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

BULLETIN 390 MARCH 8, 1940.

1. DISCIPLINARY PROCEEDINGS - FEMALE IMPERSONATORS - PETITION FOR REVIEW DENIED.

In the Matter of Disciplinary Proceedings against PETER ORSI, 112 Bank Street, Newark, N. J., Holder of Plenary Retail Consumption License C-548 (for the fiscal year 1938-39), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	ON PETITION FOR REVIEW ORDER

M. Richard Lifland, Esq. and Maurice H. Pressler, Esq.,
Attorneys for Petitioner.

BY THE COMMISSIONER:

Petitioner prays that an order heretofore entered herein on June 22, 1939 (Bulletin 326, Item 1) be vacated and for nothing holden for the reasons that (1) there is no evidence whatsoever that there was a known female impersonator on the premises, and (2) the charge as drawn does not charge petitioner with any violation of a State regulation.

The petition which was filed on February 9, 1940 might well be denied upon the ground that petitioner is guilty of laches. The suspension has already been served.

As to the merits: Petitioner contends, in support of his first reason, that the present case is precisely the same as Re Nathan Williams, Bulletin 341, Item 9. In the Williams case I vacated an order of suspension previously entered because, upon review, I found that the evidence was not sufficient to show that the woman was a known prostitute or was a prostitute at the time in question. In the present case, however, the testimony of the investigators as to the appearance of these frequenters of the licensee's place of business was sufficient to show that they were known female impersonators. While the licensee denied that he knew that the men who were ousted were perverts or "fairies", or, more politely, female impersonators, I was convinced, from his signed statement, wherein he admitted the presence of "fags" at his tavern, and the testimony of the investigators, that female impersonators were knowingly permitted in the licensed premises and that, in fact, the tavern was a rendezvous for such persons. As I said in the Conclusions previously entered:

> "I am not at all squeamish in imputing knowledge to a licensee of the character of these persons when anyone can tell objectively and most of us know what they are. The licensee had no trouble in picking them out."

Hence, on reviewing the testimony, I find that there is ample evidence that the licensee permitted known female impersonators at his tavern.

As to the second reason: The defendant was charged with having "allowed, permitted and suffered female impersonators" in and upon his licensed premises "contrary to Rule 4 of State Regulations No. 20". He contends that no violation of a State regulation has been charged because the word "known" is omitted before the words "female impersonators". The same point was considered in Re Sengebush, Bulletin 311, Item 8, wherein defendant moved to dismiss on the ground that the charge was fatally defective in that it did not allege that the defendant permitted "known" prostitutes and other persons of ill-repute at his tavern. In that case I said:

> "The contention rests upon the fact that the word 'known' appears in Rule 4 of State Regulations No. 20, which reads as follows:
>
> > "'No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, or other persons of ill-repute.'
>
> "It is definite that a licensee, to be found guilty of violating this Rule, must have tolerated the undesirables in his licensed premises while knowing of their unsavory character. Re Kaas, Bulletin 239, Item 1; Re Foster and Clauss, Bulletin 248, Item 4. The question presented by the defendant's motion is whether the charge sufficiently apprises him of the fact that he is alleged to have permitted 'prostitutes and other persons of ill repute' at his tavern while knowing of their character.
>
> "The charge, in accusing the defendant of having 'allowed, permitted and suffered' prostitutes and other persons of ill repute at his licensed premises is, by use of those words, reasonably clear to the effect that the defendant is being accused of having tolerated the undesirables at his tavern while aware of their character. As I said in Re Kaas, supra:
>
> > "'Each one of these operative verbs just quoted necessarily mean that the licensee, knowing who these people are and what they are, nevertheless tolerated them on licensed premises.'
>
> "There is no contention that the defendant was actually misled by the charge or unaware of what he was being called upon to answer. Being clear in character, and specifying the State Rule allegedly violated, the charge, while not embodying the exact language of the Rule, is nevertheless sufficient. Cf. Sawicki v. Keron, 79 N.J.L. 382 (Sup. Ct. 1910).
>
> "Accordingly, the defendant's motion is denied."

In the present case, the charge as served upon the licensee was sufficient to apprise him of the offense. The question of his personal knowledge of the character of these frequenters of his place was the very crux of the case. The mere omission of the word "known" in nowise prejudiced him and on the merits he was clearly guilty of a violation of Rule 4 of State Regulations No. 20.

