Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 155 DECEMBER 29, 1936

1. RETAIL LICENSEES - LIQUOR BY WIRE - WHAT IS AND WHAT IS NOT PERMISSIBLE

Superseded by Bulletin 230, item 9.

December 23, 1936.

MEMO TO: COMMISSIONER BURNETT

I have considered plans submitted pertaining to deliveries of alcoholic beverages "by wire".

(1) The plan contemplated by "Liquor-by-Wire-Associates" would operate as follows:

> "Jones in Boston, Massachusetts, desirous of sending liquor to Smith in Newark, New Jersey, will place his order with a retailer in Boston, who is a member of the Service and will pay the list price therefor; the Boston member will wire a New Jersey retailer, who is likewise a member of the Service, who will in turn deliver the purchased alcoholic beverages to Smith in New Jersey; the Boston retailer will then remit the purchase price to the New Jersey retailer, less a commission of 10% or 15%."

The delivery in New Jersey constitutes a sale under the Control Act which may be made only pursuant to a license. In substance, the Boston retailer, who does not hold any New Jersey license, is participating in the sale in New Jersey, and this is not permitted by the Control Act. Consequently, no retail licensee in New Jersey may engage in the proposed plan.

(2) A further plan submitted would operate as follows:

> "Jones in Boston, Massachusetts, desirous of sending a nationally advertised brand of liquor to Smith in Newark, New Jersey, will pay the purchase price therefor, plus a fixed service charge, to Western Union or Postal Telegraph in Boston; Western Union or Postal Telegraph in Boston will then instruct Western Union or Postal Telegraph in Newark to purchase the liquor from a duly licensed retailer in Newark and deliver the purchased liquor to Smith."

Unlike the first plan referred to above, the sale in New Jersey is made exclusively by a New Jersey retailer who receives and retains the entire purchase price. Western Union or Postal Telegraph is, in substance, the agent of the buyer and not of the seller. A buyer requires no license in New Jersey. Hence this plan does not appear to violate the law or the regulations, provided:

(a) The messenger or other employee of Western Union or Postal Telegraph who makes the actual purchase is over 21 years of age;

(b) The actual delivery is made by the retailer in his duly licensed vehicle or by a licensed transporter;

(c) But, in the event Western Union or Postal Telegraph desires to have the deliveries made by its own messengers or employees it may do so without special permit, provided the amount being delivered to the ultimate recipient is within the permissible limits set forth in the following excerpt from Section 2:

"****alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle from a point within this State to the extent of, not exceeding one half (1/2) barrel, or two (2) cases, containing not in excess of twenty-four (24) quarts in all, of beer, ale or porter, and five (5) gallons of wine and twelve (12) quarts of other alcoholic beverages within any consecutive period of twenty-four (24) hours."

Nathan L. Jacobs,
Counsel

APPROVED as submitted and ruled accordingly, both as to illegality of the first plan and permissibility of the second. See that the conditions attached to the latter are rigidly enforced. Persons out of the State are not to work the wires to disrupt the laws made by the people within our State.

December 24, 1936.

D. FREDERICK BURNETT
Commissioner

2. CONSUMPTION LICENSEES - SERVICING LIQUOR FOR CUSTOMERS WHO CARRY THEIR OWN - PERMISSIBLE BUT PRACTICE DISAPPROVED.

Dear Commissioner:

We have noticed when booking banquets and dinners, that in several instances the participants have purchased their liquors elsewhere and placed it on the table during the dinner, requesting service of glasses, ice, water, and ginger ale, for which a nominal charge is made by us.

It has been brought to my attention that possibly this is a violation of the law.

If, during the service, a state inspector were to call and find liquor on our tables which was not purchased by us, and our waiters giving service, would this be construed as a violation of the law.

You can readily understand that it is our wish that liquor consumed on our premises be bought here, but we are reluctant to refuse to serve liquor brought in by some member of a party for fear of incurring their bad will.

Your advice in this matter will be appreciated.

Very truly yours,

MEYERS, INC.,
A. Scheffler, Pres.

December 24, 1936

Meyers, Inc.
Hoboken, New Jersey.

