

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

BULLETIN 249

JUNE 3RD, 1938

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - STATUTORY AUTOMATIC
SUSPENSION - HEREIN OF THE DEFENSE OF ALLEGED ENTRAPMENT.

In the Matter of Disciplinary Pro- :
ceedings against :

MARY SANDAGO, :
Route 30, Clinton-Glen Gardner Road, :
Lebanon Township, :

Holder of Plenary Retail Consump- :
tion License No. C-5, issued by the :
Township Committee of Lebanon Township. :

CONCLUSIONS
AND
ORDER

In the Matter of a Petition by :
MARY SANDAGO :

To Lift the Automatic Suspension of :
Plenary Retail Consumption License :
No. C-5, issued by the Township Com- :
mittee of Lebanon Township. :

CONCLUSIONS

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage
Control.

Hendrickson, Greenberg & Jacobs, Esqs., by Sidney L. Jacobs, Esq.,
for the Licensee-Petitioner.

BY THE COMMISSIONER:

On March 11, 1938 the licensee-petitioner herein
pleaded guilty in the Hunterdon County Court of Special Sessions
to a charge of selling liquor to a minor, and was fined \$200. In
accordance with the provisions of R.S. 33:1-31.1 (Control Act,
Section *82), this conviction automatically suspended the license
and, on the following day, the license was picked up and the place
has been closed since so far as the sale of liquor is concerned.

Thereafter the licensee filed a petition to lift the
automatic suspension. At or about the same time and upon the com-
plaint of the Prosecutor of Hunterdon County, disciplinary pro-
ceedings were instituted directly by the Department, in accord-
ance with the practice established in cases where the complaint
comes from a County Prosecutor. Re Williams, Bulletin #27, Item 1.
The complaint charged that the licensee sold an alcoholic beverage
to Marie Schaible, a minor of the age of nineteen years, in viola-
tion of R.S. 33:1-77 (Control Act, Section 77, and in violation of
Rule 1 of Regulations No. 20.

As the petition to lift and the disciplinary proceed-
ings involved substantially the same facts and the same questions
of law, I directed that the proceedings be consolidated and heard
together.

The record shows that on the evening of March 10th
Prosecutor Fisher requested an acting deputy sheriff, a matron of
the County Jail and the Prosecutor's secretary to accompany the
Schaible girl to various licensed places in the county. These
four persons traveled in one automobile and the Prosecutor, accom-

panied by the Sheriff and a County Detective, followed in another. Sandago's was the second place visited. The Deputy, the matron, the secretary and the Schaible girl entered the licensed premises, while the Prosecutor, Sheriff and detective remained outside. Two rounds of drinks were served by Mrs. Sandago, who did not question the age of the minor. After the second round was served, the Prosecutor, Sheriff and Constable entered on a signal and placed Mrs. Sandago under arrest for selling to a minor. At the office of the Warden of the Hunterdon County Jail she signed a paper admitting her guilt, and was instructed to appear before Judge Prall on Saturday, March 12th. The date of her appearance was subsequently changed to the afternoon of Friday, March 11th. She received notice of the change, and appeared before Judge Prall on Friday afternoon, at which time she pleaded guilty and was fined \$200. Mrs. Sandago testified at the hearing that she is unable to read, and that she did not know she was signing a confession of guilt. She likewise contends that she did not plead guilty before Judge Prall. The Prosecutor testified that he read to her the paper wherein she admitted her guilt before she signed it and that at the trial the allegation was read, and she was asked how she pleaded, and that Mrs. Sandago thereupon pleaded guilty. In her affidavit attached to the petition to lift disqualification, Mrs. Sandago admits that Judge Prall asked her if she pleaded guilty, and that she replied "I might just as well because I put the liquor on the bar." Thus, aside from any question as to whether a conviction can be collaterally attacked in this proceeding, it appears that Mrs. Sandago actually pleaded guilty in the Court of Special Sessions.

The licensee-petitioner herein claims that her general business policy is not to serve minors and that she would not serve a person who appeared to be under the age of twenty-one. Mrs. Sandago alleges that she did not make any inquiry as to the girl's age because, as she says, the girl appeared to be twenty-two or twenty-three years of age. Under the provisions of R.S. 33:1-77 (Control Act, Section 77), the seller's knowledge of the purchaser's age is immaterial. State vs. Koettgen, 89 N.J. Law 678 (E. & A. 1916). In that case the statute under consideration provided that sales to a minor under eighteen years of age was a misdemeanor. In the course of its opinion the Court, speaking through Mr. Justice Kalisch, said (p. 684):

"But it must be borne in mind that, in the present case, the statute makes the sale of intoxicating liquors to a minor under the age of eighteen years, and not to one appearing under that age, a misdemeanor; hence the fact of age becomes vitally material. If the minor, to whom intoxicating liquor was sold, had attained the age of eighteen years, though he appeared to be sixteen, there would be no violation of the statute. If the plaintiff in error had been indicted under the statute for selling intoxicating liquors to a minor under the age of eighteen years, he could not have successfully defended himself against the charge by proof that the minor appeared to him and other witnesses to be of the age of eighteen years."

