

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

BULLETIN NUMBER 220

December 16, 1937

1. APPELLATE DECISIONS - LILLY v. WAY

PRISCILLA LILLY, )  
 )  
 Appellant, )  
 )  
 -vs- ) ON APPEAL  
 ) CONCLUSIONS  
 )  
 HONORABLE PALMER M. WAY, )  
 JUDGE OF THE COURT OF COMMON )  
 PLEAS OF CAPE MAY COUNTY AND )  
 ISSUING AUTHORITY, )  
 )  
 Respondent )  
 ----- )

Samuel F. Eldredge, Esq. and Charles A. Bonnell, Esc.,  
for Appellant.  
Boswell & Boswell, Esqs., by John E. Boswell, Esq.,  
for Respondent.  
Harry Tenenbaum, Esq., for Mr. N. Kalellis, an Objector.  
Irving Shenberg, Esq., for Cape May County Beverage Association,  
an Objector.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for plenary retail consumption license for premises located at the northwest corner of Delaware Parkway and Millman Lane, Wildwood Villas, Lower Township, Cape May County.

In May 1937, appellant filed an application for a plenary retail consumption license, stating that her premises would be used as "Restaurant Cafe & Bar." This application was denied on the ground that the license sought could not be issued in view of the following limitation of the number of licenses in force in Cape May County:

"In municipalities where licenses have heretofore been issued, there shall be no more Plenary Retail Consumption or Plenary Retail Distribution licenses issued in any such municipality of Cape May County until the number of licenses outstanding in each class in each respective municipality shall be less than the number in existence on the effective date of this rule, except to bona fide hotels, and restaurants as defined in the above revised Act."

Appellant evidently understood that although her premises were admittedly being operated as a bona fide restaurant,

the license could not issue unless they were also conducted as a hotel. Accordingly, she filed a new application in June 1937 in which she stated that her premises would be used as "Hotel Restaurant & Bar". This application was likewise denied. The present appeal is from the second denial, no appeal having been taken from the first.

Respondent advances a preliminary contention that the appeal should be dismissed because it was not taken within 30 days after notice of the first denial. Nowhere in the statute is there any provision which precludes an applicant from filing more than one application and under Section 19 he may appeal from any particular denial within 30 days after notice thereof. The present appeal was properly taken within 30 days after notice of the action sought to be reviewed, i.e. the second denial. Respondent's preliminary contention cannot, therefore, be sustained.

At the hearing considerable testimony was introduced by the appellant to prove that her premises are now actually being operated as a hotel. It was established that subsequent to the filing of the first application, the trade name "Bay View Hotel" was adopted and a sign bearing that name was erected on the exterior of the premises; a hotel register was installed; and stationery bearing the name "Bay View Hotel" was made available to guests. Appellant testified that there are 11 bedrooms in which 22 persons can be accommodated and that on several recent occasions she has been required to turn people away because all of the accommodations were taken.

It may be that the foregoing is sufficient to indicate that the premises have been converted into and are now actually being operated as a hotel. However, no determination on this issue need be made. The limitation upon which the denial was based expressly exempts "bona fide hotels, and restaurants". Properly construed, the exemption is not confined to premises operated both as a hotel and restaurant, but extends to premises operated as a restaurant as well as premises operated as a hotel. Since appellant's premises are admittedly operated as a bona fide restaurant they are not affected by the limitation.

As a further ground for the denial of the application, respondent's answer asserts that there are a sufficient number of licensed premises in the vicinity. The evidence indicates that the winter population of Wildwood Villas consists of approximately 200 families and the summer population is between 5000 and 6000 people. There is no other hotel or restaurant (except a diner which is a mile away from appellant's premises) anywhere in Wildwood Villas and the nearest licensed place of any kind is four blocks distant. Many residents of Wildwood Villas testified that the granting of the license sought would serve an affirmative public need. In view of the foregoing, it is evident that the assertion that there are a sufficient number of licensed premises in the vicinity is unfounded in fact.

One remaining question, which was raised not by the respondent but by objectors who appeared at the hearing on appeal, requires careful consideration. They advanced the contention that the appellant has not been a resident of New Jersey for five

years continuously preceding the filing of her application and that consequently she is disqualified, under the provisions of Section 22 of the Control Act, from obtaining a license.

