

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 756

APRIL 1, 1947.

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STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 756

APRIL 1, 1947.

1. NEW LEGISLATION - SUB-TITLE 8 OF TITLE 54 OF THE REVISED STATUTES, COMMONLY KNOWN AS THE BEVERAGE TAX ACT, AMENDED - DEFINITIONS OF TERMS USED IN SUB-TITLE - INCREASE OF TAX RATE ON LIQUOR TO \$1.50 PER GALLON.

Assembly Bill No. 2 was approved by Governor Driscoll on March 21, 1947, and thereupon became Chapter 18 of the Laws of 1947. It was effective immediately.

It reads as follows:

"AN ACT concerning the alcoholic beverage tax law, and amending sections 54:41-2 and 54:43-1 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 54:41-2 of the Revised Statutes is amended to read as follows:

"54:41-2. As used in this subtitle:

"'Alcoholic beverages' means liquors, beer, wines and sparkling wine, as defined in this section.

"'Beer' means beer, lager beer, ale, stout, porter, and all similar fermented malt beverages having an alcoholic content of one-half of one per centum (1/2 of 1%) or more by volume.

"'Bonded warehouse' means the warehouse of any licensed manufacturer or licensed wholesaler or licensed warehouseman for which the licensee has given special security to obtain certain privileges given by this subtitle.

"'Bureau' means the Beverage Tax Bureau of the Division of Taxation in the State Department of Taxation and Finance.

"'Commissioner,' 'State Tax Commissioner' or 'Director' means the Director of the Division of Taxation in the State Department of Taxation and Finance.

"'Container' means the receptacle immediately surrounding the alcoholic beverage and not the carton, box, case, sack, bag or other covering in which such containers may be packed, placed, or transported.

"'Department,' 'State Tax Department,' or 'Beverage Tax Bureau' means the Division of Taxation in the State Department of Taxation and Finance.

"'Licensed manufacturer' means any person holding a valid and unrevoked brewery, winery, distillery, or rectifier's license issued pursuant to the provisions of any relevant law of this State.

"'Licensed transporter' means any person holding a valid and unrevoked license or permit to transport alcoholic beverages pursuant to the provisions of any relevant law of this State.

"'Licensee' means the holder of any valid and unrevoked license or special permit issued pursuant to any relevant law of this State, pertaining to alcoholic beverages.

"'Liquors' means all distilled or rectified spirits, alcohol, brandy, whisky, rum, gin and all similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing, such as liqueurs, cordials, and similar compounds, having an alcoholic content of one-half of one per centum (1/2 of 1%) or more by volume.

"'Manufacturer' means any person holding a valid and unrevoked brewery, winery, distillery, supplemental limited distillery, or rectifier and blender's license, issued pursuant to the provisions of any relevant law of this State.

"'Person' means a natural person, an association, a partnership or a corporation.

"'Plenary retail transit licensee' means any person holding a valid and unrevoked plenary retail transit license issued pursuant to any relevant law of this State, authorizing the sale of alcoholic beverages for consumption only, on railroad trains, airplanes, and boats, while in transit in this State.

"'Return' means the return of alcoholic beverages by a customer to the source from which such beverages were obtained, upon the cancellation of a sale, and shall include: (a) actual receipt of the beverages on the licensed premises of the source or in a licensed public warehouse for the account of the source; or (b) the sending of the beverages by the customer to another person upon instructions of the source; but shall not include any other disposition, such as samples, breakage, shortage, merchandising credits, or beverages dumped on the premises of the customer, except where such dumping is done under the supervision of the Director or his representative.

"'Sale' means and includes, in addition to its ordinary meaning, any exchange, gift, loss, theft, or other disposition. In every case where alcoholic beverages are exchanged, given, lost, stolen or otherwise disposed of, they shall be deemed to have been sold, unless, in case of loss by fire, proof is furnished to the satisfaction of the commissioner, that the alcoholic beverages have been so destroyed that they could not have been put to any use.

