

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

BULLETIN 316

MAY 12, 1939.

1. DISCIPLINARY PROCEEDINGS - THE UNSATISFACTORY ADMINISTRATION OF DISCIPLINE IN PASSAIC - HEREIN OF SOWING THE WIND AND REAPING THE WHIRLWIND.

May 10, 1939

Arthur D. Bolton,
City Clerk,
Passaic, N. J.

Dear Mr. Bolton:

I have before me several certifications of disciplinary proceedings, the disposition of which has been entirely unsatisfactory. In the great pressure of work, I was not able to get to these matters until after I had learned there was to be an election in Passaic on May 9th for members of the Board of Commissioners. Desiring to talk very plainly, I did not want anything that I might say concerning sound law enforcement to be misconstrued as having a political tinge and therefore refrained from making any comment until today. I do not know how the election came out in your City, and, needless to say, have no interest therein except to hope that whoever has been elected will take a firm grip on law enforcement and that the mistakes of the past will be utilized as a guide to salutary results in the future.

The proceedings in mind were:

1. Everready Social Club
861 Main Avenue
License CB-14

Memorial Post 200 American Legion
317 Monroe Street
License C-163

In the case of Everready Social Club, charged with sale to non-members, despite its guilty plea, sentence was suspended. In the American Legion case, despite the plea of non vult to the charge of permitting Bingo in a barroom, sentence was suspended.

At the Everready Club, my men walked in and bought drinks without question being made of their right to do so. Yet the license entitled the Club to sell only to members and their bona fide guests. Club licensees who cheat and sell to the general public are in vicious competition with the holders of plenary retail consumption licenses, who pay a much higher fee for the privilege.

I am not at all impressed with the Mayor's statement that the 368 members of the club had to have some place to obtain their recreation and therefore a suspension of the license would be a hardship. In effect, the suspended sentence condones the club's violation of the law and gives it and other clubs in Passaic tacit permission to sell to the general public. Or do only clubs with 368 members -- and votes -- get the permission?

The alibi offered on behalf of the American Legion is so old and threadbare that it should bring a blush! The man in charge

was ignorant of the rules!! Does that mean that licensees in Passaic may commit as many violations as they please so long as they can find ignorant men to be in charge at the time the violation is committed?

2. Golebiesky & Abramowitz
75 Third Street
License C-147

Possession of illicit liquor. Plea - Guilty. But only a nominal, weak-kneed suspension of five days for a major offense! The staff report states:

"One of the Commissioners moved that a five day suspension of the license be imposed. Before the motion was seconded, City Attorney Weinberger called to the attention of the Board of Commissioners the letter of transmittal, which pointed out that the Commissioner had uniformly recommended a minimum penalty of thirty days in all cases involving possession of illicit liquor. When the reading of the letter was finished, the same Commissioner again moved for a five day suspension, the motion was seconded, and passed on roll call. It originally provided that the license be suspended for five days commencing Tuesday, March 14th and ending Sunday, March 19th. One of the Commissioners noticing that the five day suspension included Saturday, March 18th, the penalty was thereupon imposed to run from Monday, March 13th to Friday, March 17th, inclusive, so that the licensees would not suffer the loss of Saturday's business."

Amazing solicitude for those who strike below the belt! Why not throw the doors wide open and tell all licensees in Passaic that they can cheat and defraud and palm off counterfeit liquor on the public as much as they please - that nobody cares!! Why not go all of the way and advertise that it is not safe to get a drink in Passaic!!! If the Board wishes to discourage honest licensees and bring back Prohibition, its actions are admirably calculated to produce that very result.

3. Theodore Kowal
211 Monroe Street
License C-51

John Palka & Joe Tomczk
161 Passaic Street
License C-82

Two more cases of refilling liquor bottles. Of course, the disease spreads like the cholera! Why wouldn't it in view of the picayune five day suspensions administered in other cases in Passaic? So here too these licensees were let off with only five days,

Kowal, who was found in possession of one bottle labeled "Green River Blended Whiskey" which upon analysis proved to contain natural straight whiskey instead of a blend, claimed that his wife had poured the contents of the cracked bottle into a partially full bottle of Green River Blended Whiskey. It is obvious that if his story were true, the contents would have been a blended whiskey instead of the straight whiskey that was found.

