

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1008

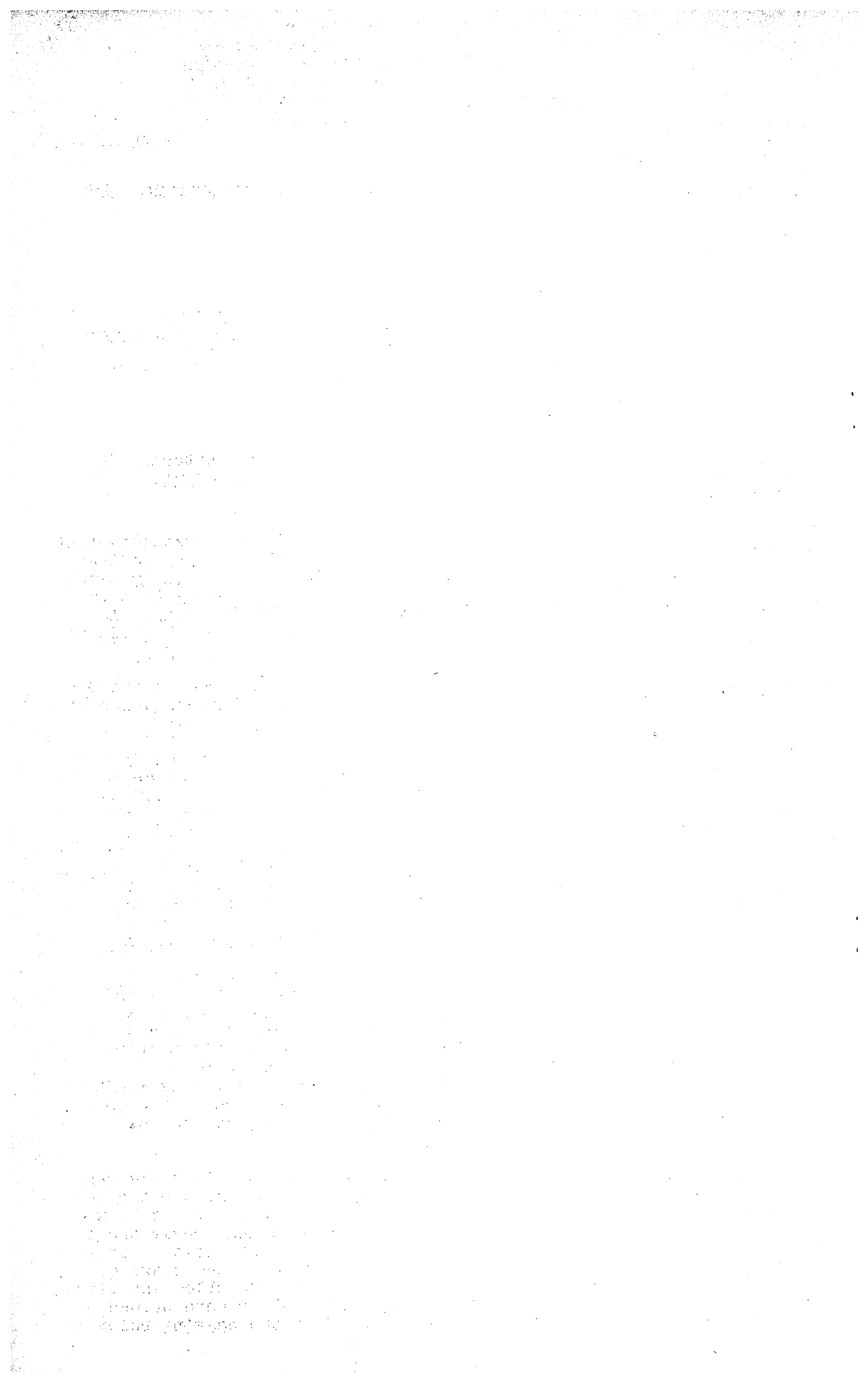
APRIL 8, 1954.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1008

APRIL 8, 1954.

1. APPELLATE DECISIONS - IANNELLO AND CASSETTA v. HACKENSACK.

FRANCESCA IANNELLO & ALFONSO)
CASSETTA, trading as HACKENSACK)
LONG BAR,)
Appellants,)

-vs-

CITY COUNCIL OF THE CITY OF)
HACKENSACK,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Dominick Fondo, Esq., Attorney for Appellants.

George A. Brown, Esq., by William R. Morrison, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from a three-day suspension by respondent of appellants' plenary retail consumption license issued for premises at 169 Hudson Street, Hackensack. Respondent imposed said suspension after it had found appellants guilty of a charge alleging that they allowed, permitted and suffered a brawl, act of violence and disturbance on their licensed premises in violation of Rule 5 of State Regulations No. 20.

Upon the filing of the appeal an order was entered by the Director staying respondent's order of suspension until further order of the Director. R. S. 33:1-31.