"'Sparkling wine' means champagne and other effervescent wine charged with carbon dioxide, whether artificially or as the result of secondary fermentation of the wine within the container.

"'State licensee' means any person holding a valid and unrevoked license or special permit, issued by the State Commissioner of Alcoholic Beverage Control, and who has posted a bond with the Director to secure the payment of the alcoholic beverage taxes.

"'Taxpayer' means a person chargeable with the payment of a tax pursuant to the provisions of this subtitle.

"'Transportation licensee' means any person holding a valid and unrevoked license or special permit to transport alcoholic beverages pursuant to the provisions of any relevant law of this State.

"'Treasurer' means the Treasurer of the State of New Jersey.

"'Vermouth' means any compound made by the mixture of extracts from macerated aromatic flavoring materials with wines and manufactured in such manner that the product possesses the taste, aroma, and characteristics generally attributed to vermouth.

"'Warehouse receipt' means a certificate or receipt given upon the storage of alcoholic beverages in a United States custom or United States internal revenue warehouse under Federal bond.

"'Warehouse receipts licensee' means any person holding a valid and unrevoked warehouse receipts license issued pursuant to any relevant law of this State.

"'Wines' means all wines whether known as 'dry wines,' 'sweet wines,' 'still wines,' or 'fortified wines' and any artificial or imitation wine or compound sold as wine, and any fruit juice containing one-half of one per centum ( $1/2$  of 1%) or more of alcohol by volume, and any other beverage containing alcohol produced by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar, which beverage contains one-half of one per centum ( $1/2$  of 1%) or more of alcohol by volume, but shall not mean or include vermouth, or cider containing less than three and two-tenths per centum ( $3-2/10\%$ ) of alcohol by volume.

"2. Section 54:43-1, of the Revised Statutes is amended to read as follows:

"54:43-1. There are hereby levied and imposed upon any sale of alcoholic beverages made within this State or upon any delivery of alcoholic beverages made within or into this State the following excise taxes:

"a. Beer -- three and one-third cents ( $\$0.03-1/3$ ) a gallon or fraction thereof.

"b. Liquors -- at the rate of one dollar and fifty cents ( $\$1.50$ ) a gallon.

"c. Wines -- at the rate of ten cents ( $\$0.10$ ) a gallon.

"d. Vermouth -- at the rate of fifteen cents ( $\$0.15$ ) a gallon.

"e. Sparkling wines -- at the rate of forty cents ( $\$0.40$ ) a gallon.

"3. This act shall take effect immediately."

2. TAX - WHOLESALERS MUST FILE SCHEDULE OF STATE TAX INCREASES AND MARKUPS TO ADD TO PRICES NOW ON FILE PURSUANT TO STATE REGULATIONS NO. 34.

TO NEW JERSEY WHOLESALE LICENSEES:

In order to establish a uniform procedure in the application of the increased State taxes to wholesale prices presently on file, I rule that within five (5) days from the effective date of the statute prescribing tax increases (five days from the date of the signing of the tax bill by the Governor), all wholesalers subject to the provisions of State Regulations No. 34 shall submit to the Department a schedule of the tax increase affecting their bottle and case prices of distilled spirits and fruit brandies. The schedule may include the wholesaler's markup on the tax increase. The filing of such schedules by letter will be accepted by the Department as an official supplemental posting and wholesalers will be permitted to add the tax increase plus the markup to prices of items affected by the tax increase presently on file in the Department.

However, wholesalers are cautioned that while the Department is granting them a five-day period in which to submit to this office schedules of the tax increase as affecting their prices now on file, they must apply the tax increase to all deliveries of alcoholic beverages immediately upon the signing of the tax bill by the Governor.

The schedule of tax increases, plus markups, to be filed by wholesalers shall set forth the exact amounts that will be added to presently posted prices by case and bottle and in containers of all sizes.