The petition is denied.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 3, 1940.

2. DISCIPLINARY PROCEEDINGS - GAMBLING - PAY-OFF ON BAGATELLE MACHINES - INADEQUATE PENALTIES.

March 4, 1940

W. H. Jamouneau,
Town Clerk,
Irvington, N. J.

My dear Mr. Jamouneau:

I have before me staff report and your letters of February 8th and 14th re disciplinary proceedings against

1. Peter Scheller
1407-9 Springfield Avenue

2. Henry Wenzel
865 Springfield Avenue

I note that both were charged with making pay-offs on scores obtained on bagatelle machines, the one in cash and the other in merchandise, and that on confession of guilt the license of each was suspended for one day.

The one-day penalties are, of course, inadequate. The recommended minimum for violations of this sort is five days with a possible remission of two days in the event that the licensee pleads guilty in advance of hearing and thus saves the Board and this Department the time and expense of hearing.

Both penalties were imposed on February 13th. In my letter of February 5th commenting on a one-day suspension for a sale to minor in the case of Mrs. Albert Splan I asked whether the Board wished me to take over its duties and handle all disciplinary matters directly.

Does it?

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).	CONCLUSIONS AND ORDER
Case No. 87	

BY THE COMMISSIONER:

On April 6, 1932, petitioner and others were found guilty in a County Court of the State of Pennsylvania of "illegal assistance to voters and also illegal instructions; also permitting unqualified voters to vote, and conspiracy". Petitioner was sentenced to serve from three months to two years in prison and to pay a fine of five hundred dollars ($500.00), but on May 30, 1932 he was paroled from prison by the Judge who had imposed the sentence. On July 1, 1936, the court filed an order restoring petitioner's right to vote and hold office.

Petitioner testified that he has never been arrested or convicted at any other time; that, for the past nine years, he has lived in the community where he now resides with his wife and children; that for the past five years he has been employed as solicitor by various companies licensed to sell alcoholic beverages in the State of Pennsylvania; that he now holds a solicitor's permit authorizing his employment in the State of Pennsylvania. He has applied for a solicitor's permit from this Department authorizing him to be employed in the State of New Jersey.

On behalf of petitioner, the attorney who represented him in the criminal proceedings testified that he has known petitioner for at least twenty years; that petitioner's reputation in the community is excellent; and that the criminal charge arose from some irregularities at a primary election at which voting machines were being used for the first time. Another Pennsylvania attorney, who for eleven years was an Assistant City Solicitor and for seven years connected with the State Department of Justice, testified that he has known petitioner for the past eight or nine years and that petitioner has a splendid reputation. An employee of a New York newspaper, a dentist and a Customs House official, who have known petitioner respectively for twenty-one, twenty and thirteen years, testified that he has a very good reputation.

I am satisfied from the evidence that petitioner has conducted himself in a law-abiding manner for at least seven years last past and that his connection with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 3rd day of March, 1940,

ORDERED, that petitioner's disqualification from obtaining or holding a license or permit or being employed by a licensee because of the conviction referred to herein be and the same hereby is removed in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - PENALTIES SPLITTING THE SUSPENSION SO THAT IT FALLS ON DAYS WHEN IT WILL HURT LEAST, DISAPPROVED.

DISCIPLINARY PROCEEDINGS - PENALTIES - THE PERIOD AND THE EFFECTIVE DATES MUST BE FIXED BY THE LICENSE ISSUING AUTHORITY AND MAY NOT BE DELEGATED TO THE MAYOR.

January 24, 1940

Frank Van Fleet,
Borough Clerk,
Fieldsboro, N. J.

My dear Mr. Van Fleet:

I have before me staff report and your letter of January 4th re disciplinary proceedings conducted by the Borough Council against

1. Emma Wallace Zabriskie
T/a Dew Drop Inn
Front Street

2. Frederick James West
West's Tavern
Fourth St.

I note that Zabriskie, charged with service of alcoholic beverages on General Election Day last past, had her license suspended for five days, and that West, charged on municipal initiative with being open after hours, had his license suspended for ten days.

Please express to the members of the Borough Council my appreciation for their conduct of these proceedings, and especially for the institution of those against West on the Council's own initiative. I can, of course, express no opinion as to the West case because I have no knowledge of the facts.

