STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 39. July 7, 1934

1. RULES GOVERNING THE TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO NEW JERSEY.

Considerable study has been given by this Department to the problem of sales and shipments into this State by foreign dealers. On June 15, 1934 a public meeting was held to discuss rules which had been proposed by the Department. At this meeting, all branches of the industry, as well as New Jersey consumers, were well represented, and the views of all were heard.

Exception #2 below is perhaps not necessary constitutionally, nevertheless, it is created as a matter of comity to persons actually engaged in bona fide inter-state commerce. If it is abused, the full powers under the Control Act will be invoked. In the meantime, all enforcement agencies have been instructed to stop all vehicles apparently carrying alcoholic beverages for the purpose of determining whether they are in good faith going <u>through</u> the State of New Jersey without making any delivery therein; that if there is a reasonable question as to whether the contents of the vehicle are intended to be delivered at some point in New Jersey, the vehicle should be held and this Department notified and complete investigation at once instituted to determine the fact whether the shipment was actually and in good faith made in interstate commerce.

The following rules are hereby promulgated:

No alcoholic beverages shall be brought or carried into this State except as follows:

1 - Alcoholic beverages owned by or sold to the holder of a New Jersey Manufacturer's or Wholesaler's license, may be brought into this State by a licensed transporter.

2 - Alcoholic beverages not intended for sale or use in New Jersey may be transported through this State in any vehicle, provided no delivery is made in New Jersey.

3 - Alcoholic beverages not intended for sale or use in New Jersey may be brought into New Jersey by a licensed transporter where they are being delivered to a licensed public warehouse, solely for temporary storage.

4 - Alcoholic beverages intended for personal consumption and not for sale may be brought into this State by any person in a vehicle owned or controlled by such person, to the following extent, viz.: Not exceeding 1/2 barrel (or two cases containing not in excess of 24 quarts in all) of beer, ale or porter, <u>and</u> 5 gallons of wine, <u>and</u> 12 quarts of other alcoholic beverages within any consecutive period of 24 hours.

5 - Alcoholic beverages may be brought or carried into New Jersey by a person having a special permit issued by the Commissioner of the State Department of Alcoholic Beverage Control in any vehicle to the extent and subject to the conditions of such special permit, without any transportation insignia.

6 - Retail transit licensees may continue to bring alcoholic beverages into this State in connection with their licenses, as heretofore.

These rules are effective on and after July 9, 1934.

D. FREDERICK BURNETT
Commissioner

2. MUNICIPAL RESOLUTIONS - INVALIDITY - WHEN MEMBERS OF THE GOVERNING BODY ARE INTERESTED IN THE EVENT.

In the matter of the Application of the Mayor and Council of the City of Asbury Park for Approval of Section 7 of Resolution of June 12, 1934, and Section 16 of Ordinance 540, passed on First Reading June 12, 1934.

ON HEARING, etc.

BY THE COMMISSIONER:

This matter came on for hearing as to the propriety and regularity of the above mentioned sections of the respective Resolution and Ordinance.

Both sections read the same, to wit:- "No license shall be granted in form pursuant to this Act at any place or point east of a point which is 150 feet westerly from the property line on the west side of Ocean Avenue, except that this provision does not apply to premises occupied by a bona fide hotel".

It was stipulated that Sherman Dennis and Louis P. Croce were, on June 12, 1934, and still are members of the Council of Asbury Park and voted in the affirmative to adopt the resolution and ordinance; that said Sherman Dennis is at present and has been for some time past Manager of the Hotel Monterey which is located within the proscribed area and operates a bar on a portion of said premises for the sale of liquor; that Louis P. Croce owns stock in a corporation that sells and distributes beer and malt liquors as well as bar fixtures and supplies, which corporation is engaged in such business in Asbury Park.

It appears that the vote of Sherman Dennis and Louis P. Croce were necessary to the enactment of the resolution and the ordinance.

The resolution and the ordinance discriminate in favor of hotels. Such discrimination has been held to be proper. MacCracken vs. Belvidere, Bulletin 38, item 18. But anyone who is financially interested in determining such discrimination is disqualified to do so. The disqualification exists independent of statute. It is fundamental that no one may be judge in his own cause.

