

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

BULLETIN NUMBER 203

AUGUST 17, 1937.

1. ADVERTISING - LIQUOR ADVERTISING ON THE MOVIE SCREEN -
DISAPPROVED.

Dear Sir:-

I have installed a new cooling system for my cafe and wish to advertise the same on the screen in the theatre. Since I am unaware of its legality, will you please notify me if it is permissible or no.

The advertisement will run similar to the following:-

To further cater to our customers, we are now drawing beer direct from "The Wood Brewery Type Refrigeration".

Thanking you for your help and advice, I am

Yours truly,

Louis Braca.

August 14th, 1937.

Mr. Louis Braca,
Sea Isle City, N. J.

Dear Mr. Braca:-

The medium of advertisement which you propose would command indiscriminately the attention of the entire audience at the movie house and carry its message to all, irrespective of age or inclination, and whether welcome or not. The movie has become a popular American institution where great numbers of our public daily seek a fugitive measure of enjoyment or relaxation.

As a matter of policy, I cannot countenance on the screen an advertisement calculated to incite hegira to your beer faucets; bound to incense those who hold moral or religious scruples; and certain to offend the good taste of all right-minded persons, wet or dry, who are opposed to liquor advertisements at a mixed gathering in a public place.

Don't do it.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS

July 19, 1937

Re: Case #58

This is to determine applicant's eligibility to be employed as a bartender in this State despite his criminal record. Bulletin #173, item #15.

Applicant is 35 years of age, 13 years married and has 5 children, all minors.

In July, 1928, applicant was arrested in a raid made by State Troopers on a "speakeasy" which he was operating at his home. He states that this raid was inspired by the fact that a State Trooper in civilian clothes entered the "speakeasy," noted that there were slot machines there, and was sold a drink of liquor. As a result of the raid, applicant was indicted in Monmouth County for illegal possession and sale of liquor and for maintaining gambling machines. Pleading guilty to both charges, he was duly convicted and sentenced to a fine of \$660 or a term in jail. Being unable to pay this fine, he was sent to the County Jail where, after seven months, he was released on three years' probation.

In November, 1930, applicant while still on probation was arrested in Monmouth County on a charge of burglary. He claims that on the night of the crime he had been drinking freely for several hours, when a friend dropped in to see him; that they had several drinks together; that this friend suggested that they steal some wine of which he had knowledge; that applicant, "crazy drunk," drove in the friend's Ford Coupe to a home in Wall Township, and with him broke into either the house or garage and took the wine. Applicant claims that he does not know precisely what occurred.

Applicant pleaded guilty in Special Sessions, and was given a suspended sentence and placed on probation for three years to make restitution of \$20, which (so applicant claims) was mainly in repayment of the damage done to the freehold when abstracting the wine.

In 1933 applicant was arrested on a charge of illegal possession and transportation of liquor but the Grand Jury dismissed his case.

It may well be that applicant's crime of illegal possession and sale of liquor during the Prohibition era and his crime of maintaining slot machines for the purpose of gambling are not crimes involving moral turpitude. See In re Hearing #143, Bulletin #166, item #8; Bulletin #70, item #2. However, burglary is a crime which, in the absence of extremely exceptional circumstances, necessarily involves moral turpitude. The mere fact that applicant so plied himself with liquor that his normal sense of restraint disappeared, is not a sufficient circumstance to negative the element of moral turpitude from the crime of burglary of which he was convicted.

Furthermore, applicant's record reveals that he is an unfit person for employment as a bartender. He has been convicted of violation of the Prohibition Act in connection with running a "speakeasy"; of maintaining slot machines for the purpose of gambling; of burglary while still a probationer; and has been arrested for illegal possession and transportation of liquor.

It is recommended that applicant be declared ineligible for employment by a licensee in this State.

Nathan Davis
Attorney

Approved:
D. Frederick Burnett
Commissioner

3. RETAIL TRANSIT LICENSEES - WAREHOUSING PRIVILEGES

August 13, 1937

United Brewing Company,
Newark, New Jersey.

Gentlemen:

According to the records of this Department, the Keansburg Steamboat Company holds a plenary retail transit license for two steamers, the "City of Keansburg" and the "City of New York," and also holds a plenary retail consumption license for premises located at the foot of its pier in Keansburg.