Appellant was born at Rio Grande, Cape May County, New Jersey, and her continued residence thereafter within New Jersey until 1933 is not questioned. She testified that early in 1933 she sold certain property owned by her, took up residence with her sister at Green Creek, Cape May County, since that date has evenly divided her time (exclusive of winter trips to Florida) between her sister's home in Cape May County and her daughter's home at #412 Elm Avenue, Upper Darby, Pennsylvania, and now resides at the premises in Wildwood Villas which are sought to be licensed. She further testified that she considers and has, at all times in the past, considered New Jersey as her home. Appellant's sister, Millicent Hemmingway, testified that her home is considered by her sister as her own; that her sister has had a room there since she sold her property; and that her clothes are kept there.

With a view towards establishing that appellant's home was in Pennsylvania rather than New Jersey, the objectors produced a letter from the County Commissioners of Delaware County, Pennsylvania, certifying that the appellant had been registered in that County for the years 1934-35 and 1936 and introduced evidence that in 1937 appellant had obtained Pennsylvania license plates for her automobile, giving her daughter's address in Pennsylvania as her residence. With respect to the matters certified in the letter, appellant testified that she never registered personally and never authorized any one else to register on her behalf and it is not suggested that she ever voted in Pennsylvania. In explanation of her conduct regarding the license plates, she testified that she purchased her automobile in Allentown, Pennsylvania, because she received a better trade-in and gave her daughter's address because she was obtaining a Pennsylvania license.

The word "residence" as used in the Control Act, means "domicile" or the place where a person maintains his permanent home to which, when he is absent, he has the intention of returning. See Re Conover, Bulletin #16, Item #4; Re Orland, Bulletin #143, Item #6. Temporary and even protracted absence from the State will not effect loss of domicile if it be accompanied by the intention presently to return, i.e. the so-called animus revertendi. See Re Osborn, Bulletin #174, Item #16; Re Case 53, Bulletin #175, Item #5; Re Potter, Bulletin #126, Item #3. Notwithstanding such absence, the original domicile, once established, is presumed to continue until a new domicile is acquired. Cadwalder vs. Howell, 16 N.J.L. 138 (Sup. Ct. 1840). And the burden of establishing that a person has changed his domicile rests upon the persons making such assertion. See Briggs vs. Stanton, 8 N.J.Misc. 363 (Sup. Ct. 1930), where the Court said:

"His prior residence being conclusively shown, it is presumed to continue until shown to have changed, and the burden of showing that is normally on the parties asserting it, in this case his adversaries in the Council."

Hence appellant's domicile, which was admittedly in New Jersey in 1933, must be deemed to continue in New Jersey unless the evidence affirmatively establishes that since that time she has transferred her domicile to Pennsylvania.

The question of residence is largely one of intention. This does not mean that the question is to be necessarily decided accordingly as a person avows or declares a given place to be his domicile. Such a declaration, it is true, is entitled to great weight and, if his words are supported by his actions, might be conclusive. But the actual intent, if kept secret and not disclosed until some self-serving occasion presents, is not dispositive. What governs is the reasonably presumable intent to be deduced, not only from what one says, but also from what one does. Actions often speak louder than words. What counts is not intent in the shadows but rather mental resolve illumined by deeds.

In the instant case, appellant declared that she has at all times considered New Jersey as her permanent home. Her actions support rather than belie her words. She was born here and lived here all her life until she sold her property, whereupon she has actually lived much of the time with her sister in this State. True, she has not been continuously present in New Jersey. But that is not a requirement of domicile. One may hang up his hat wherever he pleases but his home remains constant until he himself changes it. The fact that appellant has divided her time between her sister in this state and her daughter in another state is evidential to be sure, but does not constitute even a prima facie case of a change of home. Her visits to her daughter in Pennsylvania are in nowise inconsistent with the retention of her home in New Jersey where she spends substantially half of her time. Her New Jersey residence continues until the contrary appears. Acts consistent with a transfer of residence are not of themselves enough to effect such a transfer - to achieve that result they must be inconsistent with anything else except such transfer.

A helpful analogue is found in the Court's administration of the doctrine of vicarious liability by a master for the actions of his servant or of a principal for the acts of his agent, say of a third party who has temporarily hired a taxi operated by a driver furnished by the cab company. The rule is established that, as long as the employee is following the business of his general employer in the service rendered to a third party, there will be no inference that the servant has become the employee of the third party unless command over the employee has, in fact, been surrendered by the general employer and the mere fact of a division of command or control is not an inference of such a surrender. Charles vs. Barrett, 233 N.Y. 127, 135 N.E. 199 (1922); Cattini vs. American Railway Express Co., 202 App. Div. 336, 196 N.Y.S. 10 (1922)

So, in the case of residence, once it is established, it stays put - it continues until abdicated or surrendered and the mere fact that one's time is divided in living with one's daughter instead of at one's own home, does not create an inference of surrender. Without a surrender of the New Jersey residence,

there is no such thing as a transfer of residence to Pennsylvania. The law allows her but one legal domicile at one time.

