

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

BULLETIN 365

NOVEMBER 30, 1939.

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - 5 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary)
Proceedings against)

PETER W. & AGNES SKEBERDIS,
80 Wilson Avenue,
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-575, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

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

BY THE COMMISSIONER:

The licensees have pleaded guilty to charges that on or about October 15, 1939 they sold alcoholic beverages to two minor boys in violation of R. S. 33:1-77 and Rule 1 of State Regulations 20.

It appears that both boys were nineteen years of age and were served the alcoholic beverages by a waiter in the employ of the licensees. The boys have the appearance of age and consort with others much older. No written statements, however, were taken from them declaring their age and hence the recent statutory protection to a licensee who acts in good faith is of no avail and accordingly, the licensee must be held responsible.

In view, however, of the plea in ample time prior to the hearing the Department has been saved time and expense.

Accordingly, it is, on this 22nd day of November, 1939,

ORDERED, that Plenary Retail Consumption License C-575, heretofore issued to Peter W. & Agnes Skeberdis by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for five (5) days, effective November 27, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE ON ELECTION DAY - 30 DAYS' SUSPENSION.

November 24, 1939

Walter S. Terhune, Clerk,
West Milford, N. J.

My dear Mr. Terhune:

I have before me staff report and your letter of November 21st re disciplinary proceedings conducted by the Township Committee against William Devonmille, Jr., Hamburg Turnpike, charged with sale of alcoholic beverages on Primary Election Day last past, and note that his license was suspended for thirty days.

The gentleman seems to have a considerable previous record, for the staff report states:

"The licensee was previously charged with possession of illicit alcoholic beverages and his license was suspended for three days effective August 23, 1937. As a result of the same violation he was arrested, pleaded guilty and was fined \$100.00 whereupon his license was automatically suspended pursuant to R. S. 33:1-31.1. The statutory automatic suspension was operative from September 16, 1937, to November 3, 1937, at which time the suspension was lifted. See Re Devonmille, Bulletin 212, Item 3."

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the substantial and satisfactory penalty imposed which commands respect and should indicate to West Milford licensees that the Township Committee means business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FAIR TRADE - ORDER IMPOSING SUSPENSION ON ANY NEW LICENSE HEREAFTER ISSUED.

In the Matter of Disciplinary)
Proceedings against)

ANASTAS MICHAEL,)
943 Broadway,)
Camden, N. J.,)

ORDER

Holder of Plenary Retail Consump-)
tion License C-193 for the fiscal)
year 1938-1939, issued by the)
Municipal Board of Alcoholic Bever-)
age Control of the City of Camden)
- - - - -)

On February 9, 1939, an Order was entered suspending plenary retail consumption license C-193, then held by this licensee for premises 943 Broadway, Camden, for a period of ten (10) days, but the effective date thereof was reserved pursuant to notice of December 17, 1938, Bulletin 289, Item 1; and

The matter therein referred to having been finally determined by the court of last resort in this State; and

This licensee not having transferred his license, or obtained a renewal thereof or any new license for the present fiscal year;

It is, on this 24th day of November, 1939,

ORDERED, that the said ten-day suspension shall be and the same is hereby imposed against any license hereafter acquired by Anastas Michael under the Alcoholic Beverage Law.

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - MISREPRESENTATION IN APPLICATION - 50 DAYS' SUSPENSION.

November 24, 1939

B. J. Dunigan, Clerk,
Woodbridge, N. J.

My dear Mr. Dunigan:

I have before me staff report and your letter of November 21st re disciplinary proceedings conducted by the Township Committee against Nicholas Markow, Route No. 25 near Lafayette Rd., Fords, charged with concealing his lack of the requisite five years' residence in New Jersey in his application for license, and note that his license was suspended for fifty days.

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

I understand that by the time the suspension is up Markow will have acquired the necessary five years' residence and hence the violation will not recur.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. AUTOMATIC SUSPENSION - SALE TO ELEVEN YEAR OLD MINOR - APPLICATION TO LIFT - DENIED UNTIL SUSPENSION SHALL HAVE RUN THIRTY DAYS.