It has been ruled that a municipal retail licensee is not privileged to store his alcoholic beverages elsewhere than on the particular premises licensed for the sale of those beverages. Re Max, Bulletin #24, Item 10; Re Bock, Bulletin #118, Item 5; Re Butera, Bulletin #197, Item 9. That ruling is based upon the theory that the Control Act does not contemplate a privilege in a municipal retail licensee to maintain any private warehouse.

But a retail transit licensee stands upon a different footing. The licensed premises of the municipal retail licensee are stationary and always accessible for delivery of alcoholic beverages. Furthermore, if the licensed premises are insufficient for adequate storage of his liquor, the municipal retail licensee may readily enlarge his premises by alteration, addition or acquiring adjoining space and may obtain a license for the enlarged premises. But it is otherwise with the retail transit licensee whose licensed premises are transitory vehicles such as boats, airplanes, and railroad trains. To privilege him to make sales in these vehicles implies that he may temporarily store his alcoholic beverages on his premises at ports or stations along the route while the vehicles are in transit. Consequently, he may put in temporary storage at those premises such liquor as he may reasonably anticipate will be needed for the near future on his licensed vehicles. He may not, however, go beyond this limit; and in any event he must obtain a permit from this Department for permission to make temporary storage at his premises during the year, not exceeding a certain amount.

I am referring this letter to Deputy Commissioner Garrett for investigation of the facts. However, until further order from me to the contrary, you may make deliveries to the ice house.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. BAR DECORATIONS - BAKING SODA AND ALKALINE AND OTHER LININGS FOR THE STOMACH'S SAKE - PERMISSIBLE FOR THOSE WHO CRAVE IT.

Dear Sir:-

I have a Bar and Grill and I was informed that I can't have any more Bromo-Seltzer or Baking Soda at my bar. Will you please let me know as soon as possible if I can have these articles at my bar or not.

Yours truly,
Alexander Orso.

August 16, 1937

Mr. Alexander Orso,
New Brunswick, N. J.

My dear Mr. Orso:-

You've been misinformed about the bromides and the baking soda. While hardly to be classed as condiments or chasers, they serve a useful if not novel purpose in the repentant moods of remorseful matins, second only to ice-water. I have never understood that the use of baking soda was habit forming. Hence, there is no objection to these utilitarian items gracing the bar if you choose. You might also look into the merits of ipecac, aromatic spirits and mulligan.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

5. LICENSES - TO WIFE OF A MEMBER OF A BOROUGH COUNCIL - CONSIDERATIONS INVOLVED.

Dear Commissioner:

The wife of a member of borough council contemplates application for a Plenary Retail Consumption license in the borough wherein her husband holds office, intending to employ him as bartender. In the community in question the borough council is the license issuing authority.

May the husband be engaged by her?

If such conduct is permissible, may the borough council act upon the application, or should the same be submitted to you?

Kindly give me this information and such other as may touch upon or concern this subject.

Very truly yours,
Julius Rosenberg

August 14, 1937

Julius Rosenberg, Esq.,
Camden, N. J.

Dear Mr. Rosenberg:

The first question is who shall issue the license.

The Control Act, Section *18A (C.44, P.L.1934) declares that no license shall be issued by any municipal license issuing authority to any member thereof or to any corporation, organization or association in which any member is interested directly or indirectly but that in such case, application may be made to the State Commissioner.

Applications by wives whose husbands hold public office should be scrutinized with the greatest care to the end that the true status of the parties be fully ascertained. As you state the proposition, it sounds like a rank subterfuge. Any Borough Council which held that the husband was not interested in the wife's business, knowing all the while that he is to be her bartender, would open itself to grave suspicion. The husband himself, if a real man, should not skulk behind his wife's skirts but come out frankly and admit that he is interested and make his application direct to the State Commissioner.

The wife, if licensed, may employ her husband in the licensed business, notwithstanding he is a Councilman, provided he can fully qualify for a license in his own right. The statute requires employees, as well as licensees, to be so qualified.

