

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

BULLETIN 384

FEBRUARY 14, 1940.

1. NOTICE RE SPECIAL ELECTION FOR THE ADOPTION OF MUNICIPAL COUNCIL AND MUNICIPAL MANAGER FORM OF GOVERNMENT TO BE HELD IN THE CITY OF NEWARK ON FEBRUARY 20, 1940.

February 7, 1940

The special election to determine whether or not the Council-Manager form of government shall be adopted for the City of Newark has been set for February 20, 1940.

The election is pursuant to Title 40, Chapter 80 of the Revised Statutes.

R. S. 40:80-6, concerning the conduct of such elections, provides, among other things, that the election shall be conducted by the same election officers and in the manner prescribed by the laws regulating elections. The reference is to the Election Law (R. S. Title 19).

Rule 2 of State Regulations No. 20 provides:

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

As Title 40, Chapter 80 of the Revised Statutes incorporates the election law procedures, the election is a special election within the purview of Rule 2 of State Regulations No. 20.

The polls will be open from 7:00 A.M. until 9:00 P. M. R. S. 40:80-6. Retail licensees will, therefore, not sell, offer for sale or deliver any alcoholic beverages in Newark on February 20, 1940, between the hours of 7:00 A.M. and 9:00 P.M., the polling hours provided by the statute.

It has been brought to my attention that because of the short notice on which the date for the holding of the special election has been fixed, a number of private affairs, for which arrangements have already been made and at which it was contemplated that alcoholic beverages were to be served, may be compelled to forego such service because of the election.

In view of the shortness of the notice, I shall entertain from the organizations conducting such affairs, applications for special permits authorizing the sale and service of alcoholic beverages. Such applications will be granted only to organizations whose plans have already been consummated or whose commitments have already been made. The permits will authorize service only to those persons attending the particular function. No sale or service will be allowed to the general public.

The fee for the permit will be \$10.00. Information regarding application is available from the offices of the Department on request.

D. FREDERICK BURNETT,  
Commissioner.

New Jersey State Library

2. WHOLESALERS - MAY ASSIGN ACCOUNTS RECEIVABLE TO OUT-OF-STATE IMPORTER AS SECURITY FOR INDEBTEDNESS PROVIDED THERE IS NO ARRANGEMENT WHICH HAS THE EFFECT OF PUTTING A NON-LICENSEE INTO THE ALCOHOLIC BEVERAGE BUSINESS IN NEW JERSEY.

Dear Commissioner:

An importer of liquors, wines and spirits, with New York City offices, wishes to arrange to appoint a client of this office, holder of a New Jersey plenary wholesale license as his exclusive distributor for the State of New Jersey.

To guarantee the wholesaler's account, the importer wishes to know whether he may accept assignments of enough of the wholesaler's retail accounts to cover the wholesaler's indebtedness to him.

The wholesaler will purchase his inventories in the usual course of business and deliver the merchandise, bill the same and collect from his retail accounts.

An early ruling would be greatly appreciated as my client is very anxious to get started with the sale of these products.

Very truly yours,  
F. J. McGlynn

February 5, 1940

Franklin J. McGlynn, Esq.,  
Newark, N. J.

Dear Sir:

Assuming that the transaction is bona fide, there appears to be no reason why a New Jersey wholesaler may not assign to the importer a portion of his accounts receivable as security for his indebtedness to the importer. The transaction would not involve any violation of R. S. 33:1-43, which is the only section of the Alcoholic Beverage Law which might apply to the situation presented.

The ruling, however, is limited strictly to the facts presented in your letter, and no plan will be approved which might permit a non-licensee to conduct business in this State under a wholesale license held by another individual.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

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

In the Matter of Disciplinary )  
Proceedings against )

LEON L. HONIBERG, )  
199 Warren Street, )  
Jersey City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-121, issued by )  
the Board of Commissioners of )  
the City of Jersey City. )

-----)

Leon L. Honiberg, Pro Se.

