

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

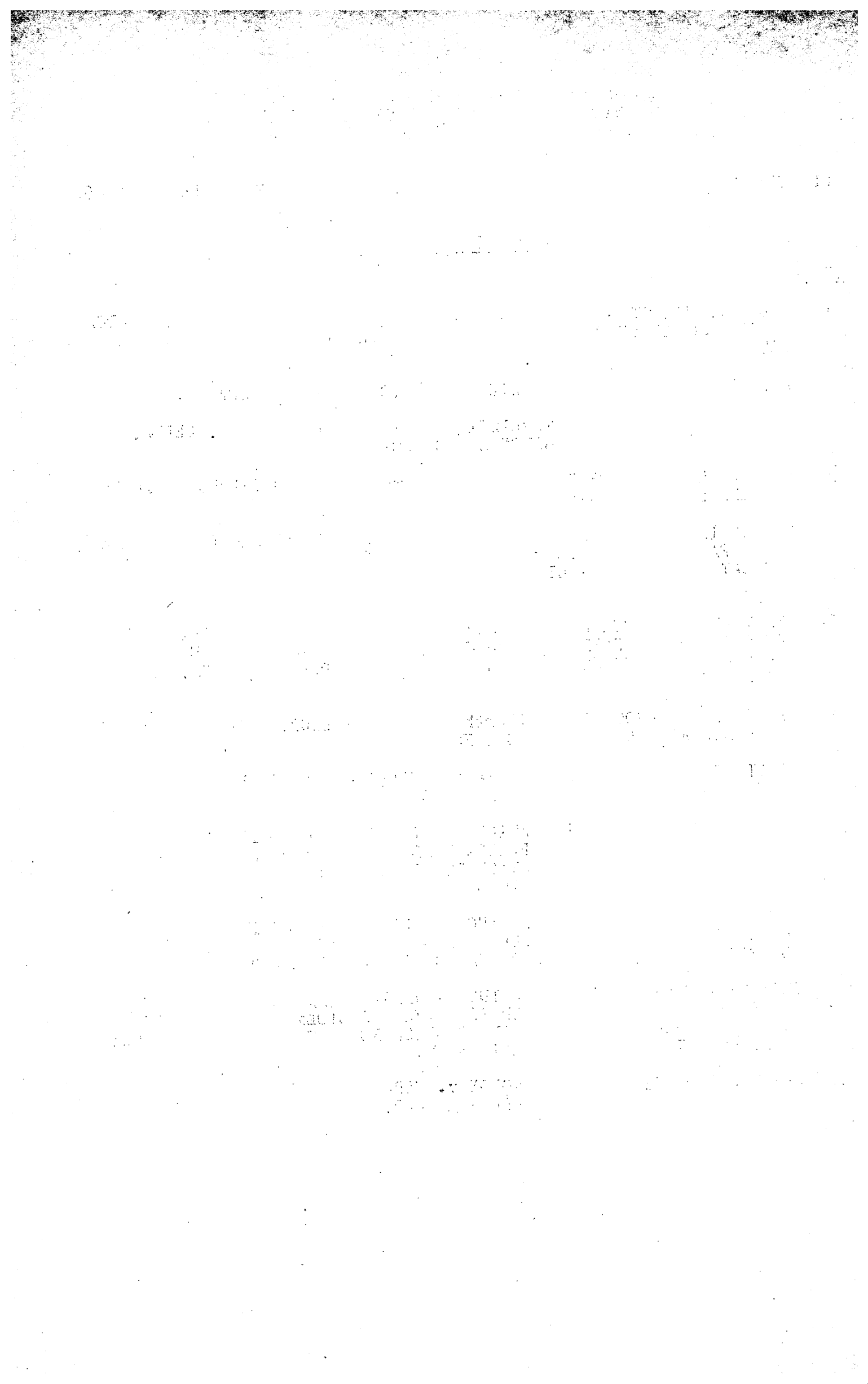
BULLETIN 860

NOVEMBER 22, 1949.

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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 860

November 22, 1949.

1. COURT DECISIONS - BIVONA v. PLAINFIELD ET AL. - ORDER OF DIRECTOR AFFIRMING ACTION OF LOCAL ISSUING AUTHORITY REVERSED BY DIVIDED COURT.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
(Docket No. A-349/48)

CHARLES BIVONA, MICHAEL J. BIVONA)
and AUGUSTUS C. BIVONA, partners)
t/a CHARLIE'S TAVERN,)
Appellants,)

-vs-

ERWIN B. HOCK, Director of the)
Division of Alcoholic Beverage)
Control (an administrative agency)
of the State of New Jersey), and)
COMMON COUNCIL OF THE CITY OF)
PLAINFIELD,)

Respondents.)