His employment in the liquor business will, however, have direct bearing on his conduct in office. 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. Private interest must not be allowed to prejudice the discharge of public duty. Hence, while he may participate generally in the actions of the Council so far as they deal with other municipal affairs, he is disqualified from participating in any manner whatsoever in the deliberations of the Council concerning any phase of alcoholic beverage control. He may not vote upon the granting or rejecting of licenses, or take part in hearings on license applications or revocations, or participate in the preparation, enactment or enforcement of any regulations, ordinances or resolutions concerning the liquor traffic. The reasons and pertinent decisions are indicated in detail in Marsteller v. Hagenbucher and Somers Point, Bulletin #95, Item #10 and the items cited therein, copies of which I send you herewith for your information.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. SALES AND TRANSPORTATION - THE POWERS OF THE POLICE - PRINCIPLES AND PRACTICE APPLICABLE.

Dear Sir:

The following question has arisen, due to truck loads of people from various parts of the State coming here and causing disturbances, after they have imbibed in the use of beer which is usually in a keg on the said truck.

Is it legal for anyone to haul beer in a keg or otherwise and consume the same on public property from a truck or other vehicle?

Your reply will be appreciated by the undersigned.

Yours very truly,

Seaside Park Police Dept.
C. R. Brown, Chief.

August 6, 1937

C. R. Brown, Chief,
Department of Police,
Seaside Park, N. J.

My dear Chief:

If any sales of the beer are made at the outings which you mention, those sales are absolutely illegal unless being made under a special permit from this Department. Apparently, the outings are not being operated under any such special permit, since it is my practice not to grant this type of permit until consent from the Police Chief of the municipality where the outing is being held, has first been obtained.

Any persons selling the beer without this permit are committing a misdemeanor under Section 50 of the Control Act; those persons who are aiding or abetting in the sales are guilty of a misdemeanor under Sections 50 and 52 of the Control Act.

The beer is being sold at these outings if there is an outright charge for the beer, or if all or some of the members of the outing are assessed to cover the cost of the beer.

If the beer is being sold, it is also necessary that the trucks transporting it are operating under a transportation license or permit from this Department. Otherwise, the transporter is committing a misdemeanor under Section 50 of the Control Act, and those who are aiding or abetting him are guilty of a misdemeanor under Sections 50 and 52.

It may be, however, that the beer at the outing is not being sold but is merely being used for free consumption by the members of the outing. In such a case, there is no violation of the Control Act so long as each truck transporting the beer carries no more than one-half barrel or 24 quarts of beer. This is because Section 2 of the Control Act allows that quantity of beer to be transported in any vehicle within this State if intended for personal consumption.

"Personal consumption" does not mean that the owner must personally drink all the beer; he may give it to his friends for them to share in its consumption. Cf. Re de Valliere, Bulletin #163, item #3.

If, however, a truck is transporting more than one-half barrel or 24 quarts of beer, the transportation is illegal unless the truck is operating under a transportation license or permit from this Department; it makes no difference, if more than that amount is being transported, whether the beer is intended to be sold. Such illegal transportation is a misdemeanor under Section 50 of the Control Act, and those who are aiding or abetting the transporter are guilty of a misdemeanor under Sections 50 and 52.

There is no provision in the Control Act or the State regulations providing where or how beer or any other alcoholic beverage is to be consumed. There may be local ordinances which prevent these outings in your municipality or which prevent drinking in public places such as parks, etc. In any event, if the persons actually become obnoxious in any public place, they apparently can be arrested as disorderly persons. See Laws 1912, p. 161; 2 Sup. Compiled Statutes, p. 944, s 59-3.

If you know or have reasonable cause to believe that any person is committing one of the above mentioned violations of the Control Act, you may arrest any such person and make complaint against him just as in the case of any other misdemeanor. Sections 64(a) and 70 of the Control Act so provide. In the event of an illegal sale, you may seize the beer; in the event of illegal transportation, you may seize the beer and the truck which is carrying it. Section 64(a) of the Control Act so provides.

If you feel uncertain as to whether any violations of the Control Act are occurring during these outings, you may notify me when the next truck-load appears and I will immediately endeavor to have department investigators arrive at the scene in time to investigate matters.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. RULES CONCERNING CONDUCT OF LICENSEES - RULE 18 - GRENADINE IS NOT ONE OF THE "MAKINGS" INTENDED TO BE COVERED BY THE RULE.

August 13, 1937.

Gentlemen:

We have been given to understand that your Board has prohibited the sale of non-alcoholic cordials and the like in stores who have retail liquor licenses. We understand further that some of such stores have been selling a non-alcoholic Grenadine. Please advise whether the sale of a non-alcoholic Grenadine is also prohibited under this rule. The reason we ask is because we produce a Grenadine of 5 proof and some of our customers have asked our salesmen whether they are allowed to continue selling the non-alcoholic Grenadine, if not, they want to discontinue it and we then can sell them our type of Grenadine.

