

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

BULLETIN 211

NOVEMBER 8, 1937.

1. RETAIL LICENSES - INTEREST IN LICENSED PREMISES - WHEN NEW LICENSE MAY BE ISSUED FOR VACATED PREMISES - SURRENDER - TRANSFER.

Gentlemen:

During the last year we have had two instances wherein licensees have given up the liquor business but have retained their licenses. In each case we have had applicants request licenses for these places.

It appears that these licensees hold their licenses in the hope that the owner of the premises will have to buy them out before new tenants can be procured.

Such a situation as this is a constant source of annoyance to us in that either the applicant or the owner of the premises feels that it should be compulsory for a licensee to surrender the license when quitting the business.

I have endeavored to point out to the complainants that the law does not demand such a procedure, citing as proof the transfer provisions of the law.

Will you please advise me definitely concerning the responsibility of a licensee who quits the liquor business but retains possession of the license.

Very truly yours,

E. J. KAPPELMANN
Township Clerk

November 1, 1937

Edward J. Kappelmann,
Clerk of Greenbrook Township,
Bound Brook, N. J.

My dear Mr. Kappelmann:

If a licensee gives up his business but retains his license and continues to hold an enforceable right to possession of the licensed premises, then, of course, the Township could not issue another license for those premises.

But if, on the other hand, he gives up the business, retaining his license, but loses or relinquishes his interest in the licensed premises, then the owner or landlord may lease those premises to a new tenant and the new tenant may apply for and obtain a new license, provided, of course, he is personally qualified, the premises are found suitable, and all other prerequisites are complied with.

You see, the whole thing depends on whether or not the original licensee maintains an interest in the premises, for if he does, so long as that interest exists no other license can be granted.

It is not essential that a licensee, after being legally dispossessed, surrender his license. He still holds

the license, although no use could then be made of it because of the absence of a licensed premises, and he is entitled to apply to the local issuing authority for its transfer to a new premises if he wishes.

See in this connection Re Argenti, Bulletin 200, Item 9; Re Boettiger, Bulletin 98, Item 11.

Very truly yours,

D. Frederick Burnett
Commissioner

2. RETAIL LICENSEES - COUPONS - PRIZES - VOTING COUPONS MAY NOT BE GIVEN OUT NOR PRIZES AWARDED WITH SALES OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION.

Dear Sir:

Kindly advise regarding a voting contest I would like to operate on all drugs, candy, merchandise, etc.

I hold liquor license D-4

No votes would be issued on purchases of liquor and sign would indicate that fact.

Yours truly,

Sol Weinglass, Prop.
Kearny Pharmacy

November 1, 1937.

Sol Weinglass, Prop.,
Kearny Pharmacy,
Kearny, N. J.

My dear Mr. Weinglass:

Rule 20 of the State Rules Concerning Conduct of Licensees (copy enclosed) forbids retail licensees from directly or indirectly offering or furnishing any gifts, prizes, coupons, or similar inducements with the sale of any alcoholic beverages for consumption off the licensed premises.

There is nothing in the Rule which would prevent you from giving prizes in connection with the sale of drugs, candy and other general merchandise. You may not, however, give out any voting coupons or award any prizes with sales of liquor.

Violation would be cause for the revocation of your license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. MUNICIPAL ORDINANCES - VALIDITY - SUPERSEDING EFFECT OF CONTROL ACT UPON MUNICIPAL ORDINANCES CONCERNING ALCOHOLIC BEVERAGES ADOPTED BEFORE THE CONTROL ACT BECAME EFFECTIVE.

November 1, 1937.

Morton C. Haight, Esq.,
Pitman, N. J.

My dear Mr. Haight:

Re: Borough of Pitman

I have before me the copy of the ordinance entitled "An Ordinance Concerning Intoxicating Liquor Used or to be Used For Beverage Purposes Within the Borough of Pitman, New Jersey," which was adopted by the Mayor and Borough Council on August 14, 1933.