Irrespective of the interest of Mr. Croce which is remote and collateral, it is clear that the direct interest of Mayor Dennis disqualified him from participation in the proceedings and voting upon discrimination favorable to his own hotel.

Section 7 of the aforesaid resolution and Section 16 of the aforesaid ordinance are therefore disapproved.

D. FREDERICK BURNETT
Commissioner

Dated: June 29, 1934.

3. MUNICIPAL RESOLUTIONS - INVALIDITY - WHEN MEMBERS OF THE GOVERNING BODY ARE INTERESTED IN THE EVENT

Roland H. Loog, City Clerk
Asbury Park, N. J.

July 2, 1934

Dear Mr. Loog:

I have before me certified copies of resolution of June 12th and of ordinance 540 passed on first reading June 12th, submitted by you on June 20th for approval and held in abeyance because of a protest lodged by John Jacobs and Samuel Brody against Sec. 7 of the resolution and Sec. 16 of the ordinance. Hearings were had upon those sections on June 21st and June 28th. On June 29th, I filed conclusions disapproving them.

We now examine the other sections.

I find that Sherman Dennis and Louis P. Croce were on June 12, 1934 and still are members of your Council and voted to adopt the resolution and ordinance; that said Sherman Dennis is at present and has been for some time past Manager of the Hotel Monterey which at the time of such adoption operated a bar for the sale of liquor, having been thereunto licensed by the Mayor and Council of Asbury Park; that Louis P. Croce owns 74% of the capital stock of L. P. Croce, Inc., which company is engaged in the distribution of beer, and also owns between 40 and 45% of the capital stock of Croce-Burke, Inc., which company is engaged in selling bar fixtures and equipment and has heretofore installed in the Monterey Hotel a bar at the cost of $300., and which company now has an order for another bar at the said Hotel which order, however, has been held up pending the outcome of the hearing hereinbefore mentioned; that the vote of Sherman Dennis and Louis P. Croce were necessary to the enactment of the resolution and ordinance.

As early as December 13, 1933, on questions asked by the Associated Press:

"(a) Has a City Commissioner who owns properties occupied by saloons the right to sit in judgment upon the award of liquor licenses?

"(b) Has a City Commissioner the right to become financially interested in a liquor distributing company?"

the Commissioner replied: "The answer in each instance is unequivocally 'No.' The disqualification exists independent of Statute and extends to everybody who is called upon to sit in judgment upon the rights of his fellow-men. It goes against the grain even to think of a person being a judge in his own case or to have his judgment in formulating rules for other men warped by financial self-interest." Bulletin 5, item 4.

On December 26, 1933, in response to the question: "Is it legal or will it be countenanced by you as Commissioner for a President or Member of City Council who owns property occupied as a saloon, or who has an interest in a saloon business, to vote as to who shall be members of such board of control and the fixing of salaries of such board?" the Commission ruled: "The answer is unequivocally 'No.' Anyone who is so financially interested is disqualified. The disqualification exists independent of statute. It is fundamental that no one may be judge in his own case. His judgment in determining the membership of a board which will probably, or even possibly control his own business, or in fixing the salaries for such board must not be warped by financial self-interest." Bulletin 7, item 2a.

Roland H. Loog, City Clerk. July 2, 1934

On March 7, 1934, the Commissioner ruled that a Councilman who was interested in a wholesale alcoholic beverage license was ineligible to pass on the issuance of retail licenses. He said: "Although there is no evidence in this case that the Councilman's judgment is influenced for or against the issuance of retail licenses, because of his interest as a wholesaler in his own right, it is entirely possible that such a condition could exist. His judgment in determining who may or may not hold retail licenses in his Borough should not be warped by financial interest in the alcoholic beverage industry. Every licensee is his potential customer. Even though this Councilman or his company may not directly solicit their business, certainly the very fact that each year these retailers must appear before him for a renewal of their licenses could tend to influence these retailers in their purchases. Therefore, as a matter of policy, this should disqualify this Councilman." Bulletin 18, item 4.

On June 29, 1934, it was ruled that the direct interest of Mayor Dennis disqualified him from participation in proceedings which resulted in discrimination favorable to his own and another Hotel. Bulletin 39, item 2.