Cordial-ly yours,

ORIGINAL JULIUS MARCUS LAB. INC. OF N.J.

James M. Baumohl, President.

August 14, 1937.

Original Julius Marcus Laboratories,
Inc. of New Jersey,
Jersey City, N. J.

Gentlemen: Att: James M. Baumohl, President

I have yours of the 13th.

Rule 18 Concerning Conduct of Licensees and Use of
Licensed Premises has nothing to do with grenadine.

New Jersey State Library

The rule was designed to prevent the possession and sale of "makings".

Grenadine, while an accessory, is not of itself something which can be converted into an alcoholic beverage. It is not a cordial, actual or potential.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. WHOLESALERS - TRIMMING WINDOWS AND OPENING THEM TO HURRICANES OF TROUBLE.

Gentlemen:

Would it be legal for a wholesaler to employ persons to trim windows for any of the various types of outlets selling liquor at retail in New Jersey, or would such a service be considered a violation of the general prohibition against giving anything of value to the retailers? It is of course understood that any advertising material which would be put into these windows would be in strict conformity with the rules and regulations of New Jersey.

Very truly yours,

H. S. Gardner, Jr.

August 14, 1937.

Gardner Advertising Company,
New York City.

Gentlemen:

A wholesaler may trim windows for a retailer provided the cost of the services rendered and the material furnished does not cause the aggregate cost or reasonable value of the advertising matter which the wholesaler may furnish to the retailer during that calendar year, to exceed the allowable \$100.00 maximum.

See Rule 1 of the Rules Governing Signs and Other Advertising Matter, a copy of which is enclosed.

I advise against the practice, however. What one wholesaler may do, so may another. What you may do another will outdo and still another will overdo. It is nothing but a form of indirect price cutting. You are opening windows to a hurricane of trouble.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

ADVERTISING - USE OF MANAGER'S NAME PERMISSIBLE - OR HIS OWN NICKNAME -
HEREIN OF PUGILISTS OF OTHER DAYS.

August 12, 1937.

Dear Commissioner:

As president of the Old Spot, Inc., holder of a plenary
retail consumption license for premises at 41 Rahway Ave., Elizabeth,
I wish to seek a ruling from you.

Will it be legal for me to erect a sign reading

"SAMMY LEWIS, MGR."

on the outside of the establishment?

My name, of course, is Samuel Klitzner, which is used
in all business dealings. However, I have been known in Elizabeth
for years as Sammy Lewis, since I used that name in the ring some
years ago.

Friends and prospective patrons will recognize my name
as Sammy Lewis more quickly than as Sammy Klitzner.

I do not wish to go to the expense of erecting a sign
until I hear from you as to the legality of the procedure. I should
like to have the sign up by August 21.

Yours truly,

Samuel Klitzner.

August 16, 1937.

Mr. Samuel Klitzner,
c/o Old Spot Tavern,
Elizabeth, N. J.

Dear Sammy:

I have before me your letter of the 12th and have check-
ed with the Sports Editors of two of our leading papers who both
verify that Samuel Klitzner was a prize-fighter some years back in
Elizabeth who fought and achieved considerable and favorable reputation
under the name of "Sammy Lewis."

There is no rule which prohibits a municipal licensee
from advertising on the outside of his premises the name of the manager
conducting the establishment. Nor is there any rule which prohibits a
municipal licensee from advertising the manager by way of his nickname,
trade name, or otherwise. The only restriction is that the advertise-
ment must not be for the purpose of defrauding or deceiving anyone.

If the name carries with it the old time punch, you are
welcome to go to it. If you keep it as clean as you did in the ring,
it won't be called in as referee often.

Yours very truly,

D. FREDERICK BURNETT,
Commissioner

10. ELIGIBILITY FOR EMPLOYMENT OR SOLICITOR'S PERMIT - MORAL
TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

August 14, 1937.

Re: Case #176

This is to determine applicant's eligibility to be employed by a licensee in this State, and to determine his eligibility to obtain a solicitor's permit.

Applicant states that, because of the discouragement of continuous unemployment, he became a numbers writer during the last half of 1932.