Civil Action

On Appeal from Conclusions
and Order of the Division
of Alcoholic Beverage Control

OPINION

Argued August 16, 1949 - Decided Sep. 30, 1949.

Before, JACOBS, SMALLEY AND SCHETTINO, JJ.

Mr. George F. Hetfield argued the cause for the appellants (Hetfield & Hetfield, Attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent, Erwin B. Hock, Director of the Division of Alcoholic Beverage Control (Theodore D. Parsons, Attorney General, Attorney).

Mr. Salvatore Diana argued the cause for the respondent, Common Council of the City of Plainfield.

The opinion of the court was delivered by
SCHETTINO, JSC.

This is an appeal from an affirmance by the Director of the Division of Alcoholic Beverage Control of the denial by the Common Council of the City of Plainfield of an application for a transfer of a plenary retail consumption license.

Appellants have held the license for premises known as 458 West 4th Street, Plainfield, since 1945. The premises have been so licensed since Repeal. Appellants sought to transfer the license to premises purchased by them, located diagonally across the street from the licensed premises.

It is agreed that appellants have conducted their operations in an orderly, lawful manner without any unfavorable incident. The application for transfer was opposed on several grounds. The only one which was relied upon by the Director and which merits discussion is that the locus is a low-economic area; that whereas the licensed premises have a floor space of 20 feet by 40 feet and contain only a bar, the premises to which a transfer is sought measure

35 feet by 43 feet, in which appellants propose to have, in addition to bar facilities about equal to those now used, facilities for service of food, cocktail lounge and more adequate toilets; that the more attractive nature of the new premises and the added facilities just mentioned, would result in greater patronage and greater sale of liquors in an area in which social improvement is desired.

It is argued that the action of the municipal body and the action of the Director rest in sound discretion and may not be disturbed by this court in the absence of a showing of an abuse of that discretion. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

It seems to us that the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940).

The legislature has vested wide powers in the regulatory authorities for the control of a field in which evils may easily arise. It is with reluctance that a court interferes with a determination sincerely made by the responsible authorities in an effort to adjust the sale of intoxicants with the public interest; but the legislature has not sought to delegate unlimited "discretion" to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition.

Reference is made to R.S. 33:1-24, which requires the issuing authority "to inspect premises sought to be licensed". This provision undoubtedly authorizes the disapproval of premises unfit for the proposed use; but here the premises were not found to be unfit, the objection being rather that they are more attractive than the premises presently licensed. Whether the municipal body may properly determine under our statute that a given portion of the municipality shall be forbidden territory need not be considered, (Cf. 30 Am. Jur. 429) for such is not the action here taken. The presently licensed premises and the proposed premises are in the same neighborhood.

The legislative mandate that the statute "is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed", R.S. 33:1-73, does not constitute a grant of unlimited authority, but rather contemplates a liberal construction of the authority somewhere granted in the act. Cf. Schaffer v. Federal Trust Co., 132 N.J. Eq. 235 (Ch. 1942). R.S. 33:1-39 confers upon the Director the power to prohibit practices unduly designed to increase consumption of alcoholic beverages. However this section contemplates the adoption by him of rules and regulations respecting the subject matter. It is unnecessary to consider the scope of the authority granted to him in that section to make "special rulings and findings" since it is not suggested that the Director has undertaken any action under this section which would invite its consideration.

Since we conclude that the local board had no basis for the denial of the application for the transfer for the reason given by it and no other valid basis for such action appearing, the determination under review is reversed.

- - - -

SMALLEY, J. (Dissenting)

The only question here involved is whether the action of the Respondent Common Council of the City of Plainfield in refusing Appellants' application to transfer a plenary retail consumption license and the action of the Respondent Director of the Division of Alcoholic Beverage Control in affirming the Council's action, is arbitrary and unreasonable so as to constitute an abuse of discretion.

The Appellants made application for a transfer of their plenary retail consumption license to other premises in the City of Plainfield. Here, in addition to operating merely a tavern, as at present, the Appellants propose to almost double the area of the licensed premises, install tables and chairs for restaurant facilities and erect a cocktail lounge.

On December 6, 1948, a public hearing was held by the Common Council of the City of Plainfield. Members of the clergy, those charged with the furnishing of recreational facilities, as well as those in charge of parochial schools in the near vicinity, voiced their objection in that favorable action by the Common Council in granting the transfer, would be contrary to the public interest.