The five-day penalty in the Zabriskie case, split as it was so that it would cover Monday, Tuesday and Wednesday of one week and Monday and Tuesday of the next, is neither in accord with the recommended ten-day minimum for Election Day violations, nor is it in accord with the established practice of having the days of suspension run consecutively without interruption. The purpose of a suspension is that it should hurt. This is not accomplished by making the suspension effective on the days that the licensee does the least business.

With respect to both suspensions, I note that the Council imposed the suspension for the respective five and ten-day periods "effective as ordered by the Mayor". The Alcoholic Beverage Law confers the power to suspend licenses on the governing body. The governing body may not delegate its power to the Mayor or anyone else, either in whole by letting him fix the period of suspension, or in part by letting him fix the effective dates. In future cases both the period of suspension and the effective dates must be fixed by the Council.

It is further noted that you say that this was West's second offense. I have no record of any previous offense by him. For the completion of my records, kindly certify the details of his previous offense, together with copy of the charges preferred and the effective dates of any suspension imposed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. SUSPENSION - APPLICATION TO LIFT - DENIED PENDING DISPOSITION BY MUNICIPALITY OF APPLICATION AND OBJECTION.

LICENSES - APPLICATIONS - NOTICE - MINIMUM OF TWO DAYS REQUIRED BETWEEN PUBLICATION OF SECOND NOTICE AND ISSUANCE.

Franklin Stores Company and George Sawczuk, Appellants, -vs- Municipal Board of Alcoholic Beverage Control of the City of Newark and Harry Gruber, Respondents	ON APPEAL ON APPLICATION TO LIFT SUSPENSION CONCLUSIONS

See 381-7

Nathaniel J. Klein, Esq., for Petitioner-Respondent, Harry Gruber.
Louis B. Englander, Esq., for Appellant, Franklin Stores Company.
Charles W. Chadwick, Esq., for Appellant, George Sawczuk.

BY THE COMMISSIONER:

It appears from the survey presented with the petition that the entrance to the premises 291 West Kinney Street, Newark, is more than seven hundred and fifty feet from the existing plenary retail distribution premises of the Franklin Stores Company at 261½-263 Springfield Avenue, Newark. It appears, therefore, that a transfer to such premises would not violate the Newark ordinance.

It appears, however, that the first publication of application for transfer to such premises was made on February 22, 1940 and the second on February 29, 1940. I am informed by the secretary of the local Excise Board that it approved the requested transfer at its meeting on February 29, 1940. Under the rules, however, two days must elapse. See Re Novack, Bulletin 174, Item 6.

Since the informal hearing this morning, I am in receipt of letter from Louis B. Englander, Esq., advising that he has filed an objection to the transfer of the license. He is, therefore, entitled to be heard by the local Excise Board. Until the Municipal Board of Alcoholic Beverage Control of the City of Newark disposes of this application and objection, pursuant to the regulations and procedure heretofore promulgated, I reserve entry of order lifting the suspension.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 2, 1940.

6. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF UNQUALIFIED PERSONS AND GAMBLING - 30 DAYS.

In the Matter of Disciplinary Proceedings against CATHERINE J. SILVA, T/a Carioca Club, 112 Elizabeth Avenue, Newark, N. J., Holder of Plenary Retail Consumption License C-956, issued by Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Irving Mandelbaum, Esq., Attorney for Licensee.
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

(1) and (2): In her applications for licenses for the years 1938-1939 and 1939-1940, she falsely stated that no individual other than herself had any interest directly or indirectly in the license, whereas in truth and fact Antonio Silva did have such interest, contrary to R. S. 33:1-25.

(3): On or about July 13, 1939, and on divers days prior thereto, she knowingly employed and had connected with her in a business capacity Antonio Silva, a person who would fail to qualify as a licensee by reason of lack of citizenship, contrary to R. S. 33:1-26.

(4): On or about April 20, 1939, she allowed, permitted and suffered gambling on the licensed premises, contrary to Rule 7 of State Regulations No. 20.

(5): On July 13, 1939, she allowed a female to tend bar, sell and serve alcoholic beverages to patrons, contrary to Section (a) of Resolution 4889 adopted by the Board of Commissioners of the City of Newark on May 24, 1939.

Licensee pleaded not guilty as to charges (1), (2) and (3), and guilty as to charges (4) and (5).