See also Wellens vs. Passaic, Bulletin #134, Item 4 and cases therein cited; Re Bondy, Bulletin #156, Item 10; Re Mount, Bulletin #159, Item 9. Even if a licensee obtains a signed affidavit from a minor stating that he or she is of full age, it would not be a defense in either a criminal or a disciplinary proceedings if in fact the person to whom the alcoholic beverages were sold was a minor at the time of the sale. Re Gott, Bulletin 245, Item 5.

Appearances may, under certain conditions, be of great weight in mitigation of punishment but they have nothing to do with the determination of guilt. Re Gott, supra. As a matter of fact the Hearer reports that the Schaible girl appeared to be very young.

The licensee-petitioner alleges entrapment. The evidence shows that on the afternoon of March 10th Prosecutor Fisher sent a Constable to Frenchtown with instructions to bring in the Schaible girl so that the Prosecutor might talk to her. When she returned with the Constable, the Prosecutor questioned her as to visits she had made to various licensed places and she admitted that she had visited two in the county, namely, Wizner's and Eskow's. From her subsequent testimony it appeared that she had never been in Sandago's place of business prior to the evening in question. The Prosecutor asked her if she wanted to help him, and she said that she would. He denies that he offered any inducement for her assistance. It is not clear whether she was under arrest at the time of her conference with the Prosecutor. It does appear that she was detained over night in the Hunterdon County Jail and that, on the following day, in the Court of Common Pleas of Hunterdon County, she pleaded guilty to fornication and was sentenced to thirty days in the County Jail, which sentence she was serving at the time of the hearing.

"Entrapment", said Mr. Justice Roberts in Sorrells vs. United States, 287 U.S. 435 (1932), "is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the officer."

I had occasion to review the authorities on this subject recently in Zimmerman vs. Bernards Township, Bulletin #228, Item 10, and came to the conclusion that "in order to establish the defense of entrapment, it must appear that some official charged with enforcement of the law, either himself or through some other person acting for him, implanted a criminal scheme in the mind of an otherwise innocent individual; that the very essence of the defense of entrapment is that the crime originated in the mind of the officer rather than of the accused. The question is one of practical law enforcement. *** Public officials have no right to treat the innocent scurrilously -- neither are they to be over-squeamish in dealing with offenders."

The inquiry is, therefore, whether any trickery, persuasion or fraud of the law officer or those under his control induced the licensee to commit a crime which she did not intend to commit. The Prosecutor testified that the raids were instituted against "places where there were continuous complaints of selling to minors." It appears from his testimony, and from statements made by the Schaible girl and the County Detective, that the Prosecutor issued instructions to the girl to declare that she was nineteen if they asked her age.

In Zimmerman vs. Bernards Township, supra, I said:

"Although it is desirable that officers of the law be afforded every reasonable means of obtaining evidence to thwart criminal activity, it is 'less evil that some criminals should escape than that the government should play an ignoble part.' Mr. Justice Holmes dissenting in Olmstead vs. United States, 277 U.S. 438, 470 (1927). Consequently, if the evidence supported the appellant's contention that a paid investigator of the respondent Township had caused one of his relatives, who was a minor but looked over age, to visit the appellant's place of business, misstate his age and purchase alco-

holic beverages, I would unhesitatingly reverse the order of suspension. Condonation of such conduct by public officials would go far towards undermining the very foundations of law."

Licensee-petitioner has failed, however, to bring herself within the principle therein laid down, because I find as a fact that the minor did not look over age and, again that there was no misstatement of her age. The mere fact that the Prosecutor, suspecting that the licensee-petitioner was selling to minors, arranged with officers of the law and the girl, who was then in his custody, to discover whether in fact the licensee-petitioner was actually engaged in selling to minors, is not entrapment. Grimm vs. United States, 156 U. S. 604; State vs. Frank, 90 N.J. Law 78 (Sup. Ct. 1917), affirmed 91 N.J. Law 718.

On the evidence I find licensee guilty as charged in the disciplinary proceedings.

The licensee-petitioner has already been punished severely. As hereinbefore mentioned, her place has been closed down since March 12th.

Accordingly, it is on this 27th day of May, 1938 ORDERED that the statutory suspension now in force be lifted and that Plenary Retail Consumption License C-5 heretofore issued to Mary Sandago by the Lebanon Township Committee, Hunterdon County, be and it is hereby declared to be again in full force and effect.

D. FREDERICK BURNETT
Commissioner

DISCIPLINARY PROCEEDINGS - SALES TO MINORS - STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING.

In the Matter of Disciplinary Proceedings against)

THOMAS W. BEATTY, t/a The Jungles,)
Route 28, between West Portal)
and East Bloomsbury,)
P.O. West Portal, New Jersey.)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption)
License No. C-3, issued by the Town-)
ship Committee of Bethlehem Township.)

