

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

BULLETIN NUMBER 139.

September 23, 1936

1. DISCIPLINARY PROCEEDINGS - REPORT ON CASES TRANSMITTED TO MUNICIPALITIES DURING THE YEAR ENDING JUNE 30, 1936.

TO: Commissioner D. Frederick Burnett
FROM: Jerome B. McKenna, Attorney.

Report on cases transmitted by the Department of Alcoholic Beverage Control to Municipal Issuing Authorities from

July 1, 1935 to June 30, 1936

for proceedings touching upon revocation or suspension of license or other disciplinary action.

SUMMARY

Cases transmitted
(135 municipalities) 424

Disposition

Revocation of licenses	31	
Suspension of licenses	244	
Dismissal of charges	71	
Licensees reprimanded (charges dismissed)	30	
Surrender of licenses	13	
Sentences suspended or probation	15	
Cases pending and decision reserved	12	
Licensee died or gave up business	3	
New license denied or held up	5	424

1. Possession of Illicit Alcoholic Beverages.

Transmittals - 131

Disposed of as follows:

Revocations	13	
Suspensions		
Periods covered:		
6 months	2	
3 "	1	
2 "	1	
7 weeks	2	
1 month or 30 days	17	
3 weeks	2	
15 days	1	
2 weeks	6	
12 days	1	
10 "	8	
7 "	12	
5 "	13	
4 "	2	
3 "	6	
2 "	2	76

Dismissals	21	
Pending and decision reserved	11	
Probation or sentence suspended	4	
Surrender of license	3	
Licensee out of business	1	
Licensee died	<u>2</u>	131

2. Sales to MinorsTransmittals - 38Disposed of as follows:

Revocations		5	
Suspensions			
Periods covered:			
30 days	1		
7 "	1		
5 "	2		
4 "	1		
3 "	4		
2 "	<u>8</u>	17	
Dismissals		11	
Probation		1	
Surrender of license		2	
New license refused		<u>2</u>	38

3. Sales on Election Days While Polls Were Open for VotingTransmittals - 119Disposed of as follows:

Suspensions			
Periods covered:			
90 days	1		
30 "	3		
20 "	1		
10 "	3		
8 "	1		
7 "	9		
6 "	3		
5 "	7		
4 "	7		
3 "	18		
2 "	27		
1 "	<u>6</u>	86	
Dismissals		32	
Sentence suspended		<u>1</u>	119

4. Cases Involving Fraud, Misrepresentations, False Statements, Etc. in Securing Licenses.Transmittals - 28Disposed of as follows:

Revocations	8	
Suspensions	3	
Dismissals	7	
Surrender of license	7	
New license refused	2	
New license held up 2 days	<u>1</u>	28

5. Sales of Alcoholic Beverages Without the Scope of Privileges
Granted by Terms of License.

Transmittals - 20

Disposed of as follows:

Suspensions	17	
Dismissal	1	
Pending	1	
Sentence suspended	<u>1</u>	20

6. Violations of Rules Prohibiting Gambling, Slot Machines and
Lotteries on Licensed Premises.

Transmittals - 29

Disposed of as follows:

Suspensions	14	
Dismissals	13	
Probation	1	
Surrender of license	<u>1</u>	29

7. Employment of Minors or Aliens.

Transmittals - 14

Disposed of as follows:

Revocation	1	
Suspensions	7	
Dismissals	<u>6</u>	14

8. Violations of State Rules #4 and #5 Prohibiting Persons of Ill
Repute, Female Impersonators, Etc. in Licensed Premises; Al-
lowing Licensed Premises to be Conducted in Such a Manner as
to Constitute a Nuisance.

Transmittals - 8

Disposed of as follows:

Revocations	3	
Suspension	1	
Dismissal	1	
Probation or sentence suspended	<u>3</u>	8

9. Sales by Club Licensees to Non Members.

Transmittals - 7

Disposed of as follows:

Suspensions	6	
Dismissal	<u>1</u>	7

10. Violations of Local Ordinances and Resolutions Relative to
Closing Hours.

Transmittals - 9

Disposed of as follows:

Suspensions	5	
Dismissals	2	
Sentence suspended	<u>2</u>	9

11. Violations of State Rule Relative to Signs and Advertising Matter.

Transmittals - 3

Disposed of as follows:

Suspensions		3
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12. Violations of State Rule Relative to Size of Containers of Alcoholic Beverages.