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

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on January 16, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten 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 7th day of February, 1940,

ORDERED, that Plenary Retail Distribution License D-121 heretofore issued to Leon L. Honiberg by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) days, effective February 11, 1940, at 2:00 A. M.

D. FREDERICK BURNETT,  
Commissioner.

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

In the Matter of Disciplinary Proceedings against  
 ALBERT PAULA,  
 341 Jackson Avenue,  
 Jersey City, N. J.,  
 Holder of Plenary Retail Consumption License C-389, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Albert Paula, Pro Se.  
 Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on January 15, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten 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 7th day of February, 1940,

ORDERED, that Plenary Retail Consumption License C-389, heretofore issued to Albert Paula by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) days, effective February 11, 1940 at 2:00 A. M.

D. FREDERICK BURNETT,  
 Commissioner.

5. FAIR TRADE - PRICE BULLETINS - REQUEST FOR EARLIER MAILING GRANTED.

RESOLUTION

"WHEREAS, there appears that certain price bulletins are mailed to retailers of alcoholic beverages; and

"WHEREAS, there appears to be numerous complaints that persons in the business of selling alcoholic beverages find themselves in the position that such price bulletins do not actually reach them by the time the prices set out in such bulletins become effective; and

"WHEREAS, in order to indicate the willingness on the part of the retailers of alcoholic beverages to cooperate in every way and see that any procedure which might embarrass or place such retailers in a position where they might be subjected to a

violation, even though acting in good faith, is eliminated, it is deemed advisable by the South Jersey Retail Liquor Dealers Association that the Commissioner of Alcoholic Beverage Control be notified of this condition for the purpose of determining some method which might be followed for the purpose of eliminating these difficulties;

"NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH JERSEY RETAIL LIQUOR DEALERS ASSOCIATION that the Commissioner of Alcoholic Beverage Control be notified as to the facts set forth above, with the view that some method be devised so that new price bulletins when mailed to retailers of alcoholic beverages be received by such persons in ample time for them to be able to make the necessary changes in their price set-ups and such dealers thus to be in a position to eliminate any misunderstandings or difficulties with the Department of Alcoholic Beverage Control; and

"It is FURTHER RESOLVED that a copy of this resolution be forwarded to Commissioner Frederick Burnett."

February 7, 1940

South Jersey Retail Liquor Dealers Association,  
Camden, N. J.

Gentlemen:

I have your resolution received here January 25, 1940, in which it is requested that retail licensees be given more time in which to make their prices conform to those set forth in the pamphlet price lists issued under the supervision of this Department from time to time.

I consider the request most reasonable and shall be glad to honor it. It has only recently been brought to my attention that in the past where only three or four days intervened between the time of mailing and the effective date, many licensees did not receive the pamphlet price lists until the very morning that the prices went into effect.

Accordingly, I have directed that henceforth all pamphlet price lists be mailed to retail licensees at least one week prior to the date upon which the prices therein become effective. This, I am sure, will give all licensees ample opportunity to make the required price changes.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 6. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

February 8, 1940

Re: Case No. 309

Fingerprint returns disclose that applicant was arrested on December 31, 1938 and charged with obtaining money under false pretenses. He pleaded non vult and was given a suspended jail sentence of eighteen months and placed on probation for five years to make restitution of the sum of \$200.00.

He testified that he had been employed as a salesman on a commission basis for a concern which manufactured inter-office communication machines. On eleven different occasions he submitted fake orders, and received and pocketed the commissions for such spurious sales. He explained that his employer did not permit the placing of a machine in the possession of a prospective customer for trial and that, in order to meet competition, he prepared the fake orders so as to obtain the machines for such purpose. This explanation hardly rings true in view that on the morning of his arrest four instruments were found in his automobile.

