

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

BULLETIN 379

JANUARY 24, 1940.

1. ADVERTISING - SIZE OF CONTAINERS - PREFERABLE THAT LICENSEES DESCRIBE SIZE OF CONTAINER RATHER THAN INDEFINITE "PER BOT."

January 21, 1940

Dear Mr. Blank:

I have your letter of January 5, 1940 enclosing liquor advertisement of _____, in which he offers "Calvert Special, Wilson, Seagram's 5, \$1.85 per Bot."

You complain that the advertisement is misleading in failing to refer to the size of the bottle which is offered at the advertised price. The advertised price is the Fair Trade minimum of the fifth size of each of the advertised products.

There would seem to be no reason why a customer should jump to the conclusion that the licensee is offering a quart at \$1.85 any more than a pint or a fifth. It's apparently wishful thinking. No doubt at that price he wishes the licensee were selling a gallon!

However, in order that possibility of confusion may be eliminated, it would be better if the exact size were stated. I am, therefore, writing the licensee today, suggesting that he co-operate by specifically describing, in all future advertisements, the size of the container - say per quart or per fifth - instead of the inexact and inelegant "per Bot."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. SEIZURES - CONFISCATION PROCEEDINGS. - PROPERTY FORFEITED.

In the Matter of the Seizure on	)	Case 5437
June 2, 1939, of 11 barrels of)	
home-made wine, a quantity of other	)	ON HEARING
alcoholic beverages, a wine press,	)	CONCLUSIONS AND ORDER
and other personal property, at)	
123 Tebe Place, in the Township)	
of Union, County of Union and State)	
of New Jersey.)	
-----)	

Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On June 2, 1939, investigators of this Department seized home-made wine manufactured without permit, beer, alcohol in jugs which bore no tax stamps, a wine press, and other articles, as set forth in Schedule "A" annexed hereto, which they found in August Delmont's house at 123 Tebe Place, Union. Delmont was arrested and later convicted of possessing illicit alcoholic beverages.

No one appeared at the hearing held herein to contest the seizure or forfeiture of the liquor and other articles.

Manufacture of the wine without a permit renders it illicit. R. S. 33:1-1(i). The absence of tax stamps on the jugs of alcohol raises the presumption that it is illicit.

I find that the wine, illicit liquor and other seized articles found therewith constitute unlawful property. R.S.33:1-1(y), R. S. 33:1-66(b).

Accordingly, it is ORDERED that the liquor and the other articles set forth in Schedule "A" be and are hereby forfeited, and that they be retained for the use of hospitals and State, County and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 19, 1940.

SCHEDULE "A"

5 - gallon jugs alcohol
24 - quart bottles beer
24 - 12 oz. bottles beer
6 - quart bottles ale
10 - 50 gal. bbls. of wine
1 - 10 gal. bbl. of wine
2 - grape crushers
1 - wine press
1 - $\frac{1}{2}$ " copper coil

3. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure)	
on November 15, 1939, of approxi-	)	Case 5622
mately 425 gallons of home-made)	
wine, and a quantity of alcohol,)	
beer, whiskey, brandy, and grape	)	ON HEARING
mash, at 182 Elm Street and 158	)	CONCLUSIONS AND ORDER
Jefferson Street, both in the City)	
of Newark, County of Essex and)	
State of New Jersey.)	

Abraham Merin, Esq., Attorney for the Department of Alcoholic
Beverage Control.

No other appearances.

BY THE COMMISSIONER:

On November 10, 1939 an investigator of this Department purchased at the unlicensed grocery store of Salvatore (Sali) Tamburri, 182 Elm Street, Newark, three glasses of wine which were consumed on the premises, and also a quart of wine. Pursuant to this "buy", a search warrant was obtained and, on November 15, 1939, there was found and seized on the said premises, which are also known as 158 Jefferson Street, the property referred to in Schedule "A" herein.

Departmental records disclose that on October 11, 1939 there was issued to Salvatore (Sali) Tamburri a special wine permit, WN-463, which allowed him to manufacture for personal consumption 200 gallons of wine. In a written statement given to the investigators, he admitted that he had illegally exceeded the terms of that permit by manufacturing between 350 and 400 gallons of wine, and also admitted the sale of the wine to the investigator.

No one appeared at the hearing held herein to contest the seizure or forfeiture of the property.