The Department's policy, early announced, has been consistently maintained.

These rulings are consonant with the decisions of the New Jersey Supreme Court.

In Traction Co. v. Board of Works, 56 N.J.L. 431, an ordinance, granting permission to construct railway tracks and operate electric motors upon the public streets of Camden was set aside on certiorari because one of the members of the board, which voted for the passage of the ordinance, was, at the time, a stockholder in the Railway Company, and this despite the fact that there was a sufficient number of votes, apart from his vote, to pass the ordinance. Reed, J. said: "The infection of the concurrence of the interested persons spreads, so that the action of the whole body is voidable."

In Drake v. Elizabeth, 69 N.J.L. 190, a resolution awarding a printing contract to a company, in which one of the Councilmen owned stock and who had participated in the proceedings, was set aside on certiorari, the "infection" being held sufficient to void the action of the entire body.

In Stevens v. Haussermann, 172 Atl. 738, decided by Mr. Justice Heher on May 16, 1934, the Supreme Court entered judgment of ouster in quo warranto because it was determined that one of the parties voting upon a certain motion of a City Council was disqualified because of his personal interest. The learned Justice said: "Generally, public policy forbids the participation of a member of a municipal governing body in any matter before it which directly or immediately affects him individually." Because of the collision of private interest with public duty, the Court held that the action, then under review, must be determined by a disinterested body. It was further held as a necessary corollary that the concurrence of an interested member in the action taken by the body taints it with illegality, and that it is immaterial that the result reached was not produced by the vote of the disqualifying member. The Court said: "It is supported by a twofold reason, viz.: First the participation of the disqualified member in the discussion may have influenced the

opinion of the other members; and, secondly, such participation may cast suspicion on the impartiality of the decision. It being impossible to determine whether the virus of self-interest affected the result, it must needs be assumed that it dominated the body's deliberations and that the judgment was its product."

In the instant case the vote of Mayor Dennis and Councilman Croce was necessary to the enactment of both the resolution and the ordinance. All the more, therefore, rules and regulations formulated by men whose judgment is warped by financial self-interest are voidable and should be set aside.

It follows that the resolution and ordinance should be declared void in toto unless they may be sustained as the exercise of a legislative, as distinguished from a judicial function. A legislative act is one which prescribes a general rule of conduct while a judicial act is one which imposes burdens or confers privileges in specific cases, according to the finding of some person or board, whether the fact exists which makes a general rule applicable to the specific case, or according to the discretionary judgment of such person or board as to the propriety of imposing the burden or granting the privilege in a specified case. Traction Co. v. Board of Works, supr. See also Dufford v. Nolan, 46 N.J.L. 87.

Normally, the fixing of license fees, hours of sale and regulations governing the conduct of the liquor business are a legislative function. In the instant case, however, I am of opinion that the act of the Mayor and Council in adopting the resolution and ordinance was judicial - the more so as to ordinance which required publication for the very purpose of affording a hearing. It is obvious that the fixing of a high license fee deters competition and tends to create a monopoly. So also a determination such as was made that no seasonal retail consumption or club or limited retail distribution license should be granted within the City of Asbury Park. Again, the fixing of a closing hour in a community such as Asbury Park as late as 3 a.m., while not necessarily inconsistent with public interest, arouses suspicion as to whether the late closing hour was not in effect a special favor to the two hotels, sole beneficiaries of the exception attempted in the same resolution and ordinance and heretofore condemned. Again, Sections of the resolution and ordinance, while prohibiting the service of alcoholic beverages in any back or side room, make an exception in favor of hotels that guests may be served in private rooms. Such exception may be reasonable and proper if enacted by a board thoroughly disinterested in the event. It is adverted to here as a step in the process of showing that the act of adopting the resolution and ordinance was judicial and not merely legislative. Again, the provision that no sign containing the words "bar", "cafe", "buffet" may be displayed within 50 feet of Ocean Avenue may effect, even if not actually designed, a discrimination in favor of the two hotels whose premises extend respectively clear through the far block, some 300 feet, to Kingsley Street. Again, another section makes an exception in favor of hotels from the restrictions against vocal or musical entertainment on licensed premises. Clause after clause is thus impregnated with rules and exceptions which are at least highly suspiciously consonant with such self-interest.