In the Matter of a Petition by)
THOMAS W. BEATTY, t/a The Jungles,)
to Lift the Automatic Suspension of)
Plenary Retail Consumption License)
No. C-3, issued by the Township Com-)
mittee of Bethlehem Township.)

CONCLUSIONS

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Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.
Hendrickson, Greenberg & Jacobs, Esqs., by Sidney L. Jacobs, Esq., for the Licensee-Petitioner.

BY THE COMMISSIONER:

On March 11, 1938, the licensee-petitioner herein pleaded guilty in the Hunterdon County Court of Special Sessions to a charge of selling liquor to a minor, and was fined \$200.

Thereby the license became automatically suspended and thereafter the same proceedings ensued and the same consolidation effected substantially as in Re Sandago, Bulletin 249, Item 1.

On the evening of March 10th Beatty's was the fourth licensed place visited by the persons named in Re Sandago, supra. Beatty, the licensee-petitioner, poured the drinks out and, after the first drinks had been consumed and the second drink had been poured, the signal was given to the prosecutor and the others who remained outside, whereupon they entered and placed Beatty under arrest for selling to a minor. After the arrest, Beatty signed three papers at the prosecutor's office, which he testified he understood were bail bonds. One of the papers then signed by Beatty was in fact an admission of his guilt. However, he testified at the hearing that the prosecutor asked him, "Then you think you are guilty?" and that he replied "Yes, if she was under twenty-one." Beatty was released and instructed to appear before Judge Prall on Saturday, March 12th. His hearing was likewise changed to the afternoon of March 11th, of which he received due notice, at which time he appeared before Judge Prall and according to the record, pleaded guilty and was fined \$200. At the hearing herein Beatty denied that he had pleaded guilty before Judge Prall. However, in an affidavit attached to the petition filed herein, Beatty says:

"Mr. Fischer read the charge to the Judge and charged me with selling liquor to a minor. The night before he told me to plead guilty. Mr. Fischer asked me if I was guilty, and I said I was, and Judge Prall fined me \$200."

Thus aside from any question as to whether a conviction can be collaterally attacked in this proceeding, it appears that Mr. Beatty actually pleaded guilty in a Court of Special Sessions.

The licensee-petitioner claims that his business policy is to ask the age of any person who appears to be a minor; that he has cards for people to sign, and that he will not serve anyone if they look young. Mr. Beatty admits that he did not make any inquiry as to Miss Schaible's age because, as he says, "The girl appeared to be over twenty-one."

Licensee-petitioner likewise alleges entrapment. The evidence is substantially the same as that considered in the Sandago case and, for the reasons stated therein, I find that there was no entrapment.

On the evidence I find licensee guilty as charged in the disciplinary proceedings.

The licensee has already been punished severely. As hereinbefore mentioned, his place has been closed down since March 12th.

Accordingly, it is, on this 27th day of May, 1938,
ORDERED that the statutory automatic suspension now in force be

lifted and that Plenary Retail Consumption License C-3, heretofore issued to Thomas W. Beatty by the Bethlehem Township Committee, Hunterdon County, be and it is hereby declared to be again in full force and effect.

There is nothing in the record in this case to involve Andrew J. Sexton, the owner of the licensed premises. Accordingly, the proceedings against him are dismissed.

D. FREDERICK BURNETT
Commissioner

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - STATUTORY AUTOMATIC SUSPENSION - HEREIN OF THE GRAVE CHANCES TAKEN BY LICENSEES IN MAKING PERFUNCTORY INQUIRIES OF MINORS AS TO THEIR AGE WITH TOO MUCH OF AN EYE ON THE CASH REGISTER.

In the Matter of Disciplinary Pro-)
ceedings against)

CONCLUSIONS
AND
ORDER

MARTIN FISCHER, JR.,)
Union Township,)
P.O. Pattenburg, New Jersey.)

Holder of Plenary Retail Consumption)
License No. C-4, issued by the)
Township Committee of Union Township,)
Hunterdon County.)

In the Matter of a Petition by)
MARTIN FISCHER, JR.,)
To lift the Automatic Suspension)
of Plenary Retail Consumption License)
No. C-4, issued by the Township)
Committee of Union Township, Hunterdon)
County.)

CONCLUSIONS

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Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.
Hendrickson, Greenberg & Jacobs, Esqs. and Jacob Chantz, Esq.,
For the Licensee-Petitioner.

BY THE COMMISSIONER:

On March 11, 1938, the licensee-petitioner herein pleaded guilty in the Hunterdon County Court of Special Sessions to a charge of selling liquor to a minor, and was fined \$200.

Thereby the license became automatically suspended and thereafter the same proceedings ensued and the same consolidation effected substantially as in Re Sandago, Bulletin 249, Item 1, the only difference being that the alcoholic beverages were alleged to have been sold to one Frances Sutter, a minor of the age of 18 years. The record of the Warden's office of the Hunterdon County Jail shows that she was "received" on March 10, 1938 on a charge of open lewdness and given an indeterminate term in Clinton Farms, where she was transferred on March 12, 1938.