The illegal manufacture and unlicensed sale of the wine renders it illicit. R. S. 33:1-1(i). I find that the wine, and all other alcoholic beverages found on the same premises, constitute unlawful property. R. S. 33:1-66(b).

Accordingly, it is ORDERED that the seized property set forth in Schedule "A" herein be and the same is hereby forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 20, 1940.

SCHEDULE "A"

- 8 - 50-gallon barrels of wine
- 1 - 25-gallon barrel of wine
- 1 - 5-gallon can of alcohol
- 10 - quart bottles of beer
- 3 - bottles of whiskey
- 1 - bottle of brandy
- 6 - 50-gallon barrels grape mash

4. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED,
PADLOCK ISSUED.

In the Matter of the Seizure on	)	Case 5570
September 25, 1939 of a number of)	
still parts and alcoholic beverages)	
at 373 Delano Place, and a)	
quantity of alcoholic beverages	)	ON HEARING
and equipment at 371 Delano Place,	)	CONCLUSIONS AND ORDER
in the Borough of Fairview, County)	
of Bergen and State of New Jersey.)	
- - - - -	- - - - -	

Joseph Locantore, Pro Se.
 Rocco Locantore, Pro Se.
 Frank Locantore, Pro Se.
 Harry Castelbaum, Esq., Attorney for the Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

On September 25, 1939, investigators of this Department seized a number of unregistered still parts and a large amount of untaxed alcoholic beverages in a garage located in the rear of premises known as 373 Delano Place. They also seized ten barrels of mash, one electric grape crusher, one wine press, and three 1-gallon jugs of tax-paid wine, in the cellar of a house located at 371 Delano Place, Fairview.

At the hearing herein no one appeared to contest the forfeiture of the seized property.

It is determined that the still parts and the alcoholic beverages found in the garage at 373 Delano Place are unlawful property. R. S. 33:2-2.

John Del Cero, eighteen years of age, who resides with his parents at 371 Delano Place, admitted in writing, at the time of the seizure, that the still parts and alcoholic beverages found in the garage were owned by him; that the property seized, as aforesaid, in the cellar of 371 Delano Place was also owned by him and that he used these items in connection with his activities in the garage. I find, therefore, that the items seized in the cellar at 371 Delano Place are articles used or adaptable for use in connection with the still, and that they, therefore, also constitute unlawful property. R. S. 33:2-2.

At the hearing herein, Joseph, Rocco and Frank Locantore contested the padlocking of the premises in which the still was found. They testified that they are the owners of the property at 373 Delano Place on which is located a house and the garage in which the still was found; that Joseph lives with Frank and his wife in a house on said property; that Rocco lives in Union City; that they have been renting the garage to Del Cero's father for the past two and one-half years for the purpose of storing his Ford car therein; that they have received a rental of Five Dollars per month for the garage; and that they knew nothing of the illegal activities conducted by John Del Cero.

Even if it be true that John Del Cero was conducting his illegal activities for a period of only three weeks or a month prior to the seizure, as he contends in his statement, it would seem that Joseph Locantore and Frank Locantore knew or should have known of the illegal activities. Therefore, I shall padlock the garage for six months. I am satisfied, however, that none of the Locantores were in any way connected with the operation of the still, and hence I shall not padlock the house in which Joseph and Frank reside.

Accordingly, it is ORDERED that the seized property described in Schedule "A" annexed hereto be and is hereby forfeited and that it be retained for the use of hospitals and State, County and municipal institutions or destroyed in whole or in part at the direction of the Commissioner; and it is further

ORDERED that the garage in the rear of 373 Delano Place, Fairview, New Jersey, being the premises in which the unregistered still parts were found, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing February 20, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 20, 1940.

SCHEDULE "A"

- 1 - 25 gallon copper cooker
- 1 - 10 gallon galvanized cooler with copper coil
- 1 - copper gooseneck
- 1 - mechanical bottle capper
- 1 - electrical grape crusher
- 1 - wine press
- 1 - 50 gallon barrel containing alcoholic beverages
- 2 - 5 gallon barrels containing alcoholic beverages
- 2 - 5 gallon glass jugs containing alcoholic beverages
- 10 - 50 gallon barrels of mash
- 11 - empty barrels
- 3 - 1 gallon jugs of wine

5. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)	
to Remove Disqualification be-)	
cause of a conviction, pursuant)	CONCLUSIONS
to R. S. 33:1-31.2 (as amended by)	AND ORDER
Chapter 350, P. L. 1938)..)	
Case No. 60 <i>Amicus</i>)	
-----)	