Transmittals - 6

Disposed of as follows:

Suspensions	4	
Dismissal	1	
Sentence suspended	<u>1</u>	6

13. Licensee Aiding and Abetting in the Operation of a Still.

License revoked		1
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14. Licensee Failing to Aid and Facilitate an Inspection and Investigation at Licensed Premises.

License suspended		1
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15. Licensee Possessing an Unregistered Still.

Transmittals - 4

Disposed of as follows:

Suspension	1	
Dismissals	<u>3</u>	4

16. Miscellaneous.

Transmittals - 6

Disposed of as follows:

Suspensions	3	
Sentence suspended	1	
Dismissals	<u>2</u>	<u>6</u>

TOTAL ----- 424

Respectfully submitted,

JEROME B. MCKENNA,
Attorney.

September 15, 1936.

2. DISCIPLINARY PROCEEDINGS - REPORT ON CASES CONDUCTED DIRECTLY BY DEPARTMENT DURING THE YEAR ENDING JUNE 30, 1936.

TO: Commissioner D. Frederick Burnett

FROM: Jerome B. McKenna, Attorney.

Report on Proceedings Instituted and Conducted by the Department of Alcoholic Beverage Control Touching Upon The Revocation or Suspension of License or other Disciplinary Action.

Period Covered

July 1, 1935 to June 30, 1936

STATE LICENSEES

<u>Hearings held</u>		5
Suspensions	3	
Revocation	1	
Sentence suspended	<u>1</u>	5

MUNICIPAL LICENSEES

<u>Hearings held</u>		10
Revocations	2	
Surrenders	2	
Suspensions	5	
Dismissal	<u>1</u>	10

STATE LICENSEES

1. <u>Michael Singer</u>	<u>Limited Winery License VL-29</u>
5-6 Van Houten St.	and
Paterson, N.J.	<u>State Beverage Distributor's License SBD-136</u>

Charge: Possession of illicit alcoholic beverages.

Sentence: License suspended for sixty (60) days from April 1, 1936.

2. <u>Maryland Club Distilling Corporation</u>	<u>Plenary Wholesale License #W-2</u>
995 Broad St.	
Newark, N.J.	

Charges: (1) Permitting salesmen to solicit orders for alcoholic beverages without a Solicitor's Permit.

- (2) Permitting alcoholic beverages to be transported by an unlicensed transporter.

Sentence: License suspended for thirty (30) days from January 24, 1936; period of suspension reduced to fifteen (15) days on February 1, 1936.

3. Louis Cohen, Transportation License T-42
t/a States Fast Freight Co.
216 South Victoria Ave.
Atlantic City, N.J.

Charges: (1) Solicitation of order for alcoholic beverages contrary to terms of transportation license.

- (2) Concealment of conviction of crime in application for license.

Sentence: License revoked.

4. Ernest Bade, State Beverage Distributor
t/a Keansburg, Union Beach License SBD-89
Beverage Co.
Stone Road,
Union Beach, N.J.

Charges: Holding chattel mortgages on contents of retail liquor establishment.

Sentence: License suspended for balance of term from June 26, 1936. No new license to be issued until all outstanding chattel mortgages are cancelled of record.

5. Adolph Trucking Company Transportation License T-126
511-23 West 24th St.
New York, N.Y.

Charge: Transportation of alcoholic beverages in New Jersey without the authority of a license. These violations occurred during period before their first license was issued and for a three month period while a renewal application was being considered.

Conclusion: Violations were unintentional and result of inadequate records and supervision. Licensee required to pay the prorated license fees for periods when illegal transportation occurred.