The evidence discloses that shortly after 1:00 a.m. on September 19, 1953, fifteen or twenty patrons were at the bar and other patrons were seated at various tables in appellants' premises. Among the patrons were a police officer (apparently off duty) and his wife who were seated at the bar; Sal, who sat at the bar; Anthony, who sat at a table, and Jack, Paul and Sonny who sat at another table. Sal had previously introduced Jack, Paul and Sonny to the police officer and to Alfonso Cassetta as his "cousins and nephew" although, at the hearing, he testified that they were not related to him but that he had "met them in different bars." The police officer rather vividly described the events which occurred on the licensed premises as follows:

"All of a sudden, bing bang, tables flew over, chairs -- I remember a chair came over, hit a big fellow next to me and hit me on my right shoulder. It was then I got hold of my wife and pushed her out. By the time I pushed her out and came back, it was all over with. *** I know the fight started from the table right in back of me and was working around to the music stand, which was over close to the men's room and that was about all. Then later on, when I came in they were straightening out and sweeping the glass on the floor with a push-broom."

Anthony testified that he had just arisen from his table when "somebody had me around the neck" and "somebody" hit him on the head with a bottle. The evidence indicates that the force of the blow caused the bottle to break; that Anthony was bleeding freely and that he was taken to a hospital where a piece of glass was removed from his head. There is no evidence that Sal participated in the brawl or struck the blow. The evidence does indicate that the blow was struck by Jack, Paul or Sonny, all three of whom ran out or were pushed out of the premises. None of the three appeared at the hearing below or at the hearing held herein.

There is no doubt that a "brawl, act of violence and disturbance" occurred on appellants' premises. The sole question is whether the evidence is sufficient to sustain respondent's finding that appellants "allowed, permitted and suffered" such actions on their licensed premises.

Alfonso Cassetta (one of the licensees and who is a son of the other licensee, Francesca Iannello) testified that he was twenty feet away when he saw a table go over; that he "saw these three fellows throwing the punches;" that he rushed over; that he broke it up; that he pushed the three fellows out and ordered the bartender to 'phone for the police. The bartender testified that he 'phoned as requested. Both of these witnesses and other witnesses testified that the disturbance lasted less than a minute. However, Sal testified that the disturbance lasted "a few minutes to five minutes" and the aforesaid testimony of the police officer indicates that the disturbance lasted for a rather long period of time. Moreover, another police officer, who lives "three houses up" from appellants' premises, testified that Sal "is always looking for trouble" and that "the bartenders are on edge when he walks in. They don't know when things are going to start popping." The evidence further shows that Sal was convicted in 1944 and 1951 on charges of assault and battery and that in November 1952 he was adjudged a disorderly person. Alfonso Cassetta denied that he knew Sal had a criminal record, but he admits that Sal was a tenant in Mrs. Iannello's house for nine months prior to September 1953 and that Sal frequently visited appellants' licensed premises. There is nothing to show that the three men who created the disturbance have criminal records but, at least, they were on very friendly terms with Sal.

Where the evidence discloses merely a sudden assault by one patron on another, it may not be sufficient to sustain a finding that the licensee "allowed, permitted or suffered" the brawl. Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3; Zicherman v. Newark, Bulletin 613, Item 5. However, as was said in Caso v. Belleville, Bulletin 101, Item 8:

"It is a salutary exercise of disciplinary power to impress licensees that they are responsible for keeping the peace in their taverns at all times."

Thus, in Klucke v. Orange, Bulletin 256, Item 3, the finding of guilt was affirmed where it appeared that the licensee knew "that there was bad blood between two of his patrons" and in Plikaytis v. Harrison, Bulletin 754, Item 1 (application for writ of certiorari denied, Bulletin 761, Item 8), the finding of guilt was affirmed where it appeared that there was "continuing service of drinks to intoxicated persons whereby the fuel for the flames was provided." See also Moran's Cafe, Inc. v. Elizabeth, Bulletin 915, Item 4. A licensee who permits a person with a reputation as a troublemaker and his so-called "cousins and nephew" on his licensed premises may reasonably foresee that such persons may cause brawls and disturbances. Under these circumstances a licensee should be held responsible if brawls and disturbances occur on his licensed premises.

After carefully considering all the evidence in this case, I conclude that appellants have not sustained the burden of proof in establishing that the action of respondent was erroneous. Rule 6 of State Regulations No. 15. Hence the action of respondent will be affirmed.

Accordingly, it is, on this 23rd day of March, 1954,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the three-day suspension by respondent of appellants' plenary retail consumption license for premises at 169 Hudson Street, Hackensack, be and the same is hereby restored to commence at 3:00 a.m. March 30, 1954, and to terminate at 3:00 a.m. April 2, 1954.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - KOVACS v. SOUTH RIVER.

JOHN KOVACS, trading as)
JOHN'S TAVERN,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH)
OF SOUTH RIVER,)

Respondent.)
-----)

Morris Spritzer, Esq., Attorney for Appellant.
John P. Kozak, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This appeal is from the revocation by respondent of appellant's plenary retail consumption license. The license issued to appellant for premises 6-8 Reid Street, South River, was revoked by respondent after it had found appellant guilty in disciplinary proceedings of a charge of violation of a special condition in his current license. Upon the filing of the appeal an order was entered on December 3, 1953 staying respondent's action pending the hearing of the appeal and the entry of a further order herein. R. S. 33:1-31.

Four of the six members of the respondent Borough Council attended the meeting on November 30, 1953 and voted unanimously to revoke appellant's license.