Palka and Tomczk, on the other hand, found in possession of six bottles all labeled blends and all containing straight whiskey, claimed that the porter was responsible for the substitution. Did it not strike the Commissioners as odd that the porter should have concentrated his activities only upon the more popular brands for which customers usually call? And why he should have emptied the contents of those bottles and refilled them with straight whiskey is, I suppose, one of those minor mysteries with which the Board chooses to have no concern.

The staff report as to Kowal states:

"At the hearing, after the investigators testified, the licensee was called as a witness and, asked for an explanation, blamed it on his wife. Commissioner Roegner moved that the license be suspended for five days. Mayor Turner objected and said that he did not feel that such a suspension was proper because only one bottle was found to be wrong, and that 'We in Passaic cannot live our lives to suit ourselves; that we have to suit somebody else; that why not write to Commissioner Burnett and ask the Commissioner what he would do in the circumstances.' Commissioner Roegner replied that no useful purpose would be served in writing to Commissioner Burnett because in speeches made in Paterson and other towns he had recommended that issuing authorities should hear the cases themselves and be lenient, whereas if the matter were heard by Commissioner Burnett, he would give a penalty of thirty days without the batting of an eyelash. Commissioner Whitehead said that the issuing authority had a duty to perform and that the Board of Commissioners were responsible to the people, and thereupon moved to find the licensee guilty and impose a penalty. Thereupon a five day suspension was imposed, the Board voting unanimously, but Mayor Turner stated that he did not want to appear hard; that he had learned in the police business that it was easy for people to get into trouble but hard to get out of trouble, but for the sake of harmony he would vote 'Aye' with the rest of the Commissioners. Commissioner Roegner then asked the licensee when he wanted the five day suspension to start. 'Don't you want to be open Sunday? Don't you do more business on Sunday or do you want to start Monday?' The licensee replied that it did not make any difference."

Such truckling to the guilty speaks for itself. It needs no comment save, perhaps, that the perceptive local Commissioner wins by an eyelash.

4. John Dudek,
40 Third Street
License C-17

Marcel Sarzynski
159 Passaic Street
License C-105

Two more cases of refilling but only a foretaste of what is to come in Passaic unless there is a prompt right about face!

Dudek was also charged with a sign violation and the mislabeling of beer taps, to both of which minor charges he pleaded guilty. Both were found guilty of possessing refilled liquor bottles. Sarzynski got five days; Dudek fifteen.

The staff report as to Dudek states:

"At the hearing, discussion was had among the Commissioners as to the length of the penalty to be imposed. Commissioner Whitehead favored thirty days, Commissioner Martini twenty days, Commissioners Van Houten and Roegner ten days, and Mayor Turner only five days, for the announced reason that he thought five days would suffice because he had known the licensee for twenty-seven years. Compromise was finally reached at fifteen days."

As to Sarzynski, the report states:

"At the hearing, the defense was that the licensee's son had refilled the bottles to conceal from his father the fact that he, the son, had held a party there and used his father's liquor. Mayor Turner stated that here again was a case of a licensee being blamed for the acts of someone else; that for the sake of harmony he would go along with the rest of the Commissioners on a five day penalty, but that he could not see why the 'Mighty should not be merciful.' Commissioner Whitehead stated that the Board had a responsibility and owed a duty to the citizens; that it should give consideration to licensees who uphold the law but none to those who did not."

According to my records, this is Dudek's second conviction of possession of illicit alcoholic beverages, he having been previously convicted by his guilty plea in disciplinary proceedings conducted by the Board on March 5, 1935, at which time sentence was suspended. Having been adjudicated guilty of committing two violations of the Act, he is henceforth ineligible for all time to hold a liquor license. See R. S. 33:1-25.

Kindly note your records accordingly, so that no renewal is granted to him.

The foregoing is not an enviable record. Why should the people of Passaic have to put up with a Board which lies down? It doesn't go elsewhere in the State in municipalities which take a decent pride in law and order. Why should it go in Passaic?

I have pondered whether or not it is my duty to step in and handle these disciplinary cases myself. I shall do so unflinchingly unless the new broom sweeps clean. I hope it does. I shall gladly overlook the mistakes of the past if a new leaf is turned over and kept turned in Passaic.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. MANUFACTURERS AND WHOLESALERS - FURNISHING OF EQUIPMENT AND SERVICES TO RETAIL LICENSEES - NOT PERMISSIBLE FOR BREWERY TO PAINT RETAILER'S DELIVERY TRUCK IN ORDER TO ADVERTISE ITS BEER THEREON.

