

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

BULLETIN 408

JUNE 11, 1940.

1. APPELLATE DECISIONS - NEW JERSEY LICENSED BEVERAGE ASSOCIATION
v. PATERSON ET AL.

NEW JERSEY LICENSED BEVERAGE ASSOCIATION, a corporation,)	
)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
-vs-)	
)	
BOARD OF ALDERMEN OF THE CITY OF PATERSON, PETER JOHNSON, MARTIN PLESS, PAUL and WILLIAM ORTMAN, and HERMAN C. MADAMA,)	
)	
Respondents)	

William C. Egan, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent Board.
I. Victor Klenert, Esq., Attorney for Respondents, Peter Johnson and Martin Pless.
Alexander E. Fasoli, Esq., Attorney for Respondents, Paul and William Ortman.
Herman C. Madama, Pro Se.

These appeals are from the action of the Paterson Board of Aldermen in granting, during February 1940, a plenary retail consumption license in that City to Peter Johnson for 856 River Street; to Martin Pless for 839 Main Street; to Paul and William Ortman for 933 Main Street; and to Herman C. Madama for 56 Van Houten Street.

Appellant, an incorporated association of various retail liquor dealers in the State, with a local branch in Paterson, contends that these four licenses were granted in violation of an ordinance which the Paterson Board introduced on March 1, 1937 and passed on second and final reading on March 15, 1937, purporting to limit consumption licenses in the City.

However, such ordinance never became law. It was vetoed by the Mayor on March 25, 1937. Section 25 of the City Charter (March 23, 1871) provides that, in case of such veto, the Board -

"....shall, at its first regular meeting,proceed to reconsider the (vetoed ordinance)....., and if on a reconsideration it shall pass the board by a vote of the majority of all the members thereof, it shall take effect....."

On April 5, 1937, at apparently the Board's first regular meeting after the veto, the Board, though voting down a motion to sustain such veto, took no further action on the ordinance. Such defeated motion was not equivalent to an actual deliberative vote on the ordinance itself which the charter specifically requires. By possibility, members of the Board might have voted against the

Mayor merely as an expression of "no confidence" in him, whereas, if actually reconsidering solely the ordinance, they might have either voted against it or have preferred to cast no vote at all on it.

Consequently, since the ordinance was thus never enacted into law, appellant's contention that these licenses were issued in violation of it falls.

As to the Johnson and Madama licenses, appellant raises no further question.

However, as to the Ortman and Pless licenses, it contends that such were issued in a vicinity already adequately supplied with taverns.

That vicinity is business and industrial in character, with side streets that are mainly residential. Along Main Street in such area there are, in a distance somewhat over half a mile, nine taverns exclusive of the Ortman and Pless taverns. On various nearby streets along the way there are seven more such places. In June 1939 the Board denied an application by Pless and a then partner for a consumption license for Pless' present site seemingly because the Alderman of that Ward stated that there was no need for an additional tavern there. Since then a large new factory has been located in the area with a resultant increase in business and population.

How many taverns shall be permitted in any area lies within the sound discretion of the local issuing authority. Here, in view that Main Street is an important business thoroughfare, that there has been an increase of activity in the section resulting from the recent advent of the nearby factory, that the previous denial of license to Pless and his then partner for this vicinity was seemingly only because the Alderman of the Ward, and not the whole Board, was opposed to it, and that none of the general citizenry appeared either before the Board or at the hearing on these appeals in protest, I cannot say that the Board necessarily abused its discretion in permitting two more taverns in the vicinity. Sobocienski v. Newark, Bulletin 239, Item 8; Fanel Realty Co. v. Newark, Bulletin 284, Item 10; Sachs v. Trenton, Bulletin 321, Item 12; Franklin Stores Co. v. Newark, Bulletin 362, Item 2; Ciliberti v. Camden, Bulletin 379, Item 13.

Appellant last contends that an undisclosed person is interested in the Ortman license. However, since it produced no evidence in support, such contention must fall.

The action of the Paterson Board in these four cases is, therefore, affirmed.

In caution it should be noted that, by reason of an ordinance adopted in April last (two months after issuance of the present licenses), no new applications for consumption licenses may now be granted in Paterson until the number of such licenses falls below 300.

E. W. GARRETT,
Acting Commissioner.

Dated: June 6, 1940.

2. APPELLATE DECISIONS - PIETZ v. MAPLEWOOD.

LUDWIG PIETZ,)	
)	
Appellant,)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF MAPLEWOOD,)	
)	
Respondent)	
-----)	

Meehan Brothers, Esqs., Attorneys for Appellant.
Abram H. Cornish, Esq., Attorney for Respondent.