The pertinent grounds set forth by appellant in his petition of appeal for reversal of respondent's action may be summarized as follows:

- (a) The alleged violations of the special condition in appellant's license were unintentional on the part of appellant and were technical in nature.
- (b) The Chief of Police of respondent Borough was advised that the special officer employed by appellant was to be absent during two weeks in July 1953, and therefore respondent waived its right to insist on strict compliance with the special condition in appellant's license.
- (c) The penalty of revocation was unduly severe for the alleged violations committed.

There is apparently no dispute as to the facts which resulted in the revocation of appellant's license. However, in order to understand the matter now under consideration a brief history of the events which occurred prior to the original insertion of the condition in the license in question will be helpful. A hearing was held on June 26, 1952 on the application for renewal of the plenary retail consumption license of appellant and one Michael Szoloczi (the latter person has no present interest in the license) for the premises 6-8 Reid Street, South River.

An attorney for several objectors and appellant's present attorney for the applicants spoke in behalf of the respective parties. The attorney for the applicants suggested to the respondent issuing authority that "the application for the renewal be granted with the understanding that a special police officer be appointed to preserve order on Friday, Saturday and Sunday nights and, in the meantime, the owners will endeavor to get another location and will have their license transferred there." This suggestion was taken under advisement by the respondent and at a meeting on June 30, 1952, the renewal of the license in question was approved subject to the following condition:

"The licensees will, at their own expense, provide police protection and supervision in the neighborhood comprising Reid and George Streets, on Friday, Saturday and Sunday evenings, without exception, between 8:00 P.M. and closing time."

The licensees thereafter employed a special police officer in accordance with the condition in the license. The appellant's license was renewed for the current licensing period with a similar special condition imposed therein.

On July 17, 18, and 19, and July 24, 25, and 26, 1953, the special police officer was on vacation. However, prior to leaving on said vacation and pursuant to instructions given by appellant, the special police officer reported to the Chief of Police of the Borough that he would be absent during the time aforementioned. The respondent does not deny this, but insists that the Chief of Police had no authority to sanction the temporary absence of special police protection. The charge preferred by respondent also alleged that on Friday night, November 6, 1953, the special police officer was not on duty at appellant's licensed premises. Appellant's explanation thereof, which is conceded by the respondent, is that a storm accompanied by heavy rains flooded the vicinity wherein the appellant's licensed premises are located; and, furthermore, the appellant had no notice until about 9:00 p.m. that evening when the special police officer called on the telephone and advised him that by reason of the severe storm he could not report for duty.

Under the circumstances, the violation of the special condition with reference to November 6, 1953 might be excusable. However, during the period in July 1953 when the appellant's premises had no police protection, the situation is entirely different. The fact that the appellant notified the Chief of Police that the special officer would be absent from the premises, in violation of the special condition, is no excuse but at most might be considered in mitigation of penalty. I, therefore, find appellant guilty of the violation charged.

The question to be decided herein is whether the penalty to be imposed by respondent is excessive. Appellant has no prior adjudicated record. I dislike to moderate any penalty imposed by any issuing authority and will do so only in cases where it clearly appears that the penalty is excessive, Reinhardt v. Clifton, Bulletin 845, Item 7; Conklin v. Bridgewater, Bulletin 809, Item 7. In view of the facts presented in the instant case, a suspension of the license for twenty days would appear to be ample for a first offense of this kind.

On December 3, 1953, I entered an order staying respondent's order of revocation pending determination of the appeal. I shall now vacate said order and enter an order herein suspending the license for twenty days.

Accordingly, it is, on this 23rd day of March, 1954,

ORDERED that the revocation of Plenary Retail Consumption License C-38 be and the same is modified to a suspension of said license for a period of twenty days; and it is further

ORDERED that the order dated December 3, 1953 is vacated, effective at 2:00 a.m. March 30, 1954, and License C-38, now held by appellant John Kovacs, trading as John's Tavern, for premises 6-8 Reid Street, South River, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. March 30, 1954, and terminating at 2:00 a.m. April 19, 1954.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - LISS v. NEWARK AND SALERNO AND LIPNICK.

GEORGE R. LISS,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY OF)
 NEWARK, and NICHOLAS SALERNO and)
 ABRAHAM LIPNICK,)
)
 Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

James J. Farley, Esq., Attorney for Appellant.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent Municipal Board.
Jack L. Cohen, Esq., Attorney for Respondents Salerno and Lipnick.

BY THE DIRECTOR:

This case is unique because it involves, in the final analysis, merely the question as to whether respondents Salerno and Lipnick should be said to hold License C-172 for 141 High Street (which premises have been demolished) or for premises at 945-A Frelinghuysen Avenue (in which they no longer have any right of possession). No business is presently being conducted under License C-172.

