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

BULLETIN 355 OCTOBER 25, 1939.

1. DISCRIMINATORY PRICES AND DISCOUNTS - DISCRIMINATION DISTINGUISHED FROM UNIFORMITY - HEREIN OF THE LAW IRRESPECTIVE OF REGULATIONS AND ALSO OF THE CHANGES THAT MAY OCCUR WHEN REGULATIONS ARE ADOPTED.

Dear Commissioner Burnett:

We are rather confused as to the meaning of the new regulations in your State with regard to uniformity of wholesale prices. Anything which you can do to clarify the situation for us will be greatly appreciated.

For instance, must we maintain absolutely uniform prices in towns like Jersey City where we only pay 8¢ a case for delivery and in Cape May, N. J., where it costs us 40¢ a case for delivery?

Do all wines of the same alcoholic contents and type but which vary considerably in quality, have to be the same price?

Are we permitted to give discounts for sales in large quantities? For instance, if we give a 5% discount on 100 cases and should sell such a lot to a chain of five stores and ship only 20 cases to each of the five stores, could we still give the 5% discount on that lot?

Respectfully yours,
Eastern Wine Corporation

October 21, 1939

Eastern Wine Corporation,
c/o Bronx Terminal Market,
New York, N. Y.

Gentlemen: Re: Discriminatory Prices and Discounts

Enclosed is a copy of the law, Chapter 87, P. L. 1939 (Bulletin 324, Item 13).

Enclosed also is copy of notice of even date of public hearing to consider proposed Regulations 32, which hearing you are urged to attend.

You will note that there is nothing, either in the law or in the proposed regulations, concerning uniformity of prices. What is forbidden is discrimination in prices and discounts.

Hence, there is no requirement that prices be the same in Jersey City as in Cape May.

If, however, you prescribe prices for your products for the whole state, instead of leaving it to your local distributor to fix his own prices in the particular locality, then, the price must, of course, be uniform through the whole state and be the same in Cape May as in Jersey City, unless, of course, you expressly differentiate specific localities in fixing prices for the State at large. The matter would seem, therefore, to be wholly within your own control. The State is distinctly NOT fixing prices. That is

done by the manufacturers and wholesalers themselves, each for himself. If you feel that there is any practical problem that should be brought to the surface in this connection, the hearing of November 1st is the time and place.

Since the State has nothing to do with price fixing, but only with maintaining the prices already established, it follows that there is no requirement that wines of the same alcoholic content and type, but which vary in quality, must be sold at the same price.

At present writing, you may fix such discounts on sales in quantities as you please, and so long as you treat everybody alike and comply with Sections 1, 2 and 3 of the Statute, there is no violation.

When and as the new regulations, however, are promulgated, compliance must be made forthwith. They presently contemplate a sale based on the amount of the purchase in terms of dollars rather than on the number of cases. But this is one of the very questions that will properly come up at the hearing, and it may well be that, after hearing all sides, another method of computing and granting the discounts will be adopted.

As regards the split-up of deliveries under a single sale: This is not presently contemplated, but I shall be glad to have you or anyone else bring this matter up for consideration at the hearing. After all, that's the object of having a hearing.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

October 14, 1939

Re: Case No. 298

When 15 years of age, applicant was found guilty of "housebreaking" by a Police Court of Richmond, Virginia, and sentenced to spend six months at a reformatory. A year later, he was given a thirty day sentence on a similar charge in the same court.

At the hearing, applicant testified, as to the first occasion, that he had stolen a bicycle from his cousin's house after being refused the use of it because he had broken the front wheel; that he took it to go "joy-riding".

Applicant denies any knowledge of the second charge. The Department of Public Safety of Richmond, Virginia, advises that no indictment was returned in either case, but that the convictions were before the Police Court, which is not a court of record. The police officers who had handled the cases are dead and no further record of the convictions is available. It would appear, however, that the second conviction involved an offense not as serious as the first, in view of the lighter sentence.