Gentlemen:

In Re Murnane, Bulletin 153, item 5, I ruled that the mixing or serving of drinks by unlicensed restaurant proprietors or their employees for customers who carry their own liquor was prohibited.

Licensees for consumption on premises do not, however, come within this rule.

Hence, you as a consumption licensee may, if you choose, service liquor brought by your customers and make no or only a nominal charge.

But why should Meyers Hotel, "Known the World Over", cater to such trade or allow such practice? How are you to determine whether the liquor brought in is legitimate? If it really is, what do they save by carrying their own? Where would you and your employees be if caught mixing and serving "hooch"? Its mere possession is a misdemeanor, irrespective of intent to sell it. Why, then, take any chances? You are the master of your own tavern. You, who are responsible for its conduct, have the right to decide for yourself what behavior therein you will permit. Why not refuse pointblank to sell set-ups or furnish accessories, and insist that no liquor may be consumed or served, or otherwise handled on your premises except such as is bought from you. After all, you are not in business for the love of it, are you?

I advise against the practice.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. LOTTERY - WHAT CONSTITUTES - LICENSEES MAY NOT ISSUE PARTICIPATION TICKETS TO PURCHASERS OF THEIR MERCHANDISE

Dear Sir:

The Park Ridge Chamber of Commerce is making a drive to try to induce the residents of the town to patronize their local stores to a greater extent. To that end each merchant is giving out coupons with every purchase for which ten prizes will be drawn weekly for their patrons. These prizes are donated by the merchants in turn and are limited in value. No profit is derived by either the Chamber or the individual merchant beyond the possible increase in business. There is no charge for the tickets I am enclosing a sample ticket for your inspection. Will you kindly advise me as soon as possible if I may co-operate in this movement.

Very truly yours,

JOHN HARTLIEB

December 24, 1936

Mr. John Hartlieb
Park Ridge, New Jersey

Dear Mr. Hartlieb:

I have your letter of the 9th and the sample ticket of the 'Build Up Park Ridge By Trading At Home' drawing for prizes which is held each Saturday night. As I understand it, the drawing is held under the auspices of the Chamber of Commerce, the local merchants give out the coupons with every purchase and each week donate the prizes.

The scheme constitutes a lottery. It is distribution of prizes by chance. This is true regardless of whether the tickets are sold or are given away as premiums with purchases of merchandise. It is, therefore, so far as liquor licensees are concerned, prohibited by Rule 6 of the State Rules Concerning Conduct of Licensees. See re Pelous, Bulletin 43, item 16; re Hutchins, Bulletin 56, item 11; re Woodruff, Bulletin 143, item 16, copies of which are enclosed.

The distribution of these tickets on your licensed premises will be cause for the suspension or revocation of your license.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SOLICITATION BY PROSTITUTES - OUTRIGHT REVOCATION

December 23, 1936

Mr. Wilfred G. Turner
City Clerk
Union City, N. J.

Dear Mr. Turner:

I have staff report and your certification of proceedings before the Board of Commissioners of Union City against

1. Emil Canova, charged with having sold alcoholic beverages on Sunday before noon in violation of your local ordinance. I note he pleaded guilty to the charge and that his license was suspended for two days.

2. John F. Stedmond and Richard Toomey, charged with the same offense. I note these licensees also pleaded guilty and that the license was suspended for a period of two days.

3. Patsy Florio charged with (a) having permitted prostitutes to solicit customers and (b) having permitted hostesses to be served drinks; in violation of your City Ordinance. I note the licensee was adjudicated guilty and that his license was revoked as of December 2, 1936.

No opinion, of course, is expressed on the merits of the latter case because, perchance, it may come before me by way of appeal.

I do, however, wish to express my sincere thanks for the businesslike, efficient action of your Board. The revocation is eloquent of their determination to enforce the law.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - LOTTERIES - LICENSEES ARE RESPONSIBLE FOR WHAT IS DONE UPON LICENSED PREMISES.

December 23, 1936

Mr. Walter W. Marrs,
City Clerk,
Burlington, N. J.

Dear Mr. Marrs:

I have staff report and your certification of the proceedings before the City Council of Burlington against Francis Gillece charged with having allowed or permitted a lottery to be conducted on his licensed premises.