There remains to be considered the matter of her voting registration in Pennsylvania. How that came about is not disclosed. Appellant's testimony that she herself never registered there and did not authorize anyone else to do so is uncontradicted. If she had voted in Pennsylvania, that would have been a matter of gravest concern, but no such proof has even been attempted. This point, therefore, falls of its own weight.

As regards her purchasing an automobile in Pennsylvania and giving her daughter's address as her Pennsylvania residence, such evidence is of real moment. Standing alone it does create an inference of residence in Pennsylvania. It certainly requires explanation. But the explanation has been given, viz: that the use of her daughter's address was merely for the purpose of facilitating a better bargain and without reference to where her permanent home might be. Her conduct is not irreconcilable with her explanation. Her action in taking out a Pennsylvania license and stating her "residence" to be in that State is consistent, to be sure, with residence in Pennsylvania. But it is not inconsistent with anything else but residence there. In other words, no transfer of residence is effected unless that is the only conclusion of which the facts are fairly susceptible. The trouble with respondent's case is that the act relied on may or may not indicate intent to change domicile. It is susceptible of more than one inference. It is equally consistent with actual residence still retained in New Jersey. For laymen, unlike lawyers, are not conscious of using edged tools when they speak of "residence". Most folk, if asked what they meant by the quoted term, would answer "the place where one lives". Hence, in ordinary use, it may signify a place of temporary sojourn just as much as a permanent home. The term, therefore, in its common acceptance, is ambiguous. That of itself makes its use susceptible of explanation. It is common knowledge that college boys and girls often take out automobile licenses or driver's cards in the State where the college is located and other than where their parents live and thereupon declare their residence to be the college dormitory or a fraternity house. They regard residence as a place of address; a place where they can be found; the place where they presently dwell even though they have no intention of remaining there permanently. If asked where their home was or the technical meaning of residence were painstakingly and clearly explained, their answer would probably be radically different. So business travelers, time and again, when registering mail or personal presence state their residence to be the store, the factory, or the office. The world in general doesn't pause to draw fine spun distinctions about residence, but treats the term as if it meant not much more than address.

So this appellant getting a new car in Pennsylvania, and naturally anxious to drive it without delay and with her own plates, takes out a Pennsylvania license. Her apparently thoughtless act of stating a Pennsylvania address as her residence cannot be isolated from all the other facts in this case and made to serve as a solemn, dispositive, and un rebuttable declaration that

she was changing her home from New Jersey to Pennsylvania. The momentous decision she made that day was to trade her car, not to transfer her residence. She did intend to change her automobile but I find no intent to change her home. Her incidental and apparently inconsequential act of filling out an application for a Pennsylvania motor license is, at the most equivocal. Her explanation is consistent with the legal presumption of her continued domicile in New Jersey. The burden of proof on the parties asserting the contrary has not been sustained.

I therefore find that, upon the present record, appellant in legal contemplation has been resident within New Jersey during the requisite period.

The action of respondent is, therefore, reversed.

Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT  
Commissioner

Dated: December 7, 1937

2. TOILET PREPARATIONS - FINGER WAVE LOTION - NO STATE LICENSE OR PERMIT REQUIRED FOR PURCHASE AND USE OF ALCOHOL IN MANUFACTURE OF TOILET PREPARATIONS UNFIT FOR BEVERAGE PURPOSES - HEREIN OF EVE AND THE QUINCE.

Dear Sir:

Would you please send me some information regarding the purchase of alcohol for my own use. We want to make our own finger-waving lotion from quince seed, which requires a certain amount of alcohol to keep it from turning rancid.

We have been experimenting with preserve poudre, but after using it we found it leaves a white sediment on the hair. I believe if this were replaced with alcohol it would prove otherwise and also speed up the process of drying the hair.

Yours truly,

Joseph J. Daring  
Mayfair Beauty Shoppe

December 9, 1937.

Mr. Joseph J. Daring,  
Mayfair Beauty Shoppe,  
West New York, N. J.