The crime of obtaining money under false pretenses ordinarily involves moral turpitude. Re Case No. 164, Bulletin 175, Item 12. Even if the explanation given by applicant were true, the circumstances related by him do not relieve his crime of that element.

It is recommended that applicant be advised that he is disqualified from holding a solicitor's permit in this State.

Samuel B. Helfand,  
Attorney.

APPROVED:

D. FREDERICK BURNETT,  
Commissioner.

## 7. LICENSES - APPLICATIONS - THE LICENSE OR TRANSFER FEE MUST BE PAID AT THE TIME THE APPLICATION IS FILED.

February 9, 1940

G. Theodore Swenson,  
Borough Clerk,  
Carlstadt, N. J.

My dear Mr. Swenson:

I have yours of January 25th and resolution adopted by the Council on January 24, 1940, authorizing the transfer of plenary retail consumption license #4 from Ralph Petruzzi, 319 Hackensack Street, to Gregory Anteo, for the same premises.

The resolution appears to be in proper form with one exception, and that is Section 3 which provides "That a fee of \$25.00 be paid." I find the same provision in resolutions authorizing transfers adopted by the Council on January 18 and August 9, 1939, respectively.

If this means that the Council has acted on the applications before the fee has been paid, it is all wrong. Whether it is an application for a new license, or for transfer from place to place, or for transfer from person to person, it is required that the license or transfer fee, as the case may be, accompany the application. See R. S. 33:1-25, R. S. 33:1-26 and Regulations No. 3, pertaining to transfers, in the Pamphlet Rules commencing on page 39. Unless the fee is paid at the time the application is filed, the application has not been properly filed and the Council should not entertain it. The requirement is solely for your benefit. If it is an application for an original license and it is denied, the Council is authorized by the Act to retain, as an investigation fee, ten per cent of the amount that has been deposited. If it is an application for a transfer and it is denied, the entire transfer fee is forfeited. If, therefore, you do not require the fees to be paid at the time the applications are filed, the municipality will be just out of luck in the event there is a denial, for your chances are mighty slim of catching the applicant and getting the fee from him afterwards.

I trust that the appropriate fees for these three transfers have been paid to the Borough. If they have and you will so certify, I shall close the file so far as these three items are concerned. If not, you must see that they are paid at once and when they are paid, so report to me for the completion of my records.

I cordially recommend that henceforth you clearly set out in the resolution authorizing the issuance of the license or the transfer that the fee has been paid to the Borough at the time of the filing of the application and the amount thereof.

Very truly yours,  
 D. FREDERICK BURNETT,  
 Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - LIEN DENIED.

In the Matter of the Seizure )	Case 4968
in the Township of Buena Vista, )	
County of Atlantic, and State of )	ON HEARING
New Jersey, of a De Soto Coach )	CONCLUSIONS AND ORDER
owned by William J. Butler, and )	
four 5-gallon cans of alcohol )	
contained therein. )	
----- )	

Harry W. Marsh, Camden Manager of the Commercial Credit Corporation, for the Commercial Credit Corporation.  
 Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On August 18, 1938, investigators of this Department discovered William J. Butler, a former liquor violator, transporting four 5-gallon cans of untaxed alcohol in Buena Vista Township, in his De Soto Coach.

No one contested the fact that William J. Butler was engaged in illegal activities. The alcohol is prima facie illicit. R. S. 33:1-1(i). Hence, it and the vehicle in which it was transported are unlawful property, subject to forfeiture.

However, Commercial Credit Corporation appeared at the hearing in the case and claimed to be a bona fide lienor of the car. It disclaimed any knowledge of Butler's reputation as a liquor law violator. Butler was arrested in 1935 by Atlantic City police officers, and convicted of possessing illicit alcoholic beverages. In 1936, he was arrested and convicted in Cumberland County for transporting twelve 5-gallon cans of illicit alcohol in a Ford Coupe, and the motor vehicle was confiscated.