The ordinance provides, in substance, that no one shall sell, barter, or furnish any intoxicating liquor for beverage purposes in Pitman, except pursuant to physician's prescription, or maintain any building or premises for that purpose. Intoxicating liquor is defined as any distilled, fermented or brewed liquor or mixture of same having an alcoholic content by weight or volume in excess of that allowed by Federal and State legislation. It expressly declares that the ordinance shall not be construed as an acceptance of the provisions of "An Act concerning the manufacture, distribution and sale of certain beverages having an alcoholic content and providing for licenses, regulations and fees in connection therewith and penalties for violations thereof," approved April 4, 1933 as amended and supplemented, or as an authorization to any person to engage in the manufacture, sale or distribution of alcoholic beverages in Pitman pursuant thereto. Penalty of fine or imprisonment may be imposed for violation.

I take it that on August 14, 1933, when the ordinance was adopted, you were satisfied that there was authority for it in the statutes. Whether there was or not, is not, however, my immediate concern. Whatever that authority may have been, I am inclined to think it was annulled or superseded by our present Alcoholic Beverage Control Act (c. 436, P.L. 1933 as amended and supplemented), which was passed the following December 6th. In the adoption of the Control Act, the Legislature contemplated a comprehensive scheme of liquor control. The subject matter is fully covered. It is, therefore, apparent that the later statute was clearly intended to lay down the only rules and delimit all municipal legislation dealing with alcoholic beverages, and that all previous statutes relating to the same subject should be deemed to be repealed. Roche v. Mayor, etc. of Jersey City, 40 N.J. L. 257. Cf. Re McNaughton, Bulletin 64, Item 5; Re Weed, Bulletin 98, Item 13; Re Malone, Bulletin 101, Item 12; Re Roberts, Bulletin 199, Item 4. It is my understanding that they were all repealed expressly.

In the absence of statutory authority, I doubt that the ordinance would survive. While I have found nothing squarely in point, the cases seem to indicate that when a statute is repealed or annulled, any municipal legislation which may have been enacted pursuant to the authority conferred by that statute, will fall. Cf. Van Cleve v. Passaic Valley Sewerage Commissioners, 71 N.J.L. 574, where the court, referring to the effect of the legislation directing the larger scheme of sewerage disposal the Commissioners were administering, on the powers of the municipalities in the area to deal with the subject matter therefore conferred, declared:

"In such case, to direct is to repeal if the authority that rests in prior delegation be inconsistent with the later expression of the superior will. Even governmental functions may, by implication, be thus repealed, It is the familiar case of repeal by necessary implication. To hold otherwise is to decide that the constitution has unwittingly placed the agent above the principal, the delegated authority of the smallest borough above the legislative repository of the sovereignty of the state."

See also Smith v. Kearny Zoning Board of Appeals, 6 N.J. Misc. 954, where the action of the Zoning Board of Appeals taken pursuant to an ordinance adopted in accordance with a statute since repealed, was set aside on the ground that the repealer abolished the Board.

From December 6, 1933, until June 8, 1935, when Section 37 of the Act was amended (c.257, P.L. 1935) to confer upon the municipal governing bodies the power to make, enforce, amend and repeal ordinances deemed necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages, in violation of the Act, there was nothing in the Act which would lend any color of authority to an ordinance such as we now have under consideration. I do not think that it could be successfully contended that the enactment of Chapter 257, P.L. 1935 revived the ordinance, dormant for well over a year. The ordinance was adopted almost two years before the amendment became effective, before the authority existed.

There are provided in the Control Act means by which municipalities can effectively prevent retail sales of alcoholic beverages within their territorial limits. Pursuant to Section 13 of the Act, the municipal governing body may, by ordinance, enact that no plenary or seasonal retail consumption, plenary or limited retail distribution, or club licenses shall be granted within its respective municipality. These five comprise all of the classes of retail licenses municipalities are authorized to issue. Their prohibition bars the issuance of any retail licenses for premises in the municipality. Further, failure on the part of the municipal governing body to fix license fees prevents the establishment of any licensed retail places, for until the license fees have been fixed, no licenses can be issued. Referenda may be held pursuant to Section 43 of the Act on the question: "Shall the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes and boats, and the issuance of any retail licenses, except as aforesaid, pursuant to the 'Act concerning alcoholic beverages' be permitted in this municipality?" A negative vote makes it thenceforth unlawful for the municipality to issue any of the aforementioned classes of retail licenses. Lastly, there is the authority conferred by Section 37, in pursuance of which, as noted above, ordinances deemed necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages in violation of the Act, may be enacted.