My dear Mr. Daring:

No license or permit is required under the State Alcoholic Beverage Control Act for the purchase or use

of alcohol used in the manufacture of toilet preparations when such preparations are unfit in fact for beverage purposes.

If, therefore, the lotion a la quince is to be used only to set the wave or hold the curl and is unpalatable, as it sounds, you need no license or permit to make it or to buy the alcohol to preserve it, so far as the State is concerned.

But there are Federal rules and permits involved if denatured alcohol is used. So I suggest that you take up this phase of the matter with the Federal Alcohol Tax Unit, Post Office Building, Newark.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

3. SPECIAL DISPENSATION - CHRISTMAS PUNCH FOR THE SWEDES - THE OPEN SEASON ON GLOGG STARTS THE DAY BEFORE CHRISTMAS - OTHERWISE SPECIAL PERMIT IS NECESSARY FOR CONCOCTION.

December 9, 1937.

Niels Dahl,  
Clifton, N.J.

Dear Mr. Dahl:

I have your letter of December 3 wherein you request permission to sell "Swedish Glogg" under club license of the New Jersey Vasa Home, Inc., at a Christmas party to be conducted on its licensed premises at Budd Lake on December 19, 1937.

Last year at about this time, I ruled that "Swedish Glogg" could be mixed, boiled and dispensed during the period beginning one day before Christmas and ending on New Year's Day at midnight. In Re Thorngreen, Bulletin 154, Item 1.

The same dispensation will be in force this year.

In view of the fact that your Christmas party is to take place before the open season on Glogg, it will be necessary for the club to apply for a Special Permit costing \$10.00 for the occasion.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

4. LICENSEES - EMPLOYEES - QUALIFICATION - EFFECT OF LOCAL REGULATION FORBIDDING FEMALES TO TEND BAR OR SERVE ALCOHOLIC BEVERAGES WHERE THE PRINCIPAL BUSINESS OF THE LICENSEE IS THE SALE OF ALCOHOLIC BEVERAGES.

December 9, 1937.

Miss Grace Dangerio,  
Newark, N. J.

Dear Miss Dangerio:

Your letter indicates that you have been a life-long resident of New Jersey and are of age. If this is true and you

are not disqualified otherwise, you are qualified to be employed, so far as the State laws are concerned, by a licensee as a waitress, and as such you have full right to sell or serve alcoholic beverages for your employer.

But there is a local regulation in Newark which may have some bearing on your case, all depending on what the principal business of your present employer is. This occurs because the Newark Board of Alcoholic Beverage Control has adopted a regulation prohibiting the employment of any female by a licensee to tend bar, sell or serve alcoholic beverages to patrons, where the principal business is the sale of alcoholic beverages.

Hence, if the principal business of the W. J. Z. Long Bar & Grill, 506 Springfield Ave., Newark, N. J., is the sale of alcoholic beverages, you can be employed as a waitress there, but your duties as such must be confined to the sale and service of foods and non-alcoholic beverages.

If, however, the principal business of your employer is not the sale of alcoholic beverages, then the local regulation would not apply to you.

Whether or not the W. J. Z. Long Bar & Grill comes within the above mentioned regulation may be determined by communicating with the Newark Board of Alcoholic Beverage Control, City Hall, Newark, N. J.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

5. APPELLATE DECISIONS - ORANSKY vs. TRENTON.

HARRY ORANSKY,	)	
Appellant	)	
-vs-	)	ON APPEAL
CITY COUNCIL OF THE	)	<u>CONCLUSIONS</u>
CITY OF TRENTON,	)	
Respondent.	)	
.....	)	

George Pellettieri, Esc., Attorney for Appellant  
Adolph F. Kunca, Esc., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of transfer of his plenary retail distribution license from 1143 East State Street to 632 Stuyvesant Avenue, Trenton.

Respondent denied the transfer because there are sufficient licensed places in the vicinity and because of a policy adopted not to issue any further licenses in the western section of the city.

The evidence shows that there are two licensed places now existing on Stuyvesant Avenue; one, licensed for consumption, about 150 feet east of the premises in question and the other, licensed for distribution, about three blocks west thereof. Both of these places were originally licensed before the alleged

policy was adopted.

The evidence shows also that the City Council, in April 1935, adopted a policy not to issue any new licenses or transfer any license to premises in the western part of Trenton, namely, that portion of the city to the west of Calhoun Street and Pennington Avenue.

