STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 717 JUNE 29, 1946.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 717 JUNE 29, 1946.

1. APPELLATE DECISIONS - MAYER v. BRIELLE.

GEORGE MAYER, Appellant vs. BOROUGH COUNCIL OF THE BOROUGH OF BRIELLE, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Paul R. Cranmer, Esq. and Brogan, Hague & Malone, Esqs., by Edward M. Malone, Esq., Attorneys for Appellant.
Forman T. Bailey, Esq., by James D. Carton, Jr., Esq., Attorney for Respondent.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at the southwest corner of Green and Ocean Avenues in the Borough of Brielle.

On March 25, 1946, respondent Board denied appellant's application for said license, setting forth the following as its reasons: "Whereas it is the consensus of this Council that there are sufficient number of licenses in the Borough. Now, therefore, be it resolved that the application of George H. Mayer for premises of Brielle Yacht Club, be denied ....".

The testimony in the instant case discloses that Brielle has an all-year population of less than one thousand inhabitants. During the summer season the population of the municipality is doubled and, because of its fishing and boating facilities, many persons visit Brielle for a one-day outing. The building proposed to be used as the licensed premises was licensed from 1934, consecutively, to and including May, 1942, at which time the license for said premises was surrendered to the municipality. It further appears from the testimony that one Victor Till entered into an agreement to purchase the premises in question and thereafter entered into a further agreement with appellant to permit appellant to operate the bar and grill.

Various witnesses, including John D. Howell, former member of the Borough Council, testified that, in their opinions, the issuance of a license to appellant would be socially desirable. These witnesses testified that a liquor license would be desirable in connection with the operation of a yacht club at the premises in question. On the other hand, Mayor Edward A. Carpenter and councilman Frederick W. Newton testified that, in their opinions, the issuance of a license to appellant would be definitely undesirable. Mayor Carpenter based his opinion, at least to some extent, upon the manner in which the premises had been operated under former licenses. Furthermore, they were of the opinion that there was no need or necessity for another licensed premises in the municipality. Six members of the issuing authority voted to deny and no member voted to grant appellant's application.

The right of a municipality to deny an application where the granting thereof would result in the existence of too many licensed premises in said municipality, is well settled. Bumball v. Burnett, 115 N.J.L. 254. Considering the fact that there are already eight licensed premises in the borough having a total population of less than one thousand, and the further fact that the surrounding municipalities seem liberally supplied with licensed places, it cannot be said that a refusal to issue another license is unreasonable.

There is also some evidence that the appellant in this case apparently would not, under the set-up contemplated, have complete control of the licensed premises. Victor Till, who is under contract to purchase the premises, stated, in answer to a question as to who would have the final say in the operation of the bar, that "I am leasing it to him (meaning Mayer) and he understands how I want it operated, on a clean-cut basis, and if anything was out of order I could go to him and say, 'This is not the way we agreed to run this.'" Victor Till, a non-resident, is not eligible to hold a retail license in New Jersey.

It appears also that the local ordinance presently in effect limits the number of plenary retail consumption licenses to eight, and that eight licenses of this type are now in existence. Three days after appellant filed his application, the members of the governing body sponsored the promulgation of an amendment to a then existing ordinance whereby the number of plenary retail consumption licenses was reduced from nine to eight. This amendment to the ordinance was finally adopted on April 8, 1946. Appellant contends that there was no policy in effect previous to the present application being filed whereby the members of the respondent governing body intended to reduce the issuance of licenses. However, Mayor Carpenter stated that "Our policy, over all, is not only to reduce the number of licenses to eight as indicated in the ordinance, but to further reduce the number as the opportunity presents itself by further amendment to the ordinance." He stated that, in his opinion, there is no need for any additional retail consumption licenses anywhere in the Borough. Councilman Frederick W. Newton substantiated Mayor Carpenter's testimony.

A similar situation was considered in Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1. In that case, Commissioner Burnett said:

> "True, the ordinance had not been adopted at the time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation at the time the application was denied."

The facts in the present case lead to the same result reached in the Franklin case, supra.

Apart from Mayor Carpenter's declaration of policy to reduce the number of liquor licenses, the New Jersey Supreme Court has held that "A licensing body of a municipality, which has fixed a limit to the number of liquor licenses to be granted, is under no

obligation to grant the full number of such licenses, but under existing legislation has discretion to stop short of the number limited, and could license one person and deny another." Bumball v. Burnett, supra.