Schedules should be submitted in the following form:

"We submit herewith the following schedule of tax increases and markups to be added to items and brands now listed with the Department of Alcoholic Beverage Control pursuant to the rules of State Regulations No. 34."

	<u>LICUOR</u>		<u>CORDIALS &amp; COCKTAILS</u>		<u>BRANDY</u>	
	<u>Case</u>	<u>Bottle</u>	<u>Case</u>	<u>Bottle</u>	<u>Case</u>	<u>Bottle</u>
Fifths						
Tenths						
Gallons						
1/2 Gallons						
Quarts						
Pints						
1/2 Pints						
25 oz.						
12 1/2 oz.						

The schedule of increases to be added to prices now on file should be carried out to specifically set forth all sizes of containers (bottle and case) and the applicable increased tax and markup.

It is emphasized that a schedule setting forth in the prescribed manner any and all price increases reflecting the tax increase and markup must be received in the Department's offices within five (5) days after the effective date of the new tax statute.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: March 20, 1947.

3. TAX - NEW STATE TAX INCREASE AND ITS APPLICATION TO MINIMUM RESALE PRICES.

TO ALL NEW JERSEY RETAIL LICENSEES:

In order to forestall any possible confusion resulting from the application of the new State tax increase, retail licensees are placed on notice that upon the signing of the tax bill by the Governor:

- (1) The increased tax is applicable immediately thereafter.
- (2) Retailers may choose for themselves whether to absorb the tax increase or pass on the tax increase, with or without markup, to the consumer.
- (3) In adding the tax increase, with or without markup, to the minimum resale prices, retailers must quote the full price of the item, tax included.
- (4) While retailers may or may not add the tax increase, with or without markup, to currently listed minimum resale prices, it is ruled that on and after Monday, March 24, 1947 no brand or item currently listed in the complete minimum resale price pamphlet may be price-advertised by a retailer in any periodical, publication, handbill or circular, unless the advertised price includes the new State tax increase, plus markup, which shall be computed on the basis of 33-1/3% on distilled spirits and 45% on cordials and liqueurs.

A retailer may continue to sell items on Fair Trade at the exact prices listed in the complete minimum resale price pamphlet but if he price-advertises in any periodical, publication, handbill or circular, he must in such price-advertising add the full tax increase and markup.

Any retail sale at less than the price listed in the current minimum resale price pamphlet will be in violation of State Regulations No. 30 and the Department will continue to enforce these Regulations.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: March 21, 1947.

4. DISCIPLINARY PROCEEDINGS - SALE OF LESS THAN 72 OUNCES AND POSSESSION OF CHILLED BEER BY LIMITED DISTRIBUTION LICENSEE - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE AND STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against BENJAMIN MARTINICO 17 Summer Street Lodi, N. J., Holder of Limited Retail Distribution License DL-1, issued by the Mayor and Council of the Borough of Lodi.

CONCLUSIONS AND ORDER

Benjamin P. Galanti, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging (1) he sold brewed malt alcoholic beverages in a quantity less than 72 fluid ounces, contrary to the provisions of his license as defined in R.S. 33:1-12(3)b, in violation of R. S. 33:1-2; (2) possessed, allowed, permitted and suffered chilled malt alcoholic beverages on his licensed premises, in violation of Rule 21 of State Regulations No. 20; (3) and (4) sold alcoholic beverages on Sunday, contrary to the provisions of a local ordinance prohibiting such sales, and in violation of State Regulations No. 38.

On Thursday, February 20, 1947, and again at about 10:10 a.m., on Sunday, February 23, 1947, defendant sold to an investigator of the State Department of Alcoholic Beverage Control for consumption off the licensed premises three 12-ounce bottles of beer, a total sale on each occasion of 36 ounces of a malt alcoholic beverage. Said bottled beer was "chilled". Defendant possessed several additional quarts of malt alcoholic beverages (beer) in his electric refrigerated showcase, which beer was also "chilled".