The right to transfer is not inherent in the license. Van Schoick vs. Howell, Bulletin 120, Item 6. The burden of proof to show that the refusal was improper is upon appellant.

The only reason appellant seeks the transfer is because his rent has been raised at his present licensed premises and because his father owns the premises to which he seeks transfer. His evidence as to necessity consists of a petition with about 100 names of persons who state they have no objections to the transfer sought. Stuyvesant Avenue is a mixed business and residential street and many residents of the neighborhood have objected to the transfer.

The present existing places appear to be adequate to take care of the needs of persons residing nearby and the policy adopted in April 1935 has been enforced.

Under the circumstances of this case, appellant has failed to show that there is need for another licensed place in this section or that the policy adopted is unreasonable.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT  
Commissioner

Dated: December 11, 1937.

6. MUNICIPAL ORDINANCES - SCOPE AND EXTENT OF LOCAL PROHIBITION WHICH MAY BE ENACTED.

December 9, 1937.

Morton C. Haight, Esq.,  
Pitman, N. J.

My dear Mr. Haight:

I have before me the proposed ordinance concerning alcoholic beverages for the Borough of Pitman which you have submitted for my approval.

I note that no retail licenses for the sale of alcoholic beverages have been issued in the Borough of Pitman. I take it, therefore, that it is the Council's thought that all retail sales of alcoholic beverages should be prohibited.

Our present Alcoholic Beverage Control Act contemplates a comprehensive scheme of control of the liquor traffic.

It provides in Section 37 that municipal governing bodies shall have the power to make, enforce, amend and repeal

such ordinances as they may deem necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages in violation of the Act.

Hence, any enactment that the Council may make with respect to alcoholic beverages should be drawn in such manner that it falls within and carries out the purposes of the Act.

In diverging from the statutory language, it may be that in some respects you have assumed more power than the statute grants; it is obvious that in others you have exercised less. You will better provide the Borough with an ordinance which will afford the greatest protection possible, as broad in scope as the statute allows, yet not overstepping the limits of your authority, by using the statutory language. I offer for your consideration the following:

"No person shall possess, sell, distribute or transport within the Borough of Pitman any alcoholic beverage in violation of 'An Act Concerning Alcoholic Beverages' passed December 6, 1953 as amended and supplemented."

Add to this your Section 5, which provides penalties for violation, and Sections 6, 7 and 8, the saving clause, the repealer, and the effective clause, respectively, and you will have an ordinance as complete and comprehensive as the statute allows.

It will prohibit the retail sale of alcoholic beverages in Pitman (your original Section 1) because under the Act all such sales are prohibited unless a license has first been obtained, and as you are not fixing retail license fees or providing for the issuance of such licenses, no such licenses can be issued for premises in Pitman. Moreover, there is no power in the Council to permit the unlicensed sale of alcoholic beverages pursuant to doctor's prescription. Duly registered druggists and pharmacists may purchase and sell alcoholic beverages for the compounding of prescriptions unfit for use as beverages and sell same without a license, but they may not sell alcoholic beverages as such either in original containers or by the glass except under a license obtained pursuant to the Act. See in the Control Act, Section 26 as last amended by Chapter 85, P. L. 1934.

The prohibition against maintaining a house or building wherein alcoholic beverages are sold (your original Section 2) is not within your statutory authority. The power to prohibit sale or possession in violation of the Act fully protects you in any event.

The ordinance being based on the Act, the terms used therein assume the meanings given them by the Act. Hence, no need for your original Section 3.

The provision allowing the possession of alcoholic beverages in private dwellings and their use for the consumption of the owner thereof and his family (your original Section 4) is covered in the Act by Section 2. The Act, in fact, is broader. It doesn't confine much private consumption exclusively to the owner and the resident members of his family. It's broad enough to allow him to give a drink to those friends and relatives who do not reside with him.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

7. COMBINATION SALES - DEFINED - THE TERM IS NOT APPLICABLE WHERE SEVERAL UNITS OF THE SAME THING ARE SOLD EVEN THOUGH A LUMP SUM IS CHARGED FOR THE LOT - HEREIN OF BEER AT TEN CENTS A BOTTLE OR THREE FOR A QUARTER.

COMBINATION SALES - THE REASON FOR THE RULE - THE BAIT IS THE HOPE OF GETTING SOMETHING FOR NOTHING OR FOR VERY LITTLE - THE PRACTICE IS AN UNDUE STIMULATION TO THE CONSUMPTION OF ALCOHOLIC BEVERAGES.