It is doubtful that the ordinance of August 14, 1933 has any legal effect. I therefore suggest that you cause it to be repealed at earliest moment and if it is still the thought of the Council that all retail sales of alcoholic beverages in Pitman should be prohibited that some measure of

doing so in line with the authority conferred by the Control Act, as above indicated, be adopted in its place. In preparing an ordinance, bear in mind that we now have in the Act statutory definitions of terms such as alcohol, alcoholic beverage, illicit beverage, person, sale, unlawful alcoholic beverage activity. See Section 1. I shall be glad to go over any ordinance that you may prepare prior to its introduction to offer whatever comments or suggestions appear necessary.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. LOTTERIES - WHAT CONSTITUTES - PUNCH CARDS IN ALLIANCE WITH THEATRES.

October 28th, 1937.

Dear Sir:

Within one week from to-day, I shall be on my way to organize a Theatre-Merchants Sales Co. in the territory of Bogota, Ridgefield Park, Teaneck, and Hackensack, N.J. to begin with.

The point is that the saloon keepers are of the opinion that it is against the law to give anything away with the sale of alcoholic beverages, which is true. I shall try to explain the situation, in as little space as possible, just how the company sells its product.

Enclosed you will please find two samples of the cards that are distributed among the different merchants in the direct vicinities of the different theatres that sign up with the aforementioned Theatre-Merchants Sales Co. As a customer walks into a saloon for a glass of beer or hard liquor, the amount of money taken in on that sale is punched on the card, 25¢, 15¢, 10¢ or two fives making a 10¢ sale. The prizes given away are printed underneath the panel and you can see that the saloon-keeper has nothing to do with the prizes, as the theatre hands out the necessary amount of passes.

Please put this matter under your deepest consideration and if there are any further questions that you would like to ask, I shall be only too glad to answer them for you by return mail. I would appreciate your giving me one good reason why the saloons cannot be supplied with the necessary cards, if you should consider this deal to be against the law. I would suggest your sending me a signed message authorizing the validity of this advertising stunt if you should agree with me in considering the above mentioned plan as legal.

Anxiously awaiting your early, favorable reply, I am,

Yours truly,

Leonard Butzel.

November 1, 1937.

Mr. Leonard Butzel,
Bogota, N. J.

Dear Sir:

Kindly refer to your letter dated October 28th.

As I understand the proposed Theatre-Merchants Sales Co. plan, merchants and theatres enter into an agreement with the Sales Co. whereby, for a consideration, cards are furnished to the merchants and theatres for distribution to patrons. When patrons make a purchase, the amount is punched on the card; when theatres are visited the card is likewise punched. When the card is filled, the patron receives the prize set forth in the "secret panel" on the card.

The plan is essentially a lottery. Prior to October 1, 1937, it would have been prohibited as to liquor licensees, by my ruling in re Shinn, bulletin 120, Item 8, copy of which is enclosed.

Since October 1, 1937 it is likewise prohibited by Rule 20 of Rules Concerning Conduct of Licensees and Use of Licensed Premises, copy of which is also enclosed. A gift or prize may not be given directly, as you admit. Indirectly giving a prize or gift, by furnishing coupons good for such gifts or by punching cards which when fully punched are good for such gifts, would clearly violate the rule.

Liquor licensees may not participate in the scheme you propose to introduce.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS - HERYLA vs. JERSEY CITY

WASYL HERYLA,)	
Appellant,)	
-against-)	ON APPEAL
BOARD OF COMMISSIONERS OF)	CONCLUSIONS
JERSEY CITY,)	
Respondent.)	

