

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

BULLETIN NUMBER 183

JUNE 8, 1937

1. GIFTS - LIQUID CONTRIBUTIONS IN THE CAUSE OF SCIENCE MAY BE MADE TO AN ARCTIC EXPEDITION PROVIDED THE BEVERAGES ARE ACTUALLY WITHDRAWN FROM AND CONSUMED OUTSIDE OF THE STATE - HEREIN OF COMPETITION AT THE NORTH POLE BY THE CAN-OPENER WITH THE HAMMER AND SICKLE.

MacGREGOR ARCTIC EXPEDITION
1937 - 1938
Schooner General A. W. Greely
Port Newark, New Jersey
C.J. MacGregor, Commander

May 18, 1937.

Dear Mr. Burnett:

As you probably know, I am organizing a scientific Expedition into Fort Conger, Ellesmere Land, Canada for the purpose of collecting and studying weather data, solar radiation, geological, radio, terrestrial magnetism, and aurora data.

I am a meteorologist for the U.S. Weather Bureau, organizer of the Alaskan Airway Service, in charge of the Second International Polar Year Expedition into Point Barrow, Alaska, in 1932-33 under the direction of the Weather Bureau and the Carnegie Institute of Washington, D. C. This work was carried on in cooperation with 43 nations of the world.

The Expedition owns a three-masted schooner, 109 feet long, 27 foot beam. It is named the "General A. W. Greely" in honor of the Commander of the First International Polar Year Expedition of 1882-83, which based at Ellesmere Land. We will re-occupy this old Polar Station of a little over 50 years ago. We expect to leave the end of June, 1937, and return in the fall of 1938.

Some of the local brewers have offered us some beer to the combined amount of about 500 cases, namely, Ballantine, Feigenspan, and Krueger. Therefore I am writing to secure permission for these firms to deliver beer to the Schooner General A. W. Greely, Port Newark, New Jersey, on or before June 19, 1937.

This beer will be used in the North beyond the continental limits of the United States. Considerable beer is used there in place of water due to the fact that water up there is extremely soft.

For your own information, I am securing alcohol tax-free from the Federal Government.

Trusting that you look with favor upon this matter, I am,

Very sincerely yours,
C. J. MacGREGOR

New Jersey State Library

C. J. MacGregor, Commander,
MacGregor Arctic Expedition,
Schooner "General A. W. Greely,"
Port Newark, N. J.

My dear Commander:

I have before me yours of May 18th.

Breweries may not make either sales or gifts to consumers within the State.

The economic reason for the statutory restriction does not apply, however, to beverages actually withdrawn from the State for sale and use elsewhere. Bulletin 181, Item 4. Bulletin 182, Item 9.

Hence, upon your assurance that the beverages donated will not be consumed until the schooner reaches the waters of the Far North, permission is hereby conferred upon the brewers to make the requested delivery.

I hope that your own contribution to science will be commensurate with your broad plans and that you will enjoy the New Jersey beer in the cool of the Arctic evenings.

Anchors aweigh - and a safe return!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SUPPRESSION OF MATERIAL FACTS - A SUSPENSION FOR A FIXED PERIOD IS INAPPROPRIATE WHEN THE FINDING IS THAT THE LICENSE WAS OBTAINED BY DELIBERATE FRAUD - IN SUCH CASE THE PENALTY SHOULD BE EITHER SUSPENSION UNTIL THE END OF THE TERM OF THE LICENSE OR PREFERABLY REVOCATION.

June 4, 1937

J. A. Joeck, Esq.,
Borough Clerk,
Belmar, New Jersey.

Dear Mr. Joeck:

I have staff report of the proceedings before the Board of Commissioners of Belmar against Abraham Blum, t/a Black Bear Cafe, charged with having falsified his application for license by failing to disclose the real owner of the business to be licensed, viz.: one, John P. Wilkins.

The report states:

"On April 26, 1937, Investigators Shafto and Chinery inspected the licensed premises and found John T. Wilkins in charge. Wilkins told them he owned the business.