COMBINATION SALES - CONDITIONS UNDER WHICH ALCOHOLIC BEVERAGES OF DIFFERENT KINDS MAY BE ATTRACTIVELY PACKAGED AND SOLD AT ONE PRICE FOR THE ASSORTMENT - HEREIN OF THE COMPLETE DISCLOSURE REQUIRED OF THE UNIT PRICES OF EACH ARTICLE AS CURRENTLY SOLD SEPARATELY.

December 14, 1937.

Morris Harris, Esq.,  
Passaic, N. J.

Dear Mr. Harris:

I have before me your letter concerning the scope of Rule 19 of the State Rules governing the conduct of licensees.

The Rule provides:

"19. No retail licensee shall, directly or indirectly, sell or offer for sale any alcoholic beverage for consumption off the licensed premises except at a specified price per bottle or specified price per case thereof, or both; 'combination sales' of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited."

(1). You inquire if it is permissible to sell beer at 10¢ a bottle or three for 25¢.

The object of the Rule was to forbid "Combination Sales" at a single aggregate price - for instance, a bottle of liquor and a pack of cigarettes, or a bottle of wine thrown in with two bottles of Scotch at so and so much for the lot. A combination is the result of uniting or joining one thing with another. A combination sale occurs where two or more different things are sold for one price. The term does not apply where several units of the same thing are sold, even though a lump sum is charged for the lot. The sales appeal in one case is based on the temptation of a concealed bargain. In the latter case it rests solely on an open differential in price dependent upon the quantity sold.

Since the sale of beer at ten cents a bottle, or three for a quarter, is not a combination sale within the meaning of the Rule, it is permissible.

The Rule is not happily worded in requiring that price must be specified either per bottle or per case. Such mention was merely intended to be illustrative of price specification in a combination sale. It applies only to such sales.

(2). The above principle applies to alcoholic beverages generally as well as beer.

(3). You ask: "Is it permissible to sell a combination basket such as is commonly made up at Christmas time at a price which is less than the total price of all the articles contained in the basket if they were sold separately?"

This question, as you ask it, must be answered in the negative because it contemplates a combination sale at a single aggregate price. It would thereby re-open the trade evils which the Rule was designed to prevent. The sales attraction in such a case is based, not upon the merits of the individual items, but upon the implication of getting a bargain even though the buyer has to take articles he does not want - upon making the buyer think he is getting more for his money if he buys the combined articles than he would if he bought them separately. Your question presupposes that he does. May be so - may be not! Only the seller knows. How would the buyer know? He could, to be sure, figure it out if he had a pad and pencil and made specific inquiry as to the price of each component. Mental inertia being what it is, it just wouldn't be done. The bait to the customer is the hope of getting something for nothing or else for very little. The wish is transformed into the thought; then the thought into action. It is this one-sided lure which makes such a practice an undue stimulation to the purchase and thence to the consumption of alcoholic beverages.

There is no objection to packaging alcoholic beverages attractively in Christmas baskets provided the exact contents are itemized in detail and the unit price of each article is specifically stated at the same figure that it is currently sold by the licensee separately and independently of any combination, and further provided that the price for the assortment is the aggregate of the individual items. These so-called Christmas, or gift, or bon voyage packages are allowable as a legitimate display suggestion to the buying public of a gift assortment but they may not be used as a medium for perpetuating the evils of the liquor trade incident to the usual combination sale.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

8. APPELLATE DECISIONS - VOROBIOFF vs. WAY.

MARY VOROBIOFF, )

Appellant, )

-vs- )

HONORABLE PALMER M. WAY, JUDGE )  
OF THE COURT OF COMMON PLEAS OF )  
THE COUNTY OF CAPE MAY AND )  
ISSUING AUTHORITY, and ANNA M. )  
KELLY, )

Respondents. )

.....  
Charles Bonnell, Esq., Attorney for Appellant.  
Rex A. Donnelly, Esq., Attorney for Respondent Issuing Authority.

Robert C. Bright, Esq., and T. Millet Hand, Esq., Attorneys for  
Respondent Licensee, Anna M. Kelly.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary re-tail consumption license to Anna M. Kelly for premises on Atlantic Avenue on the corner of Montgomery Avenue, City of Wildwood.

Appellant resides on Montgomery Avenue and the side of appellant's house is separated from the rear of the licensed premises by an alleyway four feet and ten inches wide.