Edward Schwartz, Esq., Attorney for Appellant,
N. Louis Paladeau, Jr., Esq., Attorney for Respondent,

BY THE COMMISSIONER:

This is an appeal from the revocation of appellant's plenary retail consumption license.

Appellant for some time past had conducted a tavern at 289 Grand Street. In October, 1936, he applied to transfer the license from that place to 253 Grand Street. Objection was voiced, however, by one Stella Rosenowski, who operated a tavern next door at 255. A hearing was held, on November 20, 1936, but decision on the transfer application was reserved and none was rendered during the term of the license.

On June 30, 1937, appellant was granted a renewal license for the current licensing period for the premises where he was still located at 289 Grand Street. The next day, information reached the Jersey City Bureau of Liquor Control that defendant had discontinued the tavern at 289 Grand Street and was preparing to open up at 253 Grand Street. Naturally, investigation was made immediately.

It was found that appellant had closed down his place at 289 Grand Street at midnight on June 30th and was preparing to move to 253 Grand Street. Asked why, he replied that his renewal license called for 253 Grand Street. Inspection of the new license certificate showed that it did so read, but it was also apparent to the naked eye that an erasure and change had been made in the street number of the licensed premises. Revocation proceedings were promptly instituted at which appellant was found guilty of making the erasure and change and his license was revoked.

The question is -- did Heryla make the erasure and change or cause it to be made. There is no proof as to who made it. To be sure, the altered license was found in his possession. It appears, however, that when he made his renewal application on June 16th he was still desirous of transferring to 253 Grand Street. As no decision on that point had been rendered, he made out his application for 253 Grand Street. That was where he really wanted to be. On its presentation to the Jersey City Bureau of Liquor Control he was at once told that such an application would not be received because no decision had been made on the application to transfer his old license but that if he desired to renew his license for 289 Grand Street, it would probably be all right. He then was escorted to the City Clerk's Office where a clerk changed the application so as to refer to 289 Grand Street. Heryla swears that when he received the renewal license on June 30th it read "253 Grand Street". Thinking that his long awaited wish had been granted, he immediately made preparations to move.

Various employees of the City Clerk's office were called and testified that all licenses were duly checked and verified before they were sent out to the licensees and that there were no errors. Both the stubs in the license book and the receipt book are correctly made out with respect to premises at 289 Grand Street.

Either a clerical mistake was made by somebody or else Heryla or someone for him deliberately changed the number.

The case is susceptible of clerical error. The application for the renewal was originally made out for 253 Grand Street but later changed to 289. But it is not difficult to conceive that the change in the application might cause confusion and error in the filling in of the license certificate as actually issued. Clerical errors often pass without detection. Even Homer nods occasionally.

On the other hand, there is no proof that appellant himself, or anyone for him, was guilty of making the erasure and virtually forging a license for a place other than where it had been granted. There is no proof against Heryla except the mere fact of his possession of an altered certificate. He swears that he received it in just that condition. His conduct throughout was open and not secretive. He had advertised his application for 289 Grand Street. When he found that the license, as he thought, had been issued for 253, he called upon his lawyer to have the Federal Stamp noted with the change from 289 to 253.. He closed up shop at midnight on June 30th and on the morning of July 1st had ripped out all his fixtures and was preparing to move. He had had a license before. He was no stranger to Jersey City. He knew firsthand, from previous experience, the strictness of the supervision over licensees exercised by the local Board of Liquor Control and the Police. It is incredible that he could even hope to face down such vigilant authorities. His conduct was too open. Unless he bona fide believed that his cherished desire to move to 253 had at last been granted, he must have known that he couldn't get away with a forged certificate very long. It is barely possible, of course, but it is not at all probable. I believe he told the truth when he swore "No, I never had anybody change that, that's the way I got it." I conclude that he is innocent of the charge.

The action of respondent in revoking the license is, therefore, reversed and appellant's license ordered restored for 289 Grand Street.

Dated: November 1, 1937.

D. FREDERICK BURNETT
Commissioner

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

RE: CASE #187

October 23, 1937.

Petitioner applied by letter for a hearing to determine his eligibility to be employed by a licensee. In his letter he admitted that he had been convicted, about two years ago, for embezzlement.