As to charges (1) and (2): Antonio Silva is the husband of the licensee. He is a national of Portugal, and hence is not qualified to hold a license in New Jersey. Charges were instituted after investigators of this Department had obtained statements from the licensee and her husband dated March 21, 1939 and June 30, 1939. In the statement taken from the licensee on March 21, 1939, she admitted, among other things, that:

> "My husband acts as manager for me. He buys the liquors and supplies, hires all the help and pays both bills and salaries. *** I put in my money, $150.00, and my husband put in the rest of the money to make up the amount needed."

In her statement dated June 30, 1939, she sets forth that the total amount invested in the business was $1400.00, of which sum she personally invested $450.00, and her husband invested $950.00, of which sum $350.00 had been owed to her husband by Anthony Fotato, the former licensee, and the balance, namely, $600.00, had been borrowed by her husband from a Mr. Caldeira of Brooklyn, New York. She also admitted therein that her husband was employed as manager of the licensed premises at a salary of $20.00 per week. The statements taken from Antonio Silva on March 21, 1939 and June 30, 1939 substantially corroborate the statements taken from the licensee.

At the hearing, the licensee and her husband contended that their statements, as given to the investigators, did not disclose the true situation as it exists with reference to the ownership and conduct of the business.

Written evidence introduced by the licensee at the hearing discloses that:

(a) On March 11, 1936, Anthony J. Furtado (apparently the same person referred to in the statements as Fotato) executed a bill of sale of the business conducted at 112 Elizabeth Avenue, Newark, to Catherine J. Silva in consideration of $1.00 and other good and valuable considerations;

(b) On April 4, 1936, a chattel mortgage for $885.00, duly recorded, was executed by Catherine J. Silva to Manuel S. Caldeira, covering the fixtures, equipment and merchandise at 112 Elizabeth Avenue, Newark;

(c) On the same day, Catherine J. Silva filed a trade name certificate in the Essex County Clerk's Office, authorizing her to transact business under the name of Club Carioca;

(d) Personal taxes for the years 1936 and 1937 for said premises were billed to Catherine J. Silva by the City of Newark;

(e) Catherine Silva, Club Carioca, 112 Elizabeth Avenue, Newark, N. J., was billed by a wholesale licensee for various alcoholic beverages delivered between December 1, 1937 and April 26, 1938.

The licensee, her husband and Anthony Furtado testified that the true consideration for the bill of sale was $1400.00; $350.00 of which had been paid in cash by Catherine J. Silva to Anthony Furtado, $350.00 of which represented a sum of money then owing by Furtado to Antonio Silva, (which sum the licensee testified she has since repaid to her husband in cash), and $700.00, the balance, represented unpaid bills then outstanding against Furtado, which bills the licensee testified she assumed and subsequently paid.

The chattel mortgage dated April 4, 1936 recites that it was given to secure the sum of $885.00, with interest, as evidenced by a negotiable promissory note made by Catherine J. Silva and endorsed by Antonio Silva, payable on demand. The licensee testified that this sum of $885.00 was loaned to her by Caldeira, who insisted that her husband endorse the note as collateral security; that she has repaid the sum of $335.00 and that she still owes a balance of $500.00 on said chattel mortgage. Caldeira corroborated her testimony. Licensee further testified that this sum of $885.00, in addition to the sum of $150.00 of her own money, was invested in the business.

Despite the admissions made to the investigators by the licensee and her husband, which naturally aroused suspicion, I shall, in view of the written evidence, accept as true the licensee's testimony that the business, which has been conducted in her name under successive licenses since 1936, belongs solely to her and that her husband has no interest therein. I shall, therefore, dismiss charges (1) and (2).

As to charge (3): Licensee testified that when she took over the business in 1936 she took active charge of the operation of the business until she gave birth to a child in February 1938, since which time, because of her confinement and an injury she suffered in May 1938, "she couldn't get down very often". She admits that her husband did errands and what little he could to help her since that time.

The testimony shows that Antonio Silva was tending bar at the licensed premises on April 13, 1939 and April 20, 1939, although he had been warned by Deputy Chief Sebold about twenty months previous to said dates that he was ineligible to tend bar because he was a national of Portugal. The licensee testified that in April 1939 she had no knowledge that her husband was ineligible to tend bar but I do not believe her testimony. I therefore find her guilty as to the third charge.

As to punishment: In view of the warning previously given by Deputy Chief Sebold, I shall suspend the license for twenty days because of the violation set forth in charge (3).