True, there are several commendable regulations proposed, as, for instance, the prohibitions against service of beverages direc ly to women over the bar and to minors and requiring the exclusion of minors from any room in which a bar is located, except accompanied by

a parent and sales on credit and to mental defectives and habitual drunkards. But the inclusion of these salutary provisions, undoubtedly purely legislative in character, does not save the resolution or ordinance or prevent the conclusion that the act of the Mayor and Council in adopting them was judicial in substance and effect, although in form, legislative.

Since the self-interest appears by bare inspection of the facts, I must therefore disapprove both resolution and ordinance in toto.

Very truly yours,

D. Frederick Burnett,
Commissioner

4. APPELLATE DECISIONS - D. ROE HANEY AND WILLIAM R. ROSSELL VS. KEYPORT.

D. ROE HANEY & WILLIAM R. ROSSELL,
Appellants
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF KEYPORT (MONMOUTH COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

George S. Hobart, Esq., Attorney for Appellants (Objectors),
Howard W. Roberts, Esq., Attorney for Respondent.
Ezra W. Karkus, Esq., Attorney for Edward E. Cohen.

BY THE COMMISSIONER:

Edward E. Cohen, was issued a Plenary Retail Distribution License for premises located at 77 Broad Street, in the Borough of Keyport, over the protest of the appellants. The sole question raised by the objectors was the distance between the entrance of the premises sought to be licensed and the entrance to a synagogue occupied by the United Hebrew Congregation of Keyport.

Whether the appellants, who have no connection with the United Hebrew Congregation, have any standing to object on this appeal, need not be determined.

The evidence clearly established that in the normal way that a pedestrian would properly walk from the nearest entrance of said synagogue to the nearest entrance of the premises sought to be licensed, the distance was over two hundred (200) feet.

The action of the respondent Board is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 30, 1934.

5. APPELLATE DECISIONS - D. ROE HANEY AND WILLIAM R. ROSSELL VS. KEYPORT.

D. ROE HANEY & WILLIAM R. ROSSELL,
Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF KEYPORT (MONMOUTH COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

George S. Hobart, Esq., Attorney for the Appellants (Objectors)
Edward W. Roberts, Esq., Attorney for the Respondent
Ezra W. Karkus, Esq., Attorney for Monmouth Wine & Liquor Co. Inc.

BY THE COMMISSIONER:

The appellants are ministers of the gospel, and objected to the granting of a Plenary Retail Distribution License to the Monmouth Wine & Liquor Co. Inc., for premises located at the northeast corner of Broad & East Front Streets, in the Borough of Keyport, because the distance between the entrance of the licensed premises and the entrance to St. Mary's Episcopal Church is less than two hundred (200) feet, and that the waiver signed by St. Mary's Episcopal Church was not signed by the governing body on authority of said church. The appellants are not members, or in any way connected with said church.

The evidence established that the duly authorized governing body on authority of St. Mary's Episcopal Church is the Rector, Wardens and Vestrymen, and that all instruments of said church normally are executed by the Senior Warden and attested to by the secretary. This parish has no rector, but the bishop of the diocese appointed Reverend J. Baristow Bray as the priest in charge to take the place of the rector. The secretary of said church testified that at a meeting of the Rector, Wardens and Vestrymen, the question of a waiver came before them. There was no objection to the granting of a license to the applicant, but they did not want to sign a written consent to the same, and authorized the legal advisor of said church to write a letter to the clerk, informing her that there were no objections to the granting of a license. On receipt of the letter from the lawyer, the clerk advised that the letter was not sufficient, that the waiver must be filed in the form prescribed by the Commissioner of Alcoholic Beverage Control in Bulletin #4. The waiver was then executed by the Senior Warden of the church and attested to by the secretary. The instrument was approved at the meeting of the Rector, Wardens and Vestrymen.

The waiver appears valid on its face, having been executed by the Senior Warden, and attested to by the secretary of the governing body on authority of said church. While it may be attacked by members or officials of the church as not being properly authorized, it cannot be attacked collaterally by the appellants, who are in no way connected with the church.

The action of the local Board is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 30, 1934.