On the evening of March 9th Prosecutor Fisher requested a constable, a matron of the County Jail and the Prosecutor's secretary to accompany the Sutter girl to the Pattenburg Hotel,

operated by the licensee-petitioner Martin Fischer, Jr. The prosecutor and a county detective remained outside the licensed premises, while the others entered. The licensee-petitioner knew the constable and the girl. He admits that he served two rounds of drinks to the members of the party which entered, and that he did not ask the girl her age. After the second round of drinks, the prosecutor and county detective entered on a signal and placed the licensee-petitioner under arrest for selling to a minor. The licensee-petitioner was taken to the office of the warden of the Hunterdon County Jail, where he signed a paper admitting his guilt. He was instructed to appear before Judge Prall on Saturday, March 12th. The date of his appearance was subsequently changed to Friday, March 11th, and notice of such change was given to the licensee-petitioner. The record shows that he appeared before Judge Prall at that time, pleaded guilty and was fined \$200.

The licensee-petitioner alleges that he did not ask the Sutter girl her age because she had been served before at his place of business, but that the bartender had asked her how old she was the first time she came in. The licensee also testified that he has a book which he requests persons who appear to be minors to sign. He did not know whether Miss Sutter ever signed her name in the book. He did not produce the bartender nor the book.

On cross-examination Martin Fischer testified:

"Q. You asked her age?

A. The bartender did at one time, when she first came in we asked how old she was.

Q. Did she look like a minor?

A. No.

Q. Why did you ask her age then?

A. We didn't think she was a minor after she told us she was of age.

Q. Do you have any cards you ask the minors to sign?

A. I have a book.

Q. Did you ask her to sign the book?

A. I don't know if I did.

Q. You were doubtful about her age?

A. The first time she came in, yes.

Q. When doubtful, I think you said you didn't serve?

A. I asked her age.

Q. And because she said she was over twenty-one, you served it?

A. I took her word.

Q. Is that what you do all the time?

A. If I believe them I take their word for it."

I have had occasion only recently to point out the grave chances taken by licensees in reliance on the spoken words of minors when their appearances of youth belie the statements made. Re Marad, Bulletin 243, Item 10. Licensees will have to learn that there is no safety for them in making perfunctory inquiries and relying on inferences all too favorable to their cash registers and that the least that they can do is to do everything a reasonable person might do to make sure that the parties to whom they sell are not minors. If they persist in taking chances, eventually they will be caught. Re Silver Ball, Bulletin 242, Item 6.

As a matter of fact, the Sutter girl was but eighteen years of age at the time. The matron of the Hunterdon County Jail and the Prosecutor both testified that she appeared to be very

young.

The licensee-petitioner also alleges entrapment. The evidence as to entrapment is substantially the same as that considered in Re Sandago, supra, and for the reasons set forth therein I find there was no entrapment. The unsavory character of the Sutter girl is not in point on the present issue.

On the evidence, I find licensee guilty as charged in the disciplinary proceedings.

The licensee has already been punished severely. As hereinbefore mentioned, his place has been closed down since March 12th.

Accordingly, it is on this 27th day of May, 1938

ORDERED that the statutory automatic suspension, now in force, be lifted and that Plenary Retail Consumption License C-4, heretofore issued to Martin Fischer, Jr. by the Union Township Committee, Hunterdon County, be and it is hereby declared to be again in full force and effect.

There is nothing in the record in this case to involve Martin Fischer, Sr., the owner of the licensed premises. Accordingly, the proceedings against him are dismissed.

D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - THE QUALITY HOUSE WINE AND LIQUOR, INC.
vs. NEW BRUNSWICK.

THE QUALITY HOUSE WINE)
AND LIQUOR, INC.,)

Appellant,)

-vs-

BOARD OF COMMISSIONERS OF)
THE CITY OF NEW BRUNSWICK,)

Respondent.)

ON APPEAL

CONCLUSIONS.

Kapp Brothers, Esqs., by Leon Kapp, Esq., and Edmund A. Hayes, Esq., Attorneys for Appellant.

Thomas H. Hagerty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located at 377 George Street, New Brunswick.

In its answer respondent sets up that it denied the license because (1) the premises are located within two hundred feet of a church; (2) the issuance of said license would be in violation of the ordinance of the City of New Brunswick; (3) there are already sufficient distribution licenses in the

immediate vicinity.