The license will be suspended for a further period of five days for the violation set forth in charge (4), which referred to a game of dice played for drinks at the bar by the bartender, Helen Francis, and three patrons, on April 20, 1939.

The license will be suspended for an additional period of five days for the violation set forth in charge (5), which concerned the employment of a female, Helen Francis, as bartender on July 13, 1939, making a total suspension of thirty days.

Accordingly, it is, on this 4th day of March, 1940,

ORDERED, that plenary retail consumption license C-956, heretofore issued to Catherine J. Silva by Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of thirty (30) days, effective March 8, 1940, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - CARNES v. HAMILTON TOWNSHIP.

J. RICHARD CARNES,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HAMILTON (MERCER COUNTY),)

Respondent)

Samuel Leventhal, Esq., Attorney for Appellant.
No appearance on behalf of respondent.

BY THE COMMISSIONER:

This is an appeal from a thirty-day suspension of appellant's license C-12 for premises at 511 Lalor Street, Hamilton Township.

Respondent imposed said suspension after finding appellant guilty on two charges, namely (1) failing to disclose in his application that another individual was interested directly or indirectly in his license; and (2) aiding and abetting another individual to exercise the rights and privileges of his license.

The case was transmitted to respondent for disciplinary proceedings after two investigators of this Department had obtained a written statement from appellant in which, among other things, he stated that although the license was issued in his name, he did not then nor did he ever have any financial interest in the license or business, which, he said, belonged to his aunt, Eleanor Skoczylas. At the hearing below the licensee gave uncorroborated testimony that, in fact, he conducted the business and that, while his aunt had loaned him One Thousand Dollars ($1,000.00 to purchase the business, she had no other interest in the place. On the record as it then stood, respondent's finding of guilt on both charges was proper.

However, on the hearing of the appeal herein, which is considered in the nature of a trial de novo, appellant presented additional testimony. He has produced a written lease, dated March 12, 1938, wherein Stefan Sivcc leased the licensed premises and an adjoining dwelling to J. Richard Carnes for five years at a yearly rental of Six Hundred Dollars ($600.00). He testified that he lives in the adjoining dwelling with his aunt and uncle, in whose household he has lived since he was three years of age. He also produced a pass book issued by the Trenton Trust Company in his name, showing an initial deposit of One Thousand Dollars ($1,000.00) on September 14, 1938, and fifty subsequent deposits of substantial amounts from that date until August 21, 1939. He testified that the initial deposit represented an unsecured loan of One Thousand Dollars ($1,000.00) cash, which he had received from his aunt, from which he paid Six Hundred Dollars ($600.00) to purchase the business from Stefan Sivcc; that the other deposits represented receipts of the business from which he had paid all of the bills incurred in conducting the business. He testified further that he tends bar at the licensed premises during the morning and evening of every day.

As to the interest of the aunt: Eleanor Skoczylas testified that she formerly worked as a bartender for Stefan Sivcc; that she did not have sufficient education to conduct the business but prevailed upon Sivcc to sell it to her nephew, J. Richard Carnes, after Sivcc had refused to sell the business to her husband; that thereupon she loaned her nephew the sum of One Thousand Dollars ($1,000.00) cash, with which he purchased the business; that she works as a bartender in the licensed premises at no fixed salary, although she takes Five Dollars ($5.00) or Six Dollars ($6.00) per week from the cash register for household expenses. The appellant testified that his aunt has no interest in the profits of the business and that her only interest therein is to the extent of the loan, which he contends has been reduced to the sum of Five Hundred Dollars ($500.00).

On the additional evidence presented, I am satisfied that, aside from the fact that she is employed as a bartender, the only interest which the aunt has in the licensed premises is that of an unsecured creditor to the extent of the amount due upon her loan to the licensee. Under these circumstances, the aunt was not interested, directly or indirectly, in the license, and hence it was not necessary for the licensee to disclose that interest in his application. I am satisfied also that the business belongs to J. Richard Carnes, the licensee.

Hence, on the record as it now stands, the action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 4, 1940.