To obtain recognition of its lien, the finance company must present proof that it made an adequate investigation of Butler's character, identity, and employment, and did not discover his criminal record, or any facts which would have led a reasonably prudent person to suspect that he had such a record. Cf. Bulletin 116, Item 9, Bulletin 163, Item 7, and Bulletin 163, Item 8.

Since Butler's criminal record involved two violations of the liquor laws, it must appear that the finance company exercised the utmost precautions. The company financed Butler's car in July, 1938, partially in reliance upon its previous dealings with him in 1934, when he satisfactorily met his obligations. Its investigation in July, 1938 disclosed that Butler was a liquor licensee (although the license had been issued to him as James Butler); that he had paid his rent and had paid his bills to two liquor wholesalers. No further investigation appears to have been made.

To ascertain whether a liquor licensee has a reputation as a liquor law violator, inquiry should obviously be made of the licensing and enforcement authorities. The finance company made no such inquiry. Moreover, it appears that after the seizure, it obtained an independent agency's report on William J. Butler, which revealed that his tavern did not bear a good reputation and was doing little business; that he was a poor financial risk. The independent agency's report was apparently available to the finance company in July 1938.

Repeated violators of the liquor laws will not find it difficult to purchase and finance vehicles to be used in their illegal activities if, as here, no real effort is made to investigate their antecedents or current activities before credit is extended to them.

I find that the Commercial Credit Corporation did not make an adequate investigation, and hence did not act as a person of ordinary prudence should act under the circumstances. Therefore, its lien will not be recognized.

Accordingly, it is ORDERED that the property set forth in Schedule "A" 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.

Dated: February 9, 1940

D. FREDERICK BURNETT,  
Commissioner.

SCHEDULE "A"

- 4 - 5 gallon cans alcoholic beverages
- 1 - De Soto Coach, Serial #5538913, Engine #S315562, New Jersey 1938 Registration C43674.

9. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY RELEASED ON PAYMENT OF COSTS OF SEIZURE AND STORAGE.

In the Matter of the Seizure on )  
 November 20, 1939, of Patsy )  
 Oropallo's Chevrolet Sedan, and ) Case 5627  
 two containers of alcohol found )  
 therein, on Spruce Street near ) ON HEARING  
 Market Street, in the City of ) CONCLUSIONS AND ORDER  
 Paterson, County of Passaic and )  
 State of New Jersey. )  
 - - - - - )

Patsy Oropallo, Pro Se.  
 Harry Castelbaum, Esq., Attorney for Department of  
 Alcoholic Beverage Control.

BY THE COMMISSIONER:

On November 20, 1939, Officer Hogan of the Paterson Police, after stopping a Chevrolet Sedan because of a minor traffic violation, found in the car two containers of alcohol which bore no tax stamps or other indicia of tax payment. Thereupon, he arrested Joseph Strauch, who was driving, and seized the car and the alcohol. The seizure was subsequently adopted by this Department.

The alcohol is prima facie illicit because it bore no tax stamps and it and the car in which it was being transported are unlawful property, subject to forfeiture. R. S. 33:1-1(i) and (y); R. S. 33:1-66.

At the hearing herein, Patsy Oropallo, the owner of the Chevrolet Sedan, requested return of the car on the ground that he was innocent of any wrongdoing.

Oropallo testified that he has known Strauch for more than three years; that during that time Strauch was steadily employed as a truck driver and was never previously arrested for any liquor violation; that on the evening in question he loaned his car to Strauch, as he had done on many previous occasions; and that he had no reason to believe that the car would be used for unlawful purposes.

Fingerprint records disclose that Joseph Strauch had no previous criminal record. At the hearing he testified that he "never did anything like that before"; that he intended to use the illicit alcohol for his own use during the Christmas holidays and that Oropallo had no knowledge that he intended to use the car for unlawful purposes. Under the circumstances, I shall return the car to Oropallo upon payment of the costs of seizure and storage.