May 8, 1939

Paramount Liquors, Inc.,
Irvington, N. J.

Gentlemen:

I have yours of May 2nd, advising that a brewery has offered to paint your truck provided it is allowed to use part of the body space for an advertisement of its beer.

R. S. 33:1-43 (Control Act, Sec. 40) prohibits a manufacturer or wholesaler from being directly or indirectly interested in the retailing of alcoholic beverages. The Regulations Governing Equipment, Signs and Other Advertising Matter (Pamphlet Rules, page 64) forbid manufacturers or wholesalers from directly or indirectly furnishing, delivering, servicing or repairing any fixtures, equipment, signs or other advertising matter for retail licensees, except as expressly permitted by the Rules.

There is no provision in the Rules for the painting of retailers' trucks by breweries. It is, therefore, not permissible. Violation will be cause for the suspension or revocation of your license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. ADVERTISING - ACCURACY OF DESCRIPTION ESSENTIAL - AN ADVERTISEMENT WHICH REFERS TO LIQUOR AT SO MUCH A BOTTLE WITHOUT STATING THE SIZE OF THE CONTAINER IS MISLEADING.

May 8, 1939

Pierce, Inc.,
Asbury Park, N. J.

Gentlemen:

I have before me your advertisement which appeared on page 3 of the Asbury Park Evening Press of April 14th. Among the items advertised, I note the following:

"Hennerson
APPLE
BRANDY
90 proof
Bottle 50¢."

The advertisement is devoid of any reference to the contents or size of the bottle that sells for 50¢. A prospective customer who reads the ad has no way of knowing whether the bottle being offered for 50¢ contains a quart, a fifth, a pint or less than a pint. He may well be deluded into thinking that one of the larger sizes is on sale whereas in fact it may be one of the smaller sized containers.

The advertisement is misleading. Advertising which in any way misrepresents, misleads or otherwise inadequately or incorrectly describes the product being offered is out of order. Please hereafter see that the article advertised is accurately described.

May I have your written assurance by return mail.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - STATE LICENSEES - SOLICITATION WITHOUT PERMIT - HEREIN OF THE FUTILITY OF TAKING CHANCES.

In the Matter of Disciplinary Proceedings against

KEY PRODUCTS, INC.,
162 Central Ave.,
Jersey City, N. J.,

Holder of State Beverage Distributor's License SBD-72

-and-

MEYER LEITZES,
604 Eagle Rock Avenue,
West Orange, N. J.,

originally Holder of Special Permit #20679, now Holder of Solicitor's Permit #3306

-and-

OSCAR C. KUMBLE,
9 Van Houten Avenue,
Jersey City, N. J.,

originally Holder of Special Permit #20680, now Holder of Solicitor's Permit #3319.

CONCLUSIONS
AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Leo Diamond, Esq., Attorney for Key Products, Inc. and Meyer Leitzes.
John J. Meehan, Esq., Attorney for Oscar C. Kumble.

BY THE COMMISSIONER:

The defendant Key Products, Inc., a State beverage distributor licensee, pleaded guilty to the charge of permitting the defendants Leitzes and Kumble to solicit liquor business for it in this State between July 1 and August 25, 1938 without a solicitor's permit (in violation of State Regulations No. 12, Rule 6). The defendants Leitzes and Kumble pleaded guilty to the charge of engaging in such solicitation without permit (in violation of R.S.53:1-67 and State Regulations No. 12, Rule 1).

Leitzes and Kumble held solicitor's permits for several years prior to the current fiscal year. Kumble, manager of the Key Products, Inc. during the time in question, testified that he executed an application for renewal of his permit for the current term on June 28, 1938, and Leitzes executed a similar application on June 30, 1938, at the office of the Key Products, Inc.; that he (Kumble) was to take care of filing those applications; that, however, he put them in a desk drawer, forgot about them, and later believed that he had left them with the Department on one of his trips here to file various papers for the Key Products, Inc.; that he labored under such misapprehension until corrected by Inspector Codd of this Department on August 23 or 24; that although he (Kumble) did not do much soliciting between July 1 and August 25, Leitzes did a substantial amount; that, while puzzled at receiving no solicitor's permits from the Department, he believed there was probably a delay in issuing the permits because of lateness in filing the applications and because of a possible over-rush at the Department.