"Subsequent investigation revealed that Abraham Blum owned the building containing the licensed premises and had conducted a tavern there; that in April, 1936, Wilkins rented the store from Blum and took over the business under Blum's license; that he paid Blum \$200.00 on April 7, 1936, and \$300.00 on May 6, 1936, for the

license; that Blum took out the new license for the current period in his name (Blum's), Blum telling Wilkins it would be easier to get it that way because he (Wilkins) was not a resident of Belmar. Wilkins told the investigators that the entire business belonged to him.

"Blum, in a written statement, admitted he had no interest in the licensed premises other than the fact that he owned the building."

I note the licensee pleaded guilty and that the license was suspended for twenty-five days - to June 15, 1937.

As far as your Board of Commissioners have gone, they have done well. Twenty-five days is no mean suspension. I am, therefore, appreciative of their cooperation in inflicting a man-sized penalty for the offense. In this particular case, however, there are other considerations which I wish you would submit to the Board, viz.: Blum admits that he never has been and is not now the owner of the license except in name. Therefore, he has no right to operate under the license. Wilkins is the true owner. Wilkins, however, has no license. It follows that in a case of this kind the license should be suspended until the end of the term. In re Toma and Fraccacreta, Bulletin 170, Item 1, I said:

"A suspension for a fixed period would obviously be inappropriate to a situation where the finding is that the license was obtained by the deliberate fraud of the licensee."

Better yet, would be outright revocation for the fraud perpetrated by Blum on the Borough.

Hence, concurrently herewith, I am instructing Police Chief Brackett to arrest anyone attempting to operate under this license, not only during the period of suspension but also on and after June 15th and to pick up the license in the meantime. That will effectually close the place down until the first of July when the present license expires. Your Board will be justified, of course, in refusing to issue any license for the Blum place because of his falsification of the previous application.

Please thank your Board for their prompt and wholesome action. I mention these other matters only to cure the instant situation and for the guidance of all municipal officials in dealing with future cases of this kind.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. PUBLICATION OF NOTICE OF INTENTION - PUBLICATION IN NEWSPAPER WHICH HAS NOT BEEN ENTERED AS SECOND CLASS MAIL MATTER UNDER THE POSTAL LAWS AND REGULATIONS OF THE UNITED STATES IS NOT PROPER - WHETHER NOTICE OF INTENTION TO APPLY FOR MUNICIPAL RETAIL LICENSE HAS BEEN PROPERLY PUBLISHED SHOULD BE DECIDED IN THE FIRST INSTANCE BY THE MUNICIPAL ISSUING AUTHORITY AND ITS DETERMINATION IS SUBJECT TO APPEAL TO THE COMMISSIONER.

June 3, 1937

Franklin M. Ritchie, Esq.,
New Brunswick, N. J.

Dear Sir:

The publication of notice of intention to apply for a

liquor license is governed not only by Section 22 of the Control Act and the rulings thereunder, but also by other statutes pertaining to publication of legal advertisements generally. See Bulletin 67, Item 16 enclosed herewith.

Chapter 208 of the Laws of 1936 provides that all notices required to be published by law must

"in addition to any other qualification now required by law meet the following qualifications, namely: Said newspaper or newspapers shall be entirely printed in the English language, shall have been published continuously for not less than one year and shall have been entered as second class mail matter under the postal laws and regulations of the United States."

Accordingly the publication of notice of intention in a newspaper which has not been entered as second class mail matter under the postal laws and regulations of the United States would not be proper.

The duty of determining whether any particular newspaper is qualified to publish a notice of intention to apply for a municipal retail license rests in the first instance with the municipal issuing authority and its determination will not be reviewed by the Commissioner except in the course of an appeal duly taken.

Accordingly if any taxpayer or other aggrieved person opposing the granting of an application for license considers that the publication of notice of intention was not in conformity with law, he should file written objection setting forth his grounds in due time with the municipal issuing authority and in the event the license is granted notwithstanding such objection, he may appeal to the Commissioner pursuant to Section 19 of the Control Act and the enclosed Rules Governing Appeals.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

4. DISCIPLINARY PROCEEDINGS - BOOKMAKING AND GAMBLING - ADJUDICATION OF GUILT WITH SUSPENDED SENTENCE IS ONLY A HALF-BAKED JOB.

June 4, 1937

Edward Du Pree, Esq.,
City Clerk,
Paterson, New Jersey.