Accordingly, it is ORDERED that the Chevrolet Sedan be returned to Patsy Oropallo, provided that on or before the 9th day of March, 1940 he pays the costs of its seizure and storage; and it is further

ORDERED that the property set forth in Schedule "A" annexed hereto (excepting the Chevrolet Sedan described therein)

be and the same is hereby 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: February 9, 1940

SCHEDULE "A"

- 1 - 5-gallon can of alcohol
- 1 - 1-gallon jug of alcohol
- 1 - Chevrolet Sedan, Serial No. 2 AD 6468, Engine No. 1977712, New Jersey 1939 Registration No. PW-698.

10. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - PADLOCK DENIED.

In the Matter of the Seizure on ) April 6, 1939, of a still at ) 441 - 17th Street, in the Town ) of West New York, County of ) Hudson and State of New Jersey. ) -----	Case 5341  ON HEARING CONCLUSIONS AND ORDER
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Louis D. Stern, for Joseph J. Garibaldi Organization.  
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 6, 1939, police officers seized an unregistered ten gallon still and six jugs containing illicit alcoholic beverages in Bedros Zarifian's apartment in a three family house at 441 - 17th Street, West New York. Zarifian was arrested and later pleaded non vult to possession of the articles in violation of the Alcoholic Beverage Control Law.

The still and alcoholic beverages constitute unlawful property. R. S. 33:2-2.

As to padlocking: Joseph J. Garibaldi Organization (a real estate agency which manages the property for Esther Umansky, the owner) and Bedros Zarifian (the tenant) both seek to avoid padlocking of the premises.

The evidence shows Zarifian was a tenant when the agency took over the management of the property five years before the seizure; that Louis D. Stern, the agency's employee in charge of the property, frequently visited Zarifian's apartment to collect the rent and did not at any time see a still or any other evidence to indicate that he was engaged in bootlegging activities.

Zarifian submitted his affidavit, after the hearing in the case, setting forth that he, and his wife and four children, have resided at said premises for the past ten years; that his family's sole income is what he earns on a W.P.A. project, amounting to

about \$15.00 per week; that he has no money to pay for the expense of moving. He states that he got into his present difficulties because he made Arak (an Armenian alcoholic beverage) for his own personal consumption, unaware that it was illegal to do so; that he has never sold any liquor, nor had any intention to sell the liquor in question; that he now realizes that he was violating the law, and solemnly promises not to repeat his offense.

I find that the agency was not at fault.

Since this appears to be Zarifian's first offense, and the still is not of the type usually used for commercial manufacture of bootleg liquor, I shall not padlock the premises and work an undue hardship upon his family. I believe he has learned his lesson.

Accordingly, it is ORDERED that the seized property, itemized in Schedule "A" annexed hereto, be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, 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: February 9, 1940

SCHEDULE "A"

- 1 - copper cooker
- 1 - cooler and coil
- 2 - 6 gallon stone crocks
- 6 - jugs containing alcoholic beverages

11. FAIR TRADE - PRICE LIST - ADDITIONS OR CHANGES BETWEEN ISSUES OF PRICE BULLETINS ARE NOT DESIRABLE AND SHOULD BE DISCOURAGED.

February 9, 1940

Browne Vintners Company, Inc.,  
Newark, N. J.

Att: J. S. Berke, Division Manager.

Gentlemen:

I have your letter of February 6, 1940.

I believe in Fair Trade. I want to see a full and fair trial made of the Rules and Regulations which seem to have produced such a healthy economic result in our State. If it is to be preserved, I have got to keep it on a sane, practical, business-like basis. You will, therefore, please read my following comments in the light of these principles.

Individual additions or changes in price lists between issues of price Bulletins are not desirable and should be discouraged. It is difficult enough, what with the number of separate pamphlets usually in force, for retailers to figure out and keep abreast of minimum prices. If additions and changes may be made at any time by you, so they may be made by anyone else, with the

eventual result of utter confusion. That means consequent non-observance of the established minimums, and ultimate breakdown in practical enforcement of the entire price structure.