Leitzes testified that he believed Kumble, with whom he left his application, had actually filed it with the Department; that he thought it strange when, four or five days later, no permit was yet received; that he made several inquiries of Kumble about the matter but was reassured by him that everything was all right and that the Department was probably busy; that he (Leitzes) once telephoned into the Department and asked for Deputy Commissioner Hock in order to inquire about his expected solicitor's permit but, on not getting the Deputy Commissioner, let the telephone call go.

An attorney testified, on behalf of the defendants, that he took the acknowledgment on Kumble's application on June 28, 1938 and on Leitzes' application on June 30, 1938.

I am satisfied that Kumble and Leitzes (who frankly admit their guilt) actually believed that, during the period in question, their applications were on file with this Department and were being held up because of an over-rush here. However, they knew that they were soliciting without the permit required by law, and made no real effort to check at this Department to discover what, if anything, was wrong with their applications. Even assuming that such applications were actually on file, that in itself could give no warrant or justification to Kumble and Leitzes for prematurely exercising the privileges of the permits which they were seeking and which, perchance, might ultimately have been denied them.

The Key Products, Inc. is strictly accountable for the fault of its manager, Kumble, in thus permitting himself and Leitzes to solicit on its behalf without permit.

Normally, I would, in penalty, suspend its license for ten days. However, that license, because of tax delinquency, has heretofore been suspended from February 4, 1939 through the balance of its term, but subject to reinstatement on payment of those taxes, penalties thereon, and a service charge for the reinstatement. In punishment for the present violation, any such reinstatement of the license of the Key Products, Inc., will be postponed until ten (10) days after payment of said taxes, penalties, and service charge.

The special solicitor's permits originally issued to Leitzes and Kumble, pending disposition of this matter, no longer exist. They now hold, subject to the outcome of these proceedings, permits to solicit business in New Jersey on behalf of Dutch Sales Co., Inc., a wholesale licensee.

Leitzes' present permit will be suspended for ten (10) days because of his unlicensed soliciting. Kumble's present permit will be suspended for fifteen (15) days since, in addition to his unlicensed soliciting, his negligence accounted for the failure to file the applications and his reassurances induced Leitzes to continue soliciting without permit.

Accordingly, it is on this 8th day of May, 1939,

ORDERED that reinstatement of the Key Products, Inc.'s State beverage distributor's license SBD-72, heretofore suspended because of tax delinquency, shall be postponed until ten (10) days have elapsed from payment of the delinquent taxes, penalties thereon, and service charge for reinstatement; and it is further

ORDERED that solicitor's permit #3306, heretofore issued to Meyer Leitzes to solicit alcoholic beverage business in this State on behalf of the Dutch Sales Co., Inc. for the current fiscal year, be and the same is hereby suspended for ten (10) days, commencing May 11, 1939; and it is further

ORDERED that solicitor's permit #3319, heretofore issued to Oscar C. Kumble to solicit alcoholic beverage business in this State on behalf of the Dutch Sales Co., Inc. for the current fiscal year, be and the same is hereby suspended for fifteen (15) days, commencing May 11, 1939.

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - STATE LICENSEES - SOLICITATION WITHOUT PERMIT - THE FACT THAT THE SOLICITOR HAD BEEN TAKEN MERELY ON TRIAL DOES NOT EXCUSE THE MISDEMEANOR.

In the Matter of Disciplinary Proceedings against SAVOY BEVERAGE COMPANY, INC., 525 Elmer Street, Vineland, N. J., Holder of State Beverage Distributor's License SBD-23, issued by the Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Emerson A. Tschupp, Esq.; Attorney for the State Department of Alcoholic Beverage Control. Nat Perlberg, President of the Savoy Beverage Co., Inc., for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant, a State beverage distributor licensee, pleaded guilty to the charges (1) of permitting one Charles Shropshire to solicit liquor business for it in this State between November 7 and December 16, 1938 without a solicitor's permit (in violation of State Regulations No. 12, Rule 6), and (2) of failing to notify this Department of its employment of Charles Shropshire, and to file his questionnaire, within ten days after such employment (in violation of State Regulations No. 10, Rule 4).