Dear Mr. Du Pree:

I have staff report of the proceeding before the Board of Aldermen of Paterson against Charles Joseph Conwell, charged with having permitted bookmaking and gambling on his licensed premises.

I note he was adjudicated guilty but that "sentence was suspended."

In view of the suspended sentence, I suppose no appeal will be made, but because it might, express no opinion on the merits.

By why no penalty when the man is found guilty?

Why do half a job?

As I wrote you before, "sympathy is misplaced for those who bring the liquor traffic into disrepute. Clemency to the few hurts the many. It will eventually destroy the business of all of them, for, what the people have given, the people can take away. A suspension even though but for a few days in minor cases, is the only medicine to cure a disease which spreads like the plague unless determinedly checked."

I expect your Board in future cases of this kind to see the job through by suspending the license and not the sentence.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. PLENARY RETAIL CONSUMPTION LICENSES - MAY SELL FOR ON-PREMISES OR OFF-PREMISES CONSUMPTION - NO REQUIREMENT THAT THERE BE A BAR

June 4, 1937.

John F. Boyce,
City Clerk,
New Brunswick, N. J.

Dear Mr. Boyce:

The holder of a plenary retail consumption license is entitled to sell alcoholic beverages for on-premises consumption and also, in original containers, for off-premises consumption. There is nothing in the law requiring him, merely because he holds a consumption license, to have a bar. Many restaurants conduct their liquor business without a bar. Nor is there anything preventing him from enlarging his sales of package goods and diminishing his sales for on-premises consumption or giving up the latter entirely.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. LIMITATION OF LICENSES - POWER OF MUNICIPALITY TO ENACT - EFFECT-AMENDMENT - PROCEDURE FOR REVIEW ON APPEAL

June 4, 1937.

Mr. Arthur Monks,
Wanaque, New Jersey.

Dear Mr. Monks:

It is fully competent for municipalities to limit the number of licenses. The power is expressly conferred

by Section 37 of the Act. Any such limitation, so long as duly enacted in accordance with the statutes, is binding upon the municipality until amended or repealed in the manner prescribed by law. Blum v. Pompton Lakes, Bulletin 126, Item 4. The municipal governing body may, however, alter the limitation at its own volition. Re Knox, Bulletin 157, Item 11. Cf. re Lamson, Bulletin 118, Item 6. A bill has passed both Senate and House of Assembly which requires that limitations may not be changed hereafter except by ordinance. The limitation is also, pursuant to Section 38 of the Act, subject to review on appeal to me after which it may be set aside, amended or otherwise modified as directed by order of the State Commissioner.

A number of municipal regulations limiting the number of licenses have already come before me. Where reasonable, the limitations have been upheld; Walker v. Verona, Bulletin 91, Item 4; Bell's Drug Store, Inc. v. Cranford, Bulletin 141, Item 12; Beringer v. Camden and Mazer, Bulletin 144, Item 5. Where unreasonable, they have been set aside; Kaplan v. Trenton, Bulletin 41, Item 9; Central Restaurant v. Trenton, Bulletin 44, Item 5; Wehmann v. Hohokus, Bulletin 147, Item 8; Merritt v. Tabernacle, Bulletin 156, Item 3. Municipal regulations limiting the number of licenses which may hereafter be brought upon appeal will be considered in the light of these principles.

The issuance of all retail licenses, except where a member of the municipal governing body or license issuing authority is interested directly or indirectly in the application being made, is a matter exclusively entrusted in the first instance to the several municipalities. No retail applications come before me, except as aforesaid, until action has been taken by the municipality and then only by way of appeal from its determination.

The thing for you to do to test out your rights under the limiting ordinance is to make application to the Wanaque Borough Council for a license. Then if the application is denied and you feel that the denial was improper, you may appeal the case to me. Appeals must be filed within thirty days after the notice of denial has been served upon or mailed to the rejected applicant. Upon appeal being taken, hearing will be held, both sides will be given full and equal opportunity to be heard and decision will be rendered on the merits. Until all interested parties have been heard, you must realize that it would be wholly inappropriate for me to express any opinion one way or the other.