From the evidence, I do not believe that the convictions were attended by such aggravating circumstances as to brand them with the stigma of the element of moral turpitude. Even if they were, his immaturity at the time far outweighs those circumstances. Cf. Re Case No. 261, Bulletin 305, Item 13, and cases cited therein.

It is recommended that applicant be advised that he is not disqualified, despite the foregoing convictions, from holding a liquor license or being employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

3. LICENSES - TRANSFERS - PROTEST BY A LANDLORD AGAINST TRANSFER OF HIS TENANT'S LICENSE TO OTHER PREMISES BECAUSE OF LOSS TO THE LANDLORD'S INVESTMENT IS NOT VALID GROUND FOR DENYING TRANSFER.

October 23, 1939

Elmer I. Zabriskie, Esq.,
Englewood, N.J.

Dear Mr. Zabriskie:

I have no power to "prevent" the licensee from seeking a transfer of his retail liquor license from his present site to another location in Little Ferry. The Alcoholic Beverage Control Law (R. S. 33:1-26) gives him the right to apply to the Mayor and Council of the Borough of Little Ferry for such a transfer, and that body may, in the exercise of its sound judgment, either grant or deny his application. My jurisdiction is only on appeal, after hearing all sides, to determine whether the Mayor and Council's action was correct.

Hence, I advise that, should he apply for transfer of his license, the Building and Loan, if objecting to such transfer, file a written protest with the Mayor and Council. The Council must then, before granting the application, hold a public hearing and give the Building and Loan notice and opportunity to be heard. Should the application be granted, the Building and Loan may, if it believes such action to be erroneous, appeal within thirty days.

However, for your information, let me point out that mere protest of a landlord against transfer of his tenant's liquor license to other premises because such will cause loss to the landlord's investment is ordinarily not valid ground for denying the transfer. See Re DeYoe, Bulletin 278, Item 8. An owner invests money in premises at his own risk. See Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9. Nor is the fact that the tenant is indebted to the landlord for past rentals sufficient cause to turn down the transfer. See Re Rhodes, Bulletin 176, Item 5.

In fine, while I am not unfamiliar or unsympathetic with the vexing problems that confront owners of property leased out for liquor purposes, nevertheless a licensee's right to a place-to-place transfer of his liquor license is not, generally speaking, to be dependent upon private arrangements or arguments between landlord and licensee but upon the issues of public need and policy.

Let me further point out, however, that there is no quota on tavern (i.e., plenary retail consumption) licenses in Little Ferry and that, hence, any new tenant in the Building and Loan's premises may apply to the Mayor and Council for such a license. Here, too, the question whether such application should be granted lies within the sound discretion of the Mayor and Council, with right to appeal within thirty days.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. PENDING LEGISLATION -- ASSEMBLY 706 -- PROPOSED BILL TO PERMIT WINERY LICENSEES TO SELL DIRECT TO CONSUMERS.

October 23, 1939.

Neil F. Deighan, President,
New Jersey Licensed Beverage Association.

Dear Mr. Deighan:

I have your request for opinion on Assembly 706.

The bill purports to amend R.S. 33:1-10 (so far as plenary winery licenses are concerned) to read:

> (2)a. Plenary winery license. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines, and to blend, fortify and treat wines, and to distribute and sell his products to wholesalers, retailers and to churches for religious purposes respectively licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be five hundred dollars. Upon the payment of an additional annual fee of one hundred dollars, the holder of this license shall have the right to sell wine at retail. In no event shall a retail sale to such consumer by the holder of this type of license be in quantities aggregating more than fifty gallons. All wines sold by such licensee shall be securely sealed and have attached thereto a label setting forth such information as shall be required by the rules and regulations of the Commissioner of Alcoholic Beverage Control.

The underscored words are new matter.

The bill thus confers the right upon winery licensees upon paying an additional fee of $100.00, to sell wine direct to consumers instead of being confined, as now, aside from sacramental purposes, to wholesalers and retailers. Since the wines are to be sealed, it means that they are to be sold for off-premises consumption.