The concerns which participate in scheduling their price lists should endeavor to arrange their merchandising so that it conforms to the timing of price publications. While I realize that emergent situations sometimes arise, it is better that one manufacturer or wholesaler suffer some slight inconvenience than to have the whole system go to pot.

I therefore disapprove of your plan to send out notices to the retail trade placing the item in question on Fair Trade immediately even though you do pay the cost of printing and mailing as well as your proportionate share for entering the item on the next Bulletin. Your offer is fair in every way - in fact, generous. I disapprove it solely because of the reasons aforesaid.

I shall be glad to have the benefit of your reactions, especially if you disagree with me.

You are undoubtedly in receipt by this time of the notification mailed to you on February 8, 1940, fixing the date of the next price issue.

Cordially yours,  
D. FREDERICK BURNETT,  
Commissioner.

12. BAGATELLE MACHINES - WEEKLY PRIZES - WHISKEY NOT PERMISSIBLE.

February 13, 1940

Mr. Gus Tonielli,  
Vineland, N. J.

Dear Mr. Tonielli:

I have your post card inquiring if a taproom may give a quart of whiskey for prize on a pin-ball machine.

These machines may not be lawfully used for gambling or anything which smacks of a pay-off. Genuine competition between players, however, is something quite different. You may, therefore, give one weekly prize to the person who makes the highest score during the calendar week. Re Guitan, Bulletin 368, Item 13.

But whiskey is not an appropriate prize. Nor is any liquor. In the first place it could not lawfully be given by you to a minor even if he were the winner. Again, even if all minors were excluded from the pastime, the machine would be worked overtime by the grown-ups in the hope of winning a bottle. If you offer a quart, some competitor will put up a hogshead. While I tolerate bagatelle machines if played only for amusement, I do not purpose to allow them to become devices unduly designed to increase the consumption of alcoholic beverages. Such prizes are, therefore, not permissible.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

13. DISCIPLINARY PROCEEDINGS - HARLOTRY - 60 DAYS' SUSPENSION

February 10, 1940

Philip L. Lipman, Esq.  
Buena Vista Township Solicitor  
606 Landis Avenue  
Vineland, N. J.

My dear Mr. Lipman:

I have before me staff report and your letters of January 29th and February 1st re disciplinary proceedings conducted by the Buena Vista Township Committee against Dominick Galanti, S/S Harding Highway and Main Avenue, Richland.

As I get the picture, the licensee employed a prostitute and permitted her to ply her trade among his patrons, the assignations made in the barroom being consummated upstairs.

In addition, he permitted his patrons to play card games for drinks, even going to the pains of keeping track of their losses in a book kept by him.

And just to make the picture complete, my men found a bottle of watered sloe gin which I suppose the gullible patrons bought for the resident harlot.

I note that he was found guilty of all charges, whereupon his license was suspended for sixty days.

Conditions such as these cannot be tolerated on licensed premises. The privileged business is no place for panders and prostitutes. It was indeed heartening to have Acting Chairman Mastrangelo announce in finding the licensee guilty:

"I wish to make it clear that our Township Committee will not tolerate conditions in any licensed premises that in any way cast the least suspicion upon the conduct of the owner. We propose to enforce Commissioner Burnett's rules to the fullest extent and licensees who do not feel that they can make a living without resorting to illegal activities, should appear before the committee and hand in their license. They must live up to the strict letter of the law."

Dead right!

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

14. LICENSEES - DISQUALIFICATION - A LIQUOR LICENSEE MAY BE A SHELLFISH INSPECTOR.

February 13, 1940

Mr. Cosmos Capacchione,  
Wildwood, N. J.

My dear Mr. Capacchione:

I have your inquiry of January 31st.