MUNICIPAL LICENSEES

1. Michael Bodenstein Plenary Retail Consumption
Ocean Township, License C-4.
Monmouth County.

2. Abe H. Geltzeiler Plenary Retail Consumption
Ocean Township, License C-10
Monmouth County
- Charges: Failure to disclose true ownership of licensed premises in application for license.
- Conclusions: Surrender of license permitted.
Sentence suspended.
3. Karl Bluschke Plenary Retail Consumption
Franklin Township, License C-11
Somerset County.
- Charges: Sales to minors
- Sentence: License revoked and premises rendered ineligible for two (2) years.
4. Joseph Tabatchnick & Co. Inc. Plenary Retail Distribution
Newark, License D-75
Essex County.
- Charge: Violation of State Rule #4 of "Rules Governing Signs and Other Advertising Matter" in that alcoholic beverages advertised for sale in window were not available when requested.
- Sentence: License suspended for five (5) days.
5. Frank Bosco Plenary Retail Consumption
Newark, License C-186
Essex County.
- Charge: Purchasing alcoholic beverages from another retailer for purpose of re-sale.
- Conclusion: Licensee acted in good faith and committed honest mistake. Charge dismissed. As a result of this case, State Rule #15 of "Rules Concerning Conduct of Licensees and Use of Licensed Premises" was promulgated.
6. John Niekrasz Plenary Retail Consumption
Jersey City, License C-585
Hudson County.
- Charge: Sale on Election Day.
- Sentence: License suspended for five (5) days.
7. James Connolly Plenary Retail Consumption
Jersey City, License C-465
Hudson County.
- Charge: Sale on Election Day.
- Sentence: License suspended for five (5) days.

8. Alfred H. Mansfield Plenary Retail Consumption
 Jersey City, License C-15
 Hudson County.

Charge: Sale on Election Day.

Sentence: License suspended for three (3) days.

9. Robert Pavlovich Plenary Retail Consumption
 Jersey City, License C-591.
 Hudson County.

Charge: Sale on Election Day.

Sentence License suspended for one (1) day.

10. Thomas O'Brien Plenary Retail Consumption
 Jersey City, License C-68
 Hudson County.

Charges: (1) Sale on Election Day.
 (2) Sale to a minor.

Sentence: License revoked.

Note: This licensee had previously been convicted in the Hudson County Quarter Sessions Court on charge of possessing illicit alcoholic beverages.

Respectfully submitted,

JEROME B. McKENNA,
 Attorney

September 15, 1936.

3. TAX PROCEEDINGS - REPORT ON CASES TRANSMITTED TO DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL BY STATE TAX DEPARTMENT FOR NON-PAYMENT OF TAXES OR PENALTIES OR OTHER FAILURE TO COMPLY WITH TAX LAW.

MEMORANDUM TO: Commissioner D. Frederick Burnett.

FROM: Edward J. Dorton, Attorney-in-Chief.

IN RE: Tax revocation proceedings.

The following is a summary of tax revocation proceedings instituted between July 1, 1935 and June 30, 1936.

Total number of cases instituted		188
Dismissed on filing required bond	1	
License revoked	1	
Dismissed on payment of taxes and penalties due (before suspension)	113	
Licenses suspended (not restored)	40	
Licenses suspended and thereafter restored on payment of taxes and penalties due	21	
Cases in which taxes and penalty have been paid but no final order of dismissal has been drawn	4	
Cases pending	8	
Total		188

The eight pending cases are being further investigated by the State Tax Department. These eight cases may be subdivided as follows:

Licensee bankrupt	1
Extension of time granted to licensee	2
Claim filed with bonding company	2
License transferred before institution of proceedings	<u>3</u>
Total -	8

Respectfully submitted,

EDWARD J. DORTON
Attorney-in-Chief.

September 15, 1936.

4. SOLICITORS' PERMITS - REPORT ON HEARINGS HELD.

MEMORANDUM TO: Commissioner D. Frederick Burnett.

From: Edward J. Dorton, Attorney-in-Chief.

RE: Hearings on Solicitors' permits

The following hearings were held on solicitors' permits between the period July 1, 1935 and June 30, 1936.

Hearings held on applications for solicitors' permits, where convictions of crime were disclosed in questionnaire. 34

Applications granted.	14
Applications denied,	17
Application withdrawn	1
Pending	<u>2</u>
Total -	34

Hearings held after issuance of solicitors' permits where fingerprint records subsequently disclosed conviction of crime. 32

Revocations recommended	3
Revocation recommended (re-hearing allowed)	1
Licenses surrendered	3
No appearance by solicitor, followed by recommendation that no license be issued until conviction explained	2
Suspensions recommended	15
Recommended that no action be taken	7
Pending	<u>1</u>
	32

Grand Total ----- 66

Respectfully submitted,

EDWARD J. DORTON
Attorney-in-Chief .

September 15, 1936.

5. APPELLATE DECISIONS - BORKOWSKI vs. CLIFTON.

ZIGMUND BORKOWSKI,)	
)	
Appellant,)	
)	
-vs-)	On Appeal
)	
MAYOR AND CITY COUNCIL OF)	CONCLUSIONS.
THE CITY OF CLIFTON,)	
)	
Respondent.)	