The sentence reading: "In no event shall a retail sale to such consumer by the holder of this type of license be in quantities aggregating more than fifty gallons" is ambiguous. It refers to "such consumer" but no consumer has been previously mentioned. Again it provides that no sale shall be in quantities aggregating more than fifty gallons. It may be intended that the maximum size of container shall be fifty gallons, or it may mean no retail sale to a consumer shall be made of more than fifty gallons at one time. If the latter, I fail to see any good accomplished because five minutes after one sale is consummated,

another of fifty gallons could be made and thus the statute set at naught. If the intent was, as I surmise, that the size of container shall not exceed fifty gallons, then it should say so in plain language.

Aside from these minor considerations, the major question is one of public policy, i.e., should winery licensees be permitted to sell direct to consumers.

No other manufacturer --the brewer, distiller or rectifier, is allowed to sell direct.

Whether wine should be distinguished from beer and hard liquor by allowing it to be sold by manufacturers direct to the consumer is essentially a trade problem. It will put the manufacturer in direct competition with the package goods store and with the tavern to the extent that it sells for off-premises consumption. They could not, of course, compete in price with their own supplier who could always undersell them. It would take away considerable of the incentive to our present wine wholesale licensees who have to pay $1,000. a year for the right to sell, as a middleman, to wholesalers and retailers if the manufacturer could sell not only to these two classes but also to consumers as well at a price of only $600. There are now fourteen wine wholesale licenses issued and outstanding. Perhaps all of them would not go out of business because such a license would still be necessary to those who want to wholesale wines not made by New Jersey manufacturers.

It would tend to popularize wine. If the price were kept down, it would take away much of the present incentive to make one's own for personal consumption.

In view of the trade and economic problems involved, the package goods stores and the taverns should be given full opportunity to be heard, as well as all branches of the wine industry. To that end, I recommend that no action be taken on this bill,until, at least, a public hearing is held thereon.

Very truly yours,

D. FREDERICK BURNETT,

Commissioner

5. APPELLATE DECISIONS - HOFFMAN v. RIDGEFIELD PARK.

NED HOFFMAN,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE)
VILLAGE OF RIDGEFIELD PARK,)
Respondent.)
Case No. 2)

Milton K. Chapman, Esq., Attorney for Appellant.
Morrison, Lloyd & Morrison, Esqs., by John W. Griggs, Esq. and W. R. Morrison, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail distribution license for the present fiscal year for premises located at 222 Main Street, Village of Ridgefield Park. A similar application by appellant for the previous fiscal year was denied by respondent and said action affirmed on appeal. Hoffman v. Ridgefield Park, Bulletin 334, Item 12.

On June 14, 1939, when the present application was filed, and on June 30, 1939, when it was denied, there were eight plenary retail distribution licensees in the Village of Ridgefield Park. The ordinance then in effect provided that not more than ten such licenses should be in effect at any time. Hoffman v. Ridgefield Park, supra.

One such licensee, whose place of business was located on Main Street a short distance south of and on the opposite side of the street from appellant's premises, did not renew his license for the present fiscal year.

Appellant contends that under these facts the license for which he applied should have been issued to him. If this were all, his point would be well taken.

It appears, however, that on July 25, 1939, eleven days after Conclusions in the previous appeal had been filed, and pursuant, apparently, to my suggestion therein, respondent passed, on first reading, an amendment to its existing ordinance. The amendment reads:

> "Not more than seven (7) plenary retail distribution licenses shall be in effect in the Village of Ridgefield Park at any time."

Said amendment was adopted on final reading on August 8, 1939.

It is true that this ordinance was enacted after the present application was denied and this appeal was filed.

A similar situation occurred in Franklin Stores v. Elizabeth, Bulletin 61, Item 1. In that case, too, the application

was made and denied before the ordinance was enacted. It was there contended by the appellant that such subsequently enacted ordinance did not validate denial of the application; that such an ordinance could not have any retroactive effect; that the appeal must be adjudicated on the factual situation as it existed at the time of the denial of the application.