BY THE COMMISSIONER:

In 1928, when petitioner was sixteen years of age, he was convicted on a charge of vagrancy on complaint of his mother and placed on probation for one year; in 1930 he was again convicted of vagrancy on his mother's complaint and received a suspended sentence; in February 1932 he was convicted of breaking, entering, larceny and receiving, and driving an automobile without permission of the owner, after which he was sentenced to the Rahway Reformatory. He was recalled the following month and placed on probation for three years. Subsequently, in January 1934, he was returned to court for failing to report to his probation officer and was resentenced to the Rahway Reformatory, where he remained until November 6, 1934. His fingerprint returns show that since November 6, 1934 he has never been arrested or convicted of any crime.

At the hearing, petitioner testified that he was in business for himself as a barber from November 1934 to about May 1936; that he was employed as a barber in his father's shop from May 1936 to May 1938; that, thereafter, he worked as a bartender in retail licensed premises until April 1939, when he was advised by the Chief of Police that he could not be so employed because of his criminal record; that he has been unemployed from April 1939 to the date of hearing; that he is unmarried and has lived with his parents since his release from the Reformatory.

A barber who has known him for eight years and a retail licensee, who has known him for fifteen years, corroborated his testimony as to his various employments and testified that, during the past five years, he has not associated with disreputable characters. The Chief of Police has certified to me that there are no pending investigations or complaints against him.

From the record I conclude that petitioner has turned over a new leaf, despite the bad record he made during his youthful years; that he has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 20th day of January, 1940,

ORDERED that his statutory disqualification because of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

6. SIXTH CLASS COUNTIES - THE RESPECTIVE MUNICIPALITIES WILL PERFORM THEIR NORMAL LICENSING FUNCTIONS UNDER THE ALCOHOLIC BEVERAGE LAW EXCEPT AS OTHERWISE PROVIDED BY C. 1, P. L. 1940.

SIXTH CLASS COUNTIES - RETAIL LICENSES - EXTENSION TO PERSONAL REPRESENTATIVE UPON THE LICENSEE'S DEATH - APPLICATION SHOULD BE ADDRESSED TO THE MUNICIPAL GOVERNING BODY.

January 17, 1940

Francis Tanner, Esq.,
Barnegat, N. J.

My dear Mr. Tanner:

I take it that the license of the deceased has not been extended to the personal representative, either by Judge Camp or by the Stafford Township Committee.

Judge Camp, of course, because of the decision in Dover v. VanKirk et al. (Bulletin 371, Item 10), does not have the power to make any such extension.

On January 11, 1940, Chapter 1, P.L. 1940 became law. It provides that all retail licenses in Cape May and Ocean Counties neither suspended nor revoked as of December 20, 1939, shall be continued in full force and effect until June 30, 1940, subject to the law, the regulations of the Commissioner, and the regulations duly promulgated by the respective Judges of the Courts of Common Pleas. A copy of the law, which has been re-printed in Bulletin 376, Item 6, is enclosed.

The respective municipalities in Cape May and Ocean Counties are henceforth to perform their normal licensing and regulatory functions under the Alcoholic Beverage Law, except as otherwise provided by Chapter 1, P. L. 1940.

Hence, if the license of the deceased was neither suspended nor revoked as of December 20, 1939, the proper procedure is for the executor to petition the Township Committee for the extension of the license to himself, as the personal representative of the deceased, which the Township Committee may do, in its discretion, pursuant to the authority conferred in R. S. 33:1-26, but not for any length of time exceeding the regular license term. There is no fee for such extension.

The approval thereof by the Township Committee is manifested by resolution authorizing the extension and directing the Township Clerk to endorse the license certificate; e.g.:

"This license, subject to the original terms and conditions, is hereby extended pursuant to R. S. 33:1-26 to....., executor of the estate of....., deceased, until 1940."

The petition for the extension should be addressed to the State Commissioner only if a member of the Township Committee is interested, directly or indirectly, in the application. See R. S. 33:1-20.

Until the license is extended as aforesaid, no business may be conducted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - MURCHIO v. WAYNE TOWNSHIP

THOMAS A. MURCHIO,)	
Appellant,)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF WAYNE,)	
Respondent)	
-----)	

Abraham I. Feltman, Esq., Attorney for Appellant.
C. Alfred Wilson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Respondent denied appellant's application for a plenary retail consumption license for the reason, among others, that the premises in question are located in "A" zone, as defined by the municipal zoning ordinance, which zone is restricted to residential use.