At a hearing duly held, petitioner admitted that in October 1935 he pleaded non vult to an indictment for embezzlement, at which time he was placed on probation to make restitution. Embezzlement ordinarily involves moral turpitude. Re Application for Solicitor's Permit Case No. 40, Bulletin 151, Item 2.

In explaining the facts concerning the crime, petitioner testified that, prior to his arrest, he had been collecting accounts for his employer; that he had been granting discounts to customers; that his shortage, amounting to about \$550., was due to a great extent to the discounts granted; that, in fact, he had turned in to his employer all the money he had actually collected; that at the time of his arrest he was unable to explain satisfactorily the shortage because of the faulty bookkeeping system of his employer.

Subsequent investigation shows that in fact petitioner pleaded non vult in October 1935 to two indictments for embezzlement from two different employers; that the total amount embezzled exceeded \$1,000. and that, after his arrest, petitioner stated to a Probation Officer that he had used the money which he was accused of embezzling to maintain his family because he was unable to obtain sufficient income from his employment.

As a result of our investigation, I conclude that the attempted explanation given by petitioner is untrue. Re Application for Solicitor's Permit Case No. 21, Bulletin 147, Item 10.

It is recommended, therefore, that petitioner be advised that he is ineligible for employment by a licensee.

Edward J. Dorton,
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - A PLEA OF IGNORANCE AT THIS LATE DATE MEANS THAT THE LICENSEE IS PLAYING FAST AND LOOSE WITH THE RULE - IF SUBSTANTIAL PUNISHMENT IS NOT MADE BY LOCAL ISSUING AUTHORITIES, THESE CASES WILL BE CONDUCTED BY THE DEPARTMENT DIRECT.

November 3, 1937.

Thomas C. Magee, Township Clerk,
Marlboro, N. J.

Dear Mr. Magee:

I have staff report and your certification of the proceedings before the Township Committee of Marlboro against John O. Buckelew and the Marlboro General Store, charged with having sold alcoholic beverages on Primary Election Day, September 21, 1937, while the polls were open for voting and note that pleas of guilty were entered by both licensees; that the judgment of the Committee was that the licenses be suspended for five days; that by reason of the Committee's opinion that the violations had been due to mistake and error on the part of the licensees, the sentences were suspended. Hence, in effect, no punishment was imposed.

Frankly, I cannot go along with the Committee on this. It is too late a day for licensees to be pleading ignorance of the law and rules and regulations governing the conduct of their business. It is their duty to know what the rules are and not play fast and loose with them, and, incidentally, with the Township Committee. The State Rule, which has been in effect since 1934, requires all retail licensees to refrain from selling to consumers while the polls are open for voting. Honest and conscientious licensees who scrupulously obey the law and close their places complain bitterly to me against those cheaters in their own trade who take a chance to reap a major profit if not detected, but if caught, get off with little or no punishment. For the sake of their economic future, they ask for stringent penalties. Your Committee should have stuck to its guns and have allowed the five days' suspension to remain in force. In future cases of this kind, I expect the Committee to do its full duty. If not, I shall have to take over such cases myself.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. DISCIPLINARY PROCEEDINGS - SUPINE PENALTIES DEPLORED - IF SUBSTANTIAL PUNISHMENT IS NOT MADE BY LOCAL ISSUING AUTHORITIES, THESE CASES WILL BE CONDUCTED BY THE DEPARTMENT DIRECT.

November 3, 1937

Mr. Patrick F. Keelan, Clerk
Municipal Board of Alcoholic
Beverage Control
City Hall
Elizabeth, New Jersey

Dear Mr. Keelan:

I have staff report and your certifications of the proceedings before the Municipal Board of Alcoholic Beverage Control against the following licensees:

1. Blue Horse Shoe, Inc., charged with having sold alcoholic beverages during prohibited hours in violation of your local regulation. I note the licensee was adjudicated guilty but that sentence was suspended "due to mitigating circumstances"; there is, however, no recital in your certification as to what constituted the mitigating circumstances.