I note that an adjudication of "not guilty" was based upon insufficiency of the evidence.

The report states:

"On October 15th, 1936, Investigators Perry and Roxbury proceeded to the licensed premises to investigate a complaint that a lottery was being conducted therein. After observing the place for about an hour they entered at 1:15 p.m. A bartender, Edgar McCormick was in charge. Perry immediately went to a room in the rear through a screen door. He saw four men at a table. Three were working on pads; the fourth counting money. He seized a pad and found same to be the kind used to write numbers for a lottery. Three of the men, after giving their names disappeared. The fourth gave his name as George McCormick. Twenty-two dollars and seventy-six cents ($22.76) was seized and receipt given for same. George McCormick told Perry that he and his associates used this rear room to check their daily results in the lottery which they conducted.

"At the hearing Perry and Roxbury testified as above. A police officer of Burlington testified and explained that all the names of the four men found in the rear room must have been fictitious as they could not be located.

"The licensee testified that he had no knowledge that a lottery was being conducted in the rear room of his licensed premises."

May I respectfully call the attention of the Council to the fact that a licensee is responsible for any violations of the Control Act or Rules and Regulations, that occur upon his licensed premises. He is the one that is licensed. He it is whose duty it is to see that the law is obeyed. While it may be, in this particular case, due to the absence of certain witnesses, the proof may not have been sufficient to predicate a verdict of guilt in a criminal proceeding, yet I do feel that sufficient testimony was presented by my Investigators to show the violation of the State Rule in question.

There can be no proper control in New Jersey until licensees are taught that they cannot escape responsibility for violations of others on their licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - KEMO vs. TRENTON

John L. Keno, Appellant,)
-vs-) On Appeal
City Council of the City of Trenton, Respondent.) CONCLUSIONS

Frank J. Backes, Esq., Attorney for Appellant

Adolph F. Kunca, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for premises known as 634 North Clinton Avenue, Trenton, New Jersey.

Respondent denied the application "because of the crowded area that exists in the so-called East Trenton section".

Appellant contends that there is an existing vacancy under an ordinance limiting the number of distribution licenses; that there is need for an additional licensed premises in that neighborhood and that respondent has recently issued distribution licenses in sections of the City which already contained a large number of licensed places and, hence, its denial in the present instance was arbitrary and unreasonably discriminatory.

Respondent passed a resolution of June 26, 1936 increasing the number of distribution licenses from twenty (20) to twenty-five (25). Eight applications for new distribution licenses were considered by the Council on July 14. Keno, who had filed his application on June 27, was second on the list of new applications which came up for consideration at that time. The Board granted the first, third, seventh and eighth applications upon its list, and laid over the other four, including Keno's application. On August 4 the Council denied Keno's application because of an alleged policy adopted at that meeting to grant no more licenses in the East Trenton district because of the crowded area. It issued no more distribution licenses since that time, so that the total number of distribution licenses outstanding is twenty-four (24), and the limit as fixed by the ordinance now in effect is twenty-five (25).

In the case of Eisen vs. Plainfield, Bulletin #68, Item #12 a somewhat similar situation arose. An ordinance of the City of Plainfield had fixed the number of distribution licenses at twenty (20) and only seventeen (17) had been issued. Respondent denied the application solely because, in its opinion, a sufficien number of distribution licenses had been issued in the City. In that case it was ruled that:

> "The limitation attempted to be invoked in the instant case, although subsequent in time to the ordinance, is plainly in conflict with it. The ordinance, therefore, governs. To say that the municipality has changed its mind is not sufficient. It has not changed its ordinance."

The case of Sosnow Drug Company, in Freehold, Bulletin #68, Item #13, stands for the same proposition, the only difference between that case and the Eisen case being that the limitation in the Sosnow case had been effected by resolution instead of by ordinance.

In the case of Young vs. Pennsauken, Bulletin #114, Item #2, respondent denied a license because there were already sufficient licenses in the immediate vicinity of the place for which the license was sought and, upon the evidence submitted in that case, the action of respondent was affirmed despite the fact that there was a vacancy under a municipal resolution then in effect which limited the number of consumption licenses.