In September of that year, he was arrested in Camden for "picking up" lottery slips in violation of the city ordinance, was convicted and fined \$25.

In November of the same year, he was arrested in Camden for numbers writing. He pleaded non vult and was sentenced to and served 45 days in county jail. Applicant claims that he was writing about two or three dollars worth of numbers a day, and was earning a commission of 25¢ on each dollar.

In December, 1932, apparently while applicant was out on bail pending determination of his arrest in November, he was again arrested in West Trenton for possessing number slips but the matter was nolle prossed.

Applicant's violation of the Camden ordinance is not a crime within Section 22 of the Control Act. In Re: Hearing #144, Bulletin #168, item #8. Furthermore, it may well be that his crime of selling tickets in the numbers game does not involve moral turpitude within the meaning of that same section.

However, applicant, despite two arrests, nevertheless persisted in the same illegal activities to the point of even a third arrest. This third arrest resulted in a nolle pros apparently only because applicant's second arrest had already led to a jail sentence. His partner at the third arrest was indicted, convicted and fined \$150.

Furthermore, applicant, at the hearing in this proceeding falsely testified under oath that he had never been arrested on any occasion other than in November 1932.

I do not believe that applicant's record and conduct befit him for employment by a licensee or for a solicitor's permit.

It is therefore recommended that applicant be declared ineligible for employment by a licensee and ineligible to obtain a solicitor's permit.

Nathan Davis
Attorney

Approved:
D. Frederick Burnett
Commissioner

11. ADVERTISING - SOUND TRUCKS - DISAPPROVED - HEREIN OF THE PLAGUE OF BLATANCY.

July 27, 1937.

Dear Sir:

Kindly advise me by return mail the ruling concerning advertising by a public address system. The system in question will advertise throughout the county in the afternoon and in the evening at a local carnival to be held here. It will not advertise any particular brand of liquor or prices but will confine the advertising to our place of business in a general sense. In other words, it is a mere good-will advertisement in order to help one of our local organizations, a fire company to be specific, to raise money.

Very truly yours,

Sidney W. Bookbinder,
President.

August 16, 1937.

Quality Cut Rate Liquor Store, Inc.
Burlington, N. J.

Gentlemen: Att: Sidney W. Bookbinder, Pres.

I have yours of July 27th. If what you charitably call a "public address system" comes down to a sound truck, I shall not allow it.

The radio and the movies have already been disapproved for the sales promotion of alcoholic beverages. A blatant sound truck is worse! Even the "Wets" must be spared this plague!!

Licensees are directed not to employ this medium of advertising.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. UNLICENSED RESTAURANTS - TREATMENT OF CUSTOMERS WHO CARRY THEIR OWN - RECOMMENDED THAT THEY BE MADE TO WALK SPANISH.

August 14, 1937.

Mr. H. M. Bascom,
Newark, N. J.

Dear Mr. Bascom:

There is nothing illegal about a group of persons entering a restaurant with their own liquor and there consuming that liquor with their meal, if that is absolutely all that is done. The practice, however, is a very dangerous one for the restaurant owner.

An unlicensed restaurateur or his employees cannot mix, prepare, service or serve any liquor for the customers even though the liquor has been purchased elsewhere by those customers. Re Murnane, Bulletin #153, Item 5; Re Walsh, Bulletin #187, Item #9; they may not sell, serve or dabble in liquor under any pretext, directly or indirectly. To do any of these is a misdemeanor.

The restaurateur is master of his own shop and responsible for what occurs there. The only safe practice for him to follow, in order to avoid the possibility of serious trouble, is not to permit anyone to drink liquor in his restaurant. Re Bashover, Bulletin #184, Item #2. He could and should eject your party unceremoniously. I have recommended that he do so. I wish you would not do it.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS

August 14, 1937.

Re: Case #68

This is to determine applicant's eligibility for employment as a waiter by a licensee in this State.

Applicant is now 23 years of age. He was married in 1932, when 18 or 19 years old; in 1934 he and his wife separated by mutual consent because of incompatibility.

During the latter part of 1935, applicant met a sixteen year old girl at a Newark tavern. This meeting led to a meretricious relationship between the two for a period of approximately six months. At one time the girl lived with him for a week.

Applicant states that the girl knew that he was married; that she fostered the relationship; that she appeared to be over sixteen, and showed him a false or falsified birth certificate setting her age at about eighteen; and that she has entered illicit relationships with other men prior and subsequent to him, and has involved them in similar criminal proceedings.