2. Ukranian National Home, charged with having permitted a slot machine on the licensed premises in violation of the State Rule. Here the licensee was also adjudicated guilty and the license suspended for three days.

3. Mary Kwiatek Alt,

4. Adam Sawicki,

5. Stanley Zielinski, Jr.,

all charged with having sold alcoholic beverages on Primary Election Day, September 21, 1937, while the polls were open for voting. I note Mary Kwiatek Alt was tried and found guilty; that the other two licensees pleaded guilty; that each license was suspended for one day.

6. Morris Stiglitz, charged with having sold alcoholic beverages before noon on Sunday in violation of your local regulation. His license was also suspended for one day.

First: Permit me to thank the members of the Board for their prompt attention to these matters.

Second: As to the penalties. Frankly, I do not believe, with the possible exception of the three days' penalty in the Ukranian National Home case, that they are at all effective to accomplish the desired result, viz., respect for law and rules and regulations by licensees. Suspended sentences and one or two days' suspension of a license are entirely out of order at the present time. Licensees know full well that they should not sell

during prohibited hours or on Election Day while the polls are open for voting. The State Rule relative to Election Day closing has been in effect since 1934. Nor do I believe that it is proper at this late date to temporize with such violators. It is most discouraging to those honest licensees who scrupulously obey the law.

I suggest, therefore, in future cases involving "hours of sale," "closing hours" and "Election Day" violations, that five days' suspension of the license be handed out to first offenders, double that for second offences and outright revocation of the license for third offenders.

Third: Whether there is to be respect in Elizabeth taverns for law and order depends largely on the attitude of your Board. In future cases of this kind, I expect your Board to do its full duty. If not, I shall have to take over such cases myself.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. ADVERTISING - MISSTATEMENTS ALTHOUGH UNINTENTIONAL WILL NOT BE APPROVED.

November 2, 1937.

Mr. Robert R. Lemcke,
24 Commerce Street,
Newark, N. J.

My dear Mr. Lemcke:

I understand that George B. Lee, the holder of limited wholesale license No. 44, desires to distribute to retail licensees a sign, as per sample left with me, advertising Black Horse Ale, for which he is the United States Distributor.

You tell me that, by inadvertence, the name on the sign is "George B. Lee, Incorporated", whereas in fact Mr. Lee is not incorporated but is licensed and does business as an individual.

However unintentional and innocent the mistake may be, the fact is that the advertiser has made a misstatement.

The application is, therefore, disapproved.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

Re: Case #183

October 22, 1937.

A solicitor's permit was issued to solicitor, pending investigation of his eligibility and fitness to hold such permit:

Said investigation having been completed, the present proceeding was instituted to determine whether the solicitor's permit should be revoked.

In 1930, solicitor, then 23 or 24 years of age, was arrested on a charge of illegal manufacture and possession of liquor. In 1931, after pleading guilty to said charge, he was convicted and placed on one year's probation. Solicitor states that at the time of this crime he was merely a helper at a large still, having been employed there but for a few days.

In 1932, solicitor was arrested on a similar charge, but his case was dismissed. On the occasion of this arrest, solicitor assumed an "alias".

In 1933, solicitor was again arrested on the same type of charge and under a different "alias". Upon being released on bail in this matter, he failed to re-appear in court. When fingerprinted by this Department in connection with his application for a solicitor's permit, his identity was discovered and he was accordingly arrested (in 1937) as a fugitive from justice. Solicitor states that he had never re-appeared in court because he had never been notified to re-appear; but much doubt remains whether solicitor's "aliases" may not have been the reason for any alleged failure of notification. In any event, the Federal authorities, because of their post-Repeal attitude toward Prohibition violations, recently discontinued the 1933 liquor charges against solicitor and also discontinued the affiliate proceedings against solicitor as a fugitive from justice.

The only crime of which solicitor stands convicted is his crime in 1930 of illegal manufacture and possession of liquor. It has already been determined that such a crime does not per se involve moral turpitude. Since no circumstances appear in aggravation of that crime, solicitor is not disqualified thereby.