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Maurice F. Karp, Esq., Attorney for Appellant.

John G. Dluhy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises located at 70 Paulison Avenue, Clifton.

On June 16th, 1936, respondent voted to grant the license in question. Before it was issued, respondent, at a special meeting on June 29th, 1936, rescinded its action of June 16th because of protests by a large number of property owners whose objections had not been previously made because of lack of knowledge that the application was pending and because the neighborhood borders on the City of Passaic and many of the residents read their local news in a Passaic paper and did not in fact see appellant's notice of intention, which was duly published in a Clifton paper.

Technically, the reconsideration and rescission were invalid and not within the jurisdiction of the issuing authority. Plager v. Atlantic City, Bulletin #80, Item #11; Eckerle v. Camden, Bulletin #114, Item #11. By voting to grant the application, the issuing authority completely performed the judicial duty imposed upon it, leaving only the ministerial act of issuing the license; and they cannot afterwards reconsider it. People v. Wells, 11 N. Y. Misc. 239; 32 N. Y. Supp. 973.

However, the appellant incurred no substantial obligations in reliance upon the action of the issuing authority and his position is substantially the same as one whose application had been denied in the first instance. The objectors have explained their failure to appear at the first meeting in June, and there is no reason for holding them in default, or invoking an estoppel against them. They did act promptly upon learning of respondent's action. It would, therefore, be mere pro forma circuitry to reverse respondent on the ground that it had no jurisdiction to reconsider the granting of the application, order the license issued and then turn around and entertain an appeal by the present objectors. The case has been fully tried. The same questions which would be raised by such an appeal have been carefully considered. Accordingly, I will determine this appeal upon its merits and in substance as if taken by objectors to issuance of the license.

The main question to be determined in this case is the character of the neighborhood. Upon reviewing the testimony and the exhibits, I find it to be substantially residential. It is true that the premises are located, technically, in a district zoned for business. The fact is, however, that the only business places are a half dozen neighborhood stores and a gasoline station. Otherwise, it is wholly residential. The premises themselves are a converted dwelling house previously used as a grocery and butcher store. The vigorous personal protests of the neighborhood residents at the hearing on the appeal bespeak eloquently the prevailing sentiment of the community against intrusion therein of a tavern. It does not follow that a license must issue merely because the premises are located on a street containing other stores. Ely v. Long Branch, Bulletin #99, Item #2; Welstead v. Matawan, Bulletin #133, Item #2. Likewise, the fact that the premises are located in a district zoned for business is not decisive when the neighborhood is in fact residential. Re: Cranford Veterans' Holding Co. Inc. Bulletin #126, Item #11.

I find that one of the neighborhood stores did hold, for a time, a limited retail distribution license. Such a license, which permits the holder to sell only bottled beer for consumption off-premises is entirely different from a plenary retail consumption license sought by appellant, which permits on-premises consumption of all alcoholic beverages of any potency whatsoever. The distinctions between distribution and consumption licenses from the operative and the control standpoints, have heretofore been pointed out in Lackowitz v. Waterford, Bulletin #125, Item #12. Those differences are accentuated in the case of a limited distribution license. Even that limited license no longer subsists in this neighborhood.

In view of the essentially residential character of the neighborhood and the prevailing community sentiment against the location of a saloon in its midst, respondent's action, taken on June 16th, 1936 in granting appellant's application, is reversed, and its action on June 29th, 1936, in denying the application, is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: September 18, 1936.

6. REVOCATION PROCEEDINGS - SALES TO MINORS - RESOLUTION DENOUNCING SUCH SALES AS GRAVE OFFENSE AND SERVING NOTICE THAT FUTURE VENDORS WILL FEEL THE WEIGHT OF THE BOARD'S DISPLEASURE IN NO UNCERTAIN WAY.

September 19, 1936.

William P. Lee, Esq.,
City Clerk,
Bayonne, New Jersey.

Dear Mr. Lee:

In addition to staff reports of the proceedings against Hendrickson's Corner, Inc., I have the transcript you so kindly sent me of the entire testimony and also the resolution and order of your Board reading:

This is an appeal from the denial of an application for a plenary retail consumption license for premises known as the "Fountain House", Fredon Township, Sussex County.