I have sent you under separate cover copies of the Rules Governing Appeals and Notice and Petition of Appeal and of each of the items hereinabove mentioned.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. THE FARM PROBLEM - MORE ABOUT CONTENTED BEAN AND BERRY PICKERS - THE CRISIS SAFELY PASSED.

Dear Sir:

I have your letter of the 22nd (Bulletin 178, Item 1) relative to the situation in Chesterfield Township and thank you for your suggestions. I believe this will solve our problem.

There is, however, one point I would like clarified.

Bearing in mind the fact that the number of persons who will be served by the daily delivery is close to 500, will not the daily requirements of so many exceed the limit of one half barrel, or equivalent, legal for the private conveyance in twenty-four hours?

The two licensees do not have a transportation license at the present time and because deliveries would be few, I do not believe they would care to operate a truck. The time limit on this class of business would be only about four months.

Would the manager transporting, therefore, be allowed to carry only the legal limit of fifteen gallons or would a quantity sufficient to care for the needs of all the families be permitted?

Wine was not asked for in considering this question but we will be governed by your suggestions.

Awaiting your further instructions, I am

Yours very truly,
Florence D. Clayton,
Clerk of Chesterfield Township.

June 4, 1937

Mrs. Florence D. Clayton,
Clerk of Chesterfield Township,
Crosswicks, New Jersey.

Dear Mrs. Clayton:

I have your letter of May 28th in reply to mine of the 22nd.

With five hundred people to serve, it would seem that the daily requirements will exceed the one-half barrel of beer which may be legally transported for personal consumption within any consecutive period of twenty-four hours.

The padrone would not be allowed to transport in excess of the allowable quota unless a special permit is first obtained.

The thing then for him to do, if the regular licensees do not care to go to the expense of making the deliveries themselves, is apply to me for a special permit. I have the power under Section 2 of the Act to issue permits allowing persons to transport alcoholic beverages for personal consumption in amounts greater than the statute permits. The application should be in the form of a petition requesting that special permit be issued and setting forth:

1. The name and address of the agent.
2. A description of the group for whom he is acting.
3. The reasons why the excessive transportation must be made.
4. The places of purchase; the names, addresses and license numbers of the licensees.
5. The places of delivery.
6. By whom the beer will be transported and the type, make, engine number, serial number, and motor

vehicle registration number of the vehicle to be used in transporting same.

7. The maximum daily gallonage to be delivered.

8. The period of time over which the deliveries will be made.

The fee for the permit will be \$5.00 for each month or part thereof that the permit shall be in effect. For four months, it will be \$20.00. The full fee in cash, money order or certified check drawn to my order as Commissioner must accompany the application.

The permit, if issued, must be carried on the vehicle while the deliveries are being made.

One more thing: Sales in quantities sufficiently large to serve five hundred thirsty farmhands may cause the retail licensees in your Township to run afoul of the Federal law. Under Federal law, a liquor dealer who sells in quantities of less than five gallons to the same person at the same time is termed a retail liquor dealer. If he sells only beer and other fermented malt liquors, he must have the \$20.00 Federal Retail Dealer in Fermented Malt Liquor Tax Stamp and if he sells all kinds of alcoholic beverages, he must have the \$25.00 Federal Retail Liquor Dealers Tax Stamp. But a person who sells in quantities of five gallons or over to the same person at the same time is considered, according to Federal law, a wholesale liquor dealer and such sales, if of beer, require that he first obtain the \$50.00 Federal Wholesale Dealer in Fermented Malt Liquor Tax Stamp or if of distilled spirits, that he first obtain the \$100.00 Federal Wholesale Liquor Dealers Tax Stamp.

I am sending you herewith three copies of the Bureau of Internal Revenue's Notice to Retail Liquor Dealers regarding the Tax Stamps (Form 939, Revision of August 1936), one for your own files and one for each of your two licensees.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. CONSUMPTION LICENSEES - MIXING OF DRINKS IN ADVANCE OF SALE - WHEN UNLAWFUL AS WELL AS INEXPEDIENT - HEREIN OF CASTE AND THE COLLINS FAMILY.

Dear Sir:

I represent the holder of a Plenary Retail Consumption License who is desirous of securing information as to what type of license he should have to enable him to lawfully make or mix certain drinks in advance, such as Tom Collins and the like.