The parents of the girl procured applicant's arrest on a charge of what is commonly known as "statutory rape." Applicant pleaded non vult to this charge and was sentenced to State Reformatory for an indefinite term. After remaining at the Reformatory for seven months he was released in December, 1936, on fifteen years' probation.

In May, 1937, applicant's wife obtained an uncontested divorce from him.

Applicant's crime is similar in some respects to the crime involved in Re: Case #66, Bulletin #202, item #6. There, a married man, living with his wife at the time but not on compatible terms, spent a holiday weekend with an unmarried woman in a hotel room; it was ruled that his crime of fornication did not, under the circumstances, involve moral turpitude within the meaning of Section 22 of the Control Act.

Here, however, applicant, as a married man separated from his wife, carried on a prolonged immoral affair with a girl who, in his own opinion, was only seventeen, and admittedly without any intention or hope some day to consummate the affair by marriage.

"Statutory rape," where the age is set at fifteen, has been held to be a crime involving moral turpitude for the purposes of the Federal Immigration Law. Bendel vs. Nagle, 17 F. (2nd) 719 (C.C.A. 9, 1927); and see Brown vs. Zurbrick, 45 F. (2nd) 931 (C.C.A. 6, 1930).

Even if applicant's crime be treated as but ordinary fornication, nevertheless, under the circumstances here presented, it involves moral turpitude within the meaning of Section 22 of the Control Act. I do not think that the extremely poor character of the girl wholly eliminates the baseness of the crime.

The probation authorities speak very favorably of applicant; they state that in all respects outside of this affair, he is an ordinarily sober, law-abiding and intelligent member of society, and that he is readily adjustable as a useful citizen. However, the statutory mandate of the Control Act leaves no discretion in the Commissioner in instances of a crime involving moral turpitude.

In view of applicant's earnestly attempted rehabilitation, it is with reluctance that I recommend that he be declared ineligible for employment by a licensee in this State.

Nathan Davis,
Attorney

DISAPPROVED:

To commit any crime makes one culpable. It may or may not make him corrupt. The question is not whether a crime was committed, but whether the crime involved moral turpitude. That depends on the nature of the act and the facts in the particular case. This girl was no beginner. She was not betrayed. It was not a case of revolting perversion with a mere child - not the kind of "sex crime" of which we read with shock and sudden understanding of and sympathy for the rage of those who lynch. The girl lied about her age. What the boy did was wrong, but it was not morbid. He is no menace to society.

Horace S. Volz, the State Parole Officer, testified:

"Q. Have you made a general investigation on the life and character of Mr. _____? A. I have.

Q. And what does your investigation show? A. I found his home life to be run on a much higher plane than that of most homes that I contact - so much so that I unquestioningly recommended to the institution that so far as his home was concerned there was no objection to his being paroled there, when they were considering him for parole.

Q. Are you familiar with his case when it came up for consideration of parole? A. Yes.

Q. What was stated when his case was heard - what were the reasons for giving his parole?

A. Briefly it was felt that he was not in need of any longer custody or training at the institution - that he was prepared to come out into the community and adjust himself to community life.

Q. Would you classify Mr. _____ as a person who, in a sense, belonged to a reformatory? A. No.

Q. Why not? A. First of all, he has not had any previous records of arrests or offenses. Secondly, the circumstances of this offense for which he was arrested seemed to be such that he had no idea he was really committing a crime and thirdly, his own mental and personal make-up and adding to his outlook on things, sort of fit him into a class of normal law-abiding persons.

Q. You would classify him then, as an average sane, sober and law-abiding citizen? A. Yes. As to his intelligence - I can give you the statement of the psychologist at the institution which would be more accurate - that 'his general mental level is average. A reasonable, frank young man. His work record indicates an unusual degree of industrial stability. There is nothing abnormal evident in his make-up. His standards with regard to sexual conduct were not strict but his interests and his experience along those lines were not morbid or frustrated. Present offense was very probably committed in ignorance of the girl's age. From the standpoint of menace to society, he does not appear to need long training.'