There appears to be no dispute as to the facts. Plenary Retail Consumption License C-172 was renewed for the present licensing year to Nicholas Salerno and Abraham Lipnick for premises known as 141 High Street. These premises and others were condemned for a low-cost housing project, and the licensees were forced to vacate said premises on October 16, 1953. After they filed an application to transfer their license to 945-A Frelinghuysen Avenue, various objections were filed and hearings upon the said objections were held by the Municipal Board on December 15, 1953, and December 22, 1953. Appellant was one of the objectors who testified at said hearings. An examination of the transcript of the testimony taken below discloses that the objections were based principally upon the fact that there are six other places now licensed for the consumption of alcoholic beverages within a short distance of the premises known as 945-A Frelinghuysen Avenue. On the other hand, it appeared that the latter premises are located in a row of stores which have been recently built; that there are a number of factories nearby; that the Kretchmer housing development, which houses over seven hundred families, has been recently built in this section of the City, and that the transfer of the license is not barred by the Newark ordinance fixing the minimum distance between licensed premises, because it comes within the "hardship" exception in said ordinance. After hearing all the testimony, the Municipal Board adopted a resolution, on January 5, 1954, granting the application for said transfer

and on January 14, 1954, said transfer was endorsed upon the face of the license certificate. Appellant, who holds a plenary retail consumption license for premises at 990 Frelinghuysen Avenue, filed the appeal herein and the appeal was heard on March 15, 1954.

At the hearing herein the attorney for respondents Salerno and Lipnick stated that his clients no longer had any right of possession in the premises known as 945-A Frelinghuysen Avenue. He produced at the hearing a copy of an agreement which indicated that the lease between his clients and the landlord of the premises was not to become binding upon any of the parties except and unless the Municipal Board of Alcoholic Beverage Control of the City of Newark granted a transfer of the license in question. The said agreement further provided that, in the event said transfer was not approved by January 1, 1954, either party to the lease might cancel the same and withdraw therefrom. The attorney further stated that, after the time the resolution granting the transfer was adopted, the landlord of the premises verbally notified his clients that the lease had been canceled and the landlord thereafter rented the premises to another party. Photographs introduced into evidence indicate that the store at 945-A Frelinghuysen Avenue is to be occupied as a hardware store.

Upon the facts of the case as they appeared at the close of the hearing below, I would, ordinarily, affirm the action of the Municipal Board. It has been held repeatedly that the number of licenses which should be permitted in any particular area is a matter confided to the sound discretion of the local issuing authority. This is particularly true in an area devoted to business. On appeal the burden is on appellant to show that the Board abused its discretion. Rule 6 of State Regulations No. 15; Trinity Methodist Church v. Rahway et al., Bulletin 972, Item 3; Thompson v. Mount Olive, Bulletin 986, Item 1. However, upon the additional facts presented at the hearing of the appeal, the question here at issue is whether the transfer should now be granted. Cf. Socony-Vacuum Oil Co. v. Mount Holly Township, 135 N.J.L. 112. Since it now appears that respondents Salerno and Lipnick have no right of possession to the premises at 945-A Frelinghuysen Avenue, I conclude that the transfer should not now be granted. Cf. White Castle Inc. v. Clifton et al., Bulletin 97, Item 13; Eavenson v. South Orange et al., Bulletin 283, Item 8; Montclair Athletic Club v. Montclair, Bulletin 859, Item 1. Hence I shall reverse the action of respondent Board, with the result that the license shall be considered as covering the premises at 141 High Street.

It might be well to point out that, except in cases where an appeal is duly filed, the action of an issuing authority in transferring a license is final as soon as the transfer is endorsed on the license certificate, and that the license may not be transferred thereafter to other premises except upon compliance with the statutory requirements. Cf. Re Volcker, Bulletin 140, Item 9.

Accordingly, it is, on this 23rd day of March, 1954,

ORDERED that the action of respondent Municipal Board, in transferring License C-172, held by respondents Nicholas Salerno and Abraham Lipnick, from 141 High Street to 945-A Frelinghuysen Avenue, Newark, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION - FAILURE TO FILE NOTIFICATION OF CHANGES IN FACTS SET FORTH IN APPLICATION IN VIOLATION OF R. S. 33:1-34 - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

LAKE HIAWATHA INN, INC.)
North Beverwyck Road & Minnehaha Blvd.)
Parsippany-Troy Hills)
P. O. Lake Hiawatha, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-26 for the 1952-53 and 1953-54 licensing years, issued by the Township Committee of the Township of Parsippany-Troy Hills.)
-----)

Latzer and Kanengiser, Esqs., by Irwin Kanengiser, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. In your application dated June 2, 1952, filed with the Parsippany-Troy Hills Township Committee, upon which you obtained your current plenary retail consumption license, in answer to Question 30, which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', you stated only, by reference to Question 22, that Lake Hiawatha Country Club, Inc. had such interest, thereby evading and suppressing the material fact that Arthur R. Marsh also had such interest in that he was the real and beneficial owner of the licensed business and was permitted to retain all the profits therefrom after payment of a fixed monthly fee; such evasion and suppression being in violation of R. S. 33:1-25.

"2. In your aforesaid application, in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any portion or percentage of the profits or income (by way of rent, salary or otherwise) derived from the business to be conducted under the license applied for?', you stated 'Yes... Manager to receive 2% of gross volume of business', thereby evading and suppressing the material fact that you had agreed to permit Arthur R. Marsh to retain all the profits from the licensed business after payment of a fixed monthly fee; such evasion and suppression being in violation of R. S. 33:1-25.

"3. You failed to file with the Parsippany-Troy Hills Township Committee, within ten days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions 30 and 31 of your aforesaid application, such changes being that on or about March 9, 1953 you entered into an agreement with Frank Piampiano, by which he acquired an interest in your licensed business beginning March 15, 1953 and by which you agreed to permit him, instead of Arthur R. Marsh, to retain all the profits from the licensed business after payment of a fixed monthly fee; your failure to file such notice being in violation of R. S. 33:1-34.