The defendant's managing president testified that the defendant has six regular solicitors, all of whom hold solicitor's permits; that Charles Shropshire was employed as a "solicitor-driver" for a trial period only; that, at the end of such period, he was dismissed because "he didn't do enough business for us." He admits that Shropshire, during the time of his employment, sold liquor on the defendant's behalf to various retail licensees in Camden and "opened about four accounts" there, and received payments of \$3.00, \$11.00, \$5.00, \$15.00 and another \$15.00 as salary or commission. The gist of the explanation is that he wanted to see whether Shropshire would satisfactorily pass his test period, before obtaining a permit for him and reporting him to the Commissioner as an employee.

A solicitor - whether a probationer or a seasoned veteran - requires a permit for his soliciting, and notification of his employment must be sent to this Department. Re Gobler, Bulletin 174, Item 3. The law plainly declares that nobody shall offer for sale or solicit any order for the purchase or sale of any alcoholic beverage unless such person shall have a solicitor's permit issued by the Commissioner. To do so is a misdemeanor. R. S. 33:1-67. There is no exception in favor of trial employments or tentative appointments. If the defendant desired to test the capabilities of this man before employing him permanently, it should have first made sure that he had complied with the law. The permit itself would have cost but \$5.00. Taking a chance and getting caught is poor economy.

The license will be suspended for ten days.

Accordingly, it is, on this 9th day of May, 1939, ORDERED, that State Beverage Distributor's License SBD-23, heretofore issued to Savoy Beverage Company, Inc. by the Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of ten (10) days, commencing May 12, 1939.

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - HEREIN OF "UNDERSTANDINGS" INSTEAD OF COMPLIANCE WITH THE LAW.

In the Matter of Disciplinary Proceedings against
 NEW YORKER LIQUOR STORES, INC.,
 1236 Atlantic Avenue,
 Atlantic City, N. J.,
 Holder of Plenary Retail Distribution License No. D-15, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS
AND ORDER

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge served upon the licensee alleges that, on February 28, 1939, it sold a one-fifth gallon bottle of Queen Victoria Special Reserve Blended Scotch Whiskies below the minimum retail price, in violation of State Regulations No. 30.

Licensee pleads guilty with an explanation.

On February 28, 1939 Investigator Gold saw the item in question displayed in the window of the licensed premises with a price tag of \$2.39 attached thereto. He entered and purchased the item from the clerk for \$2.39. The Fair Trade price is \$2.49.

At the hearing Hermann E. Volpin, secretary of the licensee corporation, testified that, in February 1939, his corporation purchased six one-fifth gallon bottles of Queen Victoria Scotch whiskey from Camden Bottling Co., Inc. with the understanding that the Scotch was not under Fair Trade; that, in order to be certain that this item was not on Fair Trade, he checked the price pamphlet to see if the item was listed under the name of Camden Bottling Co., Inc., the wholesaler, or Cluff & Pickering, Ltd., the importer, and was unable to find a listing of the item under either of said names. Queen Victoria Special Reserve Blended Scotch Whiskies has been listed by Gillhaus Beverage Co., Inc., Hackensack, N. J., and appears in the bulletin and price pamphlet under the name of said distributor. Mr. Volpin testified that his corporation does no business with Gillhaus Beverage Co., Inc. It appears from copies of correspondence passing between Camden Bottling Co., Inc. and Cluff & Pickering, Ltd. after the violation that Camden Bottling Co., Inc. had not been advised that the item in question had been placed on the Fair Trade list by Gillhaus Beverage Co., Inc.

I am satisfied that the licensee had no intention to "chisel." Nevertheless, nothing above recited exonerates the licensee from responsibility. If it were ruled that it did, then any representation by a distributor to a retailer that a given item was not subject to Fair Trade would exempt the retailer from culpability. "Understandings" that a given brand of Scotch is or is not under Fair Trade are not a substitute for compliance with the law. The brand in question had been duly listed. The fact that Volpin's corporation had done no business with the Gillhaus Beverage Company is no excuse for selling the brand at a price less than the latter concern had duly listed it. Nor was there any obligation on the Gillhaus Beverage Company to notify the Camden Bottling Co. that the item had been placed on Fair Trade. Better no excuse than a poor one!

Accordingly, it is on this 8th day of May, 1939, ORDERED, that Plenary Retail Distribution License No. D-15, heretofore issued to New Yorker Liquor Stores, Inc. by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - THE SOMEWHAT UNSATISFACTORY ADMINISTRATION OF DISCIPLINE IN CAMDEN - HEREIN A DISCUSSION OF RECENT DISCIPLINARY CASES.

May 10, 1939

Ann M. Baumgartner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Camden, N. J.