Thereafter the Respondent Director, after the hearing of some 27 witnesses, affirmed the action of the Common Council and concluded that the Appellants had not shown that the action of the Common Council was arbitrary or unreasonable.

It may not be disputed that the Common Council of the City of Plainfield has discretionary powers to approve or disapprove the transfer of plenary retail consumption licenses, subject to review by the State Director. R.S. 33:1-26.

A reading of the record discloses an abundance of proof which amply justified the action of the Common Council in refusing to grant the application of transfer.

Whether or not the Appellants might come to a pecuniary advantage is of no importance if this advantage be in conflict with the public good. Hudson-Bergen, etc. Assn. v. Hoboken, 135 N.J.L. 502, 510.

Judicial superintendency is not warranted except where there is a clear and manifest abuse of such discretion. Zicherman v. Driscoll, 133 N.J.L. 586, 588.

Where, as here, the subject matter is of controversial nature resulting in real differences as to the ultimate good, the unsuccessful may not successfully claim an abuse of discretion in the event the decision as rendered is in contradiction of their own convictions.

Appellate Courts may not substitute their judgment for that of the local bodies unless there has been an abuse of the delegated legal discretion. Brandon v. Montclair, 124 N.J.L. 135, 145.

Finding no abuse of discretion I would sustain the Respondent Director's affirmance of the action of the Respondent Common Council of the City of Plainfield and dismiss the appeal.

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2. APPELLATE DECISIONS - TERLIZZI v. UNION CITY AND SWEENEY.

TERLIZZI v. UNION CITY, SWEENEY, CELLA,
GAVENAS AND YOGIS.

JAMES TERLIZZI,)
Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF UNION CITY, and CATHERINE)
SWEENEY,)

Respondents.)

ON APPEAL

JAMES TERLIZZI,)
Appellant,)

CONCLUSIONS AND ORDERS

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF UNION CITY, and CATHERINE)
SWEENEY, LAWRENCE CELLA, ALFRED)
GAVENAS, WILLIAM YOGIS.)

Anthony J. DeFiore, Esq., Attorney for Appellant.
James C. Agnew, Esq., by Cyril J. McCauley, Esq., Attorney for
Respondent Board of Commissioners.
Aro G. Gabriel, Esq., Attorney for Respondents Catherine Sweeney and
Lawrence Cella.

BY THE DIRECTOR:

The appeals to be considered herein are from the action of the respondent Board of Commissioners (referred to hereafter as the Board) in granting (1) a renewal of a plenary retail consumption license to Catherine Sweeney for premises 415 - 38th Street; (2) a person-to-person and place-to-place transfer of said license from Catherine Sweeney to Lawrence Cella from premises 415 - 38th Street to 4723 Bergenline Avenue; and (3) a person-to-person transfer of said license from Lawrence Cella to Alfred Gavenas and William Yogis for the premises 4723 Bergenline Avenue, Union City.

A resume of the undisputed facts in the instant cases is as follows: Catherine Sweeney, holder of a plenary retail consumption license for the year 1948-49, conducted her liquor business at 415 - 38th Street, Union City until her eviction from said premises on October 5, 1948. The premises apparently remained vacant from October 5, 1948 until April 1, 1949, at which time, according to the testimony of Mr. H. Alten, owner of the building, he leased the premises in question to the Premier Furniture Company. The new tenant has been in possession of the premises in question since April 1, 1949.

On July 15, 1949 Catherine Sweeney filed an application for the renewal of her license wherein she falsely alleged that she "leased or rented" the premises at 415 - 38th Street, Union City, from H. Alten, although, as appears above, another person was then and had been since April 1, 1949 in exclusive possession of said premises. Said application for renewal was approved on July 21, 1949 by respondent Board. The license, however, could not in any event have been properly issuable until July 25, 1949, two days after publication of the second insertion of the notice of application. Re Novack, Bulletin 174, Item 6.

On July 21, 1949 application was filed for a person-to-person and place-to-place transfer of the said license from Catherine Sweeney to Lawrence Cella and from premises 415 - 38th Street to premises 4723 Bergenline Avenue. (In the advertised notices of

application, the address of the licensed premises of the transferor was inadvertently stated as 4723 Bergenline Avenue.) Application for the transfers was approved by the respondent Board on August 4, 1949.

On August 18, 1949 an application was filed for a person-to-person transfer from Lawrence Cella to Alfred Gavenas and William Yogis. This application was approved by the respondent Board on September 1, 1949.