8. DISCIPLINARY PROCEEDINGS - SOLICITORS - TENDING BAR FOR RETAILER - 5 DAYS.

In the Matter of Disciplinary Proceedings against

EDWARD COHEN,
109 Lewis Street,
Perth Amboy, N. J.,

Holder of Solicitor's Permit #1067, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Edward Cohen, Pro Se.
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the solicitor, alleging that:

"On or about December 16, 1939, while you were interested in the wholesaling of alcoholic beverages by reason of your employment as a solicitor for Greenspan Bros., a New Jersey wholesale licensee, you were interested in and conducted

the retailing of alcoholic beverages at the licensed premises of Charles I. Tarlow, 1 Springfield Road (Rte 29), Mountainside, P.O. Westfield, N. J., holder of a Plenary Retail Distribution License, in that you acted as a salesman on his behalf, in violation of R. S. 33:1-43."

On December 16, 1939, at about 6:00 P.M., Investigators Robbins and Ratti of this Department were in the licensed premises of Charles I. Tarlow. They testified that the solicitor, Edward Cohen, was then behind the counter with a clerk employed by Tarlow; that Cohen took two bottles from the shelf to complete a case of Canadian Club, which Robbins had purchased from him; that Cohen took the money for the purchase and placed it in the cash register.

The solicitor testified that he had arrived at the licensed premises about 5:50 P.M. for the purpose of obtaining an order from the licensee; that he had been requested by the son of the licensee, who was busy with a customer, to "hang around the register until I get back"; that he had taken the money from Investigator Robbins and placed it in the cash register. He denies that he took any bottles from the shelf to complete the case of Canadian Club, but that seems to be immaterial since it is clear that he participated in the sale.

There is no evidence that the solicitor was employed in any capacity by Charles I. Tarlow or that he was being paid for his services. He denied that he was and testified that he had never waited on customers at any other time in Tarlow's place or any other place.

In Re City Brewing Corporation, Bulletin 159, Item 5, I held that a solicitor for a wholesaler may not tend bar for a retailer, whether gratuitously or not. The purpose of R.S.33:1-43 is to divorce completely the manufacturing and wholesaling of alcoholic beverages from the retail trade. Hence, I find the licensee guilty as charged.

Since this is the first case of its kind, and there is no evidence that solicitor made a practice of acting as salesman for a retailer, I shall suspend the permit for five days.

Accordingly, it is, on this 4th day of March, 1940,

ORDERED, that Solicitor's Permit #1067, heretofore issued to Edward Cohen, be and the same is hereby suspended for a period of five (5) days, effective March 8, 1940.

D. FREDERICK BURNETT,
Commissioner.

9. SIGNS - INDIRECT ADVERTISING OF PRICE - "HUDSON'S HOT SHOTS" DISAPPROVED.

March 4, 1940

Mr. Bernard Sitkoff,
Hudson Wine & Liquor Co., Inc.,
Guttenberg, N. J.

Dear Mr. Sitkoff:

I have your letter of February 26, 1940, requesting permission to display in your show window a sign, 15" x 10½", reading:

"Hudson's Hot Shots"

Rule 3 of Regulations 21 (Pamphlet Rules, page 67) prohibits all price advertising by retailers, directly or indirectly, on the exterior of the licensed premises or in the show window or door, or interior when visible from the street, excepting only by the use of 1½" x 1½" cards advertising the price of alcoholic beverages being sold in original containers for off-premises consumption.

Now, this sign is an indirect price advertisement within the meaning of the rule, and therefore prohibited. The definite implication is that the "hot shots" are specially priced items. The term is synonymous in the mind of a purchaser with "bargains".

The use of such sign in the manner suggested would, therefore, be cause for suspension or revocation of license.

Better keep your powder dry!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. LICENSES - TRANSFERS - THE PERSON TO WHOM A LICENSE IS TRANSFERRED CANNOT BECOME LIABLE FOR UNPAID UNEMPLOYMENT COMPENSATION TAX BY VIRTUE OF ANY LIEN UPON THE LICENSE - A LIQUOR LICENSE IS NOT SUBJECT TO LIEN.

Dear Commissioner:

Does a transferee who does not take over any assets of a business nor in any other fashion acquire the business of the licensee, but simply purchases the license and nothing more, become liable for unpaid unemployment compensation tax?

The Unemployment Compensation Commission contends that the amount of unemployment compensation tax due from the licensee-transferor is a lien upon the license, and that the transferee becomes liable to payment therefor by means of the transfer.

I know that you have held time and again that no debt of a licensee can be fastened upon the license as a lien, and that the license may be transferred free and clear of the same.

I should be obliged to you for your advices in the premises.