Appellant appeals the suspension of his license for fourteen days on charges of selling alcoholic beverages to a minor.

The parties have stipulated that the appellant sold a pint of gin to Paul B_____, sixteen years of age, who, when asked his age by both the appellant and a clerk, stated that he was twenty-one years old; that the sale was made in reliance on his oral representation of age; that the minor was 5'10" in height and weighed 150 pounds, and that Paul had attempted to purchase an alcoholic beverage at a nearby licensed place but had been refused.

On the facts as stipulated, I have no alternative but to affirm the decision of the respondent. It is not a defense that the minor falsely represented his age verbally. Since the amendment of R. S. 33:1-77 on July 18, 1939 a licensee may escape the consequences of a sale to a minor, no matter how well intentioned, only if three things affirmatively appear, viz., (1) that the minor falsely represented in writing that he was of age; (2) that he actually appeared to be of age, and (3) that the sale was actually made in reliance upon both the written representation and the appearance of the minor.

Appellant claims that the fourteen-day suspension is unreasonable. It has been the consistent policy of this Department to recommend a minimum suspension of ten days in cases involving sale of alcoholic beverages to minors, and to impose such a penalty in cases conducted at the Department. I cannot conclude that a suspension of fourteen days is unreasonable when one of ten days is reasonable.

The action of the respondent is therefore affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: June 6, 1940.

street and at least 1700 feet from appellant's premises. Under the circumstances, appellant has not sustained the burden of proof in showing that respondent abused its discretion.

As to (2): The contention that appellant, as the holder of a pre-existing license, will be injured in the profitable conduct of his business, whether true or not, is not a valid ground for rescission of a subsequently issued competing license. Matters of economics are of no proper concern to issuing authorities. Licata v. Camden, Bulletin 342, Item 1; Sobocienski and Franklin Stores Co. v. Newark and International Liquor Co., Bulletin 239, Item 8; Great Atlantic and Pacific Tea Company v. Conover, Bulletin 153, Item 12, affirmed Conover v. Burnett, 118 N. J. L. 483 (Sup. Ct. 1937).

As to (3): At the hearing, Mayor Oakwood denied that he had ever stated to appellant or to anyone else, at any time, either officially as Mayor or privately as an individual, that no more distribution licenses would be issued in the Borough. On cross-examination, appellant admitted that he had first learned of the alleged policy of limitation several months after he had renewed his license, that he had not relied upon it in any way, that no such announcement had ever been made in his presence, and that he had heard of it from another licensee who was supposed to have been present at the time the commitment was made. That other licensee was not produced as a witness. Whether such commitment would serve to estop respondent from issuing an additional license need not be further considered because the record is devoid of any competent or convincing evidence that it was ever made.

The action of the respondent is therefore affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: June 6, 1940.

4. APPELLATE DECISIONS - CLEMENS v. WALLINGTON.

NICHOLAS CLEMENS,)	
)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
-vs-)	
)	
BOROUGH COUNCIL OF THE)	
BOROUGH OF WALLINGTON,)	
)	
Respondent)	

John O. McGuire, Esq., Attorney for Appellant.
Louis A. Schiffman, Esq., Attorney for Respondent.

Appellant appeals from denial of transfer of his plenary retail consumption license from 134 Locust Avenue to 128 Locust Avenue, Borough of Wallington.

Respondent alleges that in denying said transfer it "was lawfully exercising its discretion as the issuing authority governing issuance of licenses for alcoholic beverage control."

At the hearing herein six objectors appeared. One objector, who holds a consumption license for premises on Tuttle Street, testified that he is opposed to the transfer because there are too many saloons in Wallington; four others object because the transfer will establish licensed premises at a corner used as a bus stop, and because they would prefer to see some other business established at said corner. The sixth objector, who has resided at 119 Locust Avenue for the past six months, testified that the present premises are noisy and that he protests the establishment of a business at a place nearer to his home. None of these objectors appeared before the Borough Council, although there is some evidence that they had communicated their objections to members of the Council prior to the hearing at which the transfer was denied.

It appears that the premises known as 134 Locust Avenue are located a short distance from the northeast corner of Locust Avenue and Tuttle Street; that the premises known as 128 Locust Avenue consist of a two-story brick building, with a store on the first floor and living apartments above, at the southeast corner of Locust Avenue and Tuttle Street. This section of Locust Avenue is zoned for business purposes. Licensee has entered into an agreement to purchase 128 Locust Avenue and plans to reside on the second floor of the premises.

