

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

BULLETIN 972

JUNE 8, 1953.

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premises by the week or month as "This is a man and woman hotel." When he was asked to explain what he meant by that expression Charles Bauer said, "Well, you know, a man and woman comes here to the dining room. They have something to eat. They speak to the waiter and go upstairs to the room for ten, fifteen minutes, and come out, and that's it." When the agent inquired as to the price of the rooms, Bauer replied: "\$4 for the room." The conversation then was about the women who at times accompanied the men to the premises. The agent testified that Bauer "told me that on some occasions when these females come in with these men to the place there, and after they get through in their rooms upstairs, the man leaves the woman in the place, but they chase the women out immediately because they don't want anything to attract attention." The agent left the premises with the understanding that he would return the next day or the following week. The bartender, Charles Bauer, suggested that upon his return he speak to the waiter or to him to make arrangements.

The ABC agent's testimony continued as follows: He returned the following day, September 27, 1952, accompanied by two other ABC agents; they had with them ten \$1.00 bills of "marked" money, six of which he took and four of which another agent took. They arrived at defendant's licensed premises about 8:15 p.m. There were "about eight or nine cars" in the parking area, but no customers at all in the restaurant or at the bar when he went inside. The agent who had the four \$1.00 bills entered with him; the third agent remained outside. The first agent introduced his fellow agent to Charles Bauer, inquired about renting two rooms for the purpose of engaging in sexual intercourse with another man's wife, and told Bauer that he was expecting a "call" from her. Charles Bauer made inquiry of a man, subsequently identified as Eugene Forzani, employed as a waiter (hereinafter referred to as the waiter), and informed the agents that all the rooms were occupied. Bauer suggested that they wait because "sometimes some of the people stayed there five, ten, fifteen minutes." About 8:45 p.m., Charles Bauer was relieved as bartender by Francis Gentile, but before he left the premises the ABC agent spoke to him about obtaining contraceptive devices. Bauer told the agent that he had none, but that the waiter could take care of it. Also, before Bauer left Gentile answered the telephone and announced that the call was for "Frank Arthur." The agent told Gentile that the call was for him and asked whether "it was a man or a woman." Gentile replied that it was a woman. The agent answered the call and then told Bauer, "The girls are coming," and again asked about rooms. Bauer told the agent that he had spoken to the waiter, who would "take care of it." After Bauer left, the two ABC agents engaged in conversation at the bar with Francis Gentile, the bartender. They discussed the matter of obtaining rooms with him and told him the purpose of their visit. Francis Gentile went over and spoke to the waiter. The agent testified that the waiter "came back and he told me that the rooms are still tied up, but to wait until something is available." Later, the ABC agent spoke to the waiter, who this time informed him that he had two rooms available, "rooms one and four." The waiter inquired, "When are your girls coming?" The ABC agent testified that he replied "I just got a call from them that they will be here as soon as I call them, but they don't want to come to the tavern until I have rooms available, because they are married women and they don't want to be recognized by anyone here." The waiter told the agents to call the girls and tell them to come into the premises "Through the back way," and that he would send them up to the rooms. The ABC agent registered for room one as "Mr. and Mrs.," and paid the waiter four \$1.00 bills for the room. He observed his fellow agent sign the register (which was introduced in evidence) and pay money to the waiter. The agent asked about obtaining contraceptive devices, and the waiter proceeded to a "hall alcove," near the entrance to the kitchen, obtained a container of contraceptive devices from a coat pocket and handed it to the agent, for which he

was given a dollar. The three then proceeded upstairs, and each agent was directed by the waiter to a room containing a bed and other furniture. Neither of the ABC agents had luggage.

The agent testified that while he was in room one he heard noises emanating from the other rooms -- the "bounce" of bed springs.

The same agent's testimony continued: A short time thereafter there was a knock on the door of room one, and the waiter accompanied by another (the third) ABC agent entered. They then proceeded to room four occupied by the other ABC agent. A few minutes later the defendant (who resides next door) joined them. The ABC agent inspected three or four other rooms, the doors of which were open and, although no persons were in the rooms, the bedding was observed to be all over the floor, and there were wet towels both on the floor and on the radiators. After they had gone downstairs, the waiter took another container of contraceptive devices from the coat from which he had originally obtained the other container. The agent testified that when he asked the waiter for how long a period of time he had been selling these contraceptives to people who rent the rooms there, the waiter told him "about a year or so, maybe a little longer," and that the waiter asserted it was necessary that he have them for the convenience of the customers.

The agent testified that of all the cars in the parking lot when he entered the premises only two or three cars remained when the agents descended to the first floor.