Q. Since he has been out on parole and in your charge, what have you learned as to his conduct and character? A. I am very much pleased with his attitude toward his parole supervisor - with his attitude toward me as his superior in charge, his attitude towards his parents, his work. He supports himself. And especially with his attitude towards the girl with whom he got into trouble. He and I talked the whole thing over when he was being prepared to come back into the community - he told me then that he wanted to have nothing to do with the girl and asked me to help him avoid this girl in case she happened to molest him and after he did come home he told me the girl made attempts to see him. All these things indicate that he was sincere in trying to avoid further trouble of that kind. When I visited the girl and her parents and his parents - it is my opinion, if it is important here in this case, that the girl has been going out of her way to see him and that her mother is not exactly condoning her action but she is ignorant of the numerous efforts that the girl has been making to see him - yet she is aware that the girl has seen him and she is building a feeling-that I felt I was getting nowhere in trying to see them. And finally I felt it necessary to sort of point out to them that some legal action might be necessary and might possibly be taken from their methods. Since then I haven't had any indication that she is molesting him. She has been to his home - she visited his home and his mother pleaded with her to stay away - he was ignorant of the fact that she was there - there have been rumors in the neighborhood that they have seen her around there. But I have been very much pleased with his efforts to get along in the community.

Q. If the incident had not occurred which led to his arrest and conviction would you classify Mr. _____ as the ordinary, sane and sober, law-abiding citizen? A. Yes.

Q. Do you approve of Mr. _____ being employed in the capacity as waiter upon the licensed premises mentioned above? A. I heartily approve of it.

Q. For what reason? A. Because I have no fears whatever as to his adjustment in such a place. I mean I don't think for a minute that I will have any trouble or difficulty with him, with women or liquor or with the employer. And also because it will take him away from the territory which this girl frequents and will free him from being molested by her in the future. He feels that way also and that is another reason why he is anxious to take this job.

Q. Has Mr. _____ been cooperating fully with you with reference to the parole? A. He has given me full cooperation and I am very much satisfied with him."

He is eligible.

D. FREDERICK BURNETT
Commissioner

14. BARTENDER - MAY HOLD TITLE AND POWERS OF A CONSTABLE PROVIDED HIS DUTY IS CONFINED TO THE POWER TO STOP THE CUTTING OF TREES AND THE COMMISSION OF NUISANCES ON A MUNICIPAL WATERSHED.

Dear Sir:

I am employed by the City of Jersey City as an inspector of sewers on the Dover and Boonton trunk sewer and a guard on the watershed for the city.

I applied 3 years ago to be appointed constable and I received the appointment from the Roxbury Township Committee. This constable job I really need to stop people from cutting trees and other nuisances on the watershed. Now my son is out of school 3 years and my wife got a liquor license so he might have a job and keep him and my uncle off relief. This tavern does not pay enough to employ a bartender as we are not on a highway but still it gives him \$20.00 a week salary but she can't afford to pay a bartender as I said before. Now, what I want to know, can I help my wife and son out at the tavern and still keep my constable appointment as I need the appointment for my work and we can't afford to hire any help and I would like to help them out at night and relieve my son and wife at night and tend bar. We have kept my uncle ever since we opened as well as my son and never put them on relief or W.P.A. We also have 3 more children who are in school.

I understand it is your orders that a constable can't tend bar. Will you be kind enough to give me some consideration as I really need the constable job on my work, and I would like to help my wife and son at the tavern at night. I only use my constable job for my work and will not use it in any way that will be of any disrespect to the appointment. Trusting that you will grant me some consideration, I remain

Yours truly,

P. E. Higgins,
Kenvil, N. J.

August 14, 1937.

Mr. P. E. Higgins,
Aenvil, N. J.

Dear Mr. Higgins:

Ordinarily, a bartender may not be a constable. Re Schepis, Bulletin 115, Item 3. I note, however, that you are an inspector of sewers and a guard on the watershed for the City of Jersey City, and that the only reason that you applied for the title of constable and the only work that you do as such is to stop people from cutting trees and committing nuisances on the watershed. If that is your only job as constable and you have no other duties to perform, I have no objection to your acting as bartender for your wife. If, on the other hand, there is an obligation upon you because of your position as constable to enforce the liquor law, you cannot become a bartender unless you resign your job as constable.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

15. LICENSED PREMISES - A BARBER SHOP ALTHOUGH NOT STRICTLY A MERCANTILE BUSINESS IS INAPPROPRIATE AND OUT OF KEEPING WITH THE OPERATION OF A LICENSE FOR ON-PREMISES CONSUMPTION - HEREIN OF TONSORIAL ARTISTS.