Defendant holds a limited retail distribution license. Under the terms of this license he is entitled to sell any unchilled brewed malt alcoholic beverages in quantities of not less than 72 fluid ounces for consumption off his premises and in original containers. R. S. 33:1-12(3)b. State Regulations No. 20, Rule 21, prohibits the possession of chilled brewed malt alcoholic beverages by the holder of a limited retail distribution license on his licensed premises.

A local ordinance of the Borough of Lodi, adopted January 8, 1940, and amended June 22, 1942, prohibits among other activities any sale of alcoholic beverages on Sunday between 5:00 a.m. and noon. State Regulations No. 38 prohibits any sale at retail for consumption off the licensed premises on Sunday.

The indicated suspension for the violation set forth in charge (1) is ten days, Re Werner, Bulletin 539, Item 5; for that set forth in charge (2) ten days, Re Hazewinkel, Bulletin 295, Item 2; and for those set forth in charges (3) and (4) twenty days, Re Wasiluk, Bulletin 608, Item 10. Defendant has no prior adjudicated record. I shall suspend his license for forty days and remit five days thereof because of the plea, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 21st day of March, 1947,

ORDERED that Limited Retail Distribution License DL-1, issued by the Mayor and Council of the Borough of Lodi to Benjamin Martinico for premises 17 Summer Street, Lodi, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 9:00 a.m. March 28, 1947, and terminating at 9:00 a.m. May 2, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

5. APPELLATE DECISIONS - UNION COUNTY RETAIL LIQUOR STORES ASSOCIATION ET AL. v. CITY OF ELIZABETH, MCGREGOR AND BILLWILLER.

UNION COUNTY RETAIL LIQUOR STORES )  
ASSOCIATION, MARTIN HECHT, JACOB )  
PARENT, ABRAHAM USLANDER, )  
Appellants, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
ELIZABETH, and EDWARD N. MCGREGOR )  
and FRANCIS A. BILLWILLER, )  
t/a SPECAY 'N ED'S, )  
Respondents )

Herman C. Silverstein, Esc., Attorney for Appellants.  
Julius R. Pollatschek, Esq., Attorney for Objector.  
Raymond A. Leahy, Esq., Attorney for Respondent Board.  
Edward L. Whelan, Jr., Esq., Attorney for Respondents, Edward N. McGregor and Francis A. Billwiller.

This appeal has been filed from the granting of a plenary retail distribution license by respondent Municipal Board of Alcoholic Beverage Control to respondents, McGregor and Billwiller, for premises known as 825-827 Rahway Avenue, City of Elizabeth.

Appellants, Martin Hecht, Jacob Parent and Abraham Uslander, are liquor licensees in the City of Elizabeth. Appellant, Union County Retail Liquor Stores Association, is an association composed of liquor licensees operating in Union County.

The license was granted to respondents McGregor and Billwiller on December 5, 1946, subject to a special condition that the premises shall first be completed according to plans and specifications submitted to the respondent Board. Re Harris, Bulletin 183, Item 11.

Appellants contend that "there were more than sufficient licenses of this type and of Distribution licenses to adequately service the public necessity and convenience of the residents of the Municipality."

By agreement of the parties, the case was submitted on the stenographic transcript of the hearing below with a few minor changes, pursuant to Regulations No. 15, Rule 8.

At the original hearing, the attorney for appellants argued that there was no public need or necessity for an additional license in

the particular locality of the proposed premises. No testimony was offered on behalf of appellants to substantiate the statement made by their counsel.

Respondents Edward N. McGregor and Francis A. Billwiller, applicants for the plenary retail distribution license, produced 52 witnesses who indicated that they favored a license at the proposed site. In view of the fact that the respondent Board was of the opinion that the testimony of all these witnesses would be merely repetitious, only five of the witnesses actually testified in favor of the granting of the license.

It does not appear that the license in question was granted in violation of any ordinance or resolution adopted by the City Council of the City of Elizabeth.