The evidence shows that the entrance to appellant's premises is located one hundred eighty-six feet from the entrance to a store occupied by an organization called the New Brunswick Bible Church. This Church was organized November 8, 1936. It is not incorporated and has no trustees. It is a so-called undenominational church, not affiliated with any religious organization, but is in charge of a regularly ordained Baptist minister. Questioned as to the services conducted, the minister testified:

"***at a quarter to ten Sunday morning to eleven o'clock Sunday School; we have regular church worship services from eleven to twelve; Sunday evening at six forty-five, the young people meet for an hour or for three-quarters of an hour; at seven forty-five, we have an evening preaching service, and another from eight to nine o'clock; on Tuesday afternoon at two thirty we have a women's meeting for prayer and bible study; on Tuesday night at seven forty-five we have a men's meeting for the same purpose. On Wednesday evening at seven o'clock we have a training class which I teach; at seven forty-five on Wednesday evening we have a prayer praise and bible study service. On Thursday afternoon at three forty-five, we have a children's meeting, their ages from eight to fifteen, and they are taught the bible and songs. Those are the regular services. We have other services on and off. During the summer we had street meetings."

The store in which the Church meets was rented on a month to month basis in the name of a Mr VanLiew, beginning December 22, 1936. The store is one of three stores on the ground floor of a large brick building occupied by six tenants above.

In Manning vs. Trenton, Bulletin 247, Item 1, I had to determine the meaning of the word "church" as used in R.S. 33:1-76 (Control Act, Section 76) and concluded that it meant, not a religious congregation, but rather an edifice devoted permanently to the worship of God, i.e., the building and not people. Consequently, I ruled that the fact that a given organization was a religious body was not of itself sufficient to invoke the benefit of the Statute which prohibits any license being issued for premises within two hundred feet of a church. In that case, I determined that a two-family house, although used in part for religious purposes, was not a church.

In the instant case, applying the reasoning of Manning vs. Trenton, supra, and pursuant to the authorities therein cited, I find that the store in which the New Brunswick Bible Church conducts its religious services is not a church within the meaning of the Control Act. Hence, it follows that appellant's premises are not within two hundred feet of any church as the respondent Board believed or rather were advised.

As to the second point, the attorney for respondent contended that the issuance of the license would violate that portion of Section 8 of "An Ordinance To Regulate the Sale of Alcoholic Beverages in the City of New Brunswick", which refers to plenary retail distribution licenses and reads as follows:

"***provided, however, that such license shall not permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on."

Appellant's premises are located in a large general market containing six or seven concessions, and are separated from the rest of the market by partitions made of wood to a height of forty-four inches from the floor, of glass for five feet two inches above that point and again of wood to the ceiling, so that a person standing in the market has a view of the liquor department. As originally arranged, the door to the premises sought to be licensed opened on to a vestibule within the building lines, from which vestibule patrons might freely pass to the other sections of the general market. There is an outer door to this vestibule opening upon the street. After some members of the Board of Commissioners inspected the premises and objected to this arrangement, but before the application was denied, appellant permanently closed the door leading to the vestibule and opened a new entrance on George Street. This constitutes the premises, for which the license is sought, a separate licensed premises within the rule laid down in Owl Drug Co. vs. Elizabeth, Bulletin 68, Item 7. The second ground is, therefore, insufficient.

As to the third ground of alleged sufficient package stores in the immediate vicinity, the minutes are silent as to why the license was denied. After appellant's application was filed in the early part of September, the respondent Board granted two package goods licenses in the immediate neighborhood. It is unnecessary, however, to go into the question of discrimination which appellant forcibly argues for, at the oral argument before me, it appeared that the only reason why the license was denied was because of the opinion of the City Attorney, on which the respondent naturally relied, that the store occupied by the New Brunswick Bible Church constituted a church within the meaning of the Control Act, and, therefore, as he advised the Board, it was mandatory to refuse the issuance of the license because of the premises being within two hundred feet of a church. The lamented Mr. Hagerty, a friend of forty years, for whom I had great respect as well as affection, argued earnestly the other way but in this, as aforesaid, I concluded that he was mistaken in the law.

I have before me certifications signed by three of the City Commissioners, viz.: Samuel D. Hoffman, Director of Parks and Public Property; James T. Shine, Director of Public Safety; and Harry W. Dwyer, Director of Public Affairs, confirming the averments made at the oral argument before me.

Since, under this state of facts, there is nothing to be gained and much time to be lost by remanding the case to the local authorities for formal adjudication, and it satisfactorily appears that the license was denied solely because of a mistake of law as to what constituted a church, it follows that the action of the respondent Board must be and hereby is reversed.

Respondent is directed to issue the license to appellant as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: May 29, 1938.

5. SPECIAL PERMITS - TWO HUNDRED FEET RULE - HOURS OF SALE - SPECIAL PERMITS ARE IN EFFECT ONE-DAY LICENSES AND MAY NOT BE ISSUED FOR PREMISES WITHIN TWO HUNDRED FEET OF A SCHOOL OR FOR LONGER HOURS THAN THE REGULAR LICENSEES ARE PERMITTED.

TWO HUNDRED FEET RULE - SCHOOLS - LICENSES MAY NOT BE ISSUED WITHIN TWO HUNDRED FEET OF A SCHOOL EVEN THOUGH THE PREMISES WILL BE OPEN ONLY IN THE EVENINGS.