There is nothing inconsistent in holding down a job as Shellfish Inspector and also being a liquor licensee. The duties, in general, are quite dissimilar. Probably your experience as Inspector will qualify you admirably to deal with poor fish and hard shells in your tavern.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

15. APPELLATE DECISIONS - RICKER v. WEST NEW YORK.

WINIFRED RICKER,	)	
	)	
Appellant,	)	
	)	ON APPEAL
-vs-	)	CONCLUSIONS
	)	
BOARD OF COMMISSIONERS OF THE TOWN	)	
OF WEST NEW YORK,	)	
	)	
Respondent	)	
-----	)	

Anthony J. Valicenti, Esq., Attorney for Appellant.  
Irwin Rubenstein, Esq., by Abner A. Farber, Esq.,  
Attorney for Respondent.

BY THE COMMISSIONER:

Respondent denied appellant's application for transfer of the plenary retail consumption license held by William Bauer and John J. Ricker for premises 602 Bergenline Avenue, to premises 441 Sixteenth Street. Hence this appeal.

At the hearing, the parties stipulated that the proposed premises were within 200 feet of the First Church of Christ Scientists.

In examining the map introduced into evidence, it was noted that the church premises were designated thereon as "Meeting Rm. of Christian Science Church", and that the building also contained a "druggist" and a "Masonic Hall". Independent investigation was then instituted and disclosed that the building in which the church is located is an ordinary two-story brick building, on the first floor front of which there is a business concern known as the General Research Laboratory Inc., and in the rear a large recreation room of the Masonic Lodge. On the second floor, the church occupies two rooms, one as an office and the other as a "reading room." Another room is used by the Masonic Lodge. In the rear of the second floor there is a large Masonic meeting

room, which is also used by the Scientists on Wednesday evenings and Sundays for conducting religious services.

I had occasion in Manning v. Trenton, Bulletin 247, Item 1, to determine what was meant by a church as the term is used in the Alcoholic Beverage Law. I there held that a two-story dwelling house used in part for religious purposes did not constitute a church within the meaning of R. S. 33:1-76, saying:

"The word 'church' may designate either a religious congregation or an edifice of worship, according to the context. See Trustees, etc. v. Fisher, 18 N.J.L. 254, 257 (Sup.Ct. 1841); Newark Athletic Club v. Board of Adjustment, 7 N.J. Misc. 55, 59 (Sup. Ct. 1929). As used in the Alcoholic Beverage Control Act, it means a 'recognized edifice devoted permanently to the worship of God'. Bulletin 5, Item 3. That an edifice is what is meant appears from the fact that the yardstick in the statute is a distance of 200 feet, to be measured between 'the nearest entrance of said church' and 'the nearest entrance of the premises sought to be licensed.' Hence, being a religious body is not of itself sufficient to invoke the benefit of the statute. Cf. George v. Board of Excise, 75 N.J.L. 366 (Sup. Ct. 1906), aff'd 74 N.J.L. 816 (E.&A. 1907), where the Court said: 'The Legislature clearly did not intend that wherever religiously inclined persons meet together for Bible study and the like, a church existed within the meaning of this excise regulation'. The mere fact, therefore, that a religious organization calls itself a "church" does not make it a church within the meaning of Section 76 of the Control Act, R. S. 33:1-76.

"While I am committed to the view that the liquor law is to be liberally construed in favor of churches and schools, St. Mary's Greek Catholic Church v. Manville, Bulletin 187, Item 1 (the 200 feet distance is not to be pieced out by transparent artifices for the purpose of getting around the law); Memorial Presbyterian Church v. Newark, Bulletin 191, Item 8, (the salutary statutory protection to churches is not to be frittered away); Re Simon, Bulletin 238, Item 6, (the subterfuge or evasion designed to circumvent the 200 feet rule will not be tolerated); Trustees of the First Particular Baptist Church of Paterson v. Silver Rod Stores, Inc., Bulletin 245, Item 8, (a fire door installed to comply with a municipal ordinance cannot do the double duty of protecting a liquor store from the operation of the law designed for the benefit of churches), nevertheless these provisions should receive a reasonable interpretation and not be construed beyond their fair meaning to cases which the law did not contemplate."