The second ABC agent (the agent who entered defendant's premises on September 27th with the agent whose testimony had just been recounted and obtained a room at the same time) corroborated substantially the occurrences which took place on that evening. This agent testified that the first agent told Gentile that before he got the room he was going to make a phone call. Immediately thereafter the second agent himself entered the phone booth, where he remained for a minute or two. He then rejoined the first agent and the waiter and announced that "the girls will be up here in about five or ten minutes." He further testified that he paid four \$1.00 bills to the waiter and was conducted to room four at the same time his companion was conducted to room one. The third agent, who entered the premises subsequent to the other two, testified in corroboration as to some of the activities, but in particular he testified that the waiter gave to Gentile, the bartender, the money received as rent for the rooms. This witness also testified with reference to the events which took place when he and the waiter entered rooms one and four. He further testified that, when Gentile opened the cash register at his request, "... immediately on top of the \$1 bill pile were eight \$1 bills whose serial numbers were jotted down on a slip of paper" (the "marked" money).

Francis Gentile, called as a witness in behalf of the defendant, testified that, on September 27, 1952, he was employed as a bartender by defendant and that he was on duty on that date. He further testified that, previous to the renting of the rooms, the telephone rang, and upon answering it a female voice on the other end asked for "Frank Harvey"; that upon inquiry concerning a person by that name one of the men, who subsequently turned out to be an ABC agent, responded. The witness said that, after finishing the telephone conversation, this man approached him at the bar and stated "That was my wife. We are waiting for accommodations for the night." He testified that he called the waiter and referred the ABC agent to him. The witness identified a written statement made and signed by him at the time in question (Exhibit "D-1"). He admitted that he stated in the statement that he discussed the renting of rooms with the men who were ABC agents, and that they were expecting their

women, then checked with the waiter to ascertain whether there were any vacancies, and then referred the agents, to him. Further, he saw the waiter hand "the registry" to the two ABC agents, each pay him 4 one-dollar bills, which money was in turn given to him by the waiter, and rung up on the cash register. The witness did add on the bottom of the statement, however, that he understood that the ABC agents were expecting their wives.

Eugene Forzani, the waiter, testified that one of his duties was to rent rooms in the hotel. He admitted that two rooms were rented by an ABC agent on September 27, 1952, but asserted that no mention was made by said agent that he was not married. Furthermore, he admitted supplying the man with contraceptive devices and telling both men to register as "Mr. and Mrs." He also admitted that they had no baggage.

James Fasano testified that he was present on the evening of September 27, 1952, when the ABC agents were in the premises and remembered a telephone call answered by Francis Gentile. The latter inquired about a person with a certain name, and it sounded to him as if the person who responded said "must be my wife." The witness further testified that he could not identify that person.

The defendant testified that he was not present on September 27, 1952, when the arrangements were made for the renting of rooms. He admitted that Bauer and Gentile were employed as bartenders by him. He testified that he did not allow, permit, or suffer the renting of rooms for immoral purposes, nor did he have knowledge that contraceptive devices were being sold or distributed in his business establishment. He testified that he is the manager of the licensed premises. When asked who manages the premises when he is not there, he replied, "Everybody does their own work." He added, however, that the waiter (Forzani) takes care of renting the rooms. He admitted that the business more or less operates by itself. He testified that the first time he had knowledge of the matter was when he was called to the premises after the trouble arose. He also stated that he was present when the waiter and the bartender gave statements to the ABC agents.

Charles Bauer, who is alleged to have entered into the preliminary negotiations for obtaining the rooms for immoral purposes, although present at the hearing was not called to give testimony.

Defendant produced three witnesses who testified that defendant's general reputation and the reputation of defendant's establishment was good. However, one testified that to the best of his recollection he was not present, and two admitted that they were not present, on September 26 or 27, 1952.

Defendant's attorney contends that Rule 31 of State Regulations No. 20 (which provides that, in disciplinary proceedings, it is sufficient to show that the violation was committed by an agent, servant or employee of the licensee) cannot alter the "decision of our highest courts" that, in order to find guilt, there must be competent evidence to prove the charge that the licensee "allowed, permitted and suffered the alleged acts to occur. With this I agree. He then contends that such evidence must show that "the licensee had actual knowledge of the occurrence of said acts" and that "if reliance be placed on the testimony of the agents of the administrative tribunal, it must be corroborated by independent evidence." He further contends that there is "not a scintilla of evidence, either competent or incompetent, of any knowledge on his [the licensee's] part." He asserts that the only proof adduced against the licensee was the testimony of three agents of the Division and statements of employees of the licensee admitted in evidence over his objection, and enunciates the principle that the authority of an agent may not be proven by the testimony of the agent himself.

The fact that the bartenders and waiter were "employees" of defendant is established by their acts and conduct, not by their admissions. There is no denial that they performed services on the licensed premises in furtherance of the licensed business. Thus they are "employees" within the meaning of the statute and the regulations. Re William Street Bar & Grill, Bulletin 466, Item 8; Re Gutman, Bulletin 936, Item 4; Kravis v. Hock, 137 N.J.L. 252 (Sup. Ct. 1948). Furthermore, in his testimony the licensee related the various duties of these employees and admitted that Forzani takes care of the renting of rooms.