In the Matter of a Petition by)	
CIRO GHETTI,)	
96 Sitgreaves Street,)	
Phillipsburg, N. J.,	)	CONCLUSIONS
	)	AND ORDER
to lift the Automatic Suspension)	
of Plenary Retail Distribution)	
License D-5 issued by the Board of)	
Commissioners of the Town of)	
Phillipsburg.)	
-----)	

Frank J. Kingfield, Esq., Attorney for Petitioner.
BY THE COMMISSIONER:

On November 1, 1939, licensee pleaded guilty to an indictment for selling alcoholic beverages to a minor and was sentenced to

prison for thirty (30) days, which sentence was suspended during good behavior. On November 8, 1939 licensee pleaded guilty in disciplinary proceedings pending before the Board of Commissioners of the Town of Phillipsburg to a charge of selling alcoholic beverages to a minor, which charge was based upon the same facts upon which the indictment was found. Thereupon, the Board of Commissioners suspended his license for a period of five (5) days, namely, from November 13th to November 17th, 1939, both inclusive.

On November 16, 1939, an investigator of this Department picked up said license D-5 at the licensed premises and forwarded it to me because the conviction on November 1, 1939 in the criminal proceeding automatically suspended the license for the balance of its term. R. S. 33:1-31.1.

Licensee has filed petition herein, praying that the automatic suspension be lifted and the license restored.

Review of synopsis forwarded to the issuing authority, upon which the disciplinary proceedings were based, discloses that the licensee was alleged to have sold a bottle of ale to a boy eleven years of age; that a statement had been taken from the boy, wherein he admitted that he had previously bought ale at the licensed premises and consumed it after leaving the premises. A five (5) day penalty appears to be totally inadequate.

This is licensee's first offense of record. Under the circumstances, I shall not lift the automatic suspension until thirty (30) days shall have expired. The license has been suspended since November 13, 1939.

Accordingly, it is, on this 22nd day of November, 1939,

ORDERED that the automatic suspension of the license be lifted, effective at the opening hour on December 13, 1939. The license will be returned to the licensee on December 12, 1939.

D. FREDERICK BURNETT,
Commissioner.

6. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED AND PADLOCK ORDERED.

In the Matter of the Seizure on	)	Case 5590
October 5, 1939, of a number of)	
still parts, appurtenant parapher-	)	ON HEARING
nalialia, and a Ford Coach, on prem-	)	CONCLUSIONS AND ORDER
ises located in Johnstontown, in)	
Galloway Township, County of Atlantic)	
and State of New Jersey.)	
- - - - -	- - - - -	

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

BY THE COMMISSIONER:

On October 5, 1939, investigators of this Department seized unregistered still equipment, consisting of four wooden vats found in a barn, and a steam pump, steam boiler, and mixing tank found nearby, on land located in Johnstontown, owned by William D. Birch, and sold for unpaid taxes to Galloway Township. They also seized a quantity of molasses and a Ford Coach, which were on the premises.

At the hearing held herein, no one appeared to contest forfeiture of the property or padlocking of the premises.

It is determined that the seized property set forth in Schedule "A" constitutes unlawful property. R. S. 33:2-5.

Accordingly, it is ORDERED that the seized property be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

It is further ORDERED that the barn in which the vats were found shall not be used or occupied for any purpose whatsoever for a period of six months commencing the 22nd day of December, 1939.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 22, 1939.

SCHEDULE "A"

8 - drums of molasses
4 - wooden vats
1 - Worthington steam pump
1 - steam boiler
1 - cast iron mixing tank
Miscellaneous pipes, fittings and hose
1 - Ford Coach, New Jersey 1939
Registration No. AF 87 T.

7. DISCIPLINARY PROCEEDINGS - FEMALE TENDING BAR - 5 DAYS.

In the Matter of Disciplinary)
Proceedings against)

BENJAMIN ZIEGLER,
297 Springfield Avenue,
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-936 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

Benjamin Ziegler, Pro Se.
Charles Basile, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty with an explanation to a charge alleging that on September 30, 1939 he allowed a female, other than his wife, to tend bar contrary to Section (a) of Newark Resolution #4889.

On September 30, 1939, when Detectives Eschenfelder and Madden of the Newark Police entered the licensed premises, Rose Pultzi went behind the bar and served two glasses of beer to each of them. She is a stepsister of licensee, who was not on the premises when the sales were made.