The present licensed premises would appear to be sufficient to care for the needs of visiting yachtsmen. I find that appellant has not sustained the burden of proof in showing that the action of respondent was arbitrary or unreasonable. Regulations No. 15, Rule 6. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 24th day of June, 1946,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

2. RETAIL LICENSES - ADVERTISEMENT OF ALCOHOLIC BEVERAGES IN STORE ADJOINING LICENSES PREMISES DISAPPROVED.

June 21, 1946

Mrs. Anna F. Dallessio Macchi
t/a Jerry's Tavern
Somerville, N. J.

Dear Madam:

You operate a tavern at the above address for which you hold a plenary retail consumption license.

On an inspection last April 16th, one of our agents found in the front window of a confectionery store-and-lunchroom, which you operate alongside the tavern, a neon sign advertising Stegmaier's beer.

Since your confectionery store-and-lunchroom is not part of your licensed premises, and in fact could not become part in view of R. S. 33:1-12(1), it was highly improper for you to have the above-mentioned sign there. While we have found no evidence of any sale or service or consumption of beer or other alcoholic beverages in the confectionery store-and-lunchroom, nevertheless the very presence of such a sign is gravely misleading in that it strongly suggests to patrons that beer is actually available there.

The Department disapproves of any advertisement of this kind. We are glad to note that, on a recent check made at your premises, the sign in question had been removed.

We shall expect that there will be no further advertisement at your adjoining confectionery store-and-lunchroom, by way of sign or otherwise, concerning alcoholic beverages.

Please let us have your prompt pledge to this effect.

Very truly yours,

ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - HILLMAN v. BRIELLE.

HENRY C. HILLMAN,)
Appellant,)
vs.) ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF BRIELLE,) CONCLUSIONS AND ORDER
Respondent.)

Proctor and Nary, Esqs., by Haydn Proctor, Esq., Attorneys for Appellant.
Durand, Ivins & Carton, Esqs., by James D. Carton, Jr., Esq., Attorneys for Respondent.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises known as Brielle Inn located on Ashley Avenue in the Borough of Brielle. The application was filed on Marcy 6, 1946. On April 8, 1946, respondent Board denied appellant's application for said license. Hence this appeal.

In substantiation of its denial respondent sets forth in its answer that (a) the granting of the license applied for by appellant would be socially undesirable and is not necessary for the convenience of the public; there are eight plenary retail consumption licensed premises within the Borough of Brielle, and these are sufficient to meet all needs; (b) the granting of the license applied for, in the opinion of the Mayor and Council of the Borough of Brielle, would be detrimental to the best interests of the Borough; (c) it is the policy of the Mayor and Council of the Borough of Brielle to grant no more plenary retail consumption licenses in the Borough of Brielle; and (d) on April 8, 1946, the Council of the Borough adopted an ordinance limiting the number of plenary retail consumption licenses in the Borough of Brielle to eight, and there are eight such licenses issued and outstanding. Said ordinance had been proposed but not acted upon prior to the time appellant made his application.

The testimony in the instant case discloses that Brielle has an all-year population of less than 1,000 inhabitants. During the summer season there is an increase in the population of the municipality, many of whom are transient visitors who come daily to Brielle because of its fishing and boating facilities. The building for which the license is sought was licensed from 1934, consecutively, to and including the year 1942, at which time the license then held by one Henry Reid for said premises was surrendered to the municipality.

The appellant is the owner of the premises, and both he and his wife testified that it is the intention of appellant to use the liquor in conjunction with the operation of a restaurant. Appellant testified that the premises contain approximately twenty-five rooms; that the dining-room can accommodate two hundred fifty persons, and that it is his intention to have a cocktail lounge if the license is granted to him.

The Mayor (Edward A. Carpenter) and Councilman (Frederick W. Newton) both testified that in their opinions there is no need for the issuance of any additional licenses in the municipality, and

that it is their intention whenever possible to reduce the number of licenses now outstanding in the Borough.