The contention that the licensee must have actual knowledge of the unlawful acts, and the argument with respect to the effect of Rule 31 of State Regulations No. 20, are wholly without merit. These matters were disposed of, adversely to defendant's position, in Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951). It is sufficient that the acts were committed by those occupying the premises with the licensee's authority. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947). Greenbrier, Inc. v. Hock, supra. The fact that the defendant did not personally participate in the conversations or discussions or acts is immaterial. A licensee is under a duty to exercise close supervision over the licensed premises, and violations occurring there cannot be excused merely because he has no personal knowledge of them. Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, supra; Re Garaventi, Bulletin 953, Item 1. As was said in Re Paton, Bulletin 898, Item 3, "He [a licensee] cannot hide behind his employees." The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

Contrary to the contention of defendant's attorney, there is an abundance of competent evidence to support a finding of guilt. In addition to the testimony of the agents with respect to their conversations with defendant's employees and their own activities upon the licensed premises, there are many circumstances which tend to corroborate their testimony, including the finding of the "marked" money in the defendant's cash register, the condition of some of the rooms (other than the rooms assigned to the agents), the contraceptives and the hotel register. Indeed, even if corroborative evidence were to be deemed necessary, the agents' testimony is corroborated in many respects by the testimony of the defendant's own witnesses.

This case closely resembles Re Garaventi, supra, in its theory and pattern of defense aimed at discrediting utterly the truthfulness and reasonableness of the testimony of the Division's agents. Here, as in the Garaventi case, I have examined and reexamined the entire record before me. Having done so, I am thoroughly convinced that a careful reading of the testimony and evidence could lead any dispassionate, discerning person to but one conclusion, namely, that the testimony of the Division's agent truthfully represents the facts in all material and probative respects. On the basis of the full testimonial record, revealingly corroborated by all of the attendant circumstances, I am convinced that the violations were committed as charged herein.

It is not material that no illicit sexual intercourse actually occurred in the rooms after they were rented to the agents. The offense charged (allowing, permitting and suffering lewdness and immoral activities in and upon the licensed premises) was complete

when the rooms were rented with knowledge, on the part of the licensee's employees, that they were (ostensibly) to be used for the purpose of illicit sexual intercourse. In affirming an order of suspension by the Director, the Appellate Division, speaking through Judge Jayne, said "We are therefore confronted with the question whether the mere renting of bedrooms in the licensed premises by a licensee with the belief and intention that they will be occupied for the purposes of illicit sexual intercourse is an immoral activity within the signification of Rule 5. We answer the question in the affirmative." As was further stated by Judge Jayne in the same case: "The object manifestly inherent to the rule ... is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulations is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil." In Re Schneider, 12 N. J. Super, 449. See also Re Hartman, Bulletin 904, Item 2.

I find the defendant guilty as charged.

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for a period of 180 days. In Re Schneider, supra; In Re Larsen, 17 N. J. Super. 564 (App. Div. 1952); Re Hartman, supra; Re Moleno, Bulletin 910, Item 1; Re McCarty, Bulletin 919, Item 3; Re Bertown Realty Corp., Bulletin 934, Item 6.

Accordingly, it is, on this 26th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-10 issued by the Borough Council of the Borough of East Rutherford to Joseph Mazza, t/a Traveler's Hotel & Restaurant, for premises 300 Paterson Plank Road, East Rutherford, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 3, 1953; and it is further

ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1953-54 licensing year, such license shall be under suspension until 2:00 a.m. November 30, 1953.

Dominic A. Cavicchia  
Director.

2.