If, therefore, the policy of refusing to grant further licenses in the East Trenton district was reasonable, the action of the respondent in the present case would be affirmed despite the the fact that there is a vacancy under the terms of the ordinance limiting the number of distribution licenses.

The evidence in this case shows that North Clinton Avenue, in the vicinity of No. 634, is a strictly business district. The so-called East Trenton area covers approximately one-fifth of the geographical area of Trenton, and also includes one-fifth of the population of the City. At the present time there is one distribution license outstanding in the East Trenton area, which license was issued some time ago to Francimore for premises about four blocks away from the premises in question. There are also about twenty-six consumption licenses in the East Trenton district, about twelve of which are located on North Clinton Avenue. The East Trenton area is well supplied with saloons but not with package goods stores. The evidence shows that other business sections of the City which are similar in character have a larger number of licensed places. Thus, in the Chambersburg section there are three distribution, thirty consumption and seven club licenses outstanding. In the section of the City near State and Broad Streets, there are four distribution and twenty consumption licenses outstanding. In the Battle Monument area there are seven consumption and four distribution licenses. It should likewise be noted that of the four applications which were granted for distribution licenses on July 14, 1936, two were for premises within the Battle Monument area and the number of distribution licenses in that section was thus increased from two to four within a distance of five blocks. Viewing the entire licensing situation in other sections of the City which are fairly comparable to the East Trenton area, it seems that the action of respondent in denying the Kemo application because of an alleged crowded condition was unreasonably discriminatory as to him.

Appellant has presented a petition containing the names of two hundred fifty persons residing in the East Trenton section, including the names of about forty businessmen engaged in business on or near North Clinton Avenue, certifying to the public necessity and convenience of another distribution license in that section.

The action of respondent is reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 26, 1936.

7. APPELLATE DECISIONS - SILIWANOWICZ vs. TRENTON

Daniel Siliwanowicz,
Appellant,

-vs-

City Council of the City of Trenton,
Respondent.

On Appeal

CONCLUSIONS

William H. Geraghty, Esq., Attorney for Appellant

Adolph F. Kunca, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises known as 18 and 20 Mead Street, Trenton.

Respondent denied the license because "the neighborhood in which petitioner applied for said license was already supplied with sufficient saloons, and further because of petitioner's record".

The evidence shows that Mead Street is a dead-end street. The premises are located a short distance away from North Clinton Avenue, which is a business street located in the East Trenton section of the City. The section is zoned for heavy industrial purposes, and there are many factories nearby, including one which covers eight blocks.

The evidence shows that seven consumption licenses and one distribution license have been issued on North Clinton Avenue in the immediate vicinity. Under these circumstances it is difficult to find any real need for an additional consumption license, despite the industrial character of the neighborhood. As appears by the decision rendered concurrently herewith in Kemo vs. Trenton, Bulletin #155, Item #6, the East Trenton area is abundantly supplied with saloons.

The action of respondent in denying the license, so far from being unreasonable, was wholly salutary.

This conclusion renders it unnecessary to examine appellant's personal record.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 26, 1936.

8. APPELLATE DECISIONS - RAFALOWSKI vs. TRENTON

Jennie Rafalowski,
Appellant,
-vs-
City Council of the City of Trenton,
Respondent.

On Appeal

CONCLUSIONS

H. Harvey Saaz, Esq., Attorney for Appellant

Adolph F. Kunca, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at 613 Bridge Street, Trenton.

In its answer respondent alleges:

"The City Council of the City of Trenton feels that, although the proposed licensed premises are not within 200 feet of a church, the presence of a saloon in that immediate vicinity would be detrimental to the locality and more particularly to the church."

It appears that while the First Baptist Church faces on Center Street, the church and church grounds extend along Bridge Street from Center to Second Streets, directly opposite the premises for which the license is sought. It has been stipulated that the distance between the entrance to the proposed licensed premises and the entrance to the church on Center Street is two hundred thirty-four (234) feet.