The members of respondent Board of Alcoholic Beverage Control apparently decided that an additional liquor license was warranted to meet the demands of the residents in that section of the municipality. The premises in question are 1,800 feet from the nearest licensed premises in Elizabeth. The judgment of the respondent Board determining the number of liquor stores that should be permitted in a given locality must be given weight by the State Commissioner on appeal. South Jersey Retail Liquor Dealers Association et al. v. Burnett, 125 N. J. L. 105.

My function on appeals of this type is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and if so to affirm, irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4.

The members of the respondent Board voted unanimously to grant the license to respondents McGregor and Billwiller. Nothing has been presented on the appeal indicating that the members of the respondent Board acted other than with proper motives.

Appellants having failed to sustain the burden of proving that the action of the issuing authority was either arbitrary or unreasonable, and there being some evidence of a public need or convenience to be served by the license, respondent Board's decision to grant a plenary retail distribution license will be affirmed.

Accordingly, it is, on this 24th day of March, 1947,

ORDERED that action of respondent Board be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

6. APPELLATE DECISIONS - HIGHLANDS TAVERN OWNERS ASSN. v. BOROUGH OF HIGHLANDS AND CORCORAN.

HIGHLANDS TAVERN OWNERS ASSN., )  
 Appellant, )  
 -vs- )  
 BOROUGH COUNCIL OF THE BOROUGH )  
 OF HIGHLANDS, and TIMOTHY )  
 CORCORAN, t/a CORCORAN'S HOTEL, )  
 Respondents )

ON APPEAL  
 CONCLUSIONS AND ORDER

-----  
 William C. Egan, Esq., Attorney for Appellant.  
 Roberts, Pillsbury, Carton & Sorenson, Esqs., by John M. Pillsbury,  
 Esq., Attorneys for Respondent Borough Council.  
 Timothy Corcoran, Pro Se.

Appellant appeals from the issuance of a plenary retail consumption license by respondent Borough Council to respondent Timothy Corcoran for premises located on Navesink Avenue, Highlands.

The petition of appeal recites that the action was erroneous because:

- "(1) The issuance of the license is in violation of the Borough resolution limiting the number of licenses granted;
- "(2) There is no need for an additional license in the Borough of Highlands because of the number of licenses already issued;
- "(3) The issuance of the license depreciates the value of the other licenses in the Borough."

As to reason (1): On June 12, 1939, respondent Borough Council adopted a resolution containing eleven sections, but the only sections thereof which require consideration upon this appeal are the following:

- "SECTION 1. The number of Plenary Retail Consumption Licenses which may be issued and outstanding within the Borough of Highlands at the same time shall not exceed fifteen (15).
- "SECTION 2. Bona fide hotels shall be exempt from the operation of Sections 1 and 6 of this Resolution.
- "SECTION 6. No plenary retail consumption license shall be issued for, or transferred to, any premises within a distance of five hundred (500) feet of any other premises for which a plenary retail consumption license is outstanding....."

The record shows that twenty-four plenary retail consumption licenses were outstanding in the Borough when the license was issued to respondent Corcoran, although, as hereabove pointed out, Section 1 of the 1939 resolution sets forth a quota of fifteen. The section's purported limitation, however, is without legal validity. As stated in the Department's letter of July 12, 1940 to their Borough Clerk Kohlenbush:

"Section 1, while in proper form, is of no effect for the reason that since July 1, 1937, the law has required that all limitations of licenses be enacted by ordinance. See Bulletin 183, Item 3, Re Sahl, Bulletin 198, Item 11; and R. S. 33:1-40."

The premises owned by respondent Corcoran are known as the Highlander Hotel. It contains 46 rooms and is one of the largest hotels in the Borough. Even if the Highlander Hotel is within 500 feet of other licensed premises, I find that it is a bona fide hotel and, hence, excepted from the operation of Section 6 of the resolution adopted June 12, 1939.