ACTIVITY REPORT FOR MAY 1953

<b>ARRESTS:</b>			
Total number of persons arrested	-----	20	
Licensees and employees	----- 2		
Bootleggers	----- 18		
<b>SEIZURES:</b>			
Motor vehicles - cars	-----	1	
Stills - over 50 gallons	-----	2	
Alcohol - gallons	-----	1.00	
Mash - gallons	-----	300.00	
Distilled alcoholic beverages - gallons	-----	15.81	
Wine - gallons	-----	5.73	
Brewed malt alcoholic beverages - gallons	-----	29.60	
<b>RETAIL LICENSEES:</b>			
Premises inspected	-----	1,148	
Premises where alcoholic beverages were gauged	-----	793	
Bottles gauged	-----	14,346	
Premises where violations were found	-----	98	
Violations found	-----	107	
Type of violations found:			
Unqualified employees	----- 11	Prohibited signs	----- 2
Disposal permit necessary	----- 11	Other mercantile business	----- 2
Reg. #38 sign not posted	----- 4	Improper beer tap	----- 1
Gambling devices	----- 3	Other violations	----- 73
<b>STATE LICENSEES:</b>			
Premises inspected	-----	14	
License applications investigated	-----	15	
<b>COMPLAINTS:</b>			
Complaints assigned for investigation	-----	411	
Investigations completed	-----	365	
Investigations pending	-----	139	
<b>LABORATORY:</b>			
Analyses made	-----	107	
Refills from licensed premises (bottles)	-----	3	
Bottles from unlicensed premises	-----	26	
<b>IDENTIFICATION BUREAU:</b>			
Criminal fingerprint identifications made	-----	20	
Persons fingerprinted for non-criminal purposes	-----	197	
Identification contacts made with other enforcement agencies	-----	196	
Motor vehicle identifications via N. J. State Police teletype	-----	4	
<b>DISCIPLINARY PROCEEDINGS:</b>			
Cases transmitted to municipalities	-----	18	
Violations involved:			
Sale during prohibited hours	----- 6	Failure to afford view into premises	----- 2
Sale to minors	----- 6	during prohibited hours	----- 1
Unqualified employees	----- 3	Permitting brawl on premises	----- 1
Sale to non-members by club	----- 2	Sale by retailer on credit	----- 1
Permitting lottery activity (numbers, fight pool) on premises	----- 2	Permitting gambling (cards) on prem.	----- 1
Cases instituted at Division	-----		12
Violations involved:			
Sale during prohibited hours	----- 5	Possessing obscene matter	----- 1
Sale to minors	----- 2	Permitting hostesses on premises	----- 1
Possessing illicit liquor	----- 2	Fraud and front	----- 1
Permitting prostitutes on premises	----- 2	Permitting foul language on premises	----- 1
Permitting immoral activity on premises	----- 2	Failure to afford view into premises	----- 1
Permitting bookmaking on premises	----- 2	during prohibited hours	----- 1
Cases brought by municipalities on own initiative and reported to Division	-----		11
Violations involved:			
Sale to minors	----- 5	Permitting lottery activity on premises	----- 1
Sale during prohibited hours	----- 3	Permitting bookmaking on premises	----- 1
Conducting disorderly house (Mun. ordinance)	----- 2	Permitting gambling on premises	----- 1
Conducting business as a nuisance	----- 1		
<b>CANCELLATION PROCEEDINGS:</b>			
Cases instituted at Division	-----		1
Violation involved: Licensee disqualified by conviction of crime involving moral turpitude			
<b>HEARINGS HELD AT DIVISION:</b>			
Total number of hearings held	-----		41
Appeals	----- 2	Seizures	----- 5
Disciplinary proceedings	----- 19	Tax revocation	----- 2
Eligibility	----- 12	Applications for license	----- 1
<b>PERMITS ISSUED:</b>			
Total number of permits issued	-----		962
Employment	----- 235	Social affairs	----- 384
Solicitors	----- 63	Miscellaneous	----- 173
Disposal of alcoholic beverages	----- 107		

DOMINIC A. CAVICCHIA  
Director.

Dated: June 1, 1953.

3. APPELLATE DECISIONS - TRINITY METHODIST CHURCH OF RAHWAY, N. J. v RAHWAY AND FOX.

TRINITY METHODIST CHURCH OF RAHWAY, N. J., a Corporation of New Jersey,

Appellant,

-vs-

ON APPEAL CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF RAHWAY, and GUSSIE FOX and GERALD FOX, trading as GRADE "A" DAIRY,

Respondents.

Orlando H. Dey, Esq., Attorney for Appellant. James F. Patten, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control. Joseph M. Feinberg, Esq., Attorney for Respondents Gussie Fox and Gerald Fox, trading as Grade "A" Dairy.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board on December 29, 1952, granting the application of respondents Gussie Fox and Gerald Fox for a place-to-place transfer of their plenary retail distribution license from 1491 Main Street to 1449 Main Street.

The official record of respondent Board discloses that two members of the Board (Mr. Kimmick and Mr. Clark) voted in favor of the motion to grant the transfer while the third member (Mr. Brown) refrained from voting.

Appellant, in its petition of appeal, contends that respondent Board's action was erroneous for various reasons which may be summarized as follows:

- 1. The new location is too close to appellant's church.
2. The sale and display of alcoholic beverages in close proximity to the church is objectionable and in conflict with the ideals of appellant's members.
3. The advertisement, display and sale of alcoholic beverages at the new location are influences detrimental to children attending activities in the church.
4. The transfer is unreasonable and contrary to the public interest and to the interests of appellant's members.
5. The needs and requirements for alcoholic beverages of the public in the immediate area are adequately served by other existing licensed premises.
6. Respondents Gussie Fox and Gerald Fox conduct a dairy and delicatessen business in conjunction with their licensed business and intend to keep their premises open for business on Sundays.
7. The transfer is contrary to the best interests of society.