Appellant alleges that respondent has heretofore granted licenses to Greenwood Gardens and to Bash Tavern, both of which are in close proximity to churches, although more than two hundred (200) feet therefrom, and that respondent has also issued a license to Persi, whose premises are in close proximity to a school, although more than two hundred (200) feet from the entrance to the school. Appellant contends, therefore, that the alleged policy of respondent has not been uniformly applied. A policy which is not applied fairly and uniformly is of no moment on appeal. Skwara vs. Trenton, Bulletin #57, Item #7; Barbuto vs. Trenton, Bulletin #56, Item #5; Budenstein vs. Atlantic City, Bulletin #144, Item #6, and cases therein cited. If, therefore, the facts as to the three places cited by appellant were substantially the same as in the instant case, I would agree with appellant.

It appears, however, that Greenwood Gardens and Bash Tavern are located in buildings which face on South Broad Street, while the respective churches face upon the opposite side of said street. Measuring from the entrance of the licensed place to the entrance of the church, the distance in each case is only a little more than two hundred (200) feet, but the licensed buildings and the respective churches are so located that there is little likelihood of any interference with church services. It appears also that neither of the churches objected to the issuance of licenses to Greenwood Gardens or Bash Tavern respectively.

In the present case the situation is different. It is not a mere question of measuring from the entrance of the licensed premises to the entrance to the church. The fact is that the premises for which the license is sought are directly opposite the side of the church in which services are held regularly; the premises for which the license is sought are separated from the section of the church in which the services are held merely by the width of Bridge Street and its sidewalks and a small part of the church grounds. Officials of the First Baptist Church, which has a membership of over seven hundred (700), vehemently protest against the granting of the license. Section 76 of the Control Act was enacted "for the benefit not of property but of persons attendant therein". While its provisions do not apply in this case, municipal action which carries out the spirit of this section should be upheld, even though technically the statute itself does not apply.

The matter of the license to the Persi Tavern presents more difficulty than the church cases. In 1934, the Persi application was denied by the then Municipal Board of Alcoholic Beverage Control of Trenton on the ground that the premises sought to be licensed were too close to a school and the adjoining playground. It appeared that the distance between Persi's premises and the school was over 200 feet, but that the school playground, measured by the nearest crosswalk, extended within 70 feet of those premises. On appeal, Persi vs. Trenton, Bulletin #46, Item #13, I affirmed the denial, saying:

> "Section 76 expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet.
>
> "Respondent's determination that the issuance of a license for appellant's premises, substantially adjacent to a school playground, was socially undesirable, was justified by the evidence and furnished reasonable cause for the denial of the application."

At the hearing of the present appeal, Mrs. Edith H. Moore, Alcoholic Beverage Investigator of Trenton, testified that the City Council considered the proximity of the Persi licensed premises to the school before they granted that license; that it was tabled on two occasions and reconsidered; that she contacted the Supervisor of Schools and there were no objections; that the license was granted by the City Council in August, 1935 and renewed for the fiscal year beginning July 1, 1936; that the neighborhood is a mixture of residences and business.

No appeal was ever filed against the granting of the Persi license. It is beyond the minimum 200 feet line. There has been no objection by the Supervisor of Schools. While the previous license issuing authority declared the Persi license to be "socially undesirable", it cannot bind the hands of its successors, the present City Council, to decide the other way. There is room for latitude of opinion in cases of this kind. My duty in these cases is not to inflict or substitute my opinion upon or for the license issuing authority, but rather to determine if reasonable cause exists for theirs and, if so, to affirm whatever their view and irrespective of my own. The City Council were not required to withhold a license from Persi. The fact that they did not in the

case of a school in the absence of complaint, but did in the case of a church because of a complaint, does not prove unreasonable discrimination. For aught that appears in the record before me, Jennie Rafalowski would have been treated the same as Greenwood Gardens, Bash Tavern and Persi if the situation in her case had been similar to that shown in those cases.

Failing to find any arbitrary or unreasonable discrimination, the action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 26, 1936.

9. APPELLATE DECISIONS - HILL vs. BLAIRSTOWN

John C. Hill,
Appellant,
-vs-
Township Committee of the Township of Blairstown,
Respondent.