Appellant admits that the premises are so located but contends that:

- (1) Respondent's action is discriminatory because it has issued several liquor licenses for other premises located in that residential zone; and
- (2) The neighborhood in which appellant's premises are located, while within the confines of "A" zone, is, in fact, essentially business in character.

As to (1): It is unnecessary to consider the validity of the action of the local Committee in issuing other liquor

licenses in that zone, since, in any event, the denial of appellant's application was clearly right. To have done otherwise would have resulted in a violation of the terms of the local zoning ordinance. Talbot v. Keppler, Bulletin 117, Item 1; Corradi v. Closter, Bulletin 219, Item 5; East Brunswick Township Board of Adjustment v. East Brunswick, Bulletin 223, Item 5; Nugent and Hignett v. Linden, Bulletin 263, Item 7; Marinaccio v. Ocean, Bulletin 264, Item 11; Re Frank Bardessono, Bulletin 266, Item 3; M. O'Neill Supply Co. et al. v. Ocean et al., Bulletin 278, Item 1; Marra v. Cedar Grove, Bulletin 302, Item 15.

The fact that respondent may have heretofore acted improperly is no justification for it to further violate the ordinance in question. Nugent and Hignett v. Linden, *supra*; Marinaccio v. Ocean, *supra*; Re Frank Bardessono, *supra*. Two wrongs do not make a right. The proper remedy is to correct the prior unlawful operations, if any, by appropriate proceedings, and not to authorize additional unlawful operations.

Nor can appellant's second contention avail him, since, in essence, it is a collateral attack upon the validity of the zoning ordinance. Unless and until the ordinance is set aside by a Court of competent jurisdiction, I shall assume that its provisions are reasonable.

Moreover, the New Jersey Supreme Court, in Dubin v. Wich, 120 N. J. L. 469 (1938), in a carefully thought out opinion by Heher, J., construed the very ordinance under discussion, and held, with respect to premises located directly opposite those of appellant, that the "whole section is predominantly residential", and that the ordinance is reasonable.

The parties hereto have stipulated that the issue herein, if decided adversely to appellant, shall be dispositive of the appeal. It is therefore unnecessary to consider the other grounds urged for reversal.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 22, 1940.

8. APPELLATE DECISIONS - SPITZ VS. PEMBERTON

John Spitz,)	
Appellant,	)	On Appeal
-vs-)	
	)	CONCLUSIONS
Borough Council of the)	
Borough of Pemberton,)	
Respondent.)	
- - - - -		

Howard G. Stackhouse, Esq., Attorney for Appellant.
 Mayor Charles Beckwith, Appearing for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises known as 6 Elizabeth Street, Borough of Pemberton.

Respondent alleges that it denied the application because (1) applicant has been convicted of crimes three times, which convictions he did not mention in a prior application; and (2) the premises have been improperly conducted.

As to (1): This is an application for a new license for the same premises previously operated by Nicholas Scepan-sky. In 1920, appellant was convicted on a charge of gambling and fined \$100.00; in 1927 he was convicted for violating the National Prohibition Act and fined \$300.00; in 1932 he was again convicted for violating the National Prohibition Act and fined \$100.00. While none of these convictions necessarily involve moral turpitude, and thus mandatorily disqualify appellant, they should properly be considered in determining whether he is a fit person to hold a license. Moss vs. Trenton, Bulletin #29, Item #12; Orofino vs. Millburn, Bulletin #45, Item #15; Hodanish vs. Trenton, Bulletin #121, Item #6. Moreover, appellant admits that in an application filed in February 1939 for a transfer of the then outstanding license from Scepan-sky to himself, and again in an application which he filed in June 1939 for a license in his own name for the present fiscal year, he denied that he had ever been convicted of crime. The false affidavits filed in connection with the previous applications would be sufficient reason for denying the present application. Cf. Lynch vs. Paterson, Bulletin #107, Item #1.

Under the circumstances, it is unnecessary to consider the second ground upon which respondent relies and to determine whether the premises had been improperly conducted by former licensees.

The action of respondent is affirmed.

Dated: January 21, 1940.