Dear Mrs. Baumgartner:

I have before me several certifications of disciplinary proceedings respecting Camden licensees which I wish to discuss with your Board. I was not able to get to these matters until after I had learned there was to be an election in Camden on May 9th for members of the Board of Commissioners. Desiring to talk very plainly, I did not want anything I might say concerning law enforcement to be misconstrued as having a political tinge, and, therefore, refrained from making any comment until today. I do not know how the election came out in your City, and, needless to say, have no interest therein.

The proceedings in mind were:

1. Camden County American Republican Club
1101 Van Hook Street
License CB-7

Woodrow Wilson Democratic (Club)
1181 Liberty Street
License CB-4

I note that the Republican Club was charged with sale of alcoholic beverages on Sunday during prohibited hours and sale of alcoholic beverages to non-members, whereupon its license was suspended for five days. That was right. I see that the Democratic Club was charged with sale on Sunday, sale to non-members, and possession of a slot machine, and that its license was also suspended for five days. Why should that be? If five days is right for selling out of hours, why should there not be a greater penalty if the club was also guilty of sale to non-members and of the possession of a slot machine. The staff report states:

"On Sunday, July 10, 1938, Investigators Barrett and Riggins were admitted to the premises by John Matusiak, a member of the Board of Directors of the club, who unlocked the door in response to their ring. In the barroom they found two men drinking beer and in the rear room were four men, one of whom was drinking a glass of beer. Barrett ordered two glasses of beer from the bartender, who had served one when a noise from the rear room interrupted him. Riggins had gone directly to the rear room and there observed a man start to run upstairs with a slot machine known as a 5¢ Bar Jack Pot. Investigator Brooks entered and the three investigators identified themselves. Brooks placed 5¢ in the slot machine which returned to him four nickels. At no time were the investigators questioned as to whether or not they were members of the club or guests of a member."

Just what more proof was necessary?

2. George E. Brunner
3rd Ward Democratic Club
438 South 3rd Street
License CB-10

Societa Operaia Di Muta Assistenza Cittadina
Di Camden, N. J.
410 Line Street
License CB-24.

I note that the Brunner Democratic Club, charged with sale of alcoholic beverages to non-members, and the Societa Operaia, charged with permitting service or delivery of alcoholic beverages on its licensed premises on Sunday during prohibited hours and aiding and abetting a non-licensee to exercise the privileges of a licensee, were both found not guilty and the charges dismissed.

According to the staff report, the proceedings against the Brunner Democratic Club were dismissed because my men, before making the purchase of alcoholic beverages, applied for a membership in the W.P.A. Truck Driver's Association, which rented the second floor of the premises under an agreement whereby all members of the association automatically became members of the Club.

The explanation sounds very pretty if one goes in for that kind of bunk, but it entirely overlooks the fact that although two of my investigators applied for membership in the Truck Driver's Association, a third one walked in off the street, ordered and was served a glass of beer by the bartender without question as to his identity or membership in the club. I suppose that because he works for the same State Department that the other two investigators do he also "automatically" became a member of the Brunner Democratic Club! That is at least as sensible as the contention advanced by the licensee. I am amazed that the Board should have been so gullible as to swallow such a cock and bull story.

However, the Board overlooked one aspect of the matter. The application for club license requires that a list of the club members be attached to the application for license. R.S. 33:1-34 (Control Act, Section 31) requires that licensees shall file with the issuing authority notice in writing of all changes in the facts set forth in the application for license within ten days after the occurrence thereof. Did the Board think to examine the application of the Brunner Democratic Club to see whether all of these "automatic" members were reported to it? As a matter of fact, before the case was transmitted for disciplinary proceedings, investigation was made to ascertain whether one Kaighn, with whom two of the investigators entered the barroom, was a member of the Brunner Club, and his name did not appear on the list of members attached to the application for license. The Board seems to have muffed this one badly.

As for the Societa Operaia case, investigation disclosed that a testimonial dinner had been held on the licensed premises by the Fourth Ward Italian Republican Club on the night in question, and when my men got there they found three bartenders working at full speed drawing beer for a crowd of men and women who were paying for it with tickets marked "5¢." Bearing in mind that the Societa Operaia was charged with permitting the service and delivery of alcoholic beverages during prohibited hours, the dismissal of the charge for the reason that it had rented out the premises to the Fourth Ward Italian Republican Club is wholly unwarranted. A licensee cannot wash his hands of responsibility for what goes on in the licensed premises by renting the premises out to another organization.