However, solicitor's general record reveals him to be unfit at the present time for a solicitor's permit. Despite his conviction in 1931 and his trouble in 1932, he persisted in illegal liquor activity and was admittedly guilty of unlawful manufacture and possession of liquor in 1933, being saved from conviction only by his disappearance and by the Federal government's attitude after Repeal. His disappearance on bail in 1933 does not speak well, nor does his ready use of "aliases" when he fell into trouble on liquor charges.

It is recommended that solicitor be declared unfit at the present time to hold a solicitor's permit and that the permit which has been issued to him pending the outcome of the present proceeding be revoked forthwith.

NATHAN DAVIS
Attorney

Disapproved:

After Solicitor's arrest in 1932, the case was dismissed; after his arrest in 1933 and his subsequent surrender in 1937, the case was discontinued. I cannot in this incidental and collateral inquiry, adjudge him guilty of either charge.

Admittedly Solicitor's pre-Prohibition record is bad but, apparently, he has gone straight since Repeal. He has been employed by various licensees since December 1935, part of the time as a Solicitor, and has never been in trouble during that time. The evidence is insufficient to revoke Solicitor's permit.

Solicitor, however, has filed a false application stating that he has never been convicted of a crime. He explained that he so answered because he read in the newspapers that "all the charges committed before repeal were dismissed". His excuse is not sufficient. His Solicitor's permit is suspended for ten days effective from November 8, 1937 through November 17, 1937 because of his false answer.

Nov. 2, 1937.

D. Frederick Burnett
Commissioner

11. DISCIPLINARY PROCEEDINGS - SUNDAY SALES - FIVE DAYS SUSPENSION.

November 3, 1937.

Neilson Rittenhouse, Esq.,
City Clerk,
Lambertville, N. J.

Dear Mr. Rittenhouse:

I have staff report of the proceedings before the Board of Commissioners of Lambertville against Elks Club, Lambertville Lodge #1070, charged with (a) having sold alcoholic beverages on Sunday during prohibited hours in violation of your local regulation and (b) having possessed slot machines on the licensed premises in violation of the State Rule.

The report reads as follows:

"Pursuant to complaint received by this Department to the effect that, among other things, slot machines were permitted on the licensed premises and that sales of alcoholic beverages were permitted on Sunday during prohibited hours, Investigators Tognio and Slater were assigned to investigate.

"On Sunday, October 10, 1937, they visited the licensed premises; tried the side door which enters into the barroom and found same locked. After knocking on the door, it was finally opened by the bartender who, upon being shown the credentials of the investigators, admitted them. On entering the barroom they saw seven men at the bar drinking beer. They called the bartender to the front of the building and while passing through the barroom to a hallway observed a cabinet containing three slot machines -- one nickel, one dime, and one quarter machine.

"The investigators asked for the steward but no one in the premises seemed to know who the steward was. A man who identified himself as 'Mr Mitchell' said the club was allowed to open on Sunday under the local ordinance; further that the slot machines are not operated for private gain, but that the money derived therefrom is used for charitable institutions.

"Plea: Guilty

"Sentence: - License suspended for five (5) days -
November 1 at 7:00 A.M. to November 6,
1937, at 7:00 A. M.

I wish to thank the members of the Board for their prompt and effective action. Lambertville licensees have good reason to believe from this case that it is the purpose of your Board to enforce the law without fear or favor.

The penalty should have a very salutary effect upon all club licensees throughout the State. They must be brought to the realization that there is one law for all; that there can be no exception made if the Control Act is to be effectively enforced.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

12. MUNICIPAL ORDINANCES - INTERPRETATION - MUNICIPAL REGULATION PROHIBITING LICENSEES FROM OPENING THEIR PLACES OF BUSINESS DURING CERTAIN HOURS MEANS THAT DURING THOSE HOURS THE LICENSED PREMISES MUST BE CLOSED.