I there ruled:

> "The spirit and not the letter of the law should dominate. Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW.....True, the ordinance had not been adopted at the time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation at the time the application was denied."

See also Tenenbaum v. Salem, Bulletin 109, Item 1 and cases therein cited; Burdo v. Hillside, Bulletin 191, Item 10; and Duffield v. Allenhurst, Bulletin 202, Item 1.

It may well be that the ordinance now under consideration, which was adopted on August 8, 1939, was not in actual contemplation at the time of the denial of the instant application. But there was a definite policy in this community to cut down the number of licenses and not to grant any new ones unless the need for them were definitely established. Thus, on November 4, 1938, the Village Commissioners adopted a resolution declaring that the needs of the community were adequately served by the liquor licensees then operating and that no further licenses would be granted unless necessity was clearly demonstrated. That resolution failed only because of the technicality which requires that the municipal policy in this respect must be declared by ordinance instead of by resolution. It confirms, however, that the real bona fide effort of the municipal officials was to cut down the number of licenses whenever opportunity presented and not to expand them unless a definite need was shown. This is the gist of what the Mayor said to the appellant when his application was turned down in the instant case. The official board repeated to him what they had told him previously. In fairness to established businesses and commitments previously made, the local Commissioners had renewed existing licenses year after year. But, when one of them dropped out, as happened in this case, they felt that the time had arrived to reduce the number of licenses. Surely, if that was their honest

judgment, and I see no reason to doubt it, they should have the right to declare the local policy and effectuate it legally through the enactment of an appropriate ordinance even though that ordinance was not enacted or even in contemplation until after it had become known that one of the previous licensees had abandoned the renewal privilege. If this is not a proper procedure, how else, with fairness to existing licenses, will the number ever be reduced? There is no question of good faith of the respondent. There is no trick or game of legal wits. Right early in the fiscal year they have enacted an ordinance declaring unequivocally the local policy that there shall be but seven plenary retail distribution licensees in the Village. The appellant is the eighth applicant as it now turns out and, therefore, he is out under the ordinance. To rule otherwise is to order a license issued in defiance of a fair local policy properly manifested by ordinance.

However, in cases where such an ordinance is enacted after application is filed, appellant, in accordance with established practice, should have an opportunity to contest the reasonableness of the municipal regulation and its application to him. Widlansky v. Highland Park, Bulletin 209, Item 7.

The record will, therefore, be reviewed from that standpoint.

Appellant testified that he conducts a dairy, grocery and delicatessen business which he purchased in April 1939 and that he believes that a liquor license is required for the successful conduct of his business.

Mayor Lowe testified that he considered that eight such licenses were excessive and he further testified, "I don't consider that seven is excessive for the whole town, but bunched in one place, it is."

The evidence shows, as in the earlier case, supra, that there are still five plenary retail distribution licenses in this same business section on Main Street. The other two licenses still extant were issued for premises in other parts of the Village, which has a total population of between 11,000 and 12,000.

At most, the evidence shows that the failure to grant the license may work a hardship upon appellant, but the case is destitute of proof that another license is required in that section of the Village to take care of the needs of the inhabitants. The physical situation set forth in Hoffman v. Ridgefield Park, supra, still continues except to the extent that it has been relieved by the voluntary withdrawal of one of the licenses previously issued.

I find, therefore, that appellant has not sustained the burden of proof in showing that the ordinance limiting the number of distribution licenses to not more than seven is unreasonable in itself or as applied to appellant. Cf. Ford v. Ridgewood, Bulletin 347, Item 3.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 21, 1939.