Of course, he would only use them on the premises and would merely make a sufficient quantity to take care of his retail trade for one or two days.

If you can give me any information as to what the requirements are, I will greatly appreciate it.

Very truly yours,

A. J. Cafiero.

June 5, 1937

Mr. A. J. Cafiero,
Wildwood, N. J.

My dear Mr. Cafiero:

I have heretofore ruled that it is permissible for consumption licensees to fill ounce and a half decanters with cocktails in advance of orders so as to serve them during rush hours, Re New Jersey State Hotel Association, Bulletin 60, Item 6; Re Berkeley-Carteret Hotel, Bulletin 87, Item 1, for they have the right to sell for on-premises consumption "by the glass or other open receptacle." It is necessary to pour the drink into something to send it into the room or to the table. An open decanter may be used for this purpose as well as any other glass or container.

This ruling is good, however, only to the extent expressly indicated. It does not permit one to mix a batch of cocktails or other drinks and store them in bottles or jugs. Mixing for immediate service is radically different from mixing in advance for consumption at an indeterminate time and awaiting that time, storing in bottles or jugs. That is unlawful. No one can tell whether the ingredients are tax-paid or not.

Besides, a good bartender would lose caste if he mixed a Tom Collins a day or two in advance. So would the Collinses and their cousins, the Gin Rickeys, Gin Fizzes, Astorias, Belmonts, Pink Ladies, Gin Sours, Gin Alexanders, Green Devils, Paradises, Clover Clubs, Alabama Fizzes, June Roses, and all the host of rickys and juleps. Age counts for naught in this family.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. LICENSES - EXTENSION ON DEATH OF LICENSEE TO EXECUTOR OR ADMINISTRATOR - SPECIAL PERMITS ISSUABLE PENDING EXTENSION OF LICENSE TO PERSONAL REPRESENTATIVE.

Dear Sir:

I have just heard that Herman Zern, holder of Plenary Retail Consumption License C-5 in Riverdale, has been very seriously injured by an automobile, the shock of which caused a paralytic stroke.

He is reported to be dying in the Paterson General Hospital. Will you please advise me at your earliest opportunity, whether his wife, Mrs. Zern, will be permitted to carry on the business to the end of the license period, June 30, 1937, in the event of his death, and, if she will be permitted to take out a new license for the new period beginning July 1, 1937, providing, of course, that the necessary rules and regulations of the Alcoholic Beverage Control Act are observed.

Any other information relative to a situation such as this will be greatly appreciated.

Very truly yours,
Benj. F. Patterson,
Borough Clerk.

June 5, 1937

Benjamin F. Patterson,
Borough Clerk,
Riverdale, New Jersey.

Dear Mr. Patterson:

I have your letter of May 29th and I am very sorry to learn of Mr. Zern's serious injury. I hope for the best.

A liquor license is a personal privilege. No one except the licensee may exercise it. Anyone else who attempts to do so is guilty of a misdemeanor. Hence, upon the death of a licensee the privilege terminates and the license automatically suspends. It may be revived only in the manner that the statute allows. Until revived, no business may lawfully be conducted.

The Control Act, Section 23, provides that in the case of the death of a licensee the municipal license issuing authority may in its discretion extend the license for a limited time not exceeding its term to the executor or administrator. Re Lederer, Bulletin 100, Item 7. Cf. re Loog, Bulletin 81, Item 3; re Brennan, Bulletin 113, Item 1. That takes care of the eventual disposition of the business and the estate. It does not, however, provide for the maintenance of the business during the period between the licensee's death and the time the executor qualifies or the administrator is appointed. In order to conserve the assets of the estate, the business should not be compelled to suspend the same as if decedent had done some wrong. The Legislature never intended that harsh result as the effect of its liberal extension to the personal representative of decedent of the privilege originally conferred upon the latter. Therefore, to bridge the gap, a special permit may be issued to cover the time until the personal representative is duly certified by the Surrogate.