Anna M. Kelly has held a consumption license for the premises in question ever since Repeal. When she filed her application for renewal of her license in 1936, appellant filed written objections thereto. Judge Way renewed the license in 1936 despite these objections and suggested to Mrs. Kelly at that time that she should make efforts to reduce the noise in the kitchen of her premises, cease playing the radio in the early hours of the morning and take steps to prevent patrons from "honking" automobile horns in front of her premises.

It appears from the transcript of the evidence taken before Judge Way in June 1937 that the objections this year are practically the same as those filed in the previous year, with the exception as to the complaint previously made against the radio. No copies of the written objections filed in either 1936 or 1937 were introduced into evidence, but it appears from the pleadings and the evidence given at the hearing of the appeal that these objections were based upon (1) excessive noises upon the licensed premises, (2) unsanitary odors from the licensed premises, (3) improper conduct of patrons of the licensed premises in the alley heretofore mentioned.

Appellant's testimony is not cogent or convincing as to the noise and odors which she alleges. There was undoubtedly some cause for complaint during past years but the record as presented does not afford any clear picture of the conditions which obtained after, as distinguished from before, Judge Way's warning. There is nothing concrete on these points to warrant any question of the exercise of discretion by the issuing authority.

Appellant and her step-son did testify that on frequent occasions patrons from Kelly's premises used the alleyway for toilet purposes and were drunk and unruly, and sometimes vomited while they were using the alleyway. They also testified that revenue from her premises has seriously decreased since 1929 and that certain persons refused to stay as boarders in her premises because of the noise and the odors from the licensed premises. The loss of revenue may, of course, be due to other causes and cannot be given any great weight in these proceedings. The sole question with which I am concerned is whether or not the licensed premises have been properly conducted.

It appears from the testimony given by the licensee that she closed the kitchen in the rear of her premises in 1936 in order to eliminate the objection to the noises made in wash-

ing dishes and that at the present time she serves only sandwiches which are prepared at the bar in the front part of her premises. It likewise appears from the testimony of the Assistant Director of Health of the City of Wildwood that he examined Kelly's premises three or four times during June 1937, found that the toilets were adequate and clean, issued a certificate of sanitation to Mrs. Kelly and approved the sanitary conditions in a report to Judge Way. It likewise appears that since the license was renewed in 1937, Mrs. Kelly, who denies that there was ever any improper conduct in the alleyway, has erected gates at both ends thereof to prohibit anyone from using the alleyway without her permission.

Appellant likewise contends that the licensee is a resident of Pennsylvania. It appears, however, that the licensee has voted in Wildwood continually since 1930. The only evidence produced by appellant to show that she is not a resident of New Jersey is the fact that her husband holds a liquor license in Philadelphia and that he has obtained an age, residence or citizenship permit from this Department as a non-resident of New Jersey. While the residence of the husband is usually considered to be the residence of the wife, there is nothing which would prevent a wife from setting up a separate residence from her husband. The fact that Mrs. Kelly has voted for the past seven years in Wildwood is sufficient to show that she considers her permanent residence to be in this State, and the mere fact that her husband plans or maintains a residence elsewhere is not of itself sufficient to show that she is not a resident of New Jersey. Cf. Lilly vs. Way, Bulletin #220, Item 1.

The evidence shows that the licensee, Anna M. Kelly, has made real and sincere efforts to conduct her premises in a proper manner. The evidence produced by appellant is not sufficient to show that the action of the issuing authority in renewing the license was improper.

The action of Honorable Palmer M. Way, Judge of the Court of Common Pleas of the County of Cape May, in renewing the license to Anna M. Kelly is, therefore affirmed.

D. FREDERICK BURNETT  
Commissioner

Dated: December 13, 1937.

9. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

December 14, 1937.

Re: Application for Solicitor's Permit  
Case No. 198

Application was filed for solicitor's permit pursuant to provisions of P.L. 1935, c. 256. Therein, applicant disclosed that he had been convicted of the crime of "receiving stolen goods." Accordingly, a hearing was scheduled to determine if the crime involved moral turpitude.

Testimony taken at the hearing revealed that in 1918 and prior thereto, applicant and his partner conducted a pawn brokers' service store in Newark; that over a

period of time they did business with a man who was employed in a jewelry factory and who had stolen various articles of jewelry which he disposed of through applicant and his partner; that the total value of the articles of jewelry amounted to \$234.00. Applicant stated that he entered a plea of non-vult to an indictment, charging him with having received stolen goods to the value of \$234.00; that thereupon, he was sentenced in 1918 to serve three months in jail and pay a \$500.00 fine; that after serving a month, he was recalled and sentenced to the time he had already served; that he paid the \$500.00 fine. Applicant also stated that the stolen jewelry had been made good either by its return or the value of same paid to the employer of the man who stole it; further, that he did not know the jewelry had been stolen and had entered his non-vult plea only because his lawyer had advised him to do so.