My dear Sir:

Can I as Chairman of the Township Committee sign an application for a Special Permit, where the building is less than 200 feet from a Public School, and can the permit be issued to extend one hour over the regular closing time. In other words, the regular closing time is 2 A. M. Could the permit be issued to close at 3 A. M?

Another question:

We have an application for a Plenary Retail Consumption License, the building is less than 200 feet from a Public School, and in the application they state, "to be open certain evenings." I am of the opinion that we can't issue the license, but the other two Committeemen say we can. The applicant is the American Legion of Belcoville, Weymouth Township, Atlantic County. I am holding back on the hearing of the application.

Wilson M. Turner, Chairman.

May 25, 1938.

Wilson M. Turner, Chairman,
Weymouth Township Committee,
Mays Landing, N. J.

My dear Mr. Turner:

1st. It would not be proper for you to approve an application for a special permit for premises within 200 feet of a school and for hours beyond the hours for the regular licensees in the Township. Special permits are in effect licenses for the day, and the premises for which they are issued are licensed premises for that day. They are, therefore, subject to the same regulations applicable to the regular plenary retail consumption licenses. As the regular licenses may not be issued within 200 feet of a school (R.S. 33:1-76, Control Act, Sec. 76), or to afford extra hours to one licensee and not to all others (Re Waesche, Bulletin 125, Item 8 and the items cited therein), neither may special permits. See Re Hoffmeyer, Bulletin 206, Item 2; Re Gordon, Bulletin 191, Item 4.

2nd. I have already ruled that licenses may not be issued for premises within 200 feet of a school, conditioned that they will be open only in the evening when the school is not in session. See Re Smith, Bulletin 60, Item 7. The law prohibits the issuance of licenses within 200 feet of schools, except under certain specified conditions, and is not to be circumvented by any such arrangements. If the premises are within 200 feet of the school, don't issue the license. It is against the law. On appeal to me, I would have no alternative but to set the license aside. That is exactly what happened to a license which had been issued within 200 feet of a synagogue in Haines v. Burlington & Zekis, Bulletin 223, Item 3. And if the fact of the erroneous issuance subsequently comes to the Department's attention, proceedings against the license will be instituted direct. See East Brunswick Board of Adjustment vs. East Brunswick and Mills, Bulletin 223, Item 5; Re Bafile, Bulletin 238, Item 3.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - ROSENVINGE vs. METUCHEN.

IRENE ADELE ROSENVINGE, :
 Appellant, :
 -vs- : ON APPEAL
 BOROUGH COUNCIL OF THE BOROUGH : CONCLUSIONS
 OF METUCHEN, :
 Respondent. :

Frederic M. Pearse, Esq. by George S. Pearse, Esq., Attorney for
 the Appellant

Leon Semer, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This appeal is from the refusal to transfer appellant's plenary retail consumption license from 932 Middlesex Avenue to 291 Main Street, Borough of Metuchen.

Appellant's application for transfer was denied by a vote of 4 to 3, the Mayor casting the deciding vote when the Councilmen were tied at 3-3. See R. S., Sec. 40:88-1.

Metuchen (population - 8600, area - 3 square miles) contains 5 plenary retail consumption establishments, inclusive of appellant's. These 5 taverns are scattered about the Borough, no two being located in the same area.

Appellant's establishment is presently on Middlesex Avenue (Lincoln Highway) near the southwestern boundary of Metuchen, at which location it depends in substantial degree upon the travelling public for its business existence. The premises to which she seeks the present transfer are located near the center of the Borough, on Main Street, 80 feet south of Amboy Avenue. The chief business section lies 1200-2400 feet to the north along Main Street. Appellant's proposed place, while not in this business section, is located near an important intersection as regards traffic (Main Street and Amboy Avenue) and in a vicinity becoming increasingly commercial but which at present is of a mixed residential and business character. This proposed site, however, lies midway between 2 taverns already established on Main Street, one being 1600 feet to the north and in the aforesaid business section, the other being 1600 feet to the south.

Respondent alleges, as one of the grounds for denial of the transfer, that there are sufficient liquor establishments in existence to service the vicinity of the proposed site. Cf. VanSchoick vs. Howell, Bulletin 127, Item 9; Briggs vs. Oakland, Bulletin 160, Item 9; De Blasio vs. Trenton, Bulletin 175, Item 6; Rapp vs. Linden, Bulletin 185, Item 9. In view of the 2 taverns already located on Main Street, one 1600 feet above and the other 1600 feet below the proposed site, respondent's determination on this issue does not appear to be unreasonable. Main Street is the "life line" of Metuchen, being the most important and heavily trafficked thoroughfare and the

chief business street of the Borough. The Mayor and the Councilmen who voted against the present application for transfer testify that they oppose the contemplated location on Main Street because they wish, for reasons of civic appearance, to prevent a frequency of taverns along that street. It is not unreasonable for a local issuing authority to refuse to permit an additional tavern on the municipality's most important thoroughfare in an effort to prevent the undesired appearance of frequent taverns along its route. Cf. Schulte vs. Perth Amboy, Bulletin 58, Item 13.