As to reason (2): As already remarked, at the time the license was issued to respondent Corcoran, 24 plenary retail consumption licenses were already in existence in the Borough of Highlands. The testimony indicates that the permanent population of the Borough is approximately 2,500 but that the summer population is at least 10,000. The Highlander Hotel had been licensed from Repeal until 1942 when, apparently, the license was not renewed. Councilman George V. Brown testified that in his opinion there was a public need for the Corcoran license because the Highlander Hotel was a large hotel and had been licensed for many years before the property was purchased by the present licensee. The vote to grant the license was unanimous.

There is no merit to reason (3).

On appeals of this nature it is not my function to substitute my judgment for that of the members of the local issuing authority. The evidence herein establishes that it was the unanimous opinion of the members of the Borough Council that an additional license was required for this large hotel located in a summer resort. Appellant has produced no evidence which would establish that respondent Borough Council abused its discretionary power in granting the license. Williams v. Atlantic Highlands and Smith, Bulletin 715, Item 7. Hence, the action of respondent Borough Council will be affirmed.

Accordingly, it is, on this 25th day of March, 1947,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN E. HOCK  
Deputy Commissioner.

7. APPELLATE DECISIONS - BAHRS v. BOROUGH OF HIGHLANDS AND KRUSE.

JOHN A. BAHRS, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 BOROUGH COUNCIL OF THE BOROUGH )  
 OF HIGHLANDS, and EDNA M. KRUSE, )  
 t/a KRUSE'S HOTEL, )  
 )  
 Respondents )  
 ----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Parsons, Labrecque, Canzona & Combs, Esqs., by William R. Blair, Jr., Esq., Attorneys for Appellant;  
 Roberts, Pillsbury, Carton & Sorenson, Esqs., by John M. Pillsbury, Esq., Attorneys for Borough Council of the Borough of Highlands.  
 Sanford Silverman, Esq., Attorney for Respondent Edna M. Kruse,  
 William C. Egan, Esq., appearing for Highlands Tavern Owners Association, an Objector.

Appellant appeals from the transfer of a plenary retail consumption license held by Edna M. Kruse from premises known as 24 Bay Avenue to premises known as 11 Bay Avenue, Borough of Highlands.

Appellant is the holder of a plenary retail consumption license issued for premises at 2 Bay Avenue almost diagonally opposite the premises to which the Kruse license was transferred.

Appellant contends that the transfer of the license will create a traffic hazard, "and that it is in violation of the Borough's resolution, passed June 12, 1939. That resolution purports, in Section 1, to limit the number of plenary retail consumption licenses and provides in Sections 2 and 6:

"Section 2. Bona fide hotels shall be exempt from the operation of Sections 1 and 6 of this Resolution.

"Section 6. No plenary retail consumption license shall be issued for, or transferred to, any premises within a distance of five hundred (500) feet of any other premises for which a plenary retail consumption license is outstanding.

"The said five hundred (500) feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of the licensed premises to the nearest entrance of the premises sought to be licensed, in conformity with the procedure established pursuant to R. S. 33:1-76.

"This section shall not prevent the issuance of renewals for the same premises of plenary retail consumption licenses outstanding at the time this regulation is adopted."

Appellant's premises and the premises to which the Kruse license was transferred are both located on Bay Avenue near the railroad crossing. There is absolutely no evidence, except the mere opinion of appellant, that any traffic hazard would be created by the transfer of the license and, hence, this ground of appeal must be disregarded.

I am of the opinion that Section 6 of the resolution in question applies to the premises to which the Kruse license was transferred because said premises are not to be operated as a hotel and, therefore, do not fall within the exception provided in the resolution's Section 2. I am also of the opinion that Section 6 of the resolution continues in operative effect, for P.L. 1939, c. 234 (R.S. 33:1-34), effective July 18, 1939, provides that:

\*\*\*all such regulations heretofore adopted by the governing board or body of any municipality whether by ordinance or resolution shall continue in full force and effect until repealed, amended or otherwise altered or changed by ordinance."