Application for such special permit should be addressed to me in the form of petition setting forth:

1. The name, age and address of the petitioner and his or her relationship to decedent.
2. The name and address of the licensee, the facts concerning the license, and the date of licensee's death.
3. If there be a will, a copy thereof.
4. If there be no will, the facts which would warrant the issuance of special permit to the petitioner to operate the license for the benefit of the estate of decedent and the proposed plan of operations and of accounting therefor.
5. The names and the consents of the immediate family of decedent and their respective relationships to decedent.
6. That application has or will be made to the municipal license issuing authority pursuant to Section 23 of the Act for an extension.
7. The probable duration of the special permit.
8. Character recommendations of petitioner made by responsible people.

9. All other facts being pertinent to the request for issuance of such permit.

The consent of the municipal license issuing authority, together with the \$10.00 permit fee, must accompany the petition. The permit, if issued, will have the same force and effect as the license held by the deceased and will run until such time as adjudication shall be made by the issuing authority on petitioner's application for extension of the license or until extension of the license to the duly qualified executor or administrator shall be made subject, of course, as are all special permits, to cancellation at any time by the State Commissioner of Alcoholic Beverage Control in his absolute discretion.

Now as regards the extension:

If Mr. Zern should die, the license may be extended by the Council until June 30th next, but no longer, to his executor or administrator in official capacity, not as an individual. Re R. P. B., Bulletin 20, Item 6. The Council cannot extend the license to the wife as such. The extension, if granted, should be endorsed on the license itself in the manner set out in re Lederer, supra.

If Mr. Zern should pass away this month, i. e., before the close of the current fiscal year on June 30th, the issuance of the license for the fiscal year beginning July 1st would be essentially the same as the issuance of a new license. Either Mrs. Zern or Mr. Zern's legal representative could apply and obtain the license provided the person applying complied with all the requirements, was duly qualified to hold a license in his own right and the premises were suitable. Whoever takes out the new license would be personally responsible for the operation of the business and subject personally to criminal or revocation proceedings in the event of violation, regardless of whether it is Mrs. Zern or Mr. Zern's legal representative, either as an individual or as executor or administrator. Re Branigan, Bulletin 129, Item 3.

Please convey to Mrs. Zern my great sympathy in her present distress.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. STATUTORY AUTOMATIC SUSPENSION - PETITION TO LIFT - POSSESSION OF ILLICIT LIQUOR PLUS BOOTLEGGING PARAPHERNALIA - 60 DAYS MUST RUN IN SUCH CASES BEFORE SUSPENSION WILL BE LIFTED.

In the Matter of the Application)
of Thomas J. Tighe, Retail Licen-)
see of Newark, to Lift Suspension)
of his License.)
- - - - -)

CONCLUSIONS
AND ORDER

Harold Simandl, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Thomas J. Tighe, the holder of Plenary Retail Consumption License C-320, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 827 Summer

Avenue, was arraigned before the Second Criminal Court of the City of Newark on September 22, 1936, and held under \$500.00 bail to await the action of the Essex County Grand Jury. A previous inspection by investigators from this Department had revealed the presence of illicit alcoholic beverages in his licensed premises as well as bootlegging paraphernalia.

A synopsis containing all facts relative to the seizure was forwarded to the Municipal Board of Alcoholic Beverage Control of Newark for revocation proceedings. On November 30, 1936, a hearing was had before the Board; the licensee was found guilty of possessing illicit alcoholic beverages; and his license was thereupon suspended by said Board for seven (7) days - December 3, 1936 to December 10, 1936.

In the meantime, the Grand Jury of Essex County returned an indictment against Tighe for possession of illicit alcoholic beverages. On February 24, 1937, the licensee entered a plea of non vult and on March 3, 1937, he was sentenced by Daniel J. Brennan, Esq., Judge of the Essex County Quarter Sessions to pay a fine of \$100.00 and he was placed on probation for one year.

Under the Control Act (Reprint Section *82 P. L. 1935, c. 254), his license by reason of his conviction became automatically suspended for the balance of its term - to June 30, 1937. Such suspension has now been in force since April 15, 1937.

A petition has been filed by Tighe wherein he requests that the suspension be lifted. He sets forth therein that he is sixty years of age and has never been arrested or convicted of any other crime; that his premises have been closed for a period of thirty days; that none of the seized illicit liquor was offered for sale; and that he "assures your Honor that he will not, in anywise, violate any of the laws of the State of New Jersey, or rules and regulations of the local board or state board of the Alcoholic Beverage Control."