D. FREDERICK BURNETT,
 Commissioner.

9. APPELLATE DECISIONS - FICHNER v. ELIZABETH.

CHARLES FICHNER,	:	
	:	
Appellant,	:	ON APPEAL
vs.	:	
	:	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC	:	
BEVERAGE CONTROL of the CITY	:	
OF ELIZABETH,	:	
Respondent.	:	

Salvatore F. LaCorte, Esq., Attorney for Appellant.
 John J. Griffin, Esq., Attorney for Respondent.
 Frank K. Sauer, Esq., Attorney for Objectors, and John Przystas,
 a licensee.
 Daniel J. O'Hara, Esq., Attorney for Housing Authority.
 Walter H. Flaherty, Esq., Attorney for Peter Smolsky, a licensee.

BY THE COMMISSIONER:

This appeal is from the refusal to transfer appellant's plenary retail consumption license from 521 Bayway to 670 Clarkson Avenue, Elizabeth.

Respondent, by vote of 2-1, denied the transfer on the ground, inter alia, that the Housing Authority of the City of Elizabeth objected thereto.

Appellant's proposed site, a street corner at Clarkson Avenue and Richmond Street, is located almost at the center of the large Mravlag Manor Housing project now in course of construction by the Housing Authority.

That project, now near completion, consists of sixteen 3-story apartment houses which extend along both sides of Clarkson Avenue and is designed to provide good housing for 423 families of the "low income" class.

Just east of the project (and some 1,000 feet from appellant's proposed site) a tavern already exists, which originally was located on part of the very tract of land where the project now stands. When the Housing Authority purchased that tract (then vacant land except for the tavern), the tavern was duly transferred to its present location.

Quite understandably, the Manor is an alluring section for the profit-minded to seek, since it will soon be the home of several hundreds of new families. However, whether any additional tavern should be permitted there must be decided, not according to private advantage, but under a sound public policy as to what is socially best for the community. Such a policy reasonably requires that the Manor, designed to give attractive and healthful homes to persons otherwise unable to afford it, be kept free of an influx of taverns.

I find nothing unreasonable in the action of the Excise Board in honoring the protest of the Housing Authority.

Appellant further argues that, since the Housing Authority itself has but recently selected, as the site for a new project, a vicinity in "downtown" Elizabeth where many taverns are located, respondent is, therefore, unreasonable in refusing to permit the instant transfer to the Mravlag Manor area.

Whereas the Manor is a development on theretofore practically vacant land at a site deemed by the Housing Authority to be desirable, the "downtown" project, on the other hand, is a direct slum clearance - a project to demolish dilapidated buildings, clean out a slum area and replace it with better housing for the local residents. Obviously, the location of such a project was necessarily guided, not by how many or how few taverns were in the vicinity, but by the social conditions existent in that area. It has no bearing upon the present question.

A last fact stressed by appellant is that the tavern just east of Mravlag Manor, and possibly one other, are the only taverns within an area as large as half a square mile. However, such fact has no weight, since there is no evidence that public need and convenience require any additional tavern in that area. Moreover, even were another tavern there necessary, no reason appears why it should be located in the midst of Mravlag Manor instead of elsewhere in the half a square mile.

In view of the conclusion I reach, that the Excise Board was justified in refusing to allow the instant transfer, it is unnecessary to consider the alleged circumvention of the 1500 foot regulation.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 21, 1940.

10. APPELLATE DECISIONS - CHEW v. GLOUCESTER CITY.

THOMAS D. CHEW,)	
)	
Appellant,)	
)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
COMMON COUNCIL OF GLOUCESTER)	
CITY,)	
)	
Respondent)	
-----)	

Thomas D. Chew, Pro Se.
Vincent deP. Costello, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant seeks a transfer of his plenary retail consumption license from premises at Broadway and Jersey Avenue to premises at the northeast corner of Burlington and Cumberland Streets in Gloucester City.

At the hearing it appeared that ten persons resident near the proposed licensed premises had signed a petition to the issuing authority protesting the transfer; that six of those appeared at the hearing below; and that seven are now willing to withdraw their objections. None of the other three appeared at the hearing on appeal, although all had been notified of its pendency. Nor did any members of the issuing authority or other witnesses for the respondent appear.

It was admitted by the attorney for the respondent that the primary reason for the denial was the objection of the neighbors; that so far as the governing body and the police were concerned, the appellant had conducted his present licensed premises in an exemplary manner; that although the neighborhood of the proposed licensed premises is amply supplied with licensed premises, that is not the conclusion of the governing body but rather the assertion of the objectors; that the sanitary conditions at the proposed premises, to which objection was made, are not, in the opinion of the governing body, objectionable.