The right of a municipality to deny an application where the granting thereof would result in the existence of too many licensed premises in said municipality is well settled. Bumball v. Burnett, 115 N.J.L. 254. Considering the fact that there are already eight licensed premises in the Borough having a total population of less than 1,000, and the further fact that the surrounding municipalities seem liberally supplied with licensed premises, it cannot be said that a refusal to issue another license is unreasonable. Even though the ordinance limiting the number to eight plenary retail consumption licenses had not been introduced until March 25, 1946, and had not been finally adopted until April 8, 1946, nevertheless I find as fact that the policy to limit the number of licenses to eight existed at the time the application was denied. Franklin v. Elizabeth, Bulletin 61, Item 1. There is evidence that this policy was adopted on February 11, 1946. Moreover, the New Jersey Supreme Court has held "A licensing body of a municipality, which has fixed a limit to the number of liquor licenses to be granted, is under no obligation to grant the full number of such licenses, but under existing legislation has discretion to stop short of the number limited, and could license one person and deny another." Bumball v. Burnett, supra. There is no convincing evidence that the eight existing licenses are inadequate to service the Borough. Schuttenberg v. Keyport, Bulletin 327, Item 3.

Under all the circumstances in the instant case, I cannot find that the action of the respondent Borough Council was arbitrary or unreasonable. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 24th day of June, 1946,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

4. APPELLATE DECISIONS - BERKSTRESSER v. DELAWARE TOWNSHIP (CAMDEN COUNTY).

WILLIAM C. BERKSTRESSER, Appellant, vs. TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DELAWARE (CAMDEN COUNTY), Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

John Claud Simon, Esq., Attorney for Appellant.
Bruce A. Wallace, Esq., Attorney for Respondent.

This is an appeal by appellant from the action of respondent in denying his application for a plenary retail distribution license for premises located on Route 38 in said Township.

The grounds of appeal are as follows: (1) that the action is arbitrary and without sufficient reason, and (2) that at the same meeting respondent granted a similar license to an applicant who had applied subsequent to this appellant.

Briefly the facts are as follows: On January 16, 1946, the appellant filed an application for a plenary retail distribution license for premises located on Route 38 about five hundred feet West of the Coles Avenue Circle. He is fully qualified and operates a delicatessen type of business on the proposed licensed premises. The application was scheduled for hearing on January 28, 1946. On that evening counsel for appellant requested an adjournment for two weeks, which was granted. On January 25 John Lindstrom filed an application for a similar license for premises located on Church Road approximately two blocks from appellant's place of business. Lindstrom had previously been denied a plenary retail consumption licenses for his premises. Both applications came up for hearing on February 11, 1946. The Berkstresser application was denied, but the Lindstrom application was granted. No reason was stated for the denial.

The answer of the respondent sets up (1) that the vicinity where the licensed premises are located is well served; (2) that a plenary retail consumption license has just been granted in that vicinity which is sufficient for the needs of the surrounding neighborhood, and (3) that, in addition, there are taprooms in the vicinity, and in the opinion of the respondent "no additional supply is needed."

No appeal was taken on the Lindstrom application and, hence, it is impossible to take any action on that. The only question is whether the preference shown to Lindstrom in granting his application for a distribution license should cause me to issue another distribution license to appellant without considering the facts as to whether or not an additional license is needed in that portion of the community. The official population of Delaware Township (1940 census) is 5,811. Including Lindstrom's license, there are now eight plenary retail distribution licenses outstanding. Appellant testified that about 85% of his trade is transient and that, within a three-mile radius, there reside between four thousand and five thousand people. However, he admitted that this includes part of other communities.

The Legislature recently has enacted a law basing the number of outstanding licenses upon population, and has limited the number of licenses of this type to one for each three thousand inhabitants. P.L. 1946, c. 147. This act is not dispositive of the present appeal because appellant's application was filed prior to April 1, 1946. However, it is clear that the community is well served. As indicated above, the real reason advanced is the preference of one licensee over another. While appellant naturally feels that he has been treated unfairly, nevertheless the governing body was clearly within its rights in considering the two applications together and in deciding that one would better serve the interests of the community than the other. This same question was completely discussed in Giberti v. Franklin Township, Bulletin 150, Item 3, and the questions raised herein are similar, to a large extent, to the questions therein brought up. It is apparent that the issuing authority concluded that one license is all that this particular community requires and, faced with the necessity of making a choice, preferred one of two apparently equally qualified applicants to the other, and exercised its clear right of discretion.

Such being the case, I find nothing in the record to indicate that the choice was arbitrary or unreasonable. The appeal must, therefore, be dismissed.