While a transfer of a liquor license is not an inherent or automatic right, a refusal to transfer will be reversed where it appears that the action is arbitrary or unreasonable. The objections are of a general character. Mere general objections would not justify an issuing authority in refusing to transfer a license in a business district. Conn v. Kearny, Bulletin 173, Item 1; Land v. Way, Bulletin 232, Item 14; Rucereto v. Dumont, Bulletin 253, Item 6. After considering the evidence produced herein, I conclude that the refusal to transfer was unreasonable.

The action of respondent is, therefore, reversed, and respondent is directed to issue the transfer as applied for.

E. W. GARRETT,
Acting Commissioner.

Dated: June 6, 1940.

5. APPELLATE DECISIONS -- GLAZER v. PATERSON.

WILLIAM GLAZER,)	
)	
Appellant,)	
)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
)	
BOARD OF ALDERMEN OF THE CITY)	
OF PATERSON,)	
)	
Respondent.)	
-----)	

Abraham Brenman, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent.

This appeal is from the denial of a plenary retail consumption license to William Glazer for 36-38-40 First Avenue, Paterson.

Respondent's reasons for such denial are not clear, its answer merely stating that in denying the license it "acted within its lawful authority."

However, judging from the minutes of respondent's meeting of February 19, 1940, at which appellant's license was denied, and from the testimony of Alderman Garrison, the sole alderman who appeared at the hearing on appeal, the reasons which were declared in presence of the Board for the denial were: (1) that there are already a sufficient number of taverns in the proposed vicinity; (2) that, since two of appellant's brothers each hold a plenary retail consumption license in Paterson, a third such license should not be granted to a member of the same family; and (3) that in May 1938 a consumption license then held by Bertha Bader for the premises in question was revoked because of violations there.

Hence, these reasons will be taken as the ones alleged by respondent as justification for the denial. Cf. Rosenvinge v. Metuchen, Bulletin 249, Item 6; Ricker v. West New York, Bulletin 384, Item 15.

As to (1): The vicinity in question is business and industrial in character. There is a tavern some four or five hundred feet to the north of appellant's site, and three others within six or seven hundred feet to the south, one such tavern being Peter Johnson's at 856 River Street.

Both appellant and Johnson applied for license in this vicinity at about the same time. However, although Johnson's application was granted on February 5, 1940, appellant's was, for no apparent reason, carried over until February 19, when it was denied. No satisfactory evidence appears as to why there should be such discrimination between the two applicants.

Moreover, during that same month - viz., February 1940 - respondent issued two consumption licenses for another business and industrial vicinity where a large number of taverns were already in existence. See New Jersey Licensed Beverage Association v. Paterson et als., Bulletin 408, Item 1.

Now, although a local issuing authority may adopt a policy of restricting undue congregation of taverns, such a policy to be valid must be fairly and uniformly applied. Ricker v. West New York, supra.

Since it adequately appears from the foregoing that respondent was actually pursuing no such uniform policy, ground (1), stated above, is insufficient to sustain the denial of appellant's license.

As to (2): There is nothing in the liquor laws or regulations limiting the number of licenses that may be permitted to relatives, nor is there reasonable connection between liquor control and the number of individuals in the same family tree who may hold liquor licenses. Hence the mere fact that two of appellant's brothers hold consumption licenses in Paterson is not sufficient reason for the instant denial.

As to (3): After the Bader license for the premises in question was revoked in May 1938, a new license for such premises was thereafter granted to Chester Kuipers and Marinus DeYoung in August 1938 for the 1938-9 and was later renewed for the 1939-40 licensing years. On December 14, 1939 such license was transferred to premises in another vicinity. So far as appears, Kuipers and DeYoung, while at the premises in question, properly conducted their tavern there.

It may well be that the misconduct of a previous licensee at certain premises may be considered as a pertinent circumstance by a local issuing authority when seeking to determine whether to issue a new license for such premises. Cf. Mulligan v. Lyndhurst, Bulletin 146, Item 6. However, where, as here, a new license has, after such misconduct, actually been granted and the premises properly conducted under it, the issuing authority may not thereafter, when a subsequent application for license for the premises is made, seek to revert back to the now outmoded misconduct and on such ground deny the applicant.

In view of the foregoing, it thus appears that appellant's license was arbitrarily denied.

However, since such denial, respondent has, in April past, adopted an ordinance limiting consumption licenses (excepting renewals) in Paterson to 300, a quota already exhausted.