The only attempted explanation is that the licensee had repeatedly warned his stepsister not to go behind the bar. She told the police that her boss is a poor man and needs the money. Even if the licensee gave her the alleged instructions, he is responsible for the conduct of his agents. I find him guilty as charged. His license will be suspended for five (5) days.

Accordingly, it is, on this 24th day of November, 1939,

ORDERED, that plenary retail consumption license C-936, heretofore issued to Benjamin Ziegler 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, effective November 28, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - 5 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary)	
Proceedings against)	
)	
JOSEPH MARANO,	)	CONCLUSIONS
18 Downing Street,	)	AND ORDER
Newark, New Jersey,)	
)	
Holder of Plenary Retail Consump-)	
tion License C-360, issued by the)	
Municipal Board of Alcoholic)	
Beverage Control of the City of)	
Newark.)	
- - - - -)	

Frank Marano, Esq., Attorney for the Defendant-Licensee.
Charles Basile, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges that during prohibited hours on Sunday, November 5, 1939, his licensed premises were open, and also that he sold alcoholic beverages therein, in violation of Newark Ordinance No. 3930, adopted December 21, 1938.

The usual penalty for each violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 24th day of November, 1939,

ORDERED, that Plenary Retail Consumption License C-360, heretofore issued to Joseph Marano 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, effective November 28, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

9. REFERENDUM - IF HELD UNDER R. S. 19:37-1 TO ASCERTAIN LOCAL SENTIMENT UPON A QUESTION OF MUNICIPAL POLICY IS MERELY ADVISORY AND ITS RESULT HAS NO BINDING EFFECT.

November 24, 1939

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

My dear Mr. Haney:

I have before me yours of November 15th, certifying that at the general election held in the City of Trenton on November 7, 1939, there was submitted the question "Shall the sale, delivery or consumption of alcoholic beverages upon licensed premises in the City of Trenton be prohibited between the hours of 1:00 P.M. and 5:00 P.M. on Sundays?", and your further letter of November 18th certifying that the vote on the question was 'Yes' 12,872, 'No' 10,847.

I note that the referendum was held pursuant to R.S.19:37-1 et seq., which provides the procedure whereby the governing body of any municipality desiring to ascertain the sentiment of the legal voters therein upon any question or policy pertaining to the government or internal affairs thereof may submit such question to a vote of the electors in the municipality.

As expressly provided in R. S. 19:37-4, such a referendum is merely advisory, and its result has no binding effect. It therefore changes none of your existing regulations; and neither compels action by the Board of Commissioners nor prevents the Board from changing the Sunday hours by duly enacted ordinance as it sees fit at any time. It is a straw vote, a poll of public sentiment, nothing more. See Re Scott, Bulletin 288, Item 7 and the items therein cited.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. REFERENDUM - HEREIN THE DIFFERENCE IN PROCEDURE AND IN EFFECT BETWEEN REFERENDA HELD UNDER THE ALCOHOLIC BEVERAGE LAW AND ONE CONDUCTED UNDER R. S. 19:37-1.

November 24, 1939

Rev. Edward Allen Morris,
President, Trenton Council of Churches,
Trenton, N. J.

My dear Mr. Morris:

I have before me yours of November 11th enclosing copy of your letter to Mayor Rogers and requesting an expression of my opinion concerning the matter at issue.

I have today written to City Clerk Haney of Trenton regarding the referendum, as per copy enclosed.

Your mention of legal technicalities is not apposite, for the law is plain and unmistakable. Briefly, it is this: A referendum

has no effect other than that given it by the statute which authorizes the holding of the referendum. Thus, if held pursuant to the Alcoholic Beverage Law (R. S. 33:1-44 through 47.1), whatever the vote, whether yes or no, certain consequences must follow and the referendum has a positive effect. It is compulsory. That is because those consequences are prescribed by the statute. In order to put such a question on the ballot, fifteen per cent, at least, of the qualified electors must sign a petition requesting submission.