Accordingly, it is, on this 24th day of June, 1946,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE AND ILLICIT ALCOHOL TRANSPORTED THEREIN ORDERED FORFEITED - APPLICANT FOR RETURN OF MOTOR VEHICLE FAILED TO ESTABLISH "GOOD FAITH" AND THAT THE LAW WAS UNKNOWINGLY VIOLATED.

In the Matter of the Seizure on July 28, 1945 of a five-gallon can of alcohol and a Hudson sedan at Southside, Philadelphia Anchorage, Delaware River Bridge, in the City of Camden, County of Camden and State of New Jersey.	Case No. 6869 ON HEARING CONCLUSIONS AND ORDER

John R. Di Mona, Esq., Attorney for Wilbur White.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a five-gallon can of alcohol and a Hudson sedan, seized on July 28, 1945 on the Delaware River Bridge in Camden, N. J., constitute unlawful property and should be forfeited.

On July 28, 1945, at about 10:15 p.m., Officer Frank Fowler of the Delaware River Bridge Police investigated a collision on the bridge between the Hudson sedan and another motor vehicle. Wilbur White, the owner and driver of such Hudson sedan, and his companion, Leroy Gould, were in or near the car. Officer Fowler was informed by the occupant of the other car that a can had been removed from the Hudson sedan and placed alongside the bridge. The officer searched for, and found, a five-gallon can of alcohol on a screen netting at the side of the bridge.

The can of alcohol and the motor vehicle were seized by Fowler, who arrested White and Gould on charge of possessing illicit alcoholic beverages and unlawfully transporting such beverages. The alcohol and car were later turned over to the State Department of Alcoholic Beverage Control.

The alcohol was analyzed by the Department's chemist. He reports that it is 84.30 proof by volume, and fit for beverage purposes when diluted. The can bore no tax stamps or other indicia of the payment of any tax. Hence, the alcohol is prima facie illicit. R. S. 33:1-88.

The Hudson sedan was not licensed by this Department to transport alcoholic beverages. The alcohol, therefore, is also illicit because it was transported in an unlicensed vehicle. R.S.33:1-1(i). The five-gallon can of illicit alcohol and the Hudson sedan in which it was transported constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, Wilbur White appeared with counsel and sought return of the motor vehicle.

White represents that although Gould has a long criminal record, including convictions for violating the Alcoholic Beverage Law, White has a clear record and merely drove Gould to Philadelphia and back as a friendly accommodation; that when the collision occurred Gould attempted to conceal the can of alcohol; and that White's relative innocence is established by the fact that in the criminal proceedings in the case, Gould was sentenced to six months' imprisonment whereas White was fined $25.00 and given a thirty-day suspended jail sentence.

According to White's testimony, he merely knew Gould by sight but was never in his company and never visited his home or even talked with him. Nevertheless, White says that on Saturday evening, July 28, 1945, while standing at a Camden street corner, Gould told him that he had some business to transact in Philadelphia and White agreed to drive him there without inquiring as to the nature of such business.

White drove Gould to a Philadelphia address, where Gould entered a dwelling and came out within a few minutes. White then drove Gould to another address, where Gould entered another dwelling, and shortly thereafter came out with another man. Either White or Gould opened the front and rear doors of the car. Gould and the other man held a discussion for about five or ten minutes, which White claims he did not overhear. He says that he did not observe the can being placed in the car and did not know that it was there until he saw Gould take it from the rear of the car after the collision and conceal it. When the discussion was ended, Gould took a front seat in the car and White drove away en route to Camden.

Mrs. White, who has been married to Mr. White about three years, testified that she knew that Gould had a reputation for bootlegging. When asked whether her husband was aware of that fact, her only answer was, "I have never known him to associate with him."

White's story cannot be accepted at face value. It is highly improbable that he went to the trouble of driving to Philadelphia at the request of a chance acquaintance and without any idea as to the purpose of such trip. Furthermore, it is well nigh inconceivable that the can, which is of considerable bulk, could have been placed in White's car without his knowledge or that he did not at any time glance into the back of the car and see the can during the drive of two or three miles from the last place where he stopped to the place where the accident occurred. It seems more probable that White, as well as his wife, knew that Gould was a bootlegger and knew or should have known that the "business" which Gould was engaged in that night was the transportation of illicit alcoholic beverages.