According to my records, there is a Fourth Ward Italian Republican Club that holds a club license for premises at 464 Royden Street. It would be a fine situation if one licensee could rent the premises of another licensee and vice versa, and then both sell all day Sunday to their heart's content and each escape responsibility because they had rented the premises to the other. It was exactly because the Societa Operaia had rented its premises to the Fourth Ward Club that the additional charge of aiding and abetting a non-licensee to exercise the privileges of a license was recommended.

From the facts, what the Fourth Ward Club was doing was selling beer to persons attending its affair. Sale of alcoholic beverages requires a license or special permit. Any licensee who permits an unlicensed organization (and off its own licensed premises the Fourth Ward Club was the same as any unlicensed organization) to sell alcoholic beverages on its licensed premises is deserving of severest censure. Yet the Board whitewashes the licensee by supinely accepting the explanation that the premises were rented out for the evening and the Fourth Ward Club was to be solely responsible.

If that is the same club that holds the license for premises 464 Royden Street, the Board can prove its good faith by instituting proceedings against the Fourth Ward Club for its activities on the night of June 26th and imposing an appropriate suspension of its license.

3. Ceasar Campana
600 Point Street
License C-111

Fourth Ward Italian Republican Club
464 Royden Street
License CB-22

Russian Workers Mutual Aid Society of America
612 Ferry Avenue
License CB-14

I note that all were charged with sale of alcoholic beverages on Sunday contrary to local ordinance and that the license of each was suspended for five days.

That's the way!

Now that the election is over for another four years, I hope that your Board will get down to stern business and take a firm grip on law enforcement without fear or favor to anyone.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. ILLICIT LIQUOR - THE REFILL PROBLEM - CONSIDERATIONS INVOLVED.

My dear Commissioner: Re: Disciplinary Proceedings against John Jacobs, T/a Mrs. Jay's, 909-911-913 Ocean Ave., Asbury Park, N. J. (Bulletin 315, Item 8).

I beg to acknowledge the receipt of your order and conclusions in the above entitled matter, and to be perfectly frank and honest with you, I was somewhat surprised.

After reading the conclusions in which you state that the violation was not committed personally by John Jacobs, and you exonerated him personally in the matter, excepting that you are holding him for the acts of his servants and agents, I thought that we would get a very minimum sentence.

You realize that Asbury Park is a summer resort, and after all our business is done from Decoration Day to Labor Day, after which time our business is conducted at a loss. We must keep the place open because after being in business for so many years we have an organization which we must maintain, as you cannot go out every year and build up a new organization.

If you are going to insist upon carrying out the terms of this order, it means that we will have to immediately discharge at least 60 people, who will be thrown out of work in these times when you know what conditions are as far as the employment situation is concerned, and who will not be able to find employment in these parts because all of the other places have practically negotiated for their help, besides that, it will cause a great loss to us for merchandise ordered, and contracts made, commencing on or before Decoration Day for music, entertainment, etc. for which my client will be liable, and the great loss for merchandise now on hand. In other words, the insistence of the serving of the 40 days at this time practically means the elimination of Mr. Jacobs from business.

I fully appreciate and realize the serious problem involved in this particular violation, that is, "the possession of illicit liquor" as termed in your conclusions, and when talking to you at your office several weeks ago, I at that time told you that the liquor found in the bottles, while not in the correct bottles, was not illicit from the standpoint of being bootleg or tax free. This liquor was purchased from responsible distributors in the State of New Jersey, and all taxes due and owing to the Federal Government and State Government was paid thereon, and you at that time agreed that you had been compelled to change your mind as to what was, or what was not illicit or bootleg liquor, and that you thought under the circumstances you would change your ruling, and that was the reason why you were giving these cases so much thought before rendering the decision.

I am in hopes that after you read my letter, and take into consideration the number of employees and their families who will be thrown out of work, and the further fact of the irreparable damage which will be caused to my client, not only from the great loss of business he will suffer while being closed, but the loss of business and good will that he will have lost through bad advertisement, you can see your way clear to reconsider the facts in this case and reduce our penalty so that we can open at least by Decoration Day, or postpone the enforcement thereof until after Labor Day.

I trust that you will not take any offense at my interceding with you on behalf of my client, as no offense is intended, but my only justification for this letter is the seriousness of your decision as it effects my client's business, which is the result of a lifetime of work.