Appellant testified that she had leased the premises in question and in this was corroborated by the owner's son-in-law. Subsequent to the hearing, however, the owner advised the Department by letter that she had, upon further investigation, dispossessed the appellant as a tenant. Both the owner and the appellant were thereupon notified on September 2, 1936 to appear on September 9, 1936. Appellant was informed in the letter of the purpose for which the supplemental hearing was being held and that, in the event she failed to appear, it would be assumed that she had in fact been dispossessed. A copy of the notice was sent to appellant's attorney.

Neither appellant nor her attorney appeared at the time specified, nor has any reply been made to the letter of notification. It is, therefore, assumed, in accordance with the terms of the letter, that the appellant has been dispossessed.

When the interest of an applicant in the premises for which a license is sought terminates before the actual issuance of the license, no license may issue. In re Sakin, Bulletin #67, Item 13. The subject matter of the appeal thereupon becomes moot. Procoli vs. Trenton, Bulletin #28, item 6.

Accordingly, the appeal herein is dismissed.

D. FREDERICK BURNETT
Commissioner.

Dated: September 19, 1936.

8. APPELLATE DECISIONS - CONTE vs. PRINCETON TOWNSHIP.

SEBASTIANO CONTE,)	
Appellant,)	
-vs-)	ON APPEAL
TOWNSHIP COMMITTEE OF THE)	CONCLUSIONS
TOWNSHIP OF PRINCETON,)	
Respondent.)	
.....)	

George Pellettieri, Esq., Attorney for Appellant.
Louis Gerber, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application to renew his retail consumption license.

The premises, 64 $\frac{1}{2}$ Birch Avenue, Princeton Township, are in the middle of a block and there are also saloons at both ends.

Appellant has operated a saloon at the same location for two previous licensing periods. Until about six months ago conditions did not present any problem. Several neighboring residents testified that since the beginning of this year, however, the number of disturbances has decidedly increased, and that, finally, it became necessary to petition the Township Committee to refuse to renew appellant's license.

The transcript is replete with proof of indecent acts and language, fights, swearing, noise, buck dancing and brawls.

There is no question about appellant's own character. It is rather that he cannot control his customers. His next door neighbor testified the place became "unbearable . . . indecent - men coming and using the yards as toilets . . . and indecent language . . . he is a splendid neighbor. Mrs. Conte and I have been friends and I have nothing against them but they cannot control that rough crowd."

A witness who lives across the street testified she signed the petition

"Because every other night there would be fights and swearing, especially Sunday nights, about ten o'clock, there would always be a terrible fight, and Saturday nights, and I had to call the Township Police. Five weeks before this petition there was a fight about five to ten on Sunday night."

"THE HEARER: How long have these disturbances been going on?"

"THE WITNESS: The first year was quiet, the second they got loud; the last six months it seems as if they had gone wild."

Another witness, residing next door, testified:

"constantly for the last two years, the conditions around the saloon and up and down the street, have been constantly growing worse - cursing, swearing, fighting, drinking from bottles, and using publicly the most filthy and profane language; and that is constantly going on. Since we made our petition there hasn't been any fights, but this filthy stuff - even yesterday I saw men drinking from bottles; and came out from the saloon and used the street as a lavatory - but this filth on the street is wrong, though it is not to the extent it has been. I do say many of those fights the duration of them is almost momentarily. Many a night we have seen men step across the street and used parked cars in front of the saloon."

"THE HEARER: Used parked cars for what?"

"THE WITNESS: For lavatories - in the daytime as well as night."

Martin Clausen, Chief of Police, asked about the type of patronage, replied:

"A very rough type; he has some of the worst there is.

"THE HEARER: Are they any more so than the patrons of the other two places on the street?

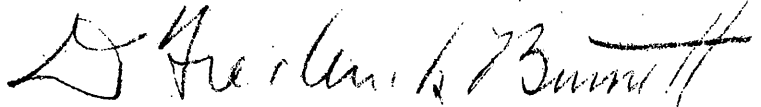
"THE WITNESS: He has patrons the others kick out and don't want in their places."

Naturally, conditions have improved since the adverse petition was filed and the prospects of order and decency are better, but that is not in point. The only question I have to decide is whether the refusal of renewal by the Princeton Township Committee was justified because of past performances at the time the renewal was denied. In view of the record, I do not see how it could have done less.

A license is a privilege. A licensee must keep his place and his patronage under control. When the exercise of his personal right becomes a nuisance to the community, public interest requires that the privilege terminate.

The action of respondent is therefore affirmed.

Dated: September 21, 1936.



D. Frederick Burnett
Commissioner