6. SEIZURES - CONFISCATION PROCEEDINGS - WINE RETURNED UPON CONDITION OF ACQUIRING RETROACTIVE PERMIT.

In the Matter of the Seizure of a quantity of home-made wine, from Sam Zigarelli, at 207 Plainfield Avenue, in the City of Plainfield, County of Union and State of New Jersey.	Case 5206 ON HEARING CONCLUSIONS AND ORDER

Chiaravalli & Fioravanti, Esqs., by Samuel Chiaravalli, Esq., Attorneys for Sam Zigarelli.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On January 7, 1939, investigators of this Department visited Sam Zigarelli's store at 207 Plainfield Avenue, Plainfield, following a complaint that he was selling alcoholic beverages without a license. In the cellar of the premises they discovered and seized some twenty gallons of home-made wine manufactured by Zigarelli in 1937 without a permit. He was arrested, but the criminal charges against him were later dismissed.

Immediately after the seizure, Zigarelli, claiming that he made the wine in good faith, for his own use, unaware that it was illegal to do so without a permit, applied for a special permit to enable him to possess the wine legally. The permit was not issued, because it was necessary to first determine whether the wine should be returned or forfeited.

At the hearing, no evidence was presented that Zigarelli, in fact, had made any sales of alcoholic beverages, and he strenuously denied that the complaint was justified.

He testified that for the past eight years he has been in the grocery business in Plainfield, and previous thereto was in the same business in Newark; that he has never been in trouble, has never sold any alcoholic beverages, and has never been convicted of any crime.

The evidence before me establishes only that he manufactured and possessed home-made wine without a permit. Technically, the wine constitutes unlawful property, and is subject to forfeiture; however where, as in the instant case, it was made in good faith, for personal consumption, and in ignorance of the law, I have heretofore authorized the issuance of a special permit to store the wine for personal consumption. Such permit is valid only for the fiscal year in which it is issued.

Since Zigarelli possessed the wine during the last fiscal year (the period covered in his application for a special permit) the fee accompanying his application will be forfeited. In addition, in order to presently possess the wine, Zigarelli must obtain a special permit covering the current fiscal year.

Accordingly, the wine will be returned upon condition that on or before the 23rd day of November, 1939, Sam Zigarelli applies for and obtains a special permit for the present fiscal year, pays the costs incident to the seizure, and complies with whatever requirements may be imposed by the State Tax Department, Beverage Tax Division; otherwise, the wine will be destroyed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 23, 1939.

7. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938)	CONCLUSIONS AND ORDER
Case No. 47	

BY THE COMMISSIONER:

Petitioner filed his application herein on January 4, 1939, but hearing thereon was not held until October 16, 1939 at his request because of his absence from the State.

In Case No. 4, Bulletin 92, Item 9, petitioner's application for a solicitor's permit was denied because, in 1930, he had been convicted of a crime involving moral turpitude.

At the hearing herein, petitioner testified that, following said conviction, he was released from prison in October 1931; that, thereafter, he was employed as an automobile salesman until July 1932, when he secured employment with a New Jersey brewery, which employment, except for a short period in 1934, continued until December 1938; that after his application for solicitor's permit was denied in September 1935, applicant was assigned by the brewery to a sales territory in various southern States and covered that territory from September 1935 to December 1938; that, since the latter date he has been a salesman in the same territory for another brewery.

An attorney and two automobile salesmen testified that petitioner has conducted himself in a law-abiding manner since 1931. An officer of the brewery by whom petitioner was first employed testified that his services had been satisfactory and that his discharge in December 1938 was due merely to a curtailment in the sales force of the brewery. Petitioner has not been arrested or convicted of any crime since 1930.

I am satisfied that petitioner has conducted himself in a law-abiding manner for more than five years last past and that his association with the alcoholic beverage industry in New Jersey will not be contrary to the interests of that industry.