Catherine Sweeney was evicted from the premises 415 - 38th Street on October 5, 1948 and had no right to possession of the premises at the time the application for renewal was filed or at the time the license was issued. The respondent Board had no jurisdiction to grant a "renewal" of the license for the present fiscal year at 415 - 38th Street. It is well established that an applicant for a liquor license must have possession or right to possession of, or interest in, the premises sought to be licensed. If the applicant does not have possession of, or right to possession, or any interest in, the premises, no license may be lawfully issued. Re Haneman, Bulletin 449, Item 4. This principle was first enunciated in Procoli v. Trenton, Bulletin 28, Item 6. It has been consistently followed to this date: Caplan v. Trenton, Bulletin 29, Item 11; Re Pennsauken, Bulletin 48, Item 8; Re Sakin, Bulletin 67, Item 13; White Castle, Inc. v. Clifton, Bulletin 97, Item 13; D'Annibale v. Fredon, Bulletin 139, Item 7; Agzigian v. Pequannock, Bulletin 216, Item 1; Eavenson v. South Orange, Bulletin 283, Item 8; Vasapoli v. Plainfield, Bulletin 301, Item 7; Licata v. Camden, Bulletin 342, Item 1; Hindin v. Egg Harbor, Bulletin 399, Item 1; Gimber v. Galloway, Bulletin 427, Item 9; Bodrato v. Northvale, Bulletin 433, Item 1; Berry v. Newark, Bulletin 433, Item 8; Alberts v. Roselle, Bulletin 444, Item 1.

Inasmuch as the renewal of the license was illegally granted, I am constrained to set aside the renewal-granting resolution of July 21, 1949; the resolution of August 4, 1949, granting transfer from Catherine Sweeney to Lawrence Cella, and from place to place; and the resolution of September 1, 1949, granting transfer from Lawrence Cella to Alfred Gavenas and William Yogis.

The respondents contend that appellant should be deemed in laches because he perfected the appeal from the renewal of the license on August 23, 1949 which they allege is beyond the thirty-day statutory period. The contention is without merit. An appeal is timely if taken "within thirty days after the issuance" of a license. (R.S. 33:1-22.) The resolution of July 21, 1949, purported to issue a renewal, effective July 21, 1949, but, as hereinabove pointed out, the date of the second publication of notice of application was July 23rd and, thus, proper issuance could not have been before July 25th -- two whole days after the second publication. (Re Novack, supra.) See Rules 6 and 7 of State Regulations No. 2.

Accordingly, it is, on this 9th day of November, 1949,

ORDERED that the respondent Board's action of July 21, 1949, whereby it purported to renew the license in question for the present fiscal year for premises 415 - 38th Street, be and the same is hereby reversed; and it is further

ORDERED that the respondent Board's action of August 4, 1949, whereby it purported to transfer the license from Catherine Sweeney to Lawrence Cella and from premises 415 - 38th Street to premises 4723 Bergenline Avenue, be and the same is hereby reversed; and it is further

ORDERED that the respondent Board's action of September 1, 1949, whereby it purported to transfer the license from Lawrence Cella to

Alfred Gavenas and William Yogis, be and the same is hereby reversed; and it is further

ORDERED that the license now held by Alfred Gavenas and William Yogis for premises 4723 Bergenline Avenue, be and the same is hereby cancelled and declared null and void; that all operation under the aforesaid license cease immediately; and that the license certificate be surrendered to the Board of Commissioners of the City of Union City for cancellation.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BLUE RIDGE POST NO. 164,)
AMERICAN LEGION)
Willow Grove Street)
Hackettstown, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-41, issued by the Director of the Division of Alcoholic Beverage Control.)

-----)
Defendant-licensee, by James P. DiRienzo, Commander.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that on September 20, 1949, and prior thereto, it possessed on and about its licensed premises four slot machines, in violation of Rule 8 of State Regulations No. 20.

On September 20, 1949, an ABC agent and two members of the Hackettstown Police Department found four slot machines, in working order, in a locked room on defendant's licensed premises.

Defendant has no previous adjudicated record. The license will be suspended for a period of ten days, less five days' remission for the plea, leaving a net suspension of five days. See Bulletin 800, Item 4.

Accordingly, it is, on this 9th day of November, 1949,

ORDERED that Club License CB-41, issued by the Director of the Division of Alcoholic Beverage Control to Blue Ridge Post No. 164 American Legion, for premises on Willow Grove Street, Hackettstown, be and the same is hereby suspended for five (5) days, commencing at 1:00 a.m. November 14, 1949, and terminating at 1:00 a.m. November 19, 1949.