Very truly yours,
Louis I. Tumen

May 10, 1939

Louis I. Tumen, Esq.,
Asbury Park, N. J.

My dear Mr. Tumen: Re: John Jacobs

I have yours of the 9th. Of course it is all right for you to argue in behalf of your client.

I had thought — at least hoped — that my reasons for the conclusions in this matter would be convincing. I realize, however, that you, as his lawyer, get so close to his side of the case that it is quite difficult for you to take the perspective which I, as Judge, must take.

The fact that the evidence made it clear that Jacobs himself had not done this refilling weighed heavily. It was for that reason alone that I took time and pains to see if there was any way consistent with previous rulings and public policy that I could mitigate the penalty. At the end I found I could not just because of the public policy involved.

We agree, I take it, that refills is the most dangerous problem with which the trade is confronted; that, if the refill is made with bootleg liquor, it is a very serious offense; that if made with recovered denatured alcohol containing poisonous ingredients, it is still worse.

When you were at the office, I said, in thinking out loud, that I was not at all sure that, when the refill was made with tax paid liquor, the offense was so serious. I considered that with utmost care, but came to the conclusion that, if any lesser penalty were fixed, then everybody would claim, when caught, that the refill was made with tax paid liquor. There is no way in which anybody can tell by any test whether liquor is bootleg or tax paid. The only difference is that one lacks a revenue stamp. No chemical analysis will bring that to light!

Consequently, unless I am going to let control fly out of the window, I have got to rule, as I did, that it makes no difference whether the refill is made with bootleg or tax paid liquor; that to say it is made with the latter is to confess one's wrong, because it is a misdemeanor in any event to refill bottles except as to those licensees such as rectifiers who are expressly licensed for the purpose.

The master is liable, irrespective of personal fault, for what goes on in his licensed premises. To be sure, it is a harsh rule to hold the Public Service Company liable for the torts of its drivers. Respondeat superior is not a principle of logic but of practical public policy. Everybody knows that the boss is liable for what goes on. Everybody looks to him and not to his employees to see that the place is run right.

Therefore, sorry as I personally feel for a man who has been betrayed by his employees, I can do no less than hold him legally responsible.

Hence the decision will have to stand.

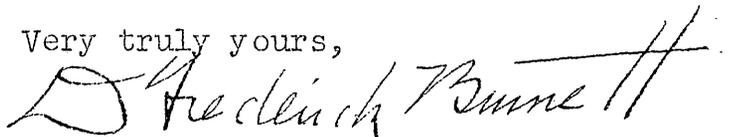
I note your statement that 60 people will be immediately thrown out of employment. Candidly, I don't believe it. Even if true, it would not be a good reason why the suspension should be held up until after Labor Day. Employers who are responsible cannot hide behind the skirts of employees and say, "Think how hard your action is going to bear on these poor innocent people." If I did that in your case, I would have to do it in every case, with the result that the smaller the place, the greater the enforcement, but that the bigger the place, the greater the ease of avoiding penalties in disciplinary proceedings. It wouldn't be right to have one law for the rich and another one for the poor. Once employees realize that they may be thrown out of work if sales are made of illicit liquor, or sales made to minors, then all of them will be on their toes to prevent it.

I said I did not believe that 60 people would be thrown out. Why should that be? The place is primarily a restaurant. The restaurant itself does not have to close. The place is not padlocked. All that is taken away is the privilege of selling liquor. You don't mean for a moment to tell me that there are 60 people whose only job is to sell and serve liquor! I do understand that you have four bartenders, and, of course, there is nothing for them to do while the liquor license is suspended. But it is a far cry from 4 to 60. Since the place does not have to close down and all that is suspended is the privilege of selling and serving liquor, it follows that the merchandise, the music and the entertainment which you mentioned may all be enjoyed to the utmost, without, however, the benefit of liquor to wash it down.

As a matter of fact, the big season in Asbury Park is the months of July and August. The suspension will be all over on the 20th of June.

I think, from various references in your letter such as, "We must keep the place open," "loss of business he will suffer while being closed," that you are laboring under the false impression that the place has to be closed down during the period of suspension. Such is not the rule. You will find the operation of the suspension fully explained in Re Spindel, Bulletin 89, Item 14, and Re Deighan, Bulletin 294, Item 3, copies enclosed.

Very truly yours,



Commissioner.