It is, therefore, on this 21st day of October, 1939,

ORDERED, that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction referred to herein be and the same is hereby removed in accordance with R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

8. APPELLATE DECISIONS - NUOVA VITA LODGE v. NORTH PLAINFIELD.

NUOVA VITA LODGE NO. 1642 SONS OF ITALY, an unincorporated association,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF NORTH PLAINFIELD,

Respondent

ON APPEAL
CONCLUSIONS

Reynold C. Marra, Esq. and Carman C. Reina, Esq., Attorneys for Appellant.
Dolliver & Feaster, Esqs., by George L. Feaster, Esq., Attorneys for Respondent.
Samuel S. Swackhamer, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for club license for premises located on the second floor of 95 Somerset Street, Borough of North Plainfield.

The resolution denying the application provides:

> "BE IT RESOLVED by the Mayor and Council of the Borough of North Plainfield that the application of the Nuova Vita Lodge #1642 Sons of Italy for a club license be denied because of the location. It is a club for lodge meetings in a closed apartment on the second floor in a business and apartment building and, therefore, in the opinion of the Committee is an unsuitable location, and which would place an additional burden of supervision on the police force of the Borough."

The evidence shows that appellant is a branch lodge of Grand Lodge of the State of New Jersey Order Sons of Italy in America, which was incorporated in this State in 1920. Appellant lodge, which has been in existence for at least seven years, formerly occupied a store at 25 Greenbrook Road and in February 1939 moved to its present quarters at 95 Somerset Street, both in the Borough of North Plainfield. Its present quarters consist of three rooms on the second floor of a building which contains Weiss's drug store on the first floor and an empty three room apartment on the top floor. The building is part of a row of brick buildings, containing stores at the street level and living quarters in the two floors above the stores.

At the hearing below, Mrs. Neuman, the owner of an adjoining building, testified that she opposed the application because she felt that the location was not suitable, being on the second floor adjoining her property, and one of the tenants in Mrs. Neuman's building opposed the application, stating that she was disturbed at night by the loud talking.

At the hearing on appeal, Mrs. Neuman testified that she is the owner of the adjoining building where she conducts a bakery;

that she has four tenants, two on each floor of her building, who have threatened to move because of the noise which comes from the club rooms. She testified further:

"Q This noise you complained of, that does not come from the headquarters or place where the club is?

A Oh, yes, all from upstairs. They also make noise standing in the curb on the street, sometimes twenty-five young people.

Q Are those fellows that stand in front of Weiss's members of the Nuova Vita Lodge?

A Yes, I know quite a few of them.

Q And you say these noises come from upstairs also?

A Yes, and then they go downstairs and make it very noisy. My tenants cannot sleep till all hours of the night."

Appellant denies that any noises originate from the club rooms and claims that the conditions complained of are due to a crowd of young men, not members of the lodge, who gather in front of Weiss's drug store. Chief of Police Kane also testified that the persons creating the disturbances were not members of appellant lodge. However, I believe that Mrs. Neuman and one of her tenants, who testified herein that he saw these individuals going into the club headquarters, were in a better position to testify as to the facts than the Chief of Police, who was called on occasions to break up disturbances in front of the building.

Club licenses have been denied where the premises are located in a residential district. Re Cranford American Legion, Bulletin 83, Item 3; Re Passaic Elks, Bulletin 95, Item 4; Re Cranford Veterans, Bulletin 126, Item 11. Where the premises are located in a mixed residential and business district, as in the present case, decision as to whether the license should issue must depend upon the surrounding circumstances.

In the present case there appears to be sufficient evidence to support respondent's finding that the location is unsuitable because the club quarters are located in a closed apartment on the second floor in a business and apartment building. This conclusion is not based upon the fact that the club quarters are on the second floor. Whether they are on the second floor or the twentieth floor would appear to be immaterial. Re Marritz, Bulletin 97, Item 8. Rather, this finding is based upon the fact that the premises are in such close proximity to the living quarters of families in adjoining buildings that the issuance of the license in question would create or contribute to an unsatisfactory condition in so far as these families are concerned.

I have given scant weight to the contention that the issuance of the license would place an additional burden upon the supervision of the police force of the Borough. The evidence shows that the only club license in the Borough has been issued to Saengerbund Turnverein, which has its bar located in the basement of the building which it owns. It should be no more difficult to police a second floor than a basement. In fact, Chief Kane testified that, in his opinion, the issuance of a license herein would not place an additional burden upon the Police Department.