Respondent Board denied generally the allegations contained in the petition of appeal and asserted that appellant had conceded, at the hearing below, that the new location is more than 200 feet from appellant's church as measured in the manner required by R.S. 33:1-76

It also asserted that its action in granting the transfer was reasonable and fair and not contrary to the public interest.

Respondents Gerald Fox and Gussie Fox, in their answer, denied the allegations of the petition of appeal and contended that (1) there are at least two other places of worship in Rahway in close proximity to liquor licensees; (2) the physical layout of their premises is such that a display of merchandise would not be detrimental to the activities of the church; (3) a tavern license exists within ten feet of respondents' property and appellant did not object to the issuance of such license despite the proximity to its premises; (4) respondents are not licensed to sell alcoholic beverages on Sunday, the most important day so far as appellant's activities are concerned; (5) the existence of eleven other licensed premises is no reason for denying this application for the continuance of respondents' business; (6) respondent Board did not abuse its discretion in transferring this license, and (7) appellant fails to show that respondent licensees' past record or their manner of conducting their business renders this transfer objectionable.

The hearing on this appeal was de novo, pursuant to Rule 6 of State Regulations No. 15.

Rev. Frank D. Dennis, minister of appellant Trinity Methodist Church, testified that the new location at 1449 Main Street is diagonally across the street from appellant's church and its other property and is closer to such church and its other property than the former location at 1491 Main Street. He admitted, however, that the new location was not within the prohibited 200 feet as measured in accordance with R. S. 33:1-76. Copies of letters were introduced in evidence indicating that respondent Board and respondent licensees had been notified of appellant's objection to the proposed transfer. He further testified that the Methodist Church is opposed to the use of alcoholic beverages on moral grounds, and there was introduced in evidence a copy of the "Discipline of the Methodist Church" which is the official attitude and philosophy of the Church with respect to the use and sale of alcoholic beverages. Basically, the "Discipline" urges total abstinence.

Rev. Frank D. Dennis also testified that, before the transfer was granted, the Executive Committee of the Rahway Council of Churches met and discussed the proposed transfer but that, while the attitude of the members of the committee was sympathetic to appellant's objection to such transfer, no action was taken; however, a resolution opposing the transfer was later adopted, after the transfer had been granted.

Testifying with respect to the activities at appellant's church, the minister detailed the various Sunday School meetings, church services and other functions conducted there, both on Sundays and on week days. From his testimony it would appear that 160 to 170 young people attend Sunday School and approximately the same number of people attend church services on Sunday. In addition to the religious activities in the church proper there are also Boy Scout meetings, basketball games and other similar activities both indoors and outdoors.

The minister further admitted that at 1453 Main Street, which immediately adjoins respondents' new location at 1449 Main Street, there is a restaurant with a plenary retail consumption license and that appellant did not object to the issuance or renewal of such license. In explaining this failure to object he testified that, since the law permits licensed premises and since the law also provides for "a sort of oasis around each church", they did not object "as long as they stayed their distance -- as long as they did not

start coming closer." He further admitted that bottled liquors are usually sold and placed in packages so that the bottle is concealed in the package; that the liquor display in the window of respondents' licensed premises cannot be seen from the church; and that the law prohibits sales of such bottle goods on Sundays. He also conceded that another plenary retail distribution license exists near a church in Rahway (directly across the street from the church) and that another church rents quarters in a building next door to a plenary retail distribution license and that appellant did not object to either of those places. He further testified that, except for an incident involving an advertisement that a professional baseball player, who is also a beer salesman, would autograph baseballs at respondents' licensed premises, respondents' business has been properly conducted and stated that appellant's objection was a matter of principle, not personalities. He described the area in which the church and the respondents' proposed new location are located as being the shopping center in which are located the majority of business stores of Rahway.

It was stipulated that the testimony of a lay preacher of appellant would be substantially the same as the testimony of the minister.

Respondent Gerald Fox testified that his mother, respondent Gussie Fox, had conducted a delicatessen and package liquor store for many years; that in 1949 he became a partner in the business; that, at approximately that time, the owner of the building at 1491 Main Street notified him and his mother that he desired to sell the building; that thereafter, in 1950, he and his mother bought land near the present new location at 1449 Main Street, and later exchanged that land for the present site (1449 Main Street) and that construction was begun in 1952 which resulted in the erection of a new modern building with a large picture window in the front permitting a view of the entire store including the liquor display. He further testified that there is a tavern next door to their new location and that there are other licensed premises closer to churches in Rahway.