White, therefore, has not established to my satisfaction that he acted in good faith and did not know or have any reason to suspect that he was transporting illicit alcoholic beverages. His request for return of the Hudson sedan is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: June 24, 1946

SCHEDULE "A"

1 - 5-gallon can of alcohol
1 - Hudson Sedan, Serial #773116, Engine #29443, 1945 New Jersey registration C-T-32-B

6. APPELLATE DECISIONS - CHARNACK v. SEA BRIGHT (CASE NO. 3).

Case No. 3.)

MAX CHARNACK,)

Appellant,) ON APPEAL
CONCLUSIONS AND ORDER

-vs-)

BOROUGH COUNCIL OF THE BOROUGH OF SEA BRIGHT,)

Respondent)

David H. Wiener, Esq., Attorney for Appellant.
Edward W. Wise, Esq., Attorney for Respondent.
J. Frank Weigand, Esq., Attorney for Objectors.

This is an appeal from the action of respondent in denying an application of appellant for a plenary retail consumption license for premises located at 1126-1128 Ocean Avenue, Sea Bright.

This is the third appeal by this appellant. The first appeal in the matter was remanded to the respondent for the purpose of taking formal action. Charnack v. Sea Bright, Bulletin 644, Item 1. Upon denial by the municipality, a second appeal was taken to this Department which, after hearing, was dismissed for the reason that the appellant failed "to show any special need for the issuance of another plenary retail consumption license in that section of the Borough", and further, because the burden of proof had not been sustained "in establishing that respondent acted arbitrarily or abused its discretion". Charnack v. Sea Bright, Bulletin 655, Item 4.

Since the last decision was rendered, respondent granted a plenary retail consumption license to one Joseph J. Salmon for premises located at 15 New Street, which licensed premises are located on a side street around the corner from the proposed licensed premises and 132 feet distant, measured diagonally, across the street from the entrance to the bar of Harry's Lobster House. Following the granting of the Salmon license, appellant filed the application which is the subject of this appeal. The application was denied. Hence this appeal.

Appellant operates a combination delicatessen store and lunch room in the premises he now occupies at 1130-32 Ocean Avenue. He now holds a plenary retail distribution license for said premises.

The reasons advanced by appellant for reversal in this case are substantially the same as were advanced in the previous appeal except that he also recites the issuance of the Salmon license.

Aside from the issuance of the Salmon license, there is no evidence of any changed conditions since the previous appeal was decided. It is obvious that, in the absence of changed conditions, the denial of appellant's present application must be affirmed. While the Salmon license is located 132 feet distant in a straight line from the entrance to the bar of Harry's Lobster House, nevertheless it is on the opposite side of the street and is a greater distance away if one considers the way a pedestrian usually walks. Then, too, in a previous appeal, one member of the issuing authority stated that there was no objection to issuing a license to the appellant if his premises were farther away from an already existing licensed place or in another block. This expressed opinion indicates there is nothing

inconsistent or arbitrary in the action of the issuing authority. The difficulty is that the appellant wants to be next door to another licensed premises and in no other place. To this the municipality objects. This is the gist of the entire matter.

In addition to the reasons above stated, appellant's application required denial for an additional reason. The testimony and exhibits indicate that appellant operates a delicatessen store in addition to his other business, and plans to move his entire business from 1130-1132 Ocean Avenue to 1126-1128 Ocean Avenue and to operate in the same manner if the license is granted. This would be in clear violation of R. S. 33:1-12(1), which reads as follows:

> "***this license (plenary retail consumption license) shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business *** is carried on."

For this, as well as the other reasons above stated, the action of the respondent is affirmed.

Accordingly, it is, on this 24th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND JUKE BOX IN SPEAKEASY ORDERED FORFEITED.

In the Matter of the Seizure on May 12, 1946 of a quantity of alcoholic beverages and a music machine at 197 Belmont Avenue, in the City of Long Branch, County of Monmouth and State of New Jersey.	Case No. 6985 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and a music machine seized on May 12, 1946 at 197 Belmont Ave., Long Branch, N. J. constitute unlawful property and should be forfeited.

The State Department of Alcoholic Beverage Control obtained evidence that speakeasy activities were being carried on in an apartment at the premises in question, and more particularly that on May 5, 1946 a person, acting on behalf of the Department, there purchased drinks of whiskey for himself and other patrons. At that time he observed a number of other patrons being served or consuming alcoholic beverages.