However, for the reasons set forth above, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 22, 1939.

9. LICENSES - EFFECT OF DEATH OR ABSCONDENCE OF LICENSEE.

LICENSES - EXTENSION - RENEWAL - EXTENSION TO PERSONAL REPRESENTATIVE UPON DEATH OF LICENSEE - RENEWAL PERMISSIBLE EITHER BY PERSONAL REPRESENTATIVE OR BY TRANSFEREE.

LICENSES - EXTENSION - RENEWAL - NO EXTENSION TO PERSONAL OR OTHER REPRESENTATIVE UPON ABSCONDENCE OF LICENSEE - NO TRANSFER PERMISSIBLE IN ABSENCE OF WRITTEN CONSENT BY THE LICENSEE - NO RENEWAL PERMISSIBLE IN ABSENCE OF FORMAL TRANSFER.

Dear Commissioner:

In the event of the death of a licensee who has been estranged from his wife, and there is no will, can the wife operate the business under deceased husband's license? What steps are necessary to renew the license on July 1, 1940?

In another case in which licensee and wife have been estranged, the husband has left on an "extended vacation" leaving his wife to operate the licensed premises. What procedure would be necessary to have this license renewed in the wife's name?

Very truly yours,
Neil F. Deighan,
President.

October 23, 1939

Neil F. Deighan, President,
New Jersey Licensed Beverage Association.

Dear Mr. Deighan:

A liquor license represents privileges which have been entrusted personally and solely to the licensee. Hence, on his death neither his wife, whether estranged from him or not, nor any one else succeeds automatically to those privileges but, instead, the license lapses. No liquor business may thereafter be conducted under that license by anyone until and unless it has been revived and extended to the executor or administrator by the issuing authority under R. S. 33:1-26 (Control Act, Sec. 23).

Once such extension is obtained, the executor or administrator, as holder of the license, may continue the business. However, to bridge the gap between the licensee's death and the said extension, any interested person, such as the widow or next of kin, may apply to this Department for a special permit to operate and keep the business alive during the interim. See Re Patterson, Bulletin 183, Item 9, which fully explains the matter.

As to renewal, if the license is never extended, there can, of course, be no renewal since there is nothing to renew, and any

subsequant license issued for the premises is, therefore, a new license. However, if the executor or administrator obtains extension of the license for the full balance of its term, he may, in pursuance of his function as personal representative of the decedent's estate, renew the license for the next fiscal year. Or, if the license, as thus extended for the balance of its term, is duly transferred by the local issuing authority from the executor or administrator to another individual, or to the executor or administrator personally, such transferee may apply for a renewal.

Having dealt with the liquor licensee who dies, I now turn to the one who absconds.

Just as in the case of a licensee's death, so too, where he absconds, neither his wife nor any one else automatically succeeds to the privileges of the license since, as already stated, such privileges are personal to the licensee.

Of course, if the license could be transferred to the wife or some other person, that transferee would then be the license-holder and, hence, could operate under it. But since the licensee, having absconded, is not available to give his requisite written consent to the transfer such as is required by Rule 3 of State Regulations No. 3, the transfer is impossible.

The only additional way in which some one other than the absconding licensee may become the holder of the license and hence exercise its privileges is by the appointment through some court procedure of a person to take care of the absconding man's estate and upon whom the liquor business would devolve by operation of law. Any such person, after appointment, may, under R. S. 33:1-26 (Control Act, Sec. 23) seek an extension of the license just as in the instance of an executor or administrator, and the same general principles as set forth in connection with that type of personal representative would govern.