6. APPELLATE DECISIONS - ROSE KASS VS. BAYONNE.

ROSE KASS,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF BAYONNE (HUDSON COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

Charles Rubenstein, Esq., Attorney for Appellant
Patrick J. O'Connell, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

A temporary Retail Consumption License was issued by the local Board to Rose Kass and Stanley Kuprel as partners for premises located at 680 Boulevard, Bayonne. Since that time Stanley Kuprel has withdrawn from the business and the business is being conducted by the appellant. A permanent license was denied and an appeal duly filed.

The respondent asserts that the denial of the application was justified because of the conduct of the appellant. At the hearing, it was established by the evidence that the appellant violated the rules and regulations of the local Board in that:

1. The appellant did not close the premises at the closing hour, but conducted her business long after the time set for closing.

2. The appellant permitted women to be served alcoholic beverages in the back room of the licensed premises.

It further appears that the appellant moved to 784 Broadway and sold alcoholic beverages without having filed application for transfer, or publishing notice of intention to apply for transfer. This constituted a violation of the Control Act, Section 23.

These findings require affirmance of the action of the local Board in denying the license.

D. FREDERICK BURNETT
Commissioner

Dated: June 30, 1934.

7. APPELLATE DECISIONS - THOMAS J. FLANAGAN VS. HOPEWELL BOROUGH

THOMAS J. FLANAGAN,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF HOPEWELL (MERCER COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

James A. McTague, Jr., Esq., Attorney for Appellant.
David L. Smith, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license, and thereafter the application was denied. An appeal was duly filed from the denial and has come on for hearing.

Respondent asserts that the application of the appellant was properly denied in view of the resolution adopted by it, prior to the issuance of any license, limiting the number thereof to two and its issuance of that number. The enactment of the resolution was properly proved as was the issuance of two licenses prior to the action taken on appellant's application. Although the limitation is subject to appeal, it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. Ryman vs. Branchburg Township Committee, Bulletin 37, Item 18.

Counsel for appellant does not contend that the limitation was in itself unreasonable, but asserts that inasmuch as appellant's application was filed prior to the two applications eventually granted that appellant was unjustly discriminated against.

This contention is factually unsound, because the appeal is from the denial of appellant's second application which was filed subsequently to the applications granted.

The appellant's premises consist of a gasoline station and a confectionery store. The two applications granted were for two hotels.

Even in the absence of any resolution limiting the number of licenses to be issued, the refusal to issue a license for a candy store was clearly proper. Shapiro vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin 34, Item 8.

The action of the respondent Board is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 29, 1934.

8. APPELLATE DECISIONS - COLONNA VS. MONTCLAIR.

THOMAS COLONNA,
Appellant,
-vs-
BOARD OF COMMISSIONERS
OF THE TOWN OF MONTCLAIR,
Respondent.

ON APPEAL

CONCLUSIONS.

Nathan A. Whitfield, Esq., Attorney for the Appellant.
Charles H. Hanks, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

On December 28, 1933, the respondent adopted an ordinance limiting the number of Plenary Retail Consumption Licenses to twelve (12) and the number of Plenary Retail Distri-

bution Licenses to ten (10) and issued the allotted number of both classes. On February 28, 1934 application was filed by appellant for a Plenary Retail Distribution License and thereafter said application was denied. An appeal was duly filed from the denial and has come on for hearing.

Respondent contends that said application was properly denied in view of the ordinance. Section 37 of the Control Act expressly authorizes municipal issuing authorities to limit the number of retail licenses to be issued. Although such a limitation is subject to appeal it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. See Ryman vs. Branchburg Township Committee, Bulletin #37, Item #18.

The population of the Town of Montclair is approximately 42,000. There are twenty-two (22) retail licensees operating therein. The respondent Board claimed that the ordinance permitted a sufficient number of licenses to meet existing demands. The appellant contended that no retail distribution license had been issued for premises in the vicinity of his place of business. It does appear that two retail consumption licenses had been granted for premises within a block of those of appellant. These two licensees could sell for off-premises consumption. Appellant claimed that his customers would not buy alcoholic beverages except in a store where no drinking was permitted.