Fenera Holland, also known as Fenera Hayes and Fenera Lawes, who occupied the apartment, did not hold any license authorizing her to sell or serve alcoholic beverages. ABC agents thereupon obtained a search warrant on the basis of these unlicensed sales.

The agents executed the search warrant on May 12, 1946, at which time there were thirteen persons in the kitchen, and empty drinking glasses on the kitchen table. The other rooms in the apartment consisted of two bedrooms and a living room.

The ABC agents seized twenty-four bottles of beer in an ice box in the kitchen, a bottle of whiskey on the table in the kitchen, 24 bottles of ale in one of the bedrooms, a music box in the living room, and a number of empty whiskey and beer bottles.

One of the persons in the kitchen when the agents entered gave them a signed statement in which he set forth that he had there purchased alcoholic beverages from Fenera Holland.

Fenera Holland was arrested and is presently awaiting action of the Monmouth County Grand Jury.

Fenera Holland was arrested in 1934 on the charge of selling whiskey without a license. In 1937 she was again arrested when ABC agents found two bottles of illicit alcoholic beverages in her kitchen and three men seated there with whiskey glasses in front of them. She did not oppose forfeiture of the illicit alcoholic beverages. In 1944 she was again arrested on the charge of selling alcoholic beverages in her apartment without a license. The alcoholic beverages seized on this occasion were forfeited and Fenera Holland pleaded non vult to the criminal charges in the case and was fined $100.00. All of these activities occurred in the immediate vicinity of the premises involved in the instant case.

Fenera Holland's background, as above recited, clearly warrants the inference that the seized alcoholic beverages were intended for sale at this speakeasy and hence are illicit. Such illicit alcoholic beverages, together with the music machine and the coins therein, seized in the Holland apartment, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: June 25, 1946

SCHEDULE "A"

48 - bottles of beer
1 - 4/5 quart bottle with whiskey
9 - whiskey glasses
1 - music machine with coins therein

8. DISCIPLINARY AND CANCELLATION PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION MISREPRESENTING MATERIAL FACT (RIGHT OF POSSESSION) - LICENSEES NOT IN POSSESSION OF LICENSED PREMISES - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against LEON GIACONIA, OSCAR AQUINO and SAMUEL INTELISANO T/a O.L.S. LIQUORS 563 VanHouten Avenue Clifton, N. J., Holders of Plenary Retail Distribution License D-37 issued by the Municipal Council of the City of Clifton.	CONCLUSIONS AND ORDER

Harry Kampelman, Esq., Attorney for Defendant-licensees.
Frank W. Shershin, Esq., Attorney for Clifton Retail Package Stores Association.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants pleaded not guilty to a charge alleging that their current plenary retail distribution license was obtained by misrepresentation of a material fact in that, in answer to Question 8(a) in their application, they stated that they leased the premises 563 (now 573½) VanHouten Avenue, Clifton, from one Olga Tomaszewski, whereas in truth and in fact they did not have a lease from Olga Tomaszewski or anyone else with respect to the said premises; such misrepresentation being in violation of R. S. 33:1-25.

Notice was served upon the defendants herein to show cause why License D-37, issued to them by the Municipal Council of the City of Clifton, should not be cancelled and declared null and void on the ground that, when said license was obtained, they did not have the requisite right to exclusive possession and control of the premises in question to warrant the issuance of any license therefor.

It appears from the testimony in the instant case that, at the time defendants filed their application for a license, the premises known as 563 (now 573½) VanHouten Avenue, Clifton, were occupied by and in possession of one Joseph Pollara, who conducted a barber shop therein. Pollara, at the time of this hearing, testified that he is still in actual possession of the said premises; that he has paid his rent up to and including May 1946, and that he has not been given any written notice to vacate said premises. One Matthew Trella, a witness for defendants, testified that, shortly after application was made for the license in question, he, as manager and rent collector of the building wherein the barber shop is situated, verbally notified Joseph Pollara to vacate the premises. Trella admitted, however, that he has collected the rent for the use of the premises as a barber shop each month up to and including March 1946. Oscar Aquino, one of the licensees, testified that he did not know Olga Tomaszewski, one of the alleged owners of the building, nor was there any rent paid for the premises, nor did they ever have the right to possession.