Although such ordinance was adopted after the denial, it is nevertheless an important factor to be considered on this appeal. See the leading case of Franklin Stores v. Elizabeth, Bulletin 61, Item 1. For recent instances of the rule, see Forest Hill Boat Club v. Cinnaminson, Bulletin 372, Item 7 and Italian American Citizens Club v. Greenwich, Bulletin 392, Item 9.

However, it does not follow that such ordinance therefore stands in necessary bar of issuance of appellant's license. As illustrated by the cited cases, a subsequently adopted quota should be deemed such bar only when it formally embodies a policy which was in effect at time of the denial. In the present case it cannot be said that respondent, when denying appellant's application, was then pursuing any bona fide policy of issuing no further licenses. To the contrary, it appears, from the records of this Department, that at or about such time respondent actually issued, in total, six new consumption licenses in Paterson.

Hence, in such case, where respondent was thus not pursuing any bona fide policy of limitation and denied the appellant's license for arbitrary reasons, the subsequently adopted quota may not, in fairness, be retroactively applied to justify the invalid denial.

The action of respondent is, therefore, reversed. Respondent is directed to issue a license to appellant forthwith as applied for.

Dated: June 6, 1940.

E.W. GARRETT,
Acting Commissioner.

6. EDUCATIONAL CAMPAIGN

June 4, 1940.

TO: E. W. GARRETT, Acting Commissioner
 FROM: S. B. WHITE, Chief Inspector

Herewith list of addresses made by members of the Department in connection with Educational Campaign during the period July 1, 1939 to June 1, 1940, and the organizations before which appearances were made:

1939

July

13	First Name Club of the Schenley Distributors Corp.	D. Frederick Burnett
14	Hobah Lodge No. 122, I.O.O.F. of Dividing Creek	Frank M. Middleton
18	Atlantic City Rotary Club	Stanton J. MacIntosh

Aug.

1	Chatham Kiwanis Club	D. Frederick Burnett
9	Mt. Holly Rotary Club	Frank M. Middleton
14	Bergenfield Rotary Club	Sydney B. White
29	Paterson Kiwanis Club	Maurice E. Ash

Sept.

14	Moorestown Rotary Club	Frank M. Middleton
27	Asbury Park Rotary Club	David J. H. Murray

Oct.

9	National Association of Alcoholic Beverage Importers Inc.	D. Frederick Burnett
10	Wheatsheaf Craftsman's Club of Roselle	David J. H. Murray
31	Moorestown W. C. T. U.	Bayard M. Sullivan

Nov.

1	Carlstadt Women's Club	Maurice E. Ash
5	Sunday Evening Discussion Group of the Central Brick Presbyterian Church of East Orange	Stanton J. MacIntosh
8	Newark Tavern Association, Inc.	D. Frederick Burnett
10	Newark Ministerial Association	D. Frederick Burnett
15	Sixth Police Training Class of Elizabeth	William S. Codd
21	Knights of Columbus of Atlantic City	Stanton J. MacIntosh

Dec.

11	Lakewood Rotary Club	Sydney B. White
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1940

Jan.

4	Palmyra-Riverton Rotary Club	Bayard M. Sullivan
5	Montclair Minister's Association	D. Frederick Burnett
7	Evening Service of St. Paul's Methodist Church of Newark	Stanton J. MacIntosh
10	N. J. State Association of Township Committeemen	Stanton J. MacIntosh
10	Alumnus Reunion Association of Princeton University	D. Frederick Burnett
10	Gloucester County Beverage Men's Association	Frank M. Middleton
16	Peace Officers Association of Warren County	Sydney B. White
18	Palestine Lodge, F. & A. M. of New Brunswick	David J. H. Murray
18	Newton Kiwanis Club	Louis P. Ratti
19	Woman's Welfare Club of East Orange	Earle W. Garrett
23	Leni Lanape #15 I.O.O.F. of Lambertville	Judiah Higgins
25	U.C.C. State Employees' "Know Your Government" Group	D. Frederick Burnett
25	Essex County W. C. T. U.	Stanton J. MacIntosh
25	Associated Wineries of N. J. Inc.	Earle W. Garrett
29	Junior School of Moorestown	Richard E. Silberman
29	John McCutcheon Republican League of Paterson	Edward Lurie
29	Freehold Lions Club	David J. H. Murray
30	Roseville Lions Club	Stanton J. MacIntosh
31	Belleville Rotary Club	Maurice E. Ash

Feb.