Dear Sir:

Mr. William Jones who holds a Plenary Retail Consumption License for premises on Cedar Avenue, East Berlin, would like the following information:

Can he build and operate a barber shop on a lot on his premises?

He owns his house and six lots, the house is on one lot and the other five were used as a garden. Now he wants to use the lot next to his house for a parking lot and the next lot build the barber shop on. Now, the question arises, would those six lots be included as the licensed premises under the license that he holds?

If so, would it be illegal for him to operate this barber shop?

Will you kindly give me a ruling on this and oblige,

Yours respectfully,

A. B. Walker,
Berlin Township Clerk.

August 14, 1937.

A. B. Walker,
Township Clerk,
Berlin, N. J.

My dear Mr. Walker:

According to my records, Mr. Jones' license has been issued for premises designated merely as being located on Cedar Avenue, East Berlin.

I cannot tell, therefore, whether the licensed premises comprises only the house and the lot on which it stands, or the house and lot and the other five lots in addition.

To determine what constitutes the licensed premises, refer to the application for the license which should contain an accurate description thereof.

If the house alone constitutes the licensed premises, then there is no question. Mr. Jones could build a barber shop on one of the other lots if he wished and it would in nowise interfere with the operation of the tavern. There is nothing in the statute or the State Rules which would prevent the holder of a plenary retail consumption license from conducting a barber shop on other premises.

If on the other hand, the licensed premises includes all six of the lots, the legality of operating the barber shop must be determined.

The Control Act, Section 13, sub. 1, provides that a plenary retail consumption license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or "other mercantile business" (subject to certain exceptions not presently material) is carried on. The phrase "mercantile business" in its generally accepted sense, refers to the buying and selling of goods or merchandise or the dealing in the purchase and sale of commodities. Re Hillery & Young, Bulletin 47, Item 6. Hence, it does not include bowling alleys. Re Hillery & Young, supra. Nor does it include shuffle-boards and pool tables. Re Smith, Bulletin 57, Item 17. Nor prize fights and boxing matches. Re Jessen, Bulletin 114, Item 7. Nor games of skill and amusement. Re Simandl, Bulletin 161, item 10. They do not involve sales of merchandise. It does include the sale of any articles except those which by general custom and usage have been considered reasonably incidental to the conduct of the alcoholic beverage business (Bulletin 47, item 6), the conduct of a delicatessen, the sale of candy, the sale of gasoline (Re Bardsley, Bulletin 174, Item 13), the conduct of a cigar store (Re Plaza Hotel, Bulletin 189, Item 11).

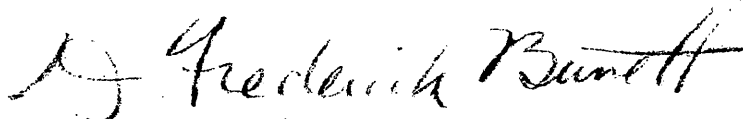
If I were to give a strict construction to the term "mercantile" I should hold that a barber shop was for the rendition of personal service rather than for the sale of commodities, but I believe it my duty to construe the term liberally in view of the patent objective of the statute which clearly was to prevent the issuance of licenses for on-premises consumption in places inappropriate and out of keeping with the operation of such a license.

Viewing it from this angle, a barber shop seems wholly out of place in a saloon. Few would have the temerity to call for a close shave in such a place, or listen in solid comfort to the steady stream of stories and local gossip from a tonsorial artist poising an unsteady razor between the times he draws a few at the bar. Barroom fracas are bad enough without the added casualty list that the working tools of a master beard trimmer might produce.

In the case you have before you, it is not necessary to prohibit the conduct of the barber shop if the licensee proposes to conduct the barber shop and tavern on premises which can be made completely separate and distinct. Hence, if Mr.

Jones' licensed premises presently comprises all six lots and he intends to go ahead with the barber shop, the thing for him to do is to petition the Township Committee, pursuant to the procedure set forth in Re Daley, Bulletin 171, Item 3, to have the licensed premises reduced in such manner that the barber shop premises will be excluded. Upon the granting of the petition and the reduction of the premises by the Township Committee, there will be no objection to the barber shop.

Very truly yours,



Commissioner

H. F. SLATER