However, the evidence herein discloses that a pedestrian using established crosswalks would be required to travel more than 500 feet in walking from the nearest entrance of appellant's premises to the nearest entrance of the premises to which the Kruse license was transferred. This is in keeping with the measurement set forth in the Borough's "distance-between-premises" resolution and in R. S. 33:1-76 and the interpretations of that statutory section by the State Commissioner. Under the circumstances, it does not appear that the transfer was granted in violation of Section 6 of the indicated resolution. Hence I shall affirm the action of the respondent Borough Council.

Accordingly, it is, on this 25th day of March, 1947,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

8. APPELLATE DECISIONS - HIGHLANDS TAVERN OWNERS ASSN. v. BOROUGH OF HIGHLANDS AND BAHRs.

HIGHLANDS TAVERN OWNER'S ASSN.,	)	
Appellant,	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH OF HIGHLANDS and ALEXANDER F. BAHRs,	)	
Respondents	)	

William C. Egan, Esq., Attorney for Appellant.  
Roberts, Pillsbury, Carton & Sorenson, Esqs., by John M. Pillsbury, Esq., Attorneys for Respondent Borough Council.  
Parsons, Labrecque, Canzona & Combs, Esqs., by William R. Blair, Jr., Esq., Attorneys for Respondent Alexander F. Bahrs.

Appellant appeals herein from the issuance of a plenary retail consumption license by respondent Borough Council to respondent Alexander F. Bahrs for premises located at 24 Bay Avenue, Borough of Highlands.

The reasons assigned for reversal are the same as those set forth in Highlands Tavern Owners Assn. v. Highlands and Corcoran, decided herewith.

After respondent Borough Council had granted a transfer of the Kruse license from 24 Bay Avenue to 11 Bay Avenue, it immediately granted to Alexander F. Bahrs the license which is the subject of this appeal.

Kruse's Hotel was established in 1906. It has been licensed for the sale of alcoholic beverages continuously since that time except during the period of Prohibition. It is a large two-story brick building. Respondent Alexander F. Bahrs testified that there are twelve rooms on the upper floor, and that he intends to operate the premises as a hotel. Despite the testimony of Mrs. Kruse, which might tend to raise some question as to whether the premises had been operated as a hotel in recent years, I find that the premises are in fact a bona fide hotel and, hence, that those premises fall within the exception from Section 6 (distance-between-licensed-premises) of the Borough's resolution of June 12, 1939, as such exception in favor of hotels is provided in Section 2 of the indicated resolution. As I have indicated in the Corcoran appeal, Section 1 of the resolution dated June 12, 1939 is without legal effect to limit the number of licenses in the Borough. (See R. S. 33:1-40, Paragraph 1.)

It is true that the issuance of the license to Alexander F. Bahrs increased the number of plenary retail consumption licenses in the Borough. However, it appears that the premises in question have been operated as a hotel for more than forty years, with the possible exception of the few years during which the premises were operated by Edna M. Kruse.

There is no "must" in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. Lincoln Avenue Corporation v. Wildwood, Bulletin 540, Item 2. On the evidence presented herein, I am satisfied that the members of respondent Borough Council were clearly of the opinion that the issuance of a liquor license to the operator of this long-established hotel was warranted. Nothing has been presented which would indicate that the members of the Council acted other than with proper motives.

Under the facts of this case I conclude that appellant has not established that respondent Borough Council abused its discretion in issuing a license to Alexander F. Bahrs and, hence, I shall affirm the said action. Williams v. Atlantic Highlands and Smith, Bulletin 715, Item 7.

Accordingly, it is, on this 25th day of March, 1947,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

9. APPELLATE DECISIONS - ROBITZEK v. BOROUGH OF HARVEY CEDARS.

AUGUST N. ROBITZEK and )  
LILLIAN I. ROBITZEK, )

Appellants, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE )  
BOROUGH OF HARVEY CEDARS, )

Respondent )

----- )  
Benjamin F. Friedman, Esq., Attorney for Appellants.  
Ellis H. Wood, Esq., Attorney for Respondent.  
William C. Egan, Esq., Attorney for Objector.