On Appeal

CONCLUSIONS

- - - - - - - - - - - - - - - - -

William P. Tallman, Esq., Attorney for Appellant

Egbert Rosecrans, Esq., Attorney for Respondent

W. Howard Demarest, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant's application for a plenary retail consumption license for premises known as Hill's Hall, Blairstown, was denied. After this appeal was heard, conclusions were filed adversely disposing of the reasons assigned by respondent for such denial but calling for a supplemental hearing on two questions which incidentally cropped out at the original hearing and which might affect the result, but as to which the record was not clear. Hill vs. Blairstown, Bulletin #144, Item #9.

Those two questions concerned (1) the existence of a uniform municipal policy banning licenses to a hall where dances are held; (2) the selection of the applicants under a numerical limitation of licenses effective in that municipality.

(1) At the supplemental hearing, it conclusively appeared that no such policy had ever been adopted.

(2) Appellant's license was not denied because of the limitation. In fact, when his application was considered, the quota was not yet filled. All that appears in the minutes, and the pleadings, is that his license was denied for reasons which have been heretofore (Hill vs. Blairstown, supra) held untenable. No effort was made by respondent at either the original or supplemental hearing to justify the rejection of appellant and the selection of another applicant to fill the existing vacancy. The Township Committeemen who voted against appellant's application were not called as witnesses at either hearing. In fact, although the supplemental hearing was called as a courtesy to respondent to enable it to justify, if it could, its rejection of Hill, who was first in line, respondent produced no witnesses at all.

Therefore, I have no idea what was in their minds, let alone whether it might have been a good reason for denying Hill's application. The reasons they assigned in their minutes and in their pleadings do not hold water. Possibilities and argumentative afterthoughts are not a substitute for sworn testimony and cross-examination.

While a license is a privilege, it is not the American way to deny one applicant and favor another unless sound reasons for that denial are squarely declared on the record and fairly supported by the weight of sworn evidence.

In the absence of any justification for the rejection of appellant's application, I find that the denial of his license was arbitrary and unreasonably discriminatory. Therefore, the action of respondent is reversed, and it is directed herewith to issue forthwith the license applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 26, 1936.

10. APPELLATE DECISIONS - McDONALD vs. PATERSON and FERRARO

Isabel M. McDonald,
Appellant,

-vs-

Board of Aldermen of the City of Paterson and Thomas Ferraro,
Respondents.

On Appeal

CONCLUSIONS

Edward F. Merrey, Esq., Attorney for Appellant

William F. Ferraro, Esq., Attorney for Thomas Ferraro

No Appearance on behalf of Respondent, Board of Aldermen of the City of Paterson

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license to respondent Ferraro for premises located at #82 Park Avenue, Paterson.

Appellant, on behalf of herself and a number of other persons residing in the vicinity, contends that the license was improperly issued because the neighborhood is residential and that the issuance of a license therein will cause the surrounding property to depreciate.

The licensed premises are in a mixed business and residential neighborhood located in a Class One business zone. Formerly trolley cars and now buses travel along the street. A distribution license has been issued for a drug store at the nearby corner. There are many stores throughout. In addition, there are a number of houses containing apartments used for dwelling purposes. The two members of respondent Board who testified, even though they constituted part of the minority opposed to the issuance of the license, admitted the neighborhood was not strictly residential and explained their votes solely on the basis of

the objections. Consumption licenses have been issued in similar neighborhoods in other sections of the city.

The question of whether it is proper to issue a license in any particular vicinity is a matter confided, in the first instance, to the judgment of the local officials. Protests of residents are properly to be considered, but the ultimate determination must take into account all other considerations, including the type of neighborhood. Were this a strictly residential section it might well have been improper to have issued a license there. Norton v. Camden, Bulletin #97, Item #9; Ely vs. Long Branch, Bulletin #99, Item #2; Dunster v. Bernards, Bulletin #121, Item #11; Re Passaic Elks, Bulletin #95, Item #4; Vannozzi v. Trenton, Bulletin #35, Item #7. Were it strictly a business section the protests would clearly have been unavailing. Shelby v. Trenton, Bulletin #129, Item #1, and cases cited therein. But it is neither strictly business nor strictly residential. The solution therefore depends upon the exercise of a sound discretion. Jones v. Camden and Caromano, Bulletin #121, Item #4. Respondent decided that the license should issue. I cannot say, in view of all the evidence, that this decision constitutes an abuse of discretion. Jones v. Camden and Caromano, supra.