Mr. Clark, one of the members of respondent Board, testified that he was present at the hearing below where several persons appeared and objected to the transfer and that he "and the rest of the Board" considered these objections. He admitted that no reasons were stated by the Board when it reconvened after a short recess, and he further admitted that one of the Board members (Mr. Brown) refused to vote. He testified that, although Mr. Brown made the statement contained in the official report of the meeting, namely that there had been some correspondence with this Division, copies of which had not been supplied to the Board, he claimed that Mr. Brown had refrained from voting because, being a church member, he did not wish to commit himself. He also testified that he believed the granting of the transfer was reasonable and fair and gave as his reasons for voting affirmatively the fact that the licensed premises would not be open on Sunday and thus he did not feel that it would be harmful to appellant; that respondents had been in business for a long time; that the transfer was only a short distance from respondents' former location; that the 200-foot rule was not involved; and that there was a plenary retail consumption license next door to the proposed new location. He also testified that he had talked with Mr. Reed, who is a former member of the local issuing authority, a former councilman, and a very prominent citizen, in whose judgment he had a good deal of confidence because of his experience. He admitted that Mr. Reed had said that he thought the proposed transfer "was O.K." and that "he didn't see any reason why it shouldn't go through." He frankly stated that he had been helped by Mr. Reed's opinion but denied that he had made up his mind as to which way he was going to vote prior to the hearing. He explained that Mr. Reed had much more experience in matters of this kind and that his conversation with Mr. Reed had helped a little in making up his mind " -- maybe 5% of it."

He further testified that he knew both the old and the new locations and the distance between them, and stated that the area was completely devoted to business. In answer to questions as to whether or not he had considered public necessity and convenience for the establishment of a plenary retail distribution license at the new location, he answered that he had thought of it before he voted but that the question was not specifically raised or discussed on the night of the hearing. He expressed it as his opinion that the new location was in a better business section; that a store in this location serves a public need and that, although he personally "would as soon see Mrs. Fox stay where she was than to move further to the church---", he did not see that it would make much difference to the public since respondents were moving only 200 feet away, adding that the public "could buy just as well here as they can buy up the street 200 feet."

It was stipulated that there are ten other licensed premises in the same general area, eight plenary retail consumption licenses and two distribution licenses.

Appellant's contentions may be summarized (as they were in its counsel's memorandum) as follows:

Respondent Board's action was an abuse of its discretion and should be reversed because (1) the Board failed to state its reasons for approving the transfer, (2) there is no proof of public need therefor, and (3) the licensed premises are too close to the church.

While it has been repeatedly indicated that, in all fairness, a local issuing authority should state the reasons for its decisions (Rosenvinge v. Metuchen, Bulletin 249, Item 6; Paini v. Bloomsbury, Bulletin 300, Item 13), such failure is not fatal. Since this is a trial de novo, appellant is being accorded his full day in court. Furthermore, the reasons were set forth in respondent Board's answer (cf. Gorcica v. Wallington, Bulletin 659, Item 10).

With respect to appellant's contention that there is no proof of public necessity and convenience to be served by the granting of the transfer and that therefore the Board abused its discretion, I cannot agree.

First, as to the evidence, Mr. Clark, the Board member who testified at the hearing on this appeal, gave as one of his reasons for voting to approve the transfer, the fact that the transfer was "not too far" and, when questioned closely with respect to the question of public necessity and convenience, testified that he didn't see much difference on that score between the former location and the new location since they were only 200 feet apart. While he testified that the question had not been specifically raised or discussed at the hearing below, he stated that he had considered it before the meeting and, from his entire testimony, it is obvious that he was thoroughly familiar with the locality and had taken into consideration many factors, including the shortness of the distance between the old and the new locations.

Under the circumstances, I cannot find that the transfer was granted in the absence of public necessity and convenience.

Second, as to the law, while it is true that no one has a right to the issuance, renewal or transfer of a license to sell alcoholic beverages (Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949)), and while it is also true that the question of public necessity and

convenience is paramount in determining whether a license should be granted for a particular location, the instant case involved, not the issuance of a new or additional license but the transfer of a license which has been in existence for many years within the same business area (in this case, approximately 200 feet). It has consistently been held that, where there is no question as to the licensee's fitness to hold a license, the mere fact that other licensed premises also serve the same neighborhood is not a valid reason for denying a place-to-place transfer from one location in the neighborhood to another location in that same neighborhood, since no increase in concentration of licenses results from such transfer, and such denials have consistently been reversed. Kupay v. Passaic, Bulletin 803, Item 9; Grower v. Hackensack, Bulletin 789, Item 1; Costa v. Verona, Bulletin 501, Item 2.

With respect to appellant's contention that the licensed premises are "too close" to the church, suffice it to say that while no license may be transferred in violation of R. S. 33:1-76, the statutory discretion to grant or deny an application for transfer of a license is vested in the municipal issuing authority (R.S. 33:1-26), and the exercise of this discretion includes the power to determine the policy question of whether or not particular premises, although beyond the required 200-foot distance, are "too close" to a church or school. Cf. Williams v. Atlantic Highlands, Bulletin 715, Item 7. "But where denial of an application is based upon the proximity of the premises to a church or school, though farther than 200 feet therefrom, such denial to have merit should be pursuant to a reasonable and bona fide municipal policy to that effect." Drozdowski v. Sayreville, Bulletin 746, Item 5.