I have ruled it is the policy of the Department that a licensee should suffer a minimum penalty of thirty days' suspension of his license for possessing illicit alcoholic beverages. See Re Morris, Bulletin 98, Item 10; Re Honsell, Bulletin 164, Item 10; Re Aldarelli, Bulletin 166, Item 11. Ordinarily I would feel that this minimum penalty would be sufficient punishment for the offense. As I said in Re Morris, supra, "I shall for the time being, fix a minimum of thirty days' suspension on this kind of case.....If this does not suffice to wipe out the sale of bootleg liquor in licensed places, the minimum period hereby imposed will be increased and the full deterrent forces of the law applied as experience requires."

I am of the opinion that the minimum penalty is insufficient in the present case. Licensees should know by this time that bootlegging will not be countenanced on licensed premises. The time is long since past that the excuse of having had the illicit liquor, either before or during Prohibition can be advanced with any degree of plausibility. The law says licensees shall not possess it. Excuses are out of order. Moreover, I cannot lose sight of the fact that there was seized from Tighe, juniper flavoring, glycerine, rubber hose and a hydrometer - all paraphernalia for the manufacture of "bath-tub" gin - all badges of "bootleg." The petitioner does not attempt to excuse this in any way.

The statutory automatic suspension will not be lifted for this major offense until the suspension has run for sixty days. He has already undergone seven days by order of the local municipal board. Fifty-three days more from April 15th will carry it down through June 6th.

Accordingly the petition to lift the statutory automatic suspension is granted effective June 7, 1937.

Until then, the license stands suspended.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 5, 1937.

11. LICENSED PREMISES - BUILDING NOT YET CONSTRUCTED - APPLICATION
MAY BE GRANTED SUBJECT TO CONDITION.

Dear Commissioner:

Will you kindly advise me whether the governing body of a municipality has the right to grant a liquor license for retail distribution for premises which have not yet been erected, but for which the plans have been drawn. The place contemplated is at present a vacant lot.

Very truly yours,
Morris Harris.

June 5, 1937

Morris Harris, Esq.,
Passaic, N. J.

Dear Mr. Harris:

A liquor license must be issued for particular premises. The operation and effect of every license is confined to the licensed premises. Before actually issuing a license, the municipal license issuing authority must find the applicant personally qualified and the premises suitable. The premises cannot be examined or found suitable if they are not yet in existence.

The most that the municipal license issuing authority may do where application is made for building not yet constructed is to grant the application subject to the express condition that the premises as described in the plans and specifications prepared, submitted and found acceptable by the municipality, shall first be built. The license, of course, will not become effective until the special condition has been complied with.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. MUNICIPAL CLERKS - NECESSITY OF PRESERVATION OF RECORDS - RECORDS
MUST BE PRESERVED UNTIL AFTER AUDIT BY STATE AUDITOR AND AFTER
PERMISSION TO DESTROY IS RECEIVED FROM STATE DIRECTOR OF PUBLIC
RECORDS.

June 4, 1937

Dear Sir:

I have before me your letter of May 28th being a copy of an original to Elmer H. Cooke, Clerk of Hope Township. The last

It is the policy of this office to direct the attention of municipal officials through letters to the clerk to matters of importance or interest and as a result of a previous ruling of the State Commissioner attention was directed to the fact that it would be unnecessary to secure new license blanks each year where a very limited number of licenses were issued if the dates, etc. were properly changed and a detailed and proper record as to the issuance of the license was kept.

The State Auditor does not have the power to authorize the destruction of any public records and it is therefore a fundamental that no public document may be destroyed for a period of years and must at least be held intact where it can readily be accessible until the annual audit is made. We are communicating with the various clerks who have received the State Commissioner's permission to use present blanks and advise them that proper records should in each and every instance be maintained and held subject to audit. After the audit is made the records should still be held in the files of the municipality at least until permission to destroy the same is received from the State Director of Public Records.

Yours very truly,
G. C. Skillman, Head Auditor
For: Walter R. Darby,
State Auditor.