There was some mention made at the hearing of a church in the vicinity although not on the same block, and beyond 200 feet. Respondent has not adopted any policy, however, to extend the protection of Section 76 of the Control Act beyond the limits fixed therein. There is therefore no reason why it should be compelled to do so here.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 26, 1936.

11. SALES TO MINORS - MORAL RESPONSIBILITIES OF SCHOOL COMMUNITIES - VIEWS OF DEAN CHRISTIAN GAUSS OF PRINCETON UNIVERSITY

December 18, 1936.

Dear Mr. Burnett:

Your very gratifying statement refusing to lift the ban on the Kingston Bar and Grill (Bulletin 151, Item 6) with your note came to my office when I was away in the south and I hasten to acknowledge and thank you for them.

Our community has one special character. Within a radius of ten or twelve miles from Princeton there are probably more young men, the majority of them minors, in schools than in any other section of the state. Our district of course includes the Lawrenceville School, the Hun School, Peddie Institute, Mercer Junior College, as well as Princeton University. The students in these schools are away from home and they are in a sense guests of the state and also of the institutions which they are attending. The people who send their sons to this educational center expect of us in the way of living conditions, conditions that are of a somewhat higher order than might obtain elsewhere. It is our responsibility to see that we live up to this implied obligation and I consider it one of the responsibilities of my office to do so.

There are a number of persons who have been licensed to sell liquor in this community with whom we have never interfered. These places do not make it a business to cater to undergraduates and do not sell to students to the point of intoxication. We have always objected and shall always object to any holder of a license who makes it a practice to invite minors to drink and who is interested only in drawing profits from them regardless of consequences.

May I thank you and your office most heartily for your cooperation which we deeply appreciate.

Sincerely yours,

CHRISTIAN GAUSS

12. APPELLATE DECISIONS - STEUP VS. WYCKOFF TOWNSHIP

EUGENE C. STEUP, JR., Appellant,	)	
	)	On Appeal
vs.	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WYCKOFF, Respondent.	)	
	)	

George R. Sommer, Esq., Attorney for Appellant.

G. R. Hendrickson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of plenary retail consumption license for premises located at the northwest corner of Franklin Avenue and Main Street, Wyckoff.

Appellant's father testified that in the early part of February 1936 he and his step-son, Edmund Carr, appeared before the Township Committee and informed its members that they contemplated buying the premises in question, but before doing so wanted to know whether a license could be obtained; that the Mayor then introduced him to the Township Clerk, who promised to mail an application to the witness; that an application was mailed within a few days; that some time later Edmund Carr entered into a contract to purchase the property and took title in March.

The application for the license was duly filed with the Township Committee, and considered at a meeting held on February 25th, 1936. At that meeting, respondent considered appellant's application and also an application which had been filed by Robert L. Hutchinson, and denied both because of its resolution limiting the number of consumption licenses to three, and the prior issuance of the allotted number.

Appellant filed another application, which was denied on June 16th, 1936 for the same reason, and it is from this latter action that appellant appeals.

Appellant's first contention is based on promise. His petition of appeal charges that

> "Before entering into a contract to purchase the said premises inquiry was made of the Township Committee, at their last meeting in January, 1936, as to whether or not petitioner would be able to obtain a retail consumption license for the premises if he bought the same and was informed by them that if an application was filed and petitioner could qualify and there were no legal objections a license would be issued."

This promise was unequivocally denied by the Township Committeemen. There is no proof in the record to support it. What really happened is told by appellant's step-brother, the aforesaid Edmund Carr:

> "Q What do you say is your recollection of the words used by your step-father when he spoke of this matter? A Well, he asked the committee if he could get a license to operate the property known as the Wyckoff Hotel, and Mr. Scott said he would give him an application to fill out, but at the present time he had none, that he would send him one, which he did. Now, my father took that as a token that if he went ahead and filled out the application he would be able to get a license to operate this hotel."