Under all the facts and circumstances of this case, I find that appellant has failed to carry the burden imposed by Rule 6 of State Regulations No. 15 of establishing that the action of the respondent issuing authority was erroneous and should be reversed.

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA  
Director.

4. APPELLATE DECISIONS - LONGYEAR v. JEFFERSON TOWNSHIP.

GEORGE O. LONGYEAR, )

Appellant, )

-vs-

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF JEFFERSON, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

Oscar Meyerson, Esq., by Sidney Simandl, Esq., Attorney for Appellant.

Schenck, Price, Smith & King, Esqs., by Robert H. Schenck, Esq., Attorneys for Respondent.

David Young, 3d, Esq., by Harry L. Sears, Esq., Attorney for Daniel Callaghan and John Callaghan.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellant's application for a transfer of his plenary retail consumption license from Berkshire Valley Hotel to Callahan's Hotel at Callahan Cove ("Callahan" being the spelling in the Notice of Appeal and Petition of Appeal), Jefferson Township. The two premises mentioned above are more than two miles apart and hence it appears that they are not located in the same section of the township.

For the past fourteen years appellant held a liquor license at Berkshire Valley Hotel. In December 1952 he received notice to vacate said premises and actually vacated said premises on April 1, 1953. After he received the notice to vacate he negotiated with the owners of Callahan's Hotel and has verbally agreed with them to execute a written lease for said property if he can obtain a transfer of his license. The lease is to contain an option to purchase. Accordingly, in the early part of March 1953 appellant applied to respondent for a transfer of his license. On March 16, 1953, respondent denied his application. Hence this appeal.

The evidence discloses that, for many years prior to Prohibition, the grandparents, parents and an uncle of the present owners operated Callahan's Hotel and that, during that period, the respective operator of the hotel held a license to sell liquor. After Prohibition the property was rented to one Zahn who obtained a liquor license and who continued to operate the hotel. About 1940 or 1941 the property was rented to one Chabon who held a liquor license for said premises but "he operated mostly a tavern." Some time in 1951 a dispute arose between the owners of the property and Chabon. It is immaterial whether these differences arose from the fact that the owners attempted to raise the rent or the fact that the tenant refused to make necessary repairs. In any event, Chabon was served with a notice to vacate the premises in December 1951. Apparently Chabon then erected a building directly across the street from Callahan's Hotel and, in December 1951, respondent transferred his plenary retail consumption license from Callahan's Hotel to Chabon's new premises. Callahan's Hotel has been vacant since that time.

The history of the premises to which appellant seeks to transfer his license is set forth at length because appellant alleges that "the transfer was denied for personal reasons." At the hearing he testified that Wilbur Willis, a member of the Township Committee, had stated, after the meeting held on March 16, that the application

had been denied "on account of Callahan's." Another member of the Callahan family testified that, when he objected to the transfer of the Chabon license, the three members of the Township Committee made a faithful promise that "if we got someone with a license, they would transfer it to the hotel." At the hearing herein Wilbur Willis denied making the statement he is alleged to have made on March 16, and all three members of the Township Committee denied that any promise had been made when the Chabon license was transferred. In any event, a license issuing authority is not bound by any informal remarks made by its members. Stein v. West New York, Bulletin 101, Item 7; Hobbs v. Lower Penns Neck, Bulletin 372, Item 6.

Appellant further contends that the transfer should have been granted because there is need in this section of the Township for a restaurant and hotel. He testified that, if the license is granted, he intends to repair the premises and to operate a restaurant and hotel. The evidence indicates that there is a beach on the property and that a large number of persons visit the beach, particularly on week-ends during the summer.

On behalf of respondent, each of the three members of the Township Committee testified that there is no need for another licensed premises in this section of the township because the premises operated by Chabon are directly across the street; licensed premises operated by Hurff are five-eighths of a mile away, and three other licensed premises are within one and a half miles of Callahan's Hotel. The evidence also indicates that persons who now visit the beach carry lunches and that Callahan's Hotel has not been operated as a restaurant or hotel for at least twelve years last past. The fact that the premises were previously licensed does not entitle it to preferential treatment. Puri v. Warren, Bulletin 266, Item 2. On this point the facts in the present case are similar to the facts in DeBlasio v. Trenton, Bulletin 175, Item 6 (decided May 10, 1937), in which case the denial of a transfer was affirmed by the Commissioner.

It is clear that a transfer from person to person or place to place is not an inherent privilege. The issuing authority may grant or deny such transfers in the exercise of a reasonable discretion. VanSchoick v. Howell, Bulletin 120, Item 6. The number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. DeCapua v. Ocean, Bulletin 941, Item 1, and cases therein cited; Food Fair Stores v. Clifton et al., Bulletin 960, Item 2; Bramberger v. Clifton, Bulletin 971, Item 1.