The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently serviced by another liquor store is difficult to sustain, especially in the case of a distribution license for off-premises consumption. For, with telephone and transportation facilities, such a store can properly service an area of much greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality. Its decision may be reversed if it fails in the ultimate test of public necessity and convenience. In the instant case, the appellant has failed to sustain the burden of proof. The action of the respondent Board is therefore affirmed.

D. FREDERICK BURNETT,
Dated: June 30, 1934. Commissioner

9. APPELLATE DECISIONS - JOSEPH M. SWEENEY VS. ASBURY PARK.

JOSEPH M. SWEENEY,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE CITY OF ASBURY PARK (MONMOUTH COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Vincent P. Keuper, Esq., Attorney for Appellant.
Benjamin Van Tyne, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On May 18, 1934, appellant applied for a Plenary Retail Consumption License and thereafter the application was denied.

An appeal was duly filed from the denial and has come on for hearing. At the hearing it was stipulated that there were no objections to the character and fitness of the appellant and that appellant had complied with all the formal requirements pertaining to his application.

Respondent asserts that the denial of the application was justified because neighboring residents objected. The objections were based on a general desire not to permit any sale of alcoholic beverages in the neighborhood. Where the premises are located in a residential neighborhood, such objections may afford a reasonable basis for a refusal to issue a license. See Vannozzi vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #7.

Counsel stipulated however, that appellant's premises, which consist of a hotel, were located in a hotel neighborhood. It appears from the evidence that licenses were issued to nine hotels within the municipality, two of them within a few hundred feet of the appellant's. The mere fact that there were objections to the issuance of any licenses in a neighborhood where several had already been issued, does not afford a reasonable basis for refusing to issue a license.

The action of the respondent Board is therefore reversed.

D. FREDERICK BURNETT
Commissioner

Dated: June 30, 1934.

10. WAREHOUSE RECEIPTS - AS COLLATERAL - SALE OF LIQUOR ITSELF REQUIRES SPECIAL PERMIT.

July 1, 1934

Edward R. McGlynn, Esq.

Dear Sir:-

If it becomes necessary, in the event of a default, for the Bank to actually take possession of the goods represented by the warehouse receipt and the beverages themselves as distinguished from the warehouse receipt are to be sold, Special Permit may be obtained from the Commissioner to effect the necessary sale. The fee cannot be determined until the inventory is submitted but will be reasonable in any event.

Very truly yours,

D. Frederick Burnett
Commissioner

11. LICENSES - OTHER MERCANTILE BUSINESS - WHAT CONSTITUTES.

June 27th, 1934

My dear Commissioner:-

There seems to be a little misunderstanding with several of our places selling alcoholic beverages in the line of conducting sales of merchandise of other character.

I have in question an applicant for a retail consumption license who has conducted a delicatessen store. He seems to be under the impression that if this merchandise is moved to another room in the same building and not in the same room where beverages are dispensed, he would be permitted to conduct these sales. I have interpreted your ruling to him and advised him of the fact that it is absolutely necessary that he discontinue sales of this character in the same building where alcoholic beverages are dispensed.

Will you kindly advise me if I have given him your right interpretation of the law as I contend that it is illegal if the business is conducted under the same roof that the alcoholic beverages are sold.

Very truly yours,

Harvey G. Wismer, Town Clerk

Harvey G. Wismer, Town Clerk, July 1, 1934
Phillipsburg, N. J.

Dear Mr. Wismer:

I have yours of June 27th and believe your interpretation is too broad and too severe.

The question is not whether two different businesses are conducted under the same roof, but whether the premises on which the consumption license is exercised are substantially separate and distinct from the premises on which the delicatessen store is conducted. It is a question of fact in each instance. All the pertinent facts would have to be presented and accurately diagramed in order to determine the ultimate conclusion on the facts. In the absence of sufficient data on which to form an opinion, I cannot advise you as to the particular licensee. This ruling, therefore, merely goes to the extent that the mere fact that two different businesses are conducted under the same roof does not of itself violate the law. It may or may not, all depending as aforesaid on the particular facts. See Bulletin 35, item 15; also Bulletin 38, item 6.