There is also proof that respondent is endeavoring to distribute consumption licenses over the Borough in such manner as to service all neighborhoods; that of the 5 consumption establishments presently outstanding, one services the northern area of the Borough, one the east, one the south, one (appellant's) the west, and one the center; that a transfer of appellant's license to the proposed site will disturb this distributional scheme, not only by leaving a vacancy in the western area but also by creating a concentration of 3 taverns on Main Street from the center to the south end of the Borough. I have sustained the denial of a license which, if issued, would violate a local scheme of distribution of licenses that is not shown to be unreasonable. Giberti vs. Franklin, Bulletin 38, Item 2; Vicari vs. Bloomfield, Bulletin 57, Item 4; Sadovsky vs. Millstone, Bulletin 120, Item 4; and cf. Hill vs. Montville, Bulletin 148, Item 9. The same ruling is made in the present case.

Appellant contends, however, that a local resolution which forbids consumption premises from being within 500 feet of each other contains the sole municipal policy on the question of proximity of consumption establishments; that such policy, while the resolution remains unaltered, is binding upon respondent; that, therefore, respondent may not, on the ground of proximity of other taverns, refuse to license premises which are not within the proscribed distance. That resolution, so far as pertinent, reads as follows:

"No Plenary Retail Consumption License shall be hereafter issued or transferred to any premises within 500 feet of any already existing licensed premises."

This resolution establishes an irreducible minimum distance between consumption places in the Borough. That is as far as it goes. It is not a negative pregnant. The negation that licenses shall not be issued or transferred to premises within 500 feet of another licensed place, does not imply any affirmative that they must be transferred if the place sought to be licensed is beyond 500 feet. There is no "must" about it. If a given neighborhood is already sufficiently serviced by existing establishments, the transfer may be denied even though the distance between those establishments and the proposed premises is more than 500 feet. The situation is analogous to, and governed by, those decisions which hold that R. S., Sec. 33:1-76 (Control Act, Sec. 76) in forbidding licensed premises within 200 feet of a church or school, merely sets a forbidden minimum distance and does not preclude an issuing authority from refusing to license premises because of proximity to a church or school beyond that distance. Serafin vs. Bayonne, Bulletin 107, Item 3; Hill vs. Montville, Bulletin 148, Item 9; Goldberg vs. Livingston, Bulletin 163, Item 2; Re Lindenwold, Bulletin 230, Item 8. See also Fenson vs. State Liquor Authority, 273 N.Y.S. 751, aff'd 278 N.Y.S. 433, which considers and rejects the precise argument here raised by appellant.

Appellant further argues that her application was denied for political reasons. A charge that members of a local issuing authority have acted under improper motivation is of serious character

and, accordingly, must be supported by clear and convincing evidence. Levitt vs. Liberty, Bulletin 169, Item 4; De Blasio vs. Trenton, Bulletin 175, Item 6. On this issue, appellant's only affirmative proof (if the evidence may be so characterized) is the fact that one of the Councilmen opposing the transfer, when asked by appellant's counsel what he had told her husband on a certain occasion, denounced and denied rumors in the Borough that he promised to support appellant's application for transfer if her husband would support him in his campaign for Mayor. I may not from this reach the conclusion that appellant's application was denied for improper reasons. The testimony of the Mayor and of the above Councilman and the remaining Councilmen who voted against the present application completely negatives such a conclusion.

In view of the foregoing, it is unnecessary to consider the additional reasons assigned by respondent in support of its denial.

The action of respondent is affirmed.

There is one other matter to which I desire to advert. Appellant complains that when respondent denied her application, it stated no grounds whatsoever for the denial. The brief of the attorney of appellant is worthy of note. He says:

"In this particular instance and it has occurred many times before, the respondent governing body heard objections at open hearings and then passed a resolution denying the transfer, but gave no reasons. After a petition of appeal was filed we can safely assume that counsel for the municipality sat down with the members of the council who voted against the transfer and worked up seven reasons why the transfer was denied. Municipalities, and especially when there are lawyers as members of the governing body, have become quite familiar with the decisions of the Commissioner and those members can pretty well tell what grounds the Commissioner feels are proper and reasonable and what grounds the Commissioner does not feel are proper. Therefore, in the preparation of the answer they invariably set forth a number of grounds, all more or less in line with former decisions of the Commissioner, with the hope and expectation that the Commissioner will believe that those grounds set forth in the answer are the ones which they acted upon and which they considered and knowing the reasonableness of the grounds they can pretty generally expect a favorable decision from the Commissioner.

"Of course the disadvantage which it puts the appellant at is patent and it must of necessity lead to, in some cases, an unfair denial of an appellants' rights, which, of course, he is almost powerless to combat."

