in the Borough via tax sale it would be inappropriate to declare the premises ineligible for license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLING WITH ALLEGED TAX PAID LIQUOR IN NOWISE EXCUSES THE MISDEMEANOR.

May 8, 1939

John L. Haney,
City Clerk,
Trenton, N. J.

My dear Mr. Haney:

I have before me staff report and your letter re disciplinary proceedings conducted by the City Council against Louis Papp, 647 Cass Street, charged with refilling liquor bottles, and note that his license was suspended for twenty-five days.

According to the staff report, the licensee freely admitted that he had refilled Wilson, Three Feathers, and Calvert bottles with Schenley's Red Label Whiskey, but contended that since he had refilled the bottles with legitimate liquor, he was not guilty of possession of illicit alcoholic beverages.

I am gratified that the Council was not taken in by this specious argument. As was previously pointed out in letter to you of March 13th (Re Haney, Bulletin 304, Item 13) "Where liquor has been rectified, blended or bottled by a retail licensee, it is illicit within the statutory definition contained in Section 1 of the Control Act (now R. S. 33:1-1) and the licensee's mere possession of such illicit beverage constitutes a misdemeanor (see Section 48 - now R. S. 33:1-50) and subjects his license to disciplinary proceedings (see Section 28 - now R. S. 33:1-31)."

Please convey to the members of the City Council my appreciation for their conduct of these proceedings. A few substantial penalties such as this should soon cause Trenton licensees to desist from tampering with liquor. It fits in well with the decision I have just made in Re John Jacobs, Bulletin 315, Item 8, by which you will note I am recommending from now on a minimum suspension of thirty days for all refills whether the liquor was bootleg or not. The Council have acquitted themselves splendidly in this matter and I am grateful for their cooperation. Undouttedly they would have given him the full thirty days if the decision in the John Jacobs case had been made at the time the Papp case was decided.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

In the Matter of Disciplinary Proceedings against

HEALTH SHOP, INC., 142 Washington Street, Paterson, N. J.,

Holder of Plenary Retail Distribution License D-69, issued by the Board of Aldermen of the City of Paterson.

CONCLUSIONS AND ORDER

Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.
Joseph Dubin, Secretary, Health Shop, Inc.

BY THE COMMISSIONER:

This licensee has pleaded guilty to a charge of selling liquor at its licensed premises on April 10, 1939 in violation of Rule 6 of State Regulations No. 30.

In conformity with the practice established in Re Polonsjy and Kiewe, Bulletin 308, Item 9, the license will be suspended for five (5) days instead of the usual ten (10).

Accordingly, it is, on this 8th day of May, 1939, ORDERED, that Plenary Retail Distribution License D-69, heretofore issued to Health Shop, Inc. by the Board of Aldermen of the City of Paterson, 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.

14. TIED HOUSES - MORTGAGES STILL HELD BY BREWERS ON RETAIL OUTLETS UNDER STATUTORY MORATORIUM NOT REQUIRED BUT APPROVED IN PRINCIPLE.

Dear Sir:

Would you please inform me whether you have ruled that all mortgages held directly or indirectly by breweries on properties in which licensed taverns are situated, and if the licensee is the mortgagor, must be amortized monthly?

Very truly yours,
Alfred Kaelin

May 8, 1939

Mr. Alfred Kaelin,
Newark, N. J.

Dear Sir:

I presume that you refer to a mortgage which was in existence on December 6, 1933, because otherwise a mortgage on licensed premises held directly or indirectly by a brewery would be unlawful.

As to mortgages which existed on December 6, 1933, there is no provision in the law and no rule or regulation of this Department which requires the mortgage to be amortized either monthly or at any other stated period. While amortization, therefore, is not required, I nevertheless approve of it as a good principle, not only because it inculcates forced thrift which eventually will redound to the benefit of the tavern owner, but also and primarily because little by little it will weed out the so-called tied house, which many people think was the cause which brought on Prohibition.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. RETAIL LICENSES - ISSUANCE TO RELIEF INVESTIGATOR - HEREIN OF DISPENSING ALCOHOLIC BEVERAGES AND RELIEF CHECKS.

Sir:

I represent an individual who is a Civil Service appointee, holding a position as Relief Investigator in the City of Orange, N. J., who desires to make an application for a plenary retail consumption license.

I would appreciate your advising me whether or not such a license will be issued to him and whether he can hold his Civil Service position at the same time that he has his license, and actively participate in the dispensing of alcoholic beverages.

Respectfully yours,
Richard Garodnick

May 8, 1959

Richard Garodnick, Esq.,
Newark, N. J.

My dear Mr. Garodnick:

There is nothing in the Alcoholic Beverage Law or State Regulations which would bar the issuance of a plenary retail consumption license merely because the applicant held a Civil Service position as Relief Investigator.

As a practical matter, however, I do not see how he can dispense alcoholic beverages and pass on relief checks at the same time. Certainly, relief checks ought not to be cashed at the tavern. The municipality may well take into consideration, in determining whether the applicant is a proper party to have a license, his dual positions.

Whether the tavern side-line would interfere with your client's status under Civil Service, is a matter for you to take up with the Civil Service Commission.

Very truly yours,
D. Frederick Burnett
Commissioner.