"4. From on or about March 2, 1946 until on or about March 15, 1948 you knowingly aided and abetted John DeYoung, and from on or about March 15, 1948 to on or about March 15, 1953 you knowingly aided and abetted Arthur R. Marsh, and from on or about March 15, 1953 to the present time you knowingly aided and abetted Frank Piampiano, to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52.

"5. In your aforesaid application, you falsely stated 'No' in answer to Question 32, which asks: 'Does any individual, partnership, corporation or association hold any chattel mortgage or conditional bill of sale on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license herein applied for?', whereas in truth and fact there was an outstanding conditional bill of sale dated March 15, 1951 for a York ice cube machine purchased from Electric Products, Inc. and used in connection with the licensed business; said false statement being in violation of R.S. 33:1-25.

"6. In your aforesaid application, as amended March 23, 1953, you falsely stated that John Lamb was your vice-president; whereas in truth and fact Stanford Alexander held that office; said false statement being in violation of R. S. 33:1-25."

In 1945, when the license was held by Lake Hiawatha Country Club, charges were preferred alleging that the club "farmed out" the license to successive stewards (Adolph Vogel and John C. De Young) in violation of the Alcoholic Beverage Law. R. S. 33:1-26; R. S. 33:1-52. During the pendency of those proceedings and apparently in an endeavor to correct the illegal situation the license was transferred to defendant herein, Lake Hiawatha Inn, Inc., a newly organized corporation. In the Conclusions and Order suspending the license the then Commissioner said, "Ninety per cent. of the stock of Lake Hiawatha Inn, Inc. is owned by members of the Board of Directors of the Lake Hiawatha Country Club, and ten per cent. of the stock of Lake Hiawatha Inn, Inc. is owned by John C. De Young. Lake Hiawatha Inn, Inc. has rented the licensed premises from the Country Club at a yearly rental of \$1,250.00 for the first two years, and a yearly rental of \$1,500.00 for the third year of the lease. Lake Hiawatha Inn, Inc. has entered into a written agreement with John C. De Young whereby it has hired him as steward at a weekly salary of \$50.00 plus two per cent. of the gross volume of business. From the facts set forth herein it sufficiently appears that the unlawful arrangements heretofore existing have been corrected. The license will, therefore, be suspended for ten days. Re Club Parsippany, Inc., Bulletin 411, Item 8. Re Lake Hiawatha Country Club, Bulletin 701, Item 5.

The file herein discloses that the agreement with De Young continued until March 1948 at which time a similar agreement was entered into with Arthur R. Marsh who "bought out" De Young and assumed his position as steward and acquired his share of stock. It appears from the statements obtained from De Young, Marsh and various officers of the Lake Hiawatha Country Club and the Lake Hiawatha Inn, Inc., that, in effect, De Young and Marsh, successively, received the entire net proceeds of the business conducted under the license.

It further appears that, in March 1953, defendant entered into an agreement with Frank Piampiano, similar to those with De Young and Marsh except that Piampiano, by the very terms of the agreement, was to retain all of the proceeds from the business and was to pay all expenses. Piampiano had "bought out" Marsh in much the same manner as Marsh had "bought out" De Young.

As to charges (1), (2) and (4) the arrangements hereinabove recited clearly resulted in the "farming out" of the license to De Young, Marsh and Piampiano, respectively. Re Lake Hiawatha Country Club, supra.

As to charge (3), defendant failed to notify the local issuing authority of the agreement with Piampiano, as required by R.S. 33:1-34.

As to charge (5) there was, in fact, a conditional bill of sale on a York Ice Cube Machine which had been purchased in the name of Lake Hiawatha Country Club by Marsh, who had an interest in the business conducted under the license. The failure to disclose such conditional bill of sale in the license application was a violation of R.S. 33:1-25.

As to charge (6) Stanford Alexander was, in fact, vice-president of defendant and the listing of John Lamb as vice-president was also a violation of R. S. 33:1-25.

Defendant, in alleged mitigation, seeks to claim that the membership of the Boards of Directors of both Lake Hiawatha Country Club and Lake Hiawatha Inn, Inc. have changed substantially since the time of the correction effected in the prior case (Re Lake Hiawatha Country Club, supra) and that the present members believed that the State Director knew and approved of the interest of the steward in the licensed business. Suffice to say that the agreement which had been previously approved was violated both in letter and spirit.

Defendant also seeks to claim that the conditional bill of sale was entered into by Marsh without its knowledge or consent and that the false answer set forth in charge (6) was an error. Nevertheless, in each instance defendant is responsible for the false answer.

During the pendency of these proceedings Piampiano acquired the entire capital stock of defendant corporation, and the illegal situation has been corrected.

In the absence of a prior record, the minimum period of suspension for the "front" violation would be twenty days. Re Marple, Bulletin 1006, Item 5. However, as hereinabove noted, when the license was held by defendant's predecessor in interest, it was suspended by the then State Commissioner for ten days, effective March 18, 1946. This fact must be considered in arriving at the proper penalty to be imposed in this case. Cf. Woodlawn Bar & Grill, Inc., Bulletin 990, Item 4; Re New Glass Bar, Inc., Bulletin 922, Item 4. However, I shall also consider the fact that said violation occurred more than five years ago.