The proposed premises has been licensed in the past for as long as the attorney for respondent can remember.

No reason appears why the transfer should not be granted. Accordingly, it is ORDERED that respondent Mayor and Common Council of Gloucester City grant the transfer of the license for which application has been made.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 21, 1940.

11. RULES GOVERNING SIGNS - INDIRECT ADVERTISING OF PRICE - WINDOW DISPLAY FEATURING ALLEGED "OUTSTANDING VALUE" COMES WITHIN THE RULE.

January 22, 1940

Frankfort Distilleries, Incorporated,
Newark, N. J.

Gentlemen:

I have before me yours of January 11th, requesting ruling on a window display approximately 3' high and 2½' wide, illustrating a bottle of Paul Jones Whiskey and carrying the legend "The Famous Dry Whiskey, Paul Jones, An Outstanding Value!"

Regulations No. 21, Rule 3, prohibits all price advertising by retailers, directly or indirectly, on the exterior of the licensed premises or in the show window or door or interior when visible from the street, excepting only by the use of 1½" by 1½" cards, advertising the price of alcoholic beverages being sold in original containers for off-premises consumption.

The use of the phrase "An Outstanding Value" is price advertising within the meaning of this rule (see Re Giant Tiger,

Bulletin 143, Item 12, and Re Schenley, Bulletin 264, Item 1), and is therefore prohibited.

The display is otherwise acceptable.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. ADVERTISING - BUSINESS CARDS - CHART ON THE ART OF WINE DRINKING - WORDING APPROVED.

January 22, 1940

Mr. Bernard Seidenberg,
Newark, N. J.

My dear Mr. Seidenberg:

There is no objection, so far as the State Alcoholic Beverage Law and Regulations are concerned, to your using a business card reading:

" B E R N E Y ' S "

R E S T A U R A N T & B A R

20 GREEN STREET NEWARK, N. J.

The following is a chart on the
Art of Wine Drinking:

With Hors d'oeuvre - Dry Sherry
With Oysters - Chablis or Dry
Champagne
With Soups - Pale Sherry or
Dry Madeira
With Fish - Dry White Wine,
Champagne or Moselle
With Entrees - Chianti or Claret
With Roast or Game - Burgundy or
Chianti
With Sweets - Sauternes, Madeira
or Champagne
With Cheese or Fruit - Port,
Brown Sherry or Sweet Madeira
With Coffee - Brandy or Liqueurs
After Dinner - Cordials.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS -- CILIBERTI v. CAMDEN

FRANK J. CILIBERTI, JR., SADIE W.)	
SEARS, JOHN A. PENNINGTON, and)	
NEW JERSEY LICENSED BEVERAGE ASSO-)	
CIATION, DIV. #5, a corporation of)	
New Jersey,)	
	)	ON APPEAL
Appellants,	)	CONCLUSIONS
)	
-vs-)	
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY OF)	
CAMDEN and BERT BOTTURA,)	
)	
Respondents)	
)	
(Cases No. 1 and No. 2))	
-----)	

Frank M. Lario, Esq., Attorney for Appellant, Frank J. Ciliberti, Jr.

Harry M. Mendell, Esq., Attorney for appellants, Sadie W. Sears,
John A. Pennington, and New Jersey Licensed Beverage
Association, Div. #5, a corporation of New Jersey.

Edward V. Martino, Esq., Attorney for Respondent, Municipal Board
of Alcoholic Beverage Control of the City of Camden.

Anthony F. Marino, Esq., Attorney for respondent, Bert Bottura.

BY THE COMMISSIONER:

Both cases involve substantially the same issues and have been submitted on testimony taken in Case No. 1. Both cases will, therefore, be decided together. In Case No. 1 appellants appeal from the granting of a transfer of respondent Bottura's plenary retail consumption license for the fiscal year 1938-1939, from 1127 Mt. Ephraim Avenue to 720 South Fifth Street, Camden. In Case No. 2 appellants appeal from renewal of respondent Bottura's license for the present fiscal year for premises located at 720 South Fifth Street, Camden.

Appellants contend that the transfer and renewal should have been denied because (1) there was no necessity for an additional saloon in the neighborhood; (2) there will be a serious interference with the rights of property owners in the neighborhood; and (3) this section of the city is of a semi-residential character.