After considering all the evidence in the instant case I conclude that appellant has not sustained the burden of proof in establishing that the members of the Township Committee were improperly motivated in denying the transfer or that their action was arbitrary or unreasonable so as to constitute an abuse of discretion warranting a reversal of their action.

The action of respondent in denying the application for transfer is hereby affirmed.

Accordingly, it is, on this 25th day of May, 1953,

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.

DOMINIC A. CAVICCHIA  
Director.

5. APPELLATE DECISIONS - JASINSKI v. JERSEY CITY.

FRANCIS JASINSKI and VICTOR J. JASINSKI, trading as VETERAN'S TAVERN,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF JERSEY CITY,

Respondent.

ON APPEAL CONCLUSIONS AND ORDER

Joseph P. Palladino, Esq., Attorney for Appellants. John B. Graf, Esq., by Francis X. Hayes, Esq., Attorney for Respondent.

Eugene A. Johnson, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's denial on November 19, 1952 of appellants' application for a place-to-place transfer of their plenary retail consumption license from 265 Grand Street to 271 Grand Street, Jersey City.

The answer of respondent filed herein sets forth, among other reasons for the denial of the application to transfer the license in question, that the proposed location was immediately next door to an existing tavern.

A prior application filed by Francis Jasinski (one of the appellants herein) for a similar transfer was denied by the local issuing authority. An appeal from said denial was taken to the then State Commissioner who, on January 17, 1946, affirmed the action of the local issuing authority in denying the transfer of the license. See Jasinski v. Jersey City, Bulletin 691, Item 8.

The evidence adduced in the instant appeal discloses no substantial variation in the factual situation from that set forth in the previous appeal. There are still three plenary retail consumption licensees operating, respectively, at the identical locations described in the prior appeal. The three liquor establishments are on the same side of the street in close proximity to one another. The appellants advance the same reasons urged in the prior appeal, that the proposed premises are larger than the existing premises, that the entrance is level with the sidewalk, whereas there are two steps leading to the entrance of their present tavern. They also contend that the present licensed premises are unsanitary and, due to the poor health of one of the appellants, it will be necessary for them to discontinue their business if they are not permitted to transfer the license to another site.

John W. Elken, Secretary to the respondent Board, testified that he became associated with the local issuing authority in 1933 and that he cannot recall the local issuing authority permitting holders of similar liquor licenses to locate next door to each other.

I am constrained to reiterate the pronouncement made in the prior appeal by the then Commissioner (Driscoll) with reference to the transfer, that the refusal to permit the appellants to move from their present site to one which will result in placing two taverns on contiguous properties, is neither unreasonable nor arbitrary. Jasinski v. Jersey City, supra.

The action of respondent is affirmed.

Accordingly, it is, on this 25th day of May, 1953,

ORDERED that the petition of appeal be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA  
Director.

6. LICENSED PREMISES - "CALCUTTA GOLF TOURNAMENT", DESCRIBED HEREIN, PROHIBITED ON LICENSED PREMISES.

June 2, 1953.

Dear Sir:

In your letter dated May 26 you ask if it is permissible for your club to hold its annual Calcutta Golf Tournament on its licensed premises.

You advise that the tournament is run in the following manner:

"Teams, each consisting of four members are set up. At a dinner in the club house each team is offered 'For Sale' to the highest bidder. The proceeds of sale are held by a committee until the conclusion of the tournament. In the succeeding two days the teams play in the tournament. The 'owners' of the teams finishing first, second, third and fourth then divide the proceeds of sale which the committee has held, according to a certain proportion. The money is actually paid outside of the club grounds."

Rule 6 of State Regulations No. 20 provides:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale; nor shall any licensee possess, have custody of, or allow, permit or suffer any such ticket or participation right, in or upon the licensed premises."

Rule 7 of State Regulations No. 20 provides:

"No licensee shall engage in or allow, permit or suffer any pool-selling, bookmaking or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, or any machine or device commonly known as a bagatelle or pin ball machine, in or upon the licensed premises."

The proposed plan involving the "sale" of the teams on licensed premises would constitute a lottery within the meaning of Rule 6 or, in any event, would constitute gambling on the outcome of the golf games within the meaning of Rule 7; and this is true regardless of the fact that the money is not to be paid on licensed premises.

Very truly yours,  
DOMINIC A. CAVICCHIA  
Director.

7. STATE LICENSES - NEW APPLICATION FILED.

G. Krueger Brewing Company, 45-73 Belmont Ave., 75-101 Belmont Ave., 17-27 Belmont Ave. and 51-79 Charlton St., Newark, N.J.

Application filed June 1, 1953 for Limited Wholesale License.