In Quality House Wine & Liquor, Inc. v. New Brunswick, Bulletin 249, Item 4, a brick building in which church services were conducted in one of three stores and which was also occupied by six tenants, was held not to be a "church" within the meaning of the statute.

In Fanel Realty Co. v. Newark and Richman, Bulletin 284, Item 10, I similarly ruled with respect to a building in which a religious organization occupied the second floor of a four-story building, the other floors being tenanted by a business concern, Mecca Temple, and private residents.

So, in this case, applying the foregoing principles, the building in which the First Church of Christ Scientists conducts its religious services is not a "church" within the meaning of R. S. 33:1-76. It follows, therefore, that appellant's proposed premises are not within 200 feet of any "church".

Respondent next contends that the transfer was denied because there already exists a licensed tavern within 75 feet of the proposed premises. The contemplated site is located on Sixteenth Street, which is definitely business in character. This street between Bergenline Avenue and Harrison Place, where appellant seeks to transfer, is solidly lined with business buildings.

There is no ordinance limiting the distances between licensed premises in the municipality. While, even in the absence of such ordinance, a general policy of limitation will be duly respected such policy must be bona fide and uniformly applied. Barthold v. Clifton, Bulletin 160, Item 7. A policy which is not applied fairly and uniformly is of no moment on appeal. Goldberg v. Livingston, Bulletin 163, Item 2.

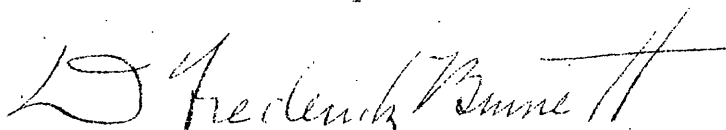
The record is barren of any evidence to support the existence of any such policy. On the contrary, the evidence shows that respondent has heretofore been granting licenses in close proximity to each other and, in fact, even next door to one another. Under the circumstances, no claim can be made that respondent has adopted and uniformly applied a policy of denying licenses in close proximity to premises already licensed. To refuse appellant the right to locate her premises on a street so definitely devoted to business, on the ground of the existence of another licensed tavern in the vicinity, is, therefore, unreasonably discriminatory as to her. To make fish of one and fowl of another is not in accord with American principles.

Lastly, respondent asserts that its action was guided by the fact that there is located in the vicinity a public library and the municipal building. I am not convinced that respondent considered this objection when appellant's application was before it. A record of the minutes of the proceedings below was submitted in evidence and shows that various objections were raised and fully discussed. No mention whatever can be found therein of the public library or municipal building. Indeed, the clerk of the municipality testified that respondent did not consider this objection "because it was not brought to their attention". It would seem to be naught but an afterthought, included with the other reasons for denial in the hope that it might be found valid on appeal. In simple fairness to all parties concerned, license issuing authorities should, when holding a hearing, air out all objections, and, if reaching an adverse decision, state the reasons therefor at the time the decision is rendered. Cf. Rosenvinge v. Metuchen, Bulletin 249, Item 6.

Moreover, even if it were a forethought, such an objection, where the neighborhood is so decidedly business in character and where, apparently without compunction, another licensed tavern was permitted to locate there, is entitled to little or no weight. Cf. Bartole v. Harrison, Bulletin 304, Item 2.

Under the facts, the action of respondent in denying appellant's application to transfer was arbitrary and unreasonable.

The action of respondent, therefore, is reversed and it is directed forthwith to issue the transfer as requested.



Commissioner.

Dated: February 11, 1940.

New Jersey State Library