The premises known as 720 South Fifth Street are located on the northeast corner of South Fifth Street and Pine Street; on the northwest corner of said streets appellant, Dr. Ciliberti, conducts a drug store and maintains his office, laboratory and living quarters; on the southwest corner is a store, wherein tables and chairs are manufactured by the Blind; and on the southeast corner there is a large warehouse, the first floor of which is used for storage and the upper floor occupied by a small manufacturing concern. To the rear of 720 South Fifth Street is a row of private houses wherein appellant, Mrs. Sears, and other objectors reside. On the south side of Pine Street, directly

opposite the side of the licensed premises and said residences, there is located the warehouse previously described, a large department store and a parking space used by patrons of the department store. This section of South Fifth Street contains many private residences and also a number of small stores, in addition to those previously described. The premises known as 720 South Fifth Street have been used for various business purposes for the past forty years.

As to (1): It is apparent that there are a large number of licensed premises in this section of Camden. Appellant, John A. Pennington, testified that there are approximately sixty within a radius of six blocks of the premises in question. It appears, however, that there are no other licensed premises on South Fifth Street within a distance of at least two blocks in either direction and that there was formerly a saloon at 810 South Fifth Street, which is no longer in existence. The question as to the number of licensed premises which should exist in any given section of a municipality is primarily within the reasonable discretion of the issuing authority. The burden is upon appellants to show that respondent, Municipal Board, abused its discretion. Under the circumstances of this case, that burden has not been sustained.

As to (2): Appellant, Dr. Ciliberti, contends that the transfer and renewal of the license will interfere with the conduct of his practice and deteriorate the value of his property, in which he has a large investment. Mrs. Sears and the other objectors contend that the existence of the saloon at the premises in question will reduce the value of their homes, which they have owned and occupied for many years, will attract undesirable persons to the neighborhood, and cause disturbances. The objections of these appellants is understandable, but it must be borne in mind that the premises in question have been devoted to business uses for many years and that there are many other business places in close proximity to their homes. If respondent, Bottura, properly conducts his business, they should have no cause to complain; if he improperly conducts his business, they may cause disciplinary proceedings to be instituted before respondent, Municipal Board, to suspend or revoke the license.

As to (3): The evidence recited above as to the character of the neighborhood shows that it is of a mixed residential and business character. Under these circumstances respondent, Municipal Board, had a reasonable discretion to determine whether the transfer and renewal should have been granted. The evidence does not convince me that the Municipal Board abused its discretion.

The action of respondent, Municipal Board of Alcoholic Beverage Control of the City of Camden, in both cases, is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 22, 1940.

14. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SECOND OFFENSE.

In the Matter of Disciplinary)
 Proceedings against)

CARLO WINE & LIQUOR CO.,)
 163 Summit Avenue,)
 Union City, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Distri-)
 bution License D-14 issued by)
 the Board of Commissioners of)
 the City of Union City.)

Stanton J. MacIntosh, Esq., Attorney for the Department of
 Alcoholic Beverage Control.

Haig Turnamian, Treasurer for Carlo Wine & Liquor Co.

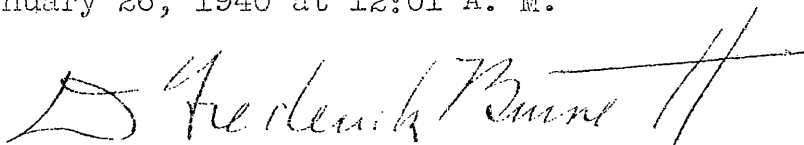
BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge that on or about December 14, 1939, without having first obtained a special permit so to do, it sold one 1/2 gallon bottle of SCHENLEY'S RED LABEL Blended Whiskey below the minimum consumer price published in Bulletin 350 of this Department, in violation of Rule 6 of State Regulations No. 30.

This is the licensee's second violation of the Fair Trade rules besides a conviction for Sunday sales before the opening hour. Last time it received a suspension of fifteen days less five for the plea. Re Carlo Wine and Liquor Co., Bulletin 371, Item 6. This time it will be thirty days less five for the plea. I hope the licensee realizes its position has become precarious. 71

Accordingly, it is, on this 22nd day of January, 1940,

ORDERED that Plenary Retail Distribution License D-14, heretofore issued by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for twenty-five (25) days, effective January 26, 1940 at 12:01 A. M.



Commissioner.