An applicant for a liquor license must have some possession or right to possession of, or interest in, the premises sought to be used as the licensed premises. If the applicant does not have possession of, or right to possession, or any interest in, the premises, no license may be issued. Re Haneman, Bulletin 449, Item 4. This principle was first enunciated in the very early days of the Department in Procoli v. Trenton, Bulletin 28, Item 6. It has been consistently followed to this date. Caplan v. Trenton, Bulletin 29, Item 11; Re Pennsauken, Bulletin 48, Item 8; Re Sakin, Bulletin 67, Item 13; White Castle, Inc. v. Clifton, Bulletin 97, Item 13; D'Annibale v. Fredon, Bulletin 139, Item 7; Agzigian v. Pequannock, Bulletin 216, Item 1; Eavenson v. South Orange, Bulletin 283, Item 8; Vasapoli v. Plainfield, Bulletin 301, Item 7; Licata v. Camden, Bulletin 342, Item 1; Hindin v. Egg Harbor, Bulletin 399, Item 1; Gimber v. Galloway, Bulletin 427, Item 9; Bodrato v. Northvale, Bulletin 433, Item 1; Berry v. Newark, Bulletin 433, Item 8; Alberts v. Roselle, Bulletin 444, Item 1.

While an interest in the premises has always been required, the necessary quantum thereof has not been precisely specified, although it has been aptly illustrated on numerous occasions that it must amount to possession and control. Re Haneman, supra. A lease on a monthly basis has been considered sufficient. Yanuzis v. Camden, Bulletin 37, Item 1. Also possession under a tenancy at will. Re Pierson, Bulletin 38, Item 12. Every applicant must have an interest in the premises to be licensed even though no more than a lease (Re Fisher, Bulletin 107, Item 8). It must be a legal interest and is satisfied by a lease (Beekwilder v. Wayne, Bulletin 122, Item 3). Legal possession is sufficient (Re Schmidt, Bulletin 137, Item 1). Legal interest is necessary (Yacula v. Jersey City, Bulletin 144, Item 7). A lease is sufficient, even though the landlord's title may be bad, until a court so determines (Gruner v. Washington, Bulletin 149, Item 6). Legal possession is necessary (Re Ingalsbe, Bulletin 250, Item 10).

The facts in the present case disclose that the defendants had no right to possession of the premises at the time the license was issued and, apparently, still have no right to possession thereof. I find them, therefore, guilty of the charge preferred against them. In view of the fact that the Municipal Council of the City of Clifton erred in issuing the license for premises to which applicants had no right of possession, I shall, pursuant to the order to show cause, cancel the license, effective forthwith.

Accordingly, it is, on this 24th day of June, 1946,

ORDERED, that the order to show cause why Plenary Retail Distribution License D-37, issued to Leon Giaconia, Oscar Aquino and Samuel Intelisano by the Municipal Council of the City of Clifton for premises 563 (now 573½) VanHouten Avenue, Clifton, should not be cancelled and declared null and void, be and the same is hereby made absolute, and it is further

ORDERED, that the license certificate itself must be surrendered to the Municipal Council of the City of Clifton for cancellation.

ERWIN B. HOCK
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (PRIMARY ELECTION DAY) - ADVERTISED OFFICIAL NOTICE OF HOURS WHEN POLLS WERE OPEN FOR VOTING INCORRECT - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

EDWARD JOHN ROEHRICH)
T/a OLD MILL STREAM)
205 Paramus Road) CONCLUSIONS
Paramus, P. O. Ridgewood) AND ORDER
R. F. D. 1, N. J.,)

Holder of Plenary Retail Consumption License C-25, issued by the Mayor and Council of the Borough of Paramus.)

Edward John Roehrich, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

A charge was served upon defendant-licensee alleging that on Primary Day (June 4, 1946), while the polls were open for voting, he sold alcoholic beverages on his licensed premises in violation of Rule 2 of State Regulations No. 20.

The facts are not in dispute. On Tuesday, June 4, 1946, at about 8:10 p.m., an ABC agent entered defendant's premises and observed six persons seated at the bar drinking alcoholic beverages which had been served by the bartender.

At the hearing herein defendant admitted that he opened his licensed premises on Primary Day at 8:00 p.m. and that alcoholic beverages were served thereafter. He testified that the premises had been closed all day but that he resumed business at 8:00 p.m., instead of 9:00 p.m., because of an official Election Notice published in "The Fair Lawn-Paramus Clarion" on May 31, 1946, which stated that Primary Election would be held on Tuesday, June 4, 1946, from the hours of 7:00 a.m. to 8:00 p.m. Daylight Saving Time. A copy of the newspaper was presented at the hearing.