The Trenton referendum was not that kind of a referendum. It was held pursuant to an entirely different statute, i.e., R. S. 19:37-1 et seq., which is no part of the Alcoholic Beverage Law, and which provides a quick summary way in which a governing body may ascertain the sentiment of the legal voters of a municipality upon any question or policy pertaining to the government or internal affairs thereof without the formality and the time and expense of obtaining signatures to petitions. Unlike referenda under the Alcoholic Beverage Law, in which the initiative has to come from the voters themselves, a referendum under R. S. 19:37-1 emanates from the governing body itself and all it requires is the adoption at a regular meeting of an ordinance or resolution requesting the Clerk of the County to print upon the official ballots to be used at the next ensuing general election a certain proposition to be formulated and expressed in concise form. The statute expressly declares that such a referendum is merely advisory and has no binding effect, viz.:

"Such result shall not bind the governing body from which the ordinance or resolution emanated, nor be taken or construed as other than an expression of sentiment by the voters, to be followed or disregarded by the governing body in its discretion." (R. S. 19:37-4).

In effect, it is about the same as if a judge of a court told you of the facts of the case coming up before him for decision and asked you how you would decide it. Your opinion would doubtless be of value to him, but it remains nevertheless his duty and his right to make his own decision.

The Trenton Board of Commissioners is, therefore, free to establish such regulations of Sunday selling, by duly enacted ordinance, as it sees fit.

You were wholly in order in addressing to Mayor Rogers, on behalf of your Council, a request for a prohibition of Sunday liquor selling. I think, in fact, that your request has borne fruit, for I am in receipt of a further letter from Mr. Haney, enclosing copy of proposed amendment to Section 18 of the Alcoholic beverage ordinance which, if adopted, will prohibit all sales of alcoholic beverages on Sunday between 2:00 A.M. and 5:00 P.M., thus establishing the same regulation of hours which was in effect prior to the referendum and apparently carrying out the wishes of the electorate as expressed in the referendum. Mr. Haney tells me that the proposed amendment passed first reading on November 16th and will be further considered at the meeting of November 30th.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

November 25, 1939

Re: Case No. 305

Applicant was arrested on March 9, 1928 and charged with being the proprietor of a disorderly (bawdy) house. He pleaded guilty and was sentenced to a six months' prison term.

Departmental investigation disclosed that applicant, as night manager of a hotel, hired rooms to couples without baggage, and without requiring them to register; that the same female would return to the hotel several times during one night, each time accompanied by a different male companion.

Applicant admitted being the night manager of the hotel and renting rooms to couples, but professed inability to remember any of the circumstances surrounding the offense.

In any event, regardless of the circumstances, maintaining a house of prostitution, per se, involves moral turpitude. Re Case No. 289, Bulletin 346, Item 11.

It is recommended that applicant be declared ineligible by reason of his conviction of the aforesaid crime from holding a liquor license or being employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

12. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure of)	#5122
Sophie Freundlich's Ford sedan,	
six quarts of whiskey and)	ORDER
twenty-four pints of gin, at)	
88 Speedwell Avenue, in the Town)	
of Morristown, County of Morris)	
and State of New Jersey.)	

BY THE COMMISSIONER:

It appearing that Conclusions and Order heretofore entered on August 4, 1939 (Re Seizure Case 5122, Bulletin 341, Item 6) provided that the alcoholic beverages comprising six quarts of whiskey and twenty-four pints of gin that had been seized might be returned to Imperial Liquor Corporation provided it paid, on or before October 1, 1939, the costs involved in the seizure thereof and also of the motor vehicle by which they were unlawfully transported; and

It further appearing that Imperial Liquor Corporation was adjudicated a bankrupt during the pendency of the proceedings and that Max L. Rosenstein, Esq., receiver in bankruptcy, is not interested in the return of the aforesaid alcoholic beverages; and

It further appearing that said alcoholic beverages were transported in an unlicensed vehicle and hence are illicit and subject to confiscation pursuant to R. S. 33:1-66(c);

Accordingly, it is ORDERED that the property set forth in Schedule "A", attached hereto, be and hereby is forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 25, 1939

SCHEDULE "A"

6 quarts of whiskey
24 pints of gin

13. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - 10 DAYS.

In the Matter of Disciplinary)	
Proceedings against)	
RUTH FRANZBLAU,)	
127 Sixteenth Ave.,	)	CONCLUSIONS
Newark, N.J.,	)	AND ORDER
Holder of plenary retail consump-)	
tion license C-303, issued by the)	
Municipal Board of Alcoholic)	
Beverage Control of the City of)	
Newark.)	