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ALEXANDER J. BARUCHIN
177 No. First Street
Paterson 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-60, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Alexander J. Baruchin, Defendant-licensee, Pro Se.
Edward F. Ambrose, 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 in original containers at retail for a price below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On November 4, 1949, defendant sold to an ABC agent a case of twelve 4/5 quart bottles of Imperial Blended Whiskey for the sum of \$39.24. On said date the effective minimum consumer price for a case of said whiskey was \$43.56, less a permissible discount of five per cent, making a net price of \$41.38.

Defendant has no prior record. In alleged mitigation he states that he was under the impression that a ten per cent discount on case lot purchases of this item was permissible and that it was not until after the violation was committed that he learned, by checking the price list, that the allowable discount was only five per cent. However, a licensee is responsible for a violation of the Fair Trade Regulations even though the violation is due to a mistake. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408. Under the circumstances, I shall suspend defendant's license for the minimum period of ten days, less five days for the plea, leaving a net suspension of five days. See Bulletin 832, Item 4.

Accordingly, it is, on this 10th day of November, 1949,

ORDERED that Plenary Retail Distribution License D-60, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Alexander J. Baruchin, for premises 177 No. First Street, Paterson, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. November 14, 1949, and terminating at 9:00 a.m. November 19, 1949.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SOLOMON GINSBERG)
T/a YOUNG'S LIQ. STORE)
2920 Boulevard)
Jersey City 2, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-112, issued by the Board of Commissioners of the City of Jersey City.)
-----)

Samuel Moskowitz, Esq., Attorney for Defendant-licensee.
William F. Wood, 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 below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On October 21, 1949, the licensee through his agent, sold to an ABC agent a case of 12 - 4/5 quart bottles of Kinsey Gold Label Blended Whiskey for the sum of \$39.00. The effective minimum consumer price, allowing for the 5% permissible discount on case lots, was \$45.49. Minimum Resale Price List, effective October 1, 1949.

Defendant has no previous adjudicated record. I shall suspend his license for a minimum period of ten days for a violation of this type. Five days will be remitted because of the plea entered herein, leaving a net suspension of five days. Cf. Re Belk, Bulletin 830, Item 5.

Accordingly, it is, on this 10th day of November, 1949,

ORDERED that Plenary Retail Distribution License D-112, issued by the Board of Commissioners of the City of Jersey City to Solomon Ginsberg, t/a Young's Liq. Store, for premises 2920 Boulevard, Jersey City, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. November 14, 1949, and terminating at 9:00 a.m. November 19, 1949.

ERWIN B. HOCK
Director.

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

In the Matter of Disciplinary Proceedings against)

MICHAEL HUCZKO)
521 State Street)
Perth Amboy, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-37, issued by the Board of Commissioners of the City of Perth Amboy.)

Michael Huczko, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages, namely, one 4/5 quart bottle labeled "Three Feathers Reserve Fine Blended Whiskey" and one 4/5 quart bottle labeled "Lord Calvert Blended Whiskey", which bottles bore labels which did not truly describe their contents, in violation of Rule 28 of State Regulations No. 20.

On September 26, 1949, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined 16 bottles of alcoholic beverages on defendant's premises and seized the two bottles in question when field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottles were not genuine as labeled.

Defendant denies tampering at any time with the contents of the seized bottles. Nevertheless, the licensee is responsible for any "refills" found in his stock of liquor.

Defendant has no previous adjudicated record. I shall suspend defendant's license for the minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Smith, Bulletin 827, Item 3.

Accordingly, it is, on this 14th day of November, 1949,

ORDERED that Plenary Retail Consumption License C-37, issued by the Board of Commissioners of the City of Perth Amboy to Michael Huczko, for premises 521 State Street, Perth Amboy, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 28, 1949, and terminating at 2:00 a.m. December 8, 1949.

ERWIN B. HOCK
Director.

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

In the Matter of Disciplinary Proceedings against)

BLANCHE BABETTE STEBBINS)
T/a BABETTE CLUB)
N/E cor. Mississippi & Pacific Aves.)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-118, issued by the Board of Commissioners of the City of Atlantic City.)
-----)

John Rauffenbart, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that she possessed on her licensed premises alcoholic beverages in bottles bearing labels which did not disclose their contents, in violation of Rule 28 of State Regulations No. 20.