The appellants' application for a plenary retail distribution license for premises at 78th Street and the Boulevard, Borough of Harvey Cedars, was denied by the respondent on December 21, 1946. Hence this appeal.

The Borough is a small seashore resort having a permanent population, according to the 1940 Federal census, of 74 residents. During the summer season, the population is increased by some 1,000 inhabitants.

The entire business center consists of three establishments. One is the grocery store operated by the appellants, the second is a gift shop and the third is a tavern located about two blocks from the appellants' store.

Although there is some question concerning the actual number of persons who objected to the issuance of the additional license, it appears that there is a substantial sentiment in the municipality against the application filed by the appellants.

The consumption establishment already located in the Borough, but two blocks distant from the appellants' site, is privileged to sell alcoholic beverages in original containers for off-premises consumption. There is no probative proof that this licensed premises does not adequately service all of the liquor needs of the local residents.

Since the appellants have failed to sustain the burden of proving that public need and necessity require the placing of an additional license at the proposed location, the appeal must be dismissed. Cf. Mauriello v. Driscoll, 135 N. J. L. 220.

Accordingly, it is, on this 25th day of March, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

EDWARD W. KIELHORN )  
T/a KIELHORN'S GRILLE )  
198 West Clinton Avenue )  
Oaklyn, P.O. Audubon, N.J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Oaklyn. )  
----- )

William T. Cahill, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On January 30, 1947, an ABC investigator seized one 4/5 quart bottle labeled "Blended Scotch Whisky Johnnie Walker Red Label" when preliminary tests thereof indicated that the contents of the bottle were not genuine as labeled. Subsequent analysis of the contents of the bottle in question by the Department Chemist revealed differences in characteristics between the whisky described on the label and that in the bottle.

Defendant has no previous adjudicated record. I shall, therefore, impose a minimum suspension of fifteen days, less five days' remission for the plea entered herein, or a net suspension of ten days. Re Turansay, Bulletin 749, Item 5.

Accordingly, it is, on this 25th day of March, 1947,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Oaklyn to Edward W. Kielhorn, t/a Kielhorn's Grille, for premises 198 West Clinton Avenue, Oaklyn, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 31, 1947, and terminating at 2:00 a.m. April 10, 1947.

ERWIN B. HOCK  
Deputy Commissioner.

11. STATE LICENSES -- NEW APPLICATIONS FILED.

Ralph De Gennaro  
T/a Modern Transit Co.  
707 Main St.  
North Caldwell, N. J.

Application filed March 31, 1947 for transfer of Transportation License T-40 from Gerard Molinari and Anthony J. D'Avanzo, t/a Modern Transit Co., 76 Harrison St., Belleville, N. J.

F. Pirrone & Sons, Inc.  
92-94 Monroe St.  
Garfield, N. J.

Application filed March 31, 1947 for transfer of Plenary Winery License V-29 from Frank Pirrone, Jr., Frank I. Pirrone and Angelina Pirrone, t/a Pirrone Wineries.

ERWIN B. HOCK  
Deputy Commissioner.

12. APPELLATE DECISIONS - CIROALO v. BOROUGH OF HIGHLANDS.

JEAN CIROALO, )  
Appellant, )

-vs-

ON APPEAL  
O R D E R

BOROUGH COUNCIL OF THE )  
BOROUGH OF HIGHLANDS, )  
Respondent )

----- )  
Edward F. Juska, Esq., Attorney for Appellant.  
Roberts, Pillsbury, Carton & Sorenson, Esqs., Attorneys for Respondent.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises at 36 Fifth Street, Highlands, New Jersey.

The parties to the appeal have filed a written stipulation consenting to the discontinuance of the appeal. No reason appearing to the contrary,

It is, on this 25th day of March, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

*Erwin B. Hock*  
Deputy Commissioner.