Charles Basile, Esq., for the State Department of Alcoholic
Beverage Control.
Irving Efseroff, Esq., for the licensee, Ruth Franzblau.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that

1. Alcoholic beverages had been sold to Eleanor S _____, a minor, in violation of R. S. 33:1-77, and
2. Such beverages had been sold, served and delivered, their service and delivery allowed, permitted and suffered, and their consumption permitted upon the licensed premises, in violation of State Regulations 20, Rule 1.

Testimony established that on the night of August 24, 1939, Eleanor S _____ visited the licensed premises with a male companion and was served a glass of beer. The sale of the beer was admitted by the bartender. On August 24, 1939, Eleanor S _____ was under the age of 21 years, having attained her majority on October 6, 1939.

The licensee moved for dismissal of the charge of sale in violation of the Act for the reason that there was no evidence that the licensee had made the sale, it being admitted that the licensee was not on the licensed premises at the time of the alleged violation. Whether the sale by the bartender would warrant conviction of the licensee in a criminal court for violation of R. S. 33:1-77 need not here be determined. It may be observed, however, that the only person who may lawfully sell alcoholic beverages is the licensee, and that the licensed privilege carries with it the burden of responsibility for employees' acts in disciplinary proceedings which, although penal, are civil rather than criminal.

The testimony established that beer was served to a minor by an employee of the licensee. The service of the beer under the circumstances, even though not a sale in the ordinary sense, nevertheless constitutes a sale for the purpose of the Alcoholic Beverage Law. R. S. 33:1-1(w); Re Morganstern and Oliner, Bulletin 292, Item 9. The motion to dismiss the first charge is therefore denied.

The licensee also moved for dismissal of the second charge for the same reason, viz., that it was not the licensee personally who had committed the alleged violation. It may be noted that the licensee was charged not only with sale, service and delivery of an alcoholic beverage to a minor, but also was charged with allowing, permitting or suffering such service or delivery - language which clearly covers the acts of an employee. The motion to dismiss the second charge is also denied.

On the whole case it is clear that the licensee is guilty as charged. Testimony on behalf of the licensee that the minor had visited the premises on a previous occasion, at which time she had represented herself to be of age, is immaterial even if it were credible.

Accordingly, it is, on this 27th day of November, 1939, ORDERED, that plenary retail consumption license C-303, heretofore issued to Ruth Franzblau for premises 127 Sixteenth Avenue, Newark, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same hereby is suspended for ten days commencing 3:00 A.M. December 1, 1939.

D. FREDERICK BURNETT,
Commissioner.

14. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - 5 DAYS.

In the Matter of Disciplinary
Proceedings against

SAMUEL and ANNA GACHINA,
97 - 16th Avenue,
Newark, N.J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-195, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

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

Herman E. Hillenbach, Esq., for the licensees, Samuel and
Anna Gachina.

BY THE COMMISSIONER:

After leaving the premises of Ruth Franzblau, the subject of disciplinary proceedings just decided (Re Franzblau, Bulletin 365, Item 13, supra), Eleanor S. _____ and her companion went to the licensed premises of Samuel and Anna Gachina where they were served several glasses of beer. To charges essentially the same as those in the Franzblau case, the licensees in the instant case pleaded guilty in advance of hearing.

The guilty plea has saved the Department the time and expense of presenting its case. The license will, therefore, be suspended for five days instead of ten.

Accordingly, it is, on this 27th day of November, 1939, ORDERED, that plenary retail consumption license C-195, issued to Samuel and Anna Gachina for premises 97 - 16th Avenue, Newark, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for five days commencing 3:00 A.M. December 1, 1939.

D. FREDERICK BURNETT,
Commissioner.

15. SEIZURES - CONFISCATION PROCEEDINGS - ORDER AMENDED.

In the Matter of the Seizure on	)	Case 5406
May 13, 1939, of approximately)	
1000 gallons of wine, approximate-)	
ly 104 containers of other alco-	)	ORDER
holic beverages and miscellaneous)	
personal property, at 15-17 Pierson)	
Place, in the City of Newark, County))	
of Essex and State of New Jersey.)	
-----)	

BY THE COMMISSIONER:

It appearing from a further check of the file in the within case that order dated November 8, 1939 was erroneous, said order is hereby vacated. In lieu thereof it is

ORDERED that the Conclusions and Order heretofore entered on November 5, 1939 be amended in the following respects:

1. The caption shall read:

"In the Matter of the Seizure on May 13, 1939 of 11 barrels, 1 keg, 2 carboys, 14 jugs and 1840 bottles of wine; 5 bottles and 5 jugs of other alcoholic beverages; 94 bottles of assorted wines and liquors and miscellaneous property at 15-17 Pierson Place, in the City of Newark, County of Essex and State of New Jersey."