I find as fact that no promises to grant a license were ever made.

Appellant's next contention is based on estoppel. He contends that respondent should be estopped to refuse a license, because when his father and step-brother first appeared before the Township Committee, none of the municipal officials advised them that a resolution limiting licenses was in effect, and that this failure induced the step-brother to purchase the property and expend a large sum of money for improvements. Neither the father nor step-brother inquired if any such resolution was in effect. This is lean material out of which to build an estoppel. The binding force of municipal ordinances and resolutions does not depend upon continuous hue and outcry by municipal officials. The contention is on a parity with the attempt to translate the transmission of an application blank as the token of a promise to issue a license. Estoppel is based on sterner stuff than comforting self-delusion.

The next contention is that the premises for which he seeks a license are a bona fide hotel, to which the licensing limitation ought not to apply. True, hotels are affected with a public interest as far as the sale of alcoholic beverages is concerned. A. B. C. Holding Company vs. Newton, Bulletin #58, Item 11; Latz vs. Somers Point, Bulletin #146, Item 5; Petrusha vs. Mine Hill, Bulletin #146, Item 8. But is this place an hotel? The pictures in evidence show nothing but the appearances of a large private dwelling. It has nine bedrooms. There is testimony that it is equipped to be operated as a hotel; that the premises have been known as the Wyckoff Hotel for the past twenty-five years, and that it was licensed for the sale of alcoholic beverages before Prohibition. Whatever it was in the past, it has very few of the earmarks of a bona fide hotel at the present time. There are no guests, no register, no restaurant, no sign, no cooks or chambermaids or porters - in fact no help except a man who takes care of

the grounds outside. The only persons who have stayed there since the property was acquired by the present owner were the members of the family and their friends. Convertibility into an hotel does not make it one. As I said in Apgar vs. Tewksbury, Bulletin #66, Item 2:

> "This is not the usual concept of an hotel. In these appeals, there are no magic words to be conjured. The mere invocation of the term 'hotel' by an appellant is no more dispositive than the mere assertion by a respondent that a license would be 'socially undesirable'. Everything depends on the facts."

I find as the fact that the premises are not a bona fide hotel.

Appellant next sets forth that at the time his second application was denied on June 16th, three consumption licenses were outstanding in the Township, and the resolution limiting the number of such licenses to three was in effect. He contends the limitation is unreasonable. This resolution was considered in the case of Hutchinson vs. Wyckoff, Bulletin #84, Item 3, and it was held that this limitation was not unreasonable as applied to appellant in that case. The appellant in the present case in in substantially the same position. His premises are only a few blocks away from the restaurant for which Hutchinson sought a license. There is no evidence in this case which would show that the limitation was unreasonable in itself, or as applied to appellant. For the reasons set forth in the Hutchinson case, this contention is dismissed.

There is one other claim to be disposed of. Subsequent to respondent's action on June 16th in denying this license, and while this appeal was pending, the license of one Brooks, in the Township, was revoked on August 11th. Thereafter, Robert L. Hutchinson filed an application for a consumption license, which was granted to him on September 8th. Appellant contends that this action was improper, and that when the vacancy occurred under the resolution, by reason of the revocation of Brooks' license, the Township Committee should have granted a license to him.

Whether that action was proper or improper is a question which is not before me on this appeal for the essential reason that Hutchinson is not a party to it and his rights cannot be affected by any proceeding in which he has no opportunity to defend himself.

If appellant considered himself aggrieved by the issuance of the Hutchinson license, why did he not appeal therefrom? He can not, in this indirect way, make collateral attack upon the issuance of a license to another and thereby seek to substitute his application for the one that was granted. Whether the Township Committee made a reasonable choice between Hutchinson and Steup in filling the vacancy caused by the Brooks revocation is a matter which, obviously, I cannot determine unless all parties having a right to be heard are before me and given that opportunity. Review of the issuance of the Hutchinson license is wholly out of place in this appeal, to which he is not a party and in which the issues are wholly alien to him.

The action of respondent is affirmed.

Dated: December 27, 1936.

D. Frederick Burnett
Commissioner