On September 1, 1949, an agent of the State Division of Alcoholic Beverage Control seized on defendant's licensed premises two 4/5 quart bottles labeled "Canadian Club Blended Canadian Whisky" when his field tests disclosed a variance in the contents of said bottles from the whiskey described on the label. An analysis by the Division Chemist clearly established that each of said bottles contained an alcoholic beverage different from that described on the respective labels. See Rule 28, State Regulations No. 20.

Defendant has no prior adjudicated record. I shall suspend the license for fifteen days, the minimum in illicit liquor cases. Re Rudolph, Bulletin 680, Item 1. Remitting five days for the plea will leave a net suspension of ten days.

Accordingly, it is, on this 14th day of November, 1949,

ORDERED that Plenary Retail Consumption License C-118, issued by the Board of Commissioners of the City of Atlantic City to Blanche Babette Stebbins, t/a Babette Club, for premises n/e cor. Mississippi & Pacific Avenues, Atlantic City, be and the same is hereby suspended for a period of ten (10) days, commencing at 7:00 a.m. November 28, 1949, and terminating at 7:00 a.m. December 8, 1949.

ERWIN B. HOCK
Director.

- 8. DISQUALIFICATION - APPLICATION TO LIFT - ENGAGING IN ALCOHOLIC BEVERAGE BUSINESS AFTER APPLICANT ADVISED THAT HE WAS INELIGIBLE TO BE SO ENGAGED - APPLICATION TO LIFT DENIED, WITH LEAVE TO REAPPLY AFTER OCTOBER 14, 1950.

In the Matter of an Application)
 to Remove Disqualification)
 because of a Conviction, Pursuant)
 to R.S. 33:1-31.2.)

CONCLUSIONS
 AND ORDER

Case No. 799.
 - - - - -)

BY THE DIRECTOR:

In July 1944 it was determined that on April 24, 1944 petitioner had been convicted of a crime involving moral turpitude and therefore was not eligible to hold a liquor license in this state or to be employed by the holder of such a license. R.S. 33:1-25, 26. See Case No. 535, Bulletin 630, Item 4.

Petitioner was at that time advised of his disability by sending him a copy of the findings made in said case. The letter covering the findings also contained a paragraph in part as follows: "Please note that you may not work for any liquor licensee in this State."

At the hearing held herein, petitioner admitted that within two years of the above mentioned warning he accepted employment from Michael Marino, then the holder of a plenary retail consumption license for premises 255 Newark Avenue, Jersey City, as a "short order" chef, relieving as bartender on occasion and that he was so employed for about one and a half years. It also appears that in September, 1949, before the petition in this case was filed, petitioner's wife and a partner secured a liquor license for premises in Jersey City. Petitioner worked on said premises for approximately six weeks until ABC agents found him so employed. It is further noted that petitioner, who is known as "Bucky", claims to have no prohibited interest in his wife's business. However, the business operates under the trade name of "A. & B.", intended, petitioner said, to identify the partner, Andrew, and petitioner's wife, Barbara. Her first name, however, is Jane, Barbara is her second name. When asked, "B couldn't stand for Bucky, could it?", petitioner answered, "Well, some people might think that. It is a legitimate living that I want to make. If people want to look at it that way, I can't hate them for it."

These proceedings are aptly termed rehabilitation proceedings. Their purpose is not to add to the punishment imposed upon those guilty of crime, but rather to remove or avoid a proper and lawful disability. The power vested in the Director may be exercised only if and when he determines "that at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest...." R.S. 33:1-31.2. I must be satisfied that petitioner has been rehabilitated, that he is honest and law-abiding and has a proper respect for truth and probity. Cf. Case 172, Bulletin 484, Item 9.

Petitioner produced three witnesses. In view of petitioner's actions during the last few years, I cannot consider the favorable testimony of said witnesses, when it appears that petitioner worked on licensed premises, without any excuse, after he had been advised that he was ineligible for such employment. I shall not remove the disqualification at this time.

Accordingly, it is, on this 14th day of November, 1949,

ORDERED that the petition herein be and the same is hereby dismissed with leave to file a new petition after October 14, 1950.

ERWIN B. HOCK
Director.

9. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES TRANSPORTED IN MOTOR VEHICLE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on) Case No. 7506
September 7, 1949, of 8 - 5-gallon)

jugs of alcohol and a Plymouth)
Coach, at 505 Morris Avenue, in) ON HEARING
the City of Elizabeth, County of) CONCLUSIONS AND ORDER
Union and State of New Jersey.)
- - - - -)

Max Brell and Fannie Brell, trading as Equitable Loan Service, by Philip Scotch, Manager.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether eight five-gallon jugs of alcohol and a Plymouth coach seized on September 7, 1949, at 505 Morris Avenue, Elizabeth, N. J., constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered for the Equitable Loan Service, which sought recognition of an alleged lien on the motor vehicle, and John Tarlach appeared, primarily to aid the finance company to establish its lien.

At such hearing, John Tarlach acknowledged that he gave a signed statement, the material portions of which are that Tarlach told Elizabeth police officers that he had eight five-gallon jugs of untaxed alcoholic beverages stored in a small garage at 505 Morris Avenue, Elizabeth; that he had manufactured such alcohol in the woods near Cranbury, New Jersey, kept it there until September 1st, and then transported the alcohol in his Plymouth coach to the garage above referred to.

Elizabeth police officers seized both the alcohol and the car in the garage and later turned them over to the Division of Alcoholic Beverage Control. There are no labels, or stamps indicating the payment of tax, affixed to the jugs of alcohol. Analysis by the Division's chemist of such alcohol discloses that it has an alcoholic content by volume of 55% and is fit for beverage purposes.

Aside from Tarlach's admission, the alcohol is prima facie illicit by reason of the absence of labels or tax stamps on the jugs. R.S. 33:1-88. Such illicit alcohol, and the Plymouth coach in which it was transported, are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Mr. Scotch, a representative of the finance company, presented a chattel mortgage dated June 28, 1949 covering the motor vehicle in question. This is the third loan, since 1947, by the finance company to Tarlach on the security of the car. The balance due on said mortgage is \$85.58.

The finance company, when making the first loan, checked Tarlach's information that he operated a window washing concern and made inquiry of a merchants' protective bureau and did not receive any information detrimental to Tarlach's character or financial responsibility. I am satisfied that the finance company did not know or have any reason to suspect that Tarlach was using the motor vehicle to transport alcoholic beverages in violation of the law. Hence, I will recognize the claim of the finance company to the extent of \$85.58.

It appears that the amount of the lien and the costs of seizure and storage of the motor vehicle exceeds its appraised retail value, and that it will not benefit the state to retain the motor vehicle for the use of the state conditioned upon payment of such lien. The motor vehicle will therefore be returned to the finance company upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 28th day of November, 1949, Max Brell and Fannie Brell, trading as Equitable Loan Service, pay the costs incurred in the seizure and storage of the Plymouth coach, such motor vehicle will be returned to them; and it is further

DETERMINED and ORDERED that the eight five-gallon jugs of alcohol constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and that they be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: November 14, 1949.

10. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES AT "BARBECUE" HELD IN PRIVATE RESIDENCE - ALCOHOLIC BEVERAGES, BAR AND OTHER ITEMS ORDERED FORFEITED - TWO AMUSEMENT MACHINES RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on) Case No. 7516
September 24, 1949, of a quantity)
of beer and other alcoholic beverages, two amusement machines and)
other fixtures and furnishings, at) ON HEARING
57 Assunpink Street, in the City of) CONCLUSIONS AND ORDER
Trenton, County of Mercer and State)
of New Jersey.)

-----)
Joseph Specile, Pro Se.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a quantity of beer and other alcoholic beverages, two amusement machines, and other fixtures and furnishings, itemized in a schedule attached hereto, seized on September 24, 1949, at 57 Assunpink Street, Trenton, N. J., constitute unlawful property and should be forfeited.

It appears that the seizure was made by ABC agents after an alleged unlawful sale of alcoholic beverages to one of the agents in a dwelling occupied by Lucille Bethea at the above address. A "barbecue" was being conducted there that day. There was a small bar in the cellar, a pin ball machine in the dining room, and a music box and tables and chairs in the yard. The alcoholic beverages were sold

by Virgie McClain, but Lucille Bethea told the agents that she was the owner of the 70 bottles of beer and four bottles of whiskey found in the cellar, and that she was operating the "barbecue".

Neither Virgie McClain nor Lucille Bethea held any license authorizing either of them to sell or serve alcoholic beverages, and the premises were not licensed for the sale of alcoholic beverages.

When the matter came on for hearing pursuant to R.S. 33:1-66, Joseph Specile appeared and sought return of the music and pin ball machines. He did not challenge the accuracy of the above stated facts.