2. The second paragraph shall read:

"The illicit alcoholic beverages consisted of 11 barrels and 1 keg of home-made wine manufactured without permit, 2 carboys, 14 jugs and 1840 bottles of wine, 4 jugs and 4 bottles of other alcoholic beverages; 1 jug and 1 bottle of alcohol. Only a few of said jugs and bottles appeared to contain tax-paid alcoholic beverages. The bottling equipment included 2 bottle capping machines, coloring matter, hydrometers, labels and bottle caps. The seizure also included 94 bottles of assorted wines and liquors which were tax-paid but which are subject to forfeiture under the provisions of R. S. 33:1-66(b)."

3. Schedule "A" shall read:

"11 barrels, 1 keg, 2 carboys, 14 jugs and 1840 bottles of wine;
4 jugs and 4 bottles of alcoholic beverages;
1 jug and 1 bottle of alcohol;
94 bottles of assorted wines and liquors.
Miscellaneous personal property."

D. FREDERICK BURNETT,
Commissioner.

Dated: November 26, 1939.

16. REFERENDUM - SPECIFIED HOURS FOR SUNDAY SALES - EFFECT OF NEGATIVE VOTE - HEREIN AN ILLUSTRATION OF THE REASON FOR THE STATUTORY PRESCRIPTION OF THE EFFECT OF SUCH VOTE.

HOURS OF SALE - SPECIAL EXTENSIONS FOR CHRISTMAS AND NEW YEAR'S MAY BE MADE ONLY BY ORDINANCE - THE PROCEDURE INDICATED FOR THOSE WHO OBJECT TO SUCH AN AMENDATORY ORDINANCE.

November 27, 1939

Camden County Ministerial Association
3704 Westfield Ave.
Camden, N. J.

Att: Rev. Norman W. Paullin, President
Albert E. Flourney, Secretary

Gentlemen:

I have before me your letter of November 20th protesting the celebration of Christmas and New Year's in Camden taverns on the respective Sunday evenings preceding and note your reference to the 1937 referendum.

The result of that referendum has no legal effect upon the present question. It put to the Camden voters the question "Shall the sale of alcoholic beverages be permitted on Sundays in the municipality after 1:00 P.M.?" The vote was in the negative - roughly 2 to 1, as you say. Where a question of allowing Sunday sales during certain specified hours is submitted and the vote is in the negative, the Statute expressly provides that the hours of sale may be regulated "as theretofore", which means just as if there had never been any referendum. This is fully explained in Re Riverside Township, Bulletin 363, item 8 (copy enclosed) where the difference in result, if the question put had been whether there should be any sales at all on Sundays, is shown.

It follows, therefore, that Section 5 of the Camden Ordinance, adopted by the Board of Commissioners on December 27, 1934, which prohibits sales on Sundays after 2:00 A.M., was not affected by the referendum but continued in full force and effect, which illustrates neatly the reason for the aforesaid statutory prescription of the effect of a negative vote upon such a question.

This ordinance has never been altered or changed.

Such ordinance, therefore, so long as it remains in force prohibits any sales of alcoholic beverages not only on the Sundays in question but also upon any Sunday after 2:00 A.M.

I ruled just recently that there would be no state-wide dispensation authorizing taverns to open on Sunday, December 31st for New Year's Eve. And this for the reason that each community should determine for itself whether taverns should be open or closed on Sundays. Re Devin Products Co., Bulletin 363, item 9, (copy enclosed).

Hence, if there is to be any change in Camden, it can be accomplished only by formal ordinance duly adopted by the municipal governing body. Re Mills, Bulletin 364, Item 16.

If an amendatory ordinance should be proposed in Camden your appropriate procedure is to enter your objection directly to the Camden Board of Commissioners. I have no jurisdiction in such a matter except by way of appeal after the ordinance is enacted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

17. DISCIPLINARY PROCEEDINGS - FARMING OUT LICENSE AND REFILLS - INADEQUATE PENALTIES.

November 27, 1939

Nelson Birch,
North Brunswick Township Clerk,
New Brunswick, R.D. 24, N.J.