Respectfully yours,
Samuel Backer,
City Solicitor.

March 4, 1940

Samuel Backer, City Solicitor,
Atlantic City, N. J.

Dear Mr. Backer:

I hesitate to express any opinion as to the right of the Unemployment Compensation Commission to enforce a tax but it seems perfectly clear, from the provisions of R. S. 33:1-26, that the Commission cannot acquire a lien upon a liquor license. That section provides:

> "Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to remove disqualification because of a conviction, pursuant to R. S. 33:1-31.2	CONCLUSIONS AND ORDER
Case No. 82 Rubenstein	

Sidney B. Rosenthal, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner requests a lifting of his disqualification resulting from his conviction on October 6, 1933 of the crime of robbery.

Finger print returns and police reports disclose that petitioner was twice arrested in 1935 as a disorderly person, the charge being dismissed on the first occasion and sentence suspended on the second. Petitioner was again arrested in 1936, charged with atrocious assault and battery, but the case was dismissed by the Grand Jury.

At the hearing petitioner testified that since 1933 he had been employed at first by his father and subsequently by a textile print works where he started in April 1935 as a laborer and subsequently advanced to the position of stock clerk with an assistant and six other men under his direction. He further testified that he terminated his employment in April 1939. Asked by

the Hearer where he had been employed since April 1939, petitioner testified that he had not been employed. Pressed, he confessed that for the four months prior to the hearing he had been employed at a retail licensed premises. Confronted with his previous testimony as to his unemployment, he claimed that he was "just helping" the licensee. In fact, he was manager at a salary of twenty-five dollars a week.

False testimony and evasiveness by the petitioner in a proceeding of this nature require that I refuse to exercise in his favor the discretion conferred by R. S. 33:1-31.2 to enter an order removing the disqualification.

The petition is denied with leave to reapply after one year from the date hereof, an interval during which petitioner may learn to tell the truth.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 6, 1940.

12. DISCIPLINARY PROCEEDINGS - NON-BEVERAGE ALCOHOL - SALES WITHOUT OBTAINING CERTIFICATE SIGNED BY PURCHASER - PERMIT CANCELLED.

In the Matter of Disciplinary Proceedings against GUIDO BORTOLO TOSCANI, T/a Toscani's Wine & Liquors, 262½ Parker Avenue, Clifton, New Jersey, Holder of Plenary Retail Distribution License No. D-11, heretofore issued by the Municipal Council of the City of Clifton, and Special Permit No. AL-42, heretofore issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

Guido Bortolo Toscani, Pro Se.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee, the holder of a plenary retail distribution license and an alcohol permit, pleads guilty to a violation of Rule 5(g) of State Regulations No. 31, in that he failed to receive from the purchaser with each purchase of alcohol a certificate signed by the purchaser that the alcohol was intended for non-beverage use.

During September 1939 licensee sold 8.75 gallons of alcohol. He obtained proper certificates from twenty purchasers to cover 3.50 gallons of said amount, but none to cover the balance, namely, 5.25 gallons.

During October 1939 he sold 4.25 gallons of alcohol. He obtained proper certificates from four purchasers to cover one gallon of said amount, but none for the balance.

In November 1939 he sold four gallons of alcohol without obtaining certificates signed by the purchasers.

It is clear from the provisions of Rule 5(g) of State Regulations No. 31 that, with respect to each purchase of alcohol, a certificate signed by the purchaser that the alcohol is intended for non-beverage use must be obtained by the permittee.

The licensee claims that he was confused by advice from a salesman that he did not have to pay tax for non-beverage alcohol for which certificates had been received and by an alleged telephone message to some unidentified person at this Department - perhaps the janitor! - about the tax which is none of our business anyway. Moreover, he says he was confused by questions which the State Tax Commissioner required him to answer in his monthly report. The result of his several confusions, as may be surmised, was that he indulged the self-favoring conclusion that it was not necessary for him to obtain certificates from the purchasers - a result plainly at variance with the express condition of his permit.

The essential requirements of this privilege of selling non-beverage alcohol will be clarified and all further confusion obviated by cancelling the permit.

Accordingly, it is, on this 7th day of March, 1940,

ORDERED, that Alcohol Permit AL-42, heretofore issued by the Commissioner of Alcoholic Beverage Control, be and the same is hereby cancelled, effective immediately.

Commissioner.