Under all of the circumstances in this case, including the prior record and the additional charges (5) and (6), I shall suspend the license for a period of thirty days.

Although these proceedings were instituted during the 1952-53 licensing period they do not abate but remain fully effective against the license renewed for 1953-1954. (State Regulations No. 16.)

Accordingly, it is, on this 24th day of March, 1954,

ORDERED that Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Parsippany-Troy Hills to Lake Hiawatha Inn, Inc., North Beverwyck Road & Minnehaha Blvd., Parsippany-Troy Hills, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m. March 30, 1954, and terminating at 3:00 a.m. April 29, 1954.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ALBERT TEMPLETON)
T/a AL'S TAVERN)
154 Fowler Avenue)
Jersey City 5, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-309, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Albert Templeton, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold and delivered two quart bottles of beer in their original containers for consumption off the licensed premises after 10:00 p.m., Wednesday, February 17, 1954, in violation of State Regulations No. 38.

The file discloses that at 10:00 p.m., on Wednesday, February 17, 1954, two ABC agents visited defendant's licensed premises. While at the bar they observed a patron order and receive two quart bottles of beer for off-premises consumption from the bartender, subsequently identified as the defendant. At approximately 10:45 p.m., one of the agents ordered two quart bottles of beer from the defendant. The latter went to the cooler, obtained two quart bottles of beer, placed them in a paper bag and handed it to the agent. The payment for the two bottles of beer was made by both agents, each contributing the sum of forty-five cents therefor. The agents then left the defendant's premises but returned shortly thereafter and identified themselves to the defendant.

The defendant admitted the violation but declined to give the agents a written statement.

Defendant has no prior adjudicated record. I shall impose the minimum suspension for a violation of this type -- fifteen days. Re Cohen, Bulletin 945, Item 14. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 16th day of March, 1954,

ORDERED that Plenary Retail Consumption License C-309, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Albert Templeton, t/a Al's Tavern, 154 Fowler Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 22, 1954, and terminating at 2:00 a.m. April 1, 1954.

WILLIAM HOWE DAVIS
Director.

6. PLENARY RETAIL CONSUMPTION LICENSE - UPON FURTHER EVIDENCE PRESENTED ON RE-APPLICATION FOR, BY HOLDER OF CLUB LICENSE, GRANTED.

In the Matter of an Application by)

THE RACQUETS CLUB OF SHORT HILLS)
162 Hobart Avenue)
Millburn)
P. O. Short Hills, N. J.,)

CONCLUSIONS

For a Plenary Retail Consumption)
License.)
-----)

Milton, McNulty & Augelli, Esqs., by John Milton, Jr., Esq.,
Attorneys for Applicant.
Thomas F. Scully, Jr., Esq. and Joseph P. Dunn, Esq., Attorneys
for the Objectors.

BY THE DIRECTOR:

Applicant now holds Club License CB-308 which was issued by the State Director instead of by the local issuing authority because a member of the club is a member of such local issuing authority. (R.S. 33:1-20.) Applicant filed an application with the State Director for a plenary retail consumption license for the 1953-54 license year. Written objections having been filed, a hearing was held at which both applicant and the objectors were represented by counsel.

A previous similar application filed during the 1952-53 license year was denied by my predecessor. Re Racquets Club of Short Hills, Bulletin 976, Item 5. In the conclusions in that case the Director referred to the testimony of the objectors, who reside near the club premises, which he summarized as follows: "...they fear that the issuance of a license to sell to the general public would create undesirable conditions in this section of Short Hills, which is admittedly residential in character." After pointing out that conversion of club licenses to plenary retail consumption licenses was, for a time, approved by the Department, now Division, but that such approval was expressly overruled in 1944; that the mere fact that the issuance of the license sought would not violate the Township's numerical limitation ordinance does not require its issuance and that, while public necessity and convenience is not an issue where club licenses are concerned, it is "the paramount" consideration where retail licenses, other than club, are concerned, he stated, "There is before me no evidence of public need for the plenary retail consumption license sought."

The club appealed the denial of the license to the Superior Court of New Jersey, Appellate Division, but later withdrew such appeal.

At the hearing on the present application it was stipulated that the record of the testimony of the objectors who appeared at the hearing on the previous application would become part of the record herein. In addition two of the objectors took the stand and testified. It was further stipulated that the Director could consider letters received by him either favoring or opposing the issuance of the license.

The objections, taken together, may be summarized as follows: (1) Applicant's present club license is adequate to serve the needs of its members; (2) there is no necessity for a "broader" license; (3) parking facilities in the vicinity of the club are inadequate and serious traffic problems would be created by automobiles parked on the public streets, principally Hobart Avenue; (4) the increased privileges of the plenary retail consumption license would result in an increase in activities at the club with an attendant increase in noise and traffic problems; (5) the premises are inappropriate for such a license since they are located in a residential area where values are substantial;

(6) there is no public necessity and convenience to be served by such a license at that location and (7) bottled liquor can be purchased elsewhere, without inconvenience.