My dear Mr. Birch:

I have before me staff report and copies of resolutions adopted by the Township Committee on October 2nd in disciplinary proceedings against

- | | |
|------------------|----------------------|
| 1. William Green | 2. Anthony Tamburino |
| Route 25 | 1308 Livingston Ave. |

I note that Green was charged with renting out his license to a non-resident, and Tamburino with refilling liquor bottles, but that the license of each was suspended for only five days.

The penalties in both cases are woefully inadequate.

As to Green: According to the staff report the licensee sold out his business, lock, stock and barrel, to a resident of Staten Island in December 1938, and permitted the buyer to operate under his license. In Re Business Men's Associates, Inc., Bulletin 348, Item 6, a similar case, the license was revoked. I said:

"A licensee who deliberately farms out its license to others for financial gain.....perpetrates a serious fraud upon the State which strikes at the very root of the liquor licensing system."

As to Tamburino: According to the staff report, my men found five bottles of liquor which, upon analysis, proved to be not as described by the labels. Questioning the licensee and his son, the investigators obtained an admission from the latter that he had refilled the questionable bottles with other whiskey. Yet from the resolution adopted it appeared that at the hearing the licensee claimed that he could make no defense because no sample of the seized liquor was left with him. The refilling was admitted - what good would analysis do the licensee or anyone else?

Has the North Brunswick Township Committee any stomach to perform its duty?

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

18. DISCIPLINARY PROCEEDINGS - REFILLS - APPROPRIATE PENALTY.

November 27, 1939

Robert V. Peabody,
Pennsauken Township Clerk,
P.O. Merchantville, N.J.

My dear Mr. Peabody:

I have before me staff report and your letter of October 11th re disciplinary proceedings conducted by the Township Committee against Tekla Dromsky, 1906 - 49th Street, charged with possession of nine bottles of watered whiskey, and note that her license was suspended for twenty-five days.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the penalty imposed. I take it that the Committee reduced the recommended thirty-day minimum by five days because of the licensee's plea of guilty. This was entirely proper.

If other issuing authorities would do their duty unflinchingly, as your Township Committee has done in this case, the bootlegger and his allies would soon be driven from the State.

The cooperation of the Pennsauken Township Committee in the fight against illicit liquor is appreciated.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

19. PLENARY RETAIL TRANSIT LICENSE - STORAGE OF LIQUOR IN OFF SEASONS.

Dear Sir:

During the summer months this Company operated the Steamer "Sandy Hook" between New York City and Atlantic Highlands, N. J. and license number M-9 was issued to the Company.

The season ended during the early part of September and at that time we had an inventory of 30.94 gallons of liquor and .10 gallons of still wine. We should like to store this liquor and wine in our Jersey City restaurant. I requested permission to do so from the State Tax Department and they said that such an arrangement was agreeable to them but that we should write to you to determine whether you will consent to this liquor and wine being stored at our licensed premises in Jersey City. It is our plan to keep this liquor and wine separate and apart from the other liquor in the restaurant.

I should appreciate your advice.

Yours very truly,
Charles E. Miller,
General Attorney.

November 27, 1939.

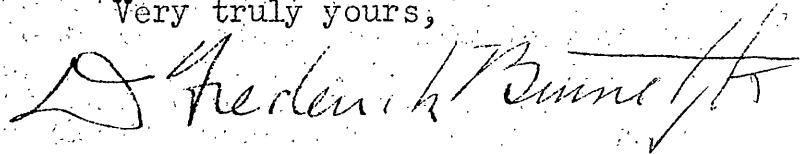
The Central Railroad Company of New Jersey,
New York, N. Y.

Gentlemen: Att: Charles E. Miller, General Attorney.

According to our records, your corporation holds Plenary Retail Transit License M-9 for the Steamer Sandy Hook and Plenary Retail Consumption License C-165 for premises located at the Jersey City Terminal, Jersey City, N. J.

Under the circumstances, I see no objection to your transferring the above mentioned liquor and wine to your Jersey City Terminal for storage on the licensed premises there.

Very truly yours,



Commissioner.