Admittedly there was some confusion as to whether the polls should be open between 7:00 a.m. and 8:00 p.m. or between 8:00 a.m. and 9:00 p.m. on Primary Day, and the closing hour was not officially fixed at 9:00 p.m. until the Attorney General of the State of New Jersey rendered an official opinion shortly prior to the date upon which the primary was held. The official notice was published in a newspaper on May 31st, and defendant-licensee testified at the hearing and our independent investigation confirms that he had received no other notice from the Borough officials.

I am satisfied that defendant acted in good faith when he opened his premises at 8:00 p.m., and that he was misled by the published official notice. In fairness, I shall dismiss the charge.

Accordingly, it is, on this 24th day of June, 1946,

ORDERED, that the charge herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

10. APPELLATE DECISIONS - CROCAMO v. PHILLIPSBURG.

DONALD JAMES CROCAMO,)
Appellant,)
-vs-) ON APPEAL
CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE)
TOWN OF PHILLIPSBURG,)
Respondent)

Lyness & Bedell, Esqs., by Joseph I. Bedell, Esq., Attorneys for Appellant.
Frank J. Kingfield, Esq., Attorney for Respondent.
Robert B. Meyner, Esq., Attorney for Objectors.

Appellant appeals from denial of the transfer of his plenary retail consumption license from 733 South Main Street to 311 Thomas Street, Town of Phillipsburg. The answer sets forth that the transfer was denied because (a) the transfer would be contrary to a resolution of the Town of Phillipsburg adopted May 22, 1935; (b) the transfer would be contrary to the policy of respondent not to change the location of licensed premises; (c) the premises to which transfer was sought are not suitable in that they are located on an alley and adjoin a grocery and confectionery store frequented by children, and (d) the grant of the transfer would not serve public convenience and necessity.

It has been held that the resolution of May 22, 1935 does not prevent the transfer of a license. Ignatz v. Phillipsburg, Bulletin 167, Item 16. It has also been determined that no one place is entitled to a license more than another. Re Konesky, Bulletin 217, Item 7. Hence the reasons set forth herein as (a) and (b) are not sufficient to sustain the action of respondent in refusing to transfer the license.

As to (c) and (d): The licensed premises at 733 South Main Street, Phillipsburg, are located in the southerly section of the Town of Phillipsburg. Years ago these premises were operated as a hotel, but are not being used for hotel purposes at the present time. They have been licensed for the sale of alcoholic beverages continuously since Repeal, and appellant has held a license for said premises continuously since August 1943. The present owners of the building have entered into a contract to sell these premises to another individual, and appellant has been served with a notice to vacate the premises.

The building to which appellant seeks to transfer his license consists of a one-story cinder block building, containing approximately five hundred square feet, which has been built as an addition to the rear of a one-story frame building in which his sister operates a grocery store. The grocery store is located at the corner of Thomas Street and a narrow street which is known as Emma Street. There are no other buildings on this portion of Emma Street except a small clubhouse on the opposite corner of Thomas and Emma Streets. The entrance to the proposed premises would be located on Emma Street some distance north of Thomas Street. The proposed premises are located approximately 1500 feet easterly of South Main Street.

An examination of the evidence and the photographs introduced at the hearing leads me to conclude that there is no need for another licensed premises in the section of the town to which appellant seeks to transfer his license. The general area is residential in character although a number of manufacturing plants are located nearby. One plenary retail consumption license has been issued for premises on Thomas Street a short distance from Emma Street, and this place would appear to be sufficient to take care of the needs of those residing in the neighborhood. Moreover, this small building, located on this narrow street or alley, is scarcely a fit place for the sale of alcoholic beverages.

The right to transfer a license from place to place is not inherent in the license. A transfer may be denied to accomplish the objects of the Alcoholic Beverage Law and secure compliance with its provisions and, hence, a transfer may be denied where the premises are unsuitable or there are already too many licenses in the vicinity. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6.

Appellant has not sustained the burden of proof in showing that the action of respondent was arbitrary or unreasonable. Hence the action of respondent must be affirmed.

Accordingly, it is, on this 25th day of June, 1946,

ORDERED, that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Ernest S. Hock
Deputy Commissioner.