A number of applicant's members, officers and trustees and its steward testified in support of the application. Their testimony may be summarized as follows: The club premises are on the north side of the Delaware, Lackawanna and Western Railroad tracks, adjacent to the "Station Plaza" of the Short Hills station and are in a one-family "A" district, under the zoning ordinance. Substantially all of the property on said north side of the railroad tracks is zoned "A" or "A-A" residence districts and the area consists of dwellings of substantial value. Across the tracks is a large municipal parking area, a small residence "C-1" district and a small business "B" district consisting of a post-office, drug store, barber shop, fruit store, a market which holds a plenary retail distribution liquor license, a cleaning and dyeing store and a garage. South of that is a one-family "B" district extending some 2,500 feet to Millburn Avenue where there are more business properties, including the Chanticleer, which holds a plenary retail consumption license and a package goods store (plenary retail distribution license).

There are outstanding 9 plenary retail consumption, 7 plenary retail distribution and 3 limited retail distribution licenses. The area in the neighborhood of applicant's club premises constitutes the Short Hills section of the Township of Millburn. Except for the 2 licenses on Millburn Avenue, hereinabove mentioned (Chanticleer and the package store) and the plenary retail consumption licenses issued to the Short Hills Club and to Canoe Brook Country Club (both private clubs), all of the outstanding liquor licenses are issued for premises in downtown Millburn at a considerable distance from applicant's club premises. The Short Hills Club is located approximately 1/2 mile north of applicant's club premises while the Canoe Brook Country Club is more than a mile from applicant's premises in a westerly direction. Both of these licenses are located in a residential "A" or "A-A" district.

Applicant was incorporated under Title 15 of the Revised Statute (Corporations not for profit) and has occupied its present quarters for a number of years. In addition to the outdoor tennis courts, there are indoor facilities for various athletics, a restaurant, lounge and barroom. There are 333 family memberships (approximately 600 persons) and all but 60 of these memberships are held by residents of Millburn Township, the vast majority being residents of the Short Hills section. The president of the club testified that there were 16 members within 500 feet of the club; 28 between 1,000 and 1,500 feet; 38 between 1,500 and 2,000 feet; 43 between 2,000 feet and 2,500 feet; approximately 100 to 150 people within 1/2 mile and 227 within a mile.

In addition to various functions held for club members exclusively there are many other functions conducted by other organizations or groups of people who rent applicant's facilities or portions thereof. The charges for these facilities depend upon the facilities rented, and the hours of the day and the days of the week, and range from \$5.00 to \$50.00. From the testimony of several of applicant's witnesses it appears that these charges are somewhat less than similar charges at the other two clubs hereinabove mentioned. Several of applicant's witnesses testified that a majority of those who rent applicant's facilities serve alcoholic beverages at these functions (presumably pursuant to special permit issued by the State Director). These witnesses also testified that many of the renters have requested that applicant supply the liquor for their affairs but that these requests were refused because of the limitations of applicant's club license which permits the sale of alcoholic beverages only for immediate consumption on the licensed premises and only to bona fide club members and their guests; that, for the reason aforesaid, the alcoholic beverages had to be purchased elsewhere by the renters and that

considerable difficulty was entailed in bringing in these beverages, keeping them segregated, and taking the remainder out at the conclusion of the affairs.

Applicant's witnesses advance the following reasons for seeking a plenary retail consumption license: (1) It would be of greater convenience to club members, who constitute a considerable segment of the community, because it would permit the sale of bottled goods for off-premises consumption which sales are prohibited under a club license; (2) it would be of greater benefit to nonmembers; (3) that the club performs a "quasi-community activity" and its facilities are used by many local organizations and groups; and (4) it would permit the club to exercise greater control over the quantity of alcoholic beverages consumed on the premises by nonmembers.

In connection with reason (1), it was testified that the market which holds a plenary retail distribution license for premises in the small business section near the Short Hills Railroad Station closes at 6:00 p.m. and, that thereafter, bottled goods may be obtained only from package stores located at a considerable distance from the residences of the club members living in the Short Hills area. As to (2), it was testified that nonmembers would be benefited in that nonmember renters, who find it difficult to rent similar facilities at moderate prices in the Millburn area, could purchase alcoholic beverages on the premises from applicant, thus avoiding the necessity of bringing in such beverages before and removing them from the premises after the affair. As to (3), testimony and exhibits were introduced from which it appears that the club's facilities are used to a considerable extent by non-member groups. As to (4), several of the witnesses testified that, under present conditions, where nonmember groups bring their own bottles of alcoholic beverages there is a tendency to consume the entire contents of the bottle during the course of the evening and that, consequently, there are those who consume inordinate quantities. The witnesses expressed it as their opinion that, if alcoholic beverages were obtainable by the drink at applicant's licensed premises, this condition could be rectified.

With respect to the parking facilities in the vicinity of the club, applicant's witnesses testified that the club's parking area accommodates 42 cars; that a minimum of 23 cars can be parked on the opposite side of the street; that there are additional parking facilities in the evenings and on weekdays and holidays in the station plaza and that there is a very large municipal parking area on the south side of the railroad track easily accessible from the club premises.

Applicant's officers and trustees testified that it was their intention to continue to conduct the activities at the premises in question as a club and that it was not their intention to open the doors to the general public, as such, and several of the members, who live in the near vicinity, expressed it as their view that matters would not be substantially different if the license sought were granted and that they did not anticipate anything objectionable.