The fair, four square, American way of dealing with one's fellow men in judicial capacity is not only to give them a chance to be heard, but also if it is necessary to render a decision against them to state the reasons for so doing. We who resent so bitterly the high-handed, arbitrary actions over-seas of which we read with deepening indignation would do well to put into practice at home the elementary rules of justice and fair dealing. Dictators and Czars never give reasons. Fair-minded men who are convinced that their judgment is right and will bear the light of day have no fear to commit themselves so that all may know just where they stand.

I haven't the slightest idea whether the strictures of the

learned attorney of the appellant are justified in the instant case. That is nothing but mere conjecture on his part. Consequently my remarks are not personal to this respondent. I have, however, on frequent occasion heard complaints from attorneys in other cases to the same effect. In simple fairness to all concerned I recommend that license issuing authorities state their reasons for every adverse decision they make at the time it is rendered. Then there can be no charges of after-thought or other disaffection against those in authority.

May 31, 1938.

D. FREDERICK BURNETT
Commissioner

7. SIGNS AND ADVERTISING MATTER - AGGREGATE COST OR REASONABLE VALUE OF ADVERTISING MATTER A WHOLESALER FURNISHES A RETAILER MAY NOT EXCEED \$50 PER YEAR - HEREIN OF JOINT CONTRIBUTIONS.

Dear Commissioner:

There presently exists a State Beverage Distributors group which has been incorporated for the usual mutual benefits of businesses in similar activities and problems.

There also exists a South Jersey Retail Beverage Dealers Association, composed of members holding retail licenses who likewise have similar problems.

It appears that the latter and the former are attempting to iron out several problems in order to better business conditions. In so doing, the South Jersey Retail Beverage Dealers Association placed an ad in a local newspaper indicating changes in prices.

The State Beverage Distributors of South Jersey, a non-pecuniary corporation, is desirous of assuming a portion of the expense of this ad.

Would you kindly inform me whether or not this violates any rules or regulations.

Yours very truly,

CARLTON W. ROWAND.

May 25, 1938.

Carlton W. Rowand, Esq.,
Camden, N. J.

My dear Mr. Rowand:

I understand that the South Jersey Association of State Beverage Distributors wishes to contribute to the expense incurred by the South Jersey Retail Beverage Dealers Association in publishing an advertisement of retail prices in local newspapers.

There is no objection provided the amount each wholesaler furnishes to each retailer does not cause the aggregate cost or reasonable value of signs or other advertising matter furnished the retailer to exceed the allowable \$50 per year. See the Rules Governing Signs, Regulations No. 21, Rule 1, Pamphlet Rules, page 64.

The amount each wholesaler furnishes each retailer is computed in cases of this nature by multiplying the number of the wholesalers by the number of the retailers and dividing the product into the amount of the joint contribution. For example, if the contribution were to be \$100 and there were five wholesalers and

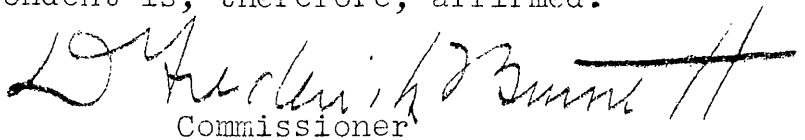
plication for a seasonal retail consumption license, if the person and place are otherwise satisfactory.

In addition to fixing a fee for plenary retail consumption licenses, the respondent Township Committee has fixed a fee for plenary retail distribution licenses but has failed to fix any fee for seasonal retail consumption licenses. It is unnecessary to determine whether such failure is material in the instant case because the existing ordinance, by its terms, has created a limitation as to the number of consumption licenses that may lawfully be issued in the Township and the quota so fixed has already been reached.

The ordinance confines the power of the Township Committee. It may license "no more than eight places to sell alcoholic beverages for plenary retail consumption." Appellant reads the ordinance as if it declared "no more than eight plenary retail consumption licenses" shall be issued. The ordinance, however, does not say that. What it does say is that no more than eight places shall be licensed to sell for "plenary retail consumption." "Consumption" means "for consumption on premises" as distinguished from package goods stores for off-premises consumption. "Retail" means "for sale to the ultimate consumer", as distinguished from wholesale which contemplates a subsequent resale. "Plenary" connotes wide powers, i.e., without limitation or restriction as distinguished from the narrow privileges afforded to club licensees who are confined to making their sales only to members or bona fide guests; or, again, as distinguished from limited distribution licensees who may sell only unchilled beer or ale. A seasonal license is just as plenary in its nature as the so-called "plenary retail consumption license." It confers exactly the same privileges. The only difference is that one is good for a year, the other for only six months. Both are consumption licenses. Both are retail. Both are plenary in scope.

If the instant application were granted, there would be nine places in the Township licensed to sell alcoholic beverages "for plenary retail consumption." But this the ordinance forbids. It has been so decided. Smith vs. Warren Township, Bulletin 217, Item 2.

The action of respondent is, therefore, affirmed.


Commissioner

Dated: June 1, 1938.