On Petition for Modification
of Penalty
CONCLUSIONS.

Nothing is contained in the petition which was not fully considered in the decision made but eleven days ago except "the most cruel hardship upon petitioner and his family," and that the

violation, "assuming a violation in the present case," was not as deliberate as in another case decided concurrently in which the same penalty was meted out.

The time to think of the wife and children is before the deed is done - not afterwards.

The claim that one has but a mote in his own eye in comparison with the beam in his fellow's is not in point when illicit alcohol with poisonous ingredients is involved. As well might it be argued in such a case that a victim did not die - or - if he did - that he did not suffer so long because the poison was more deadly! Nicety in the apportionment of punishment is not the prime objective in these cases. This stuff is on the way out. So are licensees who possess it on licensed premises.

In his peroration, the learned attorney quotes from a West Virginia case:

"Society must be protected from law violators and their punishment must be just.....commensurate with the seriousness of the offense. But the state does not punish malefactors in vengeance."

Just so!

Petitioner is fortunate that his license was not revoked outright. He is disqualified now only for the balance of his present term. If the local issuing authority desire to give him another chance during the coming fiscal year which starts on July 1st, that is within their power and upon their responsibility.

The application to mitigate is denied. -

D. FREDERICK BURNETT,
Commissioner.

Dated: June 5, 1937.

14. LICENSED PREMISES - MOTION PICTURES - NO OBJECTION IF SUBJECT MATTER IS PROPER.

June 7, 1937

Kunz-McCork Company,
Philadelphia, Pa.

Gentlemen:

Your letter of May 26th addressed to the State House, Trenton, New Jersey, and inquiring if 16 M/M Safety Motion Pictures may be shown on premises where liquor is sold, has been forwarded to me for reply.

There is nothing which would prohibit the showing of any motion pictures in licensed liquor places provided the subject matter was proper. Lewd, immoral and indecent exhibitions are barred. They are prohibited by Rule 5 of the State Rules Concerning Conduct of Licensees. For what happens to retail licensees who show filthy moving pictures in violation of the rule, see re Muhlenbrink, Bulletin 172, Item 3. Violation of the rule is cause for the revocation of the license.

So long as there is no violation of the rule and nothing by way of municipal regulation which would prohibit it, motion

pictures may be shown on licensed liquor premises. Inquiry as to local municipal regulations should be made directly of the Municipal Clerks.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. ADVERTISING - NO REQUIREMENT THAT LIQUOR ADVERTISEMENTS SENT THROUGH THE MAIL BE ENCLOSED IN ENVELOPES.

Gentlemen:

I am enclosing two post cards which have recently come to my attention. It has always been my understanding that advertisement of liquor prices may only be mailed enclosed, in this State.

I operate a liquor store in the City of Paterson and am therefore vitally interested.

Yours truly,
Mark R. Bock.

June 7, 1937

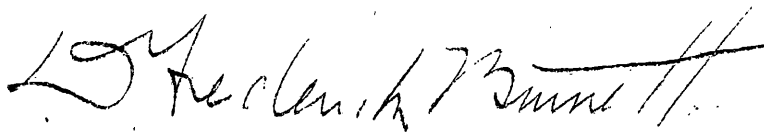
Mr. Mark R. Bock,
Paterson, New Jersey.

My dear Mr. Bock:

There is nothing in the State Rules requiring that liquor advertisements be enclosed in envelopes. There is no requirement of secrecy about it. Proper advertising matter may be distributed by mail either by post-card or by handbills, open or enclosed, as each licensee wishes. There is nothing wrong with the sample post-card as submitted.

The State Rules prohibit solicitation from house to house personally or by telephone. See Rule 3 of the Rules Concerning Conduct of Licensees. That means that you can't send out canvassers or salesmen to ring door bells and solicit orders directly from householders or do what amounts to the same thing by telephone. It does not, however, prevent the mailing of advertising matter or its distribution from house to house unaccompanied by any direct solicitation. See Re Advertising Distributors of America, Inc., Bulletin 173, Item 17, which will give you the reasons for the rule and an explanation of it.

Very truly yours,


D. Frederick Burnett,
Commissioner.

Inspected by: E. E. B. ANDERSON and found O. K.