Mr. Specile testified that Mrs. Bethea operates a restaurant nearby, in which there is one of his music machines, and that he placed the music and pin ball machines in her home, without charge, as an accommodation, for the one day on which the "barbecue" was to be held. Specile says that the idea that alcoholic beverages might be sold or served at the "barbecue" did not occur to him.

It is conceivable that a reasonably prudent person, loaning a machine for a one-day rental, could have overlooked the possibility of sales of alcoholic beverages at the affair. I shall give Specile the benefit of the doubt, and find that he acted in good faith and did not know or suspect that alcoholic beverages were to be sold at the place. Cf. Seizure Case No. 7014, Bulletin 738, Item 8. The machines will therefore be returned to him upon payment of the costs of their seizure and storage.

The evidence presented establishes that the beer and whiskey seized in the place were intended for unlawful sale. Therefore they constitute illicit alcoholic beverages. R.S. 33:1-1(i). Such illicit alcoholic beverages, together with the other articles seized at the premises, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Accordingly, it is DETERMINED and ORDERED that if on or before the 28th day of November, 1949, Joseph Specile pays the costs of the seizure and storage of the music machine and pin ball machine, such machines will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: November 14, 1949.

SCHEDULE "A"

- 70 - bottles of beer
- 4 - bottles of other alcoholic beverages
- 1 - "Genco" pin ball machine #8440 and
currency therein
- 1 - Wurlitzer Music Machine 616A - Serial
No. 210728 and currency therein
- 1 - bar
- 4 - tables and chairs

11. APPELLATE DECISIONS - CODINGTON v. WARREN TOWNSHIP AND SCHWAEBISCHE ALB, INC.

HORACE CODINGTON,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF WARREN, and)
 SCHWAEBISCHE ALB, INC.,)
)
 Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

 Horace Codington, Appellant, Pro Se.
 No appearance on behalf of Respondent Township Committee.
 Barney Asarnow, Esq., Attorney for Respondent Schwaebische Alb, Inc.

BY THE DIRECTOR:

This is an appeal from the renewal by respondent Township Committee of a plenary retail consumption license held by respondent Schwaebische Alb, Inc. for premises on Springdale-Washington Valley Road in the Township of Warren.

The objection to the issuance of the license would seem to be based upon a claimed inadequacy of the entrance road -- a private lane, 1,000 feet in length and 17 feet to 22 feet in width, leading from the public road, known as Valley Road, to the licensed premises, and an alleged traffic hazard at the point where the roads intersect.

Valley Road is a typical rural highway about 27 feet in width -- considering the improved portion thereof -- running through an area mostly rural with some suburban development gradually encroaching. The road, having a tarbound stone surface, is used by a considerable number of automobiles probably because of its scenic appeal.

The entrance lane, at the point where it intersects Valley Road and for some distance back, is paved similarly to the public road for a width of approximately 22 feet; thereafter, decreasing in width to 17 feet. It is apparently sufficient for automobiles in passing each other and gives adequate access to and from the public road.

The appellant testified to a congested condition on the public road, caused by cars entering and leaving the private lane. I am forced to conclude that this testimony, covering only occasional incidents, is far from sufficient to establish any public inconvenience and far from sufficient to show the existence of a public nuisance. The condition complained of cannot be considered as in any way inconveniencing the appellant.

The licensee has been operating in its present premises without substantial change in road conditions for over 14 years. There is no evidence of any obstruction of view or any other condition that would prevent or interfere with the proper use of the public road, nor is there any positive evidence of any accidents at or near the intersection.

Other evidence presented on behalf of respondent Schwaebische Alb, Inc. would seem to indicate that the intersection is no different than many other intersections. A farmer situated across the public road has a similar entrance lane and uses the respondent's lane to drive his cows to pasture -- crossing the road with the cows mostly every day -- and finds no inconvenience either by reason of the entrance lane or by reason of the public use of the highway.

The respondent Township Committee did not appear, nor did any of its members testify. Apparently, however, the appellant had raised the same objection at a hearing before the Township Committee.

The grant of a license and the renewal thereof rests in the sound discretion of the local issuing authority. Their opinion is entitled to great weight. Mossman v. Irvington and Brauer, Bulletin 715, Item 1. The burden of proving any abuse of said discretion rests upon the person advancing such assertion. State Regulations No. 15, Rule 6; Hoffman v. Ridgefield Park, Bulletin 334, Item 12.

I conclude that there is not sufficient evidence to warrant the reversal of the action of respondent Township Committee.

The appeal will be dismissed.

Accordingly, it is, on this 14th day of November, 1949,

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

Conrad E. Hook

Director.