However, offhand I do not recall any law or procedure that permits the appointment of any such personal representative on a man's absconding other than R. S. Title 3, Ch. 42 (authorizing appointment of an executor or administrator of a man's estate after his unexplained absence of at least seven years) and possibly R. S. Title 3, Ch. 41 (authorizing appointment of a trustee of a man's estate after his unexplained absence of at least one year). But, as you will readily see, the personal representative appointed under these Chapters could not obtain extension of the disappeared man's license since, by the time that the necessary period of absence has elapsed for his appointment, the license has necessarily expired. If he absconds and sticks to it, the license will have to take the count. Any new license taken out in the wife's name wouldn't be a renewal.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. WINE - SALE BY PERSONAL CANVASS FROM HOUSE TO HOUSE - PROHIBITED.

Gentlemen:

Inquiry has been made of me in the following:

Is it possible for a citizen to obtain a license to vend only wine on orders from friends of his or by canvass of prospective users at their homes.

This wine would be delivered to the seller by California interests, for resale here.

Locally we have no class of license that could possibly allow him to engage in this type of selling and thought best to ask if your Department does issue such licenses.

Very truly yours,
Dominick J. Livelli,
Township Clerk.

October 23, 1939

Mr. Dominick J. Livelli,
Township Clerk,
Lyndhurst, N. J.

Dear Mr. Livelli:

No license is available which would allow the licensee to solicit orders of wine from friends or by canvass of prospective users at their homes.

The only licenses pursuant to which wine may be sold at retail for off-premises consumption are the Plenary Retail Consumption and Plenary Retail Distribution Licenses, both of which are issued by the regular issuing authorities in the various municipalities. Neither, however, would entitle the holder thereof to solicit orders other than on the licensed premises itself. See Regulations 20, Rule 3.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. LIMITATION OF LICENSES - COUNTIES OF THE SIXTH CLASS - THE WORD "PERSON" MAY INCLUDE A CORPORATION AND HENCE THE LAW DOES NOT PREVENT TRANSFER OF A LICENSE TO A QUALIFIED CORPORATION.

Dear Sir:

I represent the holder of a Plenary Retail Consumption License who was desirous of transferring the license to a corporation of which himself and members of his family will be principal stockholders. He was desirous of doing this on or about June 30th of this year so that the new license could be obtained in the name of the corporation, but Chapter 61 of the Laws of 1939 was adopted, and barred such application by a corporation because it occupied the position of a new licensee.

The question in my opinion is rather close and if it is possible, I would like to have an expression from you as to

whether I could make a transfer of his present license to this corporation. Chapter 61 permits transfers, but the word "corporations" was not included.

Very truly yours,
A. J. Cafiero

October 25, 1939

A. J. Cafiero, Esq.,
Wildwood, N. J.

Dear Sir:

Chapter 61, P. L. 1939 provides:

"11. Nothing in this act shall prevent the transfer of licenses from person to person or place to place."

R. S. 33:1-1(r) (Section 1(r), Control Act), defines the word "person" to include a corporation. I rule, therefore, that Chapter 61, P. L. 1939 does not prevent the transfer of a license to a qualified corporation.

Your understanding as to the effect of said chapter on an application to renew a license is correct.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SERVICE OF AN ALCOHOLIC BEVERAGE OTHER THAN ORDERED - 3 DAYS' SUSPENSION.

October 23, 1939

Howard W. Roberts,
Eatontown Borough Attorney,
Atlantic Highlands, N. J.

My dear Mr. Roberts:

I have before me staff report and your letter of October 5th re disciplinary proceedings conducted by the Eatontown Borough Council against Atlantic Operating Company (Guido's Sapphire Room, Guido's Windsor Room), Tinton Avenue, charged with service of an alcoholic beverage other than that ordered, and note that its license was suspended for three days.

Please express to the members of the Council my appreciation for their conduct of these proceedings and the penalty imposed.

It is indeed heartening to observe that the Mayor and Council deemed that a suspension should be imposed even though it was claimed that the violation was merely technical. So long as the governing body feels that all violations, no matter how slight, must be punished, it should have no trouble with its licensees.

Very truly yours,

D. Frederick Burnett

Commissioner.