The crime of receiving stolen goods ordinarily involves moral turpitude. In Re Application for Solicitor's Permit, Case #42, Bulletin 156, Item 4, and cases therein cited. In view of the plea of non-vult, the sentence and fine, coupled with the facts as outlined above, there is nothing in this case which would warrant a contrary conclusion.

It is therefore recommended that the application for solicitor's permit be denied.

Jerome B. McKenna, Attorney

Approved:

D. FREDERICK BURNETT  
Commissioner

10. APPELLATE DECISIONS - PEARCE vs. WEST ORANGE

REV. HENRY ARTHUR PEARCE,	)	
	)	
Appellant,	)	
	)	
-vs-	)	
	)	
BOARD OF COMMISSIONERS OF	)	ON APPEAL
WEST ORANGE,	)	
	)	<u>CONCLUSIONS</u>
Respondent.	)	
	)	
. . . . .		

Henry Arthur Pearce, Pro Se.  
Alfred J. Grosso, Esq., Attorney for Respondent.  
Max Mehler, Esq., Attorney for West Orange Tavern Owners Ass'n.

Appeal from a resolution of respondent modifying the regulations concerning closing hours in West Orange, now fixed at 2:00 A. M. on week-days and 3:00 A. M. on Sunday mornings, and which resolution provided in substance that said closing hours shall not be operative or in effect on Christmas Day, 1937, or on New Year's Day, 1938.

After public hearing conducted by the Commissioner during which the above attorneys, tavern owners in person, and citizens generally were heard, the Commissioner thereupon rendered oral conclusions as follows:

BY THE COMMISSIONER (orally):

The statute (Section 38), provides that if any person who is affected by the hours between which sales of alcoholic beverages at retail may be made shall consider himself aggrieved thereby, he may appeal to the Commissioner in respect thereto. Thereupon, the Commissioner, after public hearing, may set aside, vacate and repeal the limitation complained of, or change, alter, amend or otherwise modify it.

I have listened with intense care to what has been presented in an effort to understand both sides. There is no question of power. It is not a matter of law. It is rather a question of policy - a matter of social desirability. Opinions differ. The Legislature has provided that I am to be the umpire, because while the right to fix these hours is, in the first instance, delegated to the municipalities, it is subject to appeal.

Such an appeal is not a matter of determining whether a discretion has been abused. The Commissioner is not confined to the alternatives of affirmance or reversal, for express power is conferred to change, alter or otherwise modify the hours so fixed. Hence the question is one of social desirability. And, therefore, in my homely, clumsy way, I have to grope and feel for the criterion and to sense the public interest as best I can. So that is the only ground I am going to go by in this decision.

Christmas is a holiday, as well as a holy day. It is essentially a home day; it is akin to Thanksgiving. It is one of our two family days. The Christmas tree is one of the few remaining sentimentalities that we allow ourselves to indulge in; but it typifies the spirit of Christmas. When the Christmas stockings are emptied and the presents are opened, the kids want father and mother and brother and sister to be there. The man who has spent the whole night in a tavern and comes home plastered at seven does not contribute anything to the family cheer, except gloom. I don't see that public policy is served by taking all wraps off on Christmas Eve or early Christmas morning.

The municipality allows an extension to three o'clock on special days, that is to say on Saturday nights. I shall regard Christmas as being a special day, and hereby set 3:00 A.M. on December 25th as the closing hour. That's enough.

As regards New Year's, speaking from the same standpoint of social desirability, I find the situation essentially different. New Year's Day is not in any sense a family day; it is a day of feasting, celebration, merrymaking, and letting off steam. The general idea of most everybody, whatever their particular thoughts about liquor, is that on New Year's Eve they must be "out" - they must go somewhere. Some go to watch-night services at the church, some to night clubs, some to social affairs here and there, but whatever they do, they are on the move in gay party spirits - something essentially different from a Christmas family gathering at the fireside.

Consequently, so far as New Year's Eve is concerned, the resolution is affirmed.

*C. E. Hendrickson*  
Commissioner

C. E. HENDRICKSON