There was introduced in evidence a certified copy of a resolution adopted by the Township Committee on September 14, 1953 whereby the Committee certified to the Director that it has no objection to the issuance of a plenary retail consumption license to applicant; that it consents thereto and that it is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance of such license.

From the foregoing, it is obvious that the record before me on the current application is substantially different from that before my predecessor on the earlier application. True, the objections have not

changed or abated. However, while there was little, if any, proof on the earlier application with respect to the question of public necessity and convenience, there is considerable evidence, in the instant case, on that significant question. In this regard, the evidence, as indicated, does not show and applicant does not contend for "public necessity and convenience" in the sense that the entire general public would be invited to and accommodated at applicant's club premises if the license sought were to be granted. But the testimony adduced by and the contentions made on behalf of applicant are to the effect that public necessity and convenience will be served by reason of the fact that applicant's members taken together with the large number of nonmembers who use applicant's facilities constitute a substantial segment of the general public in the community. It seems clear that, under the circumstances hereinabove set forth, applicant's ability to sell bottled goods for off-premises consumption would be a convenience to its members and, what is more important, its ability to sell alcoholic beverages to nonmembers would be a considerable convenience to those members of the general public who use the club's facilities at nonmember functions. Many clubs hold plenary retail consumption licenses and applicant's proposed method of operation under a plenary retail consumption license is by no means unique or unusual.

I have carefully weighed the objections. Most, if not all, are based on a fear of what may happen in the future. Many of the objectors have no serious objection to the conduct of applicant's premises, including the conduct of alcoholic beverage activities under its present club license. Since applicant's present license permits on-premises consumption of alcoholic beverages and since, in the past, nonmember renters have dispensed alcoholic beverages on the premises, pursuant to special permit, it is difficult to conjecture the manner in which any objectionable changes would occur. If such changes were to take place appropriate remedies would be readily at hand.

Counsel for objectors contends that the denial of the previous application was res judicata and that applicant should have pursued its remedy by way of appeal. This contention is unsound. As above indicated, the record upon the previous application was devoid of proof on the question of public necessity and convenience. Not so here. Furthermore, all licenses are issued for the term of one year from the first day of July in each year. R. S. 33:1-26. The present new application is for a different license year than the application which was previously denied.

Objectors' counsel contends, also, that the granting of the license sought would be tantamount to opening a mercantile establishment in an area classified as zone "A" (residence). I cannot agree. The issuance of the license would merely grant to applicant certain additional privileges as provided by the Alcoholic Beverage Law (R.S. 33:1-12(1)). There is no evidence before me from which I am able to conclude that the exercise of those privileges would constitute a violation of any zoning ordinance or local regulations. As noted, the Township Committee certified that it is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance of the license sought. Furthermore, it appears that two such licenses presently exist in residential zones in the Township.

The issuance of the license applied for rests in the State Director's sound discretion. R. S. 33:1-20. Under all of the facts and circumstances in this case I find that applicant has shown sufficient public necessity and convenience to warrant the issuance of a license. The application will, therefore, be granted if and when said application is in proper form.

WILLIAM HOWE DAVIS
Director.

Dated: March 22, 1954.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THOMAS EDWARD ROCKETT)
T/a GREEN LANTERN TAVERN)
145 St. Pauls Avenue)
Jersey City 6, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-534, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Thomas Edward Rockett, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold alcoholic beverages at retail in original containers for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that on Sunday, February 28, 1954, two ABC agents observed a sale by defendant's bartender to two patrons of six cans of beer for off-premises consumption. At about 5:45 p.m. one of the agents purchased from the bartender six cans of beer to take out. The agents then identified themselves, and the bartender admitted the sale.

Defendant has no prior record. I shall suspend his license for the minimum period of fifteen days. Re Fleming's Wine & Liquor, Inc., Bulletin 984, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of March, 1954,

ORDERED that Plenary Retail Consumption License C-534, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Thomas Edward Rockett, t/a Green Lantern Tavern, for premises 145 St. Pauls Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. March 29, 1954, and terminating at 2:00 a.m. April 8, 1954.

WILLIAM HOWE DAVIS
Director.

8. RETAIL CONSUMPTION LICENSEES - EGG NOG - EASTER DISPENSATION.

April 2, 1954.

A. H. Geltzeiler, President
United Licensed Beverage Association
Newark 2, N. J.

Dear Mr. Geltzeiler:

This is in answer to your oral inquiry today concerning egg nog.

Traditionally, every year during the Easter season consumption licensees have been permitted to serve egg nog for a limited period of time.

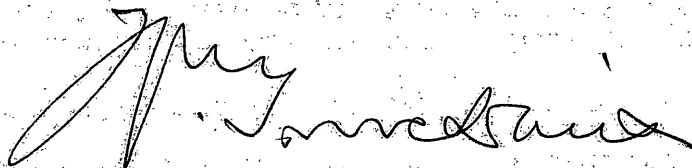
I am glad to note that no abuse has developed from this privilege. The same privilege will therefore be permitted this year beginning Thursday, April 15, 1954, and ending Monday, April 19, 1954, at midnight, on the understanding, of course, that the privilege will be used with reason and moderation.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATION FILED.

Cardinale Trucking Corp.
Route #10, Mt. Pleasant Avenue
Whippany, N. J.

Application filed April 1, 1954 for Transportation License.



William Howe Davis
Director.