My dear Mr. Burnett:

I would like to obtain a ruling on whether or not Mr. Arinsberg can open his store on Sunday mornings, as he has always done in the past, provided he has covers on his alcoholic beverage products with a sign reading "No sales in this Dept. until 1 p.m." Mr. Arinsberg is situated on a main highway and does very good business on Sunday morning, and of course does not want to stay closed if it is permissible to remain open. He did not want to violate any provisions of the Act last Sunday, and remained closed, but has asked me to obtain a ruling. I will appreciate it very much if you will advise me immediately.

Very truly yours,

MARGARET E. WERMUTH,
Clerk, Delaware Township

November 3, 1937.

Mrs. Charles J. Wermuth,
Clerk of Delaware Township,
Erlton, N. J.

My dear Mrs. Wermuth:

According to my records, Section 8 of the ordinance concerning alcoholic beverages adopted by the Township Committee on June 10, 1935, provides:

"No alcoholic beverage shall be sold, served, or delivered, nor shall any licensee suffer or permit the sale, service or delivery of any alcoholic beverage upon the licensed premises, directly or indirectly, nor shall any licensee hereunder keep lighted up, operate, or open for business any place so licensed, between the hours of Three A.M. and Seven A.M. on any week day, or between Three A.M. and One P.M. on any Sunday."

The ordinance expressly states that no one licensed under the ordinance shall keep his place of business open between the hours of 3:00 A. M. and 1:00 P. M. on Sunday. It applies to distribution licensees as well as to the others. There is no provision for making exceptions in particular cases or because of the manner in which the premises are arranged.

So long as the ordinance stands as at present, it appears that during the prohibited hours Mr. Arinsberg will have to close his premises.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. DISCIPLINARY PROCEEDINGS - SUNDAY SALES - THIRTY DAYS SUSPENSION.

November 3, 1937.

R. C. Baer, Township Clerk,
Township of Gloucester,
Blackwood, N. J.

Dear Mr. Baer:

I have staff report and your certification of the proceedings before the Township Committee of Gloucester against:

1. August H. Du Rocher
2. George W. Kownacke

charged with having sold alcoholic beverages on Sunday in violation of your local regulation. I note both licensees pleaded guilty and that each license was suspended for thirty days.

That is indeed a most severe penalty and should bring home, in no uncertain manner, to Gloucester Township licensees that the rules and regulations were made to be obeyed.

Please express to the members of the Township Committee my respect and appreciation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. RETAIL LICENSEES - GIFTS - AN ADVERTISING NOVELTY IN THE NATURE OF A MARKETING BAG, COSTING $2\frac{1}{2}$ ¢ EACH, IS OF NOMINAL VALUE AND ITS DISTRIBUTION IS, THEREFORE, PERMISSIBLE.

Dear Sir:

The bag we contemplate giving to some of our customers is approximately 12" x 15", made entirely of paper and is intended

to ease the burden of some of the women shoppers who come into our store laden with bundles under each arm. The cost of this bag is 2½¢. It will be a relief to most of our customers, especially the aged ones who shop in this area regularly and then take the train or bus to their homes.

In our opinion a service of this character should not tend to increase the consumption of alcoholic beverages or in any way affect the habits of the individual.

The inebriate does not want any kind of cover or container on his bottle of liquor, preferring to put it in his pocket where it is easily accessible the moment he leaves the store.

We trust that you will view our request as a perfectly innocent one and permit us to extend this accommodation to the home folks, who prefer to convey their bottle of liquor or gallon of wine to their homes for entertaining or stimulating purposes.

Yours respectfully,

BOND WINE & LIQUOR STORE
George Roseman, Pres.

P.S. Our name and telephone number will appear only on the inside of the bag leaving the outside entirely free of any liquor advertisement.

GR

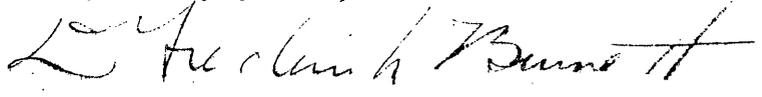
November 3, 1937.

Bond Wine & Liquor Store
Camden, N. J.

Gentlemen:

In view of the nature and cost of the bag as certified by you, I deem it to be an advertising novelty of nominal value. Its use is, therefore, permissible.

Very truly yours,


Commissioner