Very truly yours,

D. Frederick Burnett
Commissioner

12. TURPITUDE - WHAT CONSTITUTES - DISORDERLY HOUSE
TURPITUDE - MITIGATING CIRCUMSTANCES - DISQUALIFICATION
APPLICATIONS - FALSE AFFIDAVITS - SUPPRESSION OF CRIME

June 27, 1934

D. Frederick Burnett, Commissioner
Department of Alcoholic Beverage Control
744 Broad St.,
Newark, N. J.

Dear Sir:

Your opinion in the following matter will be greatly appreciated.

A local citizen, residing in the city for the past fifteen years, made application in December, 1933 for a Temporary Plenary Retail Consumption License, and in his application stated that he had never been convicted of a crime.

The Board of Commissioners granted this person a license, also a permanent license in April, 1934 to expire June 30th. He is again making application as of July 1st.

However it has come to my notice at this time whereby our investigation of the Court records reveals that this person was convicted on a charge of maintaining a Disorderly House, in the City of Paterson, N. J. and fined Five Hundred Dollars on July 18, 1912 in Special Sessions Court, of Passaic County.

What is the status in this person's case, are the Board of Commissioners duty bound to refuse the license or in view of the fact that this person convicted Twenty Two years ago, and having lived a life of a respectcle citizen and business man since, give the Board of Commissioners power to use their own good judgement in the matter.

Very truly yours,

Ryan Vandervalk,
Chief of Police.

July 1, 1934

Ryan Vandervalk, Chief of Police,
Borough of Hawthorne, N. J.

Dear Sir:

I have yours of the 27th.

Whether conviction of maintaining a disorderly house constitutes conviction of a crime involving moral turpitude depends on the facts in that case, since the term disorderly house is generic and covers a multitude of different kind of sins.

If the particular crime did involve moral turpitude, then the mere fact that the conviction was 22 years ago and since then he has lived down the past and been a respectable citizen and business man, does not help him and the Board of Commissioners have no option except to refuse the license. Such happily mitigating circumstances do not change the conclusion that he is disqualified <u>if</u> you once find that the crime did involve moral turpitude. See Bulletin 17, item 1.

I sympathize with the situation and it might well be that in some proper cases more good would be done than harm by allowing him to have a license instead of depriving him, because he had been convicted of a crime involving moral turpitude a score of years ago. It is not my function, however, to speculate on what might be the better policy because the Legislature has made it a law that if he is once convicted of a crime involving moral turpitude, he is thereby disbarred for all time from having a liquor license. Hard as that may be in the particular case, it is probably the only practical and workable rule. Hence if the Board of Commissioners find that the crime did involve moral turpitude, they are in duty bound to refuse the license.

The thing which disturbs me most, however, is the fact

that in his application he stated that he had never been convicted of a crime. It now appears that he has been. The statute, sec. 22, provides that false statements or suppression of material facts are not only grounds for revocation (and hence for rejection) but also that any person who knowingly misstates any material fact under oath in his application shall be guilty of a misdemeanor and punished accordingly. Therefore, without more, I am of opinion that this application should be rejected, or, if issued, revoked; and furthermore, that it is your duty to bring the matter to the attention of and lay the facts before the Prosecutor because it appears that a crime has been committed if the application has been sworn to. If it was not sworn to, it should never have been received.

Very truly yours,

D. Frederick Burnett
Commissioner

13. RETAILER - WHAT CONSTITUTES - DIFFERENCE BETWEEN FEDERAL AND STATE DEFINITION

July 5, 1934

Dear Commissioner:

In Bulletin No. 33, Item 5, you say that the holder of a plenary retail consumption license may sell alcoholic beverages in any quantity that he pleases and that there is no objection to selling beer or ale in quarter, half or whole barrels.

Is it not necessary that such a plenary retail consumption licensee have a $50 Federal Stamp? Most plenary retail consumption licensees have only a $25 stamp.

Very truly yours,

John Erskine.

July 6, 1934

Dear Sir:

The ruling you mention referred only to the question asked. The holder of a New Jersey plenary retail consumption license is not limited to any maximum quantity. There is, however, a difference between the Federal and State definition of a retailer. Under the State law a retailer is one who sells alcoholic beverages to consumers. Under the Federal law anyone making a sale of five gallons and over is classified as a wholesaler for tax purposes and therefore requires a $50 Federal Tax Stamp.

Very truly yours,

D. Frederick Burnett
Commissioner