1	Perth Amboy Lions Club	David J. H. Murray
2	West Orange Rotary Club	D. Frederick Burnett
5	Women's Club of Clinton	Maurice E. Ash
5	Alumni Association of Seton Hall College	D. Frederick Burnett
7	Carteret Liquor Dealers' Association	Sydney B. White
12	Warren County Rod & Gun Club No. 2	Judiah Higgins
12	The Civic Club of Lakewood	Maurice E. Ash
13	Asbury Park Woman's Republican Club	David J. H. Murray
14	Haddonfield Rotary Club	Frank M. Middleton
15	Gloucester City Senior High School Assembly	Frank M. Middleton

Feb.

15	Lafayette Chapter No. 26, Royal Arch Masons of Rahway	David J. H. Murray
19	Lambertville Rotary Club	Horace W. Roxbury
21	Dunellen Chamber of Commerce	David J. H. Murray
21	St. John's Lodge #1, F. & A. M. of Newark	D. Frederick Burnett
23	Paulsboro Republican Club	Frank M. Middleton
23	Montana Lodge #23 of Knights of Pythias of Phillipsburg	Judiah Higgins
27	Camden Suburban Liquor Dealers' Association, Division #49	Frank M. Middleton
27	P. B. A. #71 of Ocean County	William F. Chinery
27	Hackettstown Rotary Club	Judiah Higgins
28	Salem Rotary Club	Bayard M. Sullivan
28	Perth Amboy Rotary Club	David J. H. Murray
28	Gloucester City Rotary Club	Roscoe C. Lockwood
28	Red Bank Chamber of Commerce	Maurice E. Ash
28	Avoda Club of Atlantic City	George F. Tracy
29	Woodbridge Rotary Club	David J. H. Murray

March

3	Hawthorne Young People of the First Baptist Church of East Orange	Emerson A. Tschupp
5	Point Pleasant Rotary Club	David J. H. Murray
5	Hebrew Benevolent Society of Long Branch	Sydney B. White
6	Salem Y's Men's Club	Norman Myers
6	South River Rotary Club	Stanton J. MacIntosh
7	Men's Association of Christ Church of Short Hills	Stanton J. MacIntosh
7	Merchantville Lions Club	William W. Brooks
11	Maplewood W. C. T. U.	Maurice E. Ash
11	Police Training School of East Orange	William S. Codd
11	Plainfield Bar Association	D. Frederick Burnett
11	Brotherhood of the First Methodist Church of Lakewood	John E. Shafto
12	Y. M. & Y. W. H. A. of Long Branch	Harry Castelbaum
12	North Newark Kiwanis Club	Emerson A. Tschupp

March

13	Nutley Lions Club	Stanton J. MacIntosh
14	Belleville Lions Club	Sydney B. White
14	Men's Club of Sixth Presbyterian Church of Newark	Charles Basile
17	South Jersey Liquor Dealers' Association	D. Frederick Burnett
17	Young Peoples Fellowship of the Dutch Reformed Church of Pequannock Township	Anthony Robbins
18	Political Service Students of Rutgers University	D. Frederick Burnett
19	Perth Amboy Kiwanis Club	Sydney B. White
19	Orange-West Orange Kiwanis Club	D. Frederick Burnett
20	United Republican Club of Pennsauken Township	Charles Basile
26	Newark Tavern Association, Inc.	Erwin B. Hock Sydney B. White
26	Keyport Kiwanis Club	Stanton J. MacIntosh
26	Red Bank Lions Club	David J. H. Murray
27	Livingston Kiwanis Club	William S. Codd
27	East Orange Rotary Club	William S. Codd
27	Montclair Lions Club	Stanton J. MacIntosh
27	Democratic Club of Metuchen	Sydney B. White

April

2	Schraalenburgh Valley Kiwanis Club	Sydney B. White
2	Morris County Liquor Dealers' Association	Sydney B. White
2	Asbury Park Junior Hadassah	David J. H. Murray
3	New Brunswick Turn Verein	John E. Shafto
3	Collingswood Rotary Club	Frank M. Middleton
3	State Beverage Distributor's Association of New Jersey	Earle W. Garrett
4	Trenton Rotary Club	Sydney B. White
4	American Legion Post #159 of Flemington	Erwin B. Hock
5	Belmar Masonic Club	David J. H. Murray
5	Parent Teachers Association of Pequannock Township	Anthony Robbins
8	Asbury Park High School Students	David J. H. Murray

April

8	Ushers Club of the First Presbyterian Church of Edgewater	Louis Joret
9	Freehold Rotary Club	Charles Perry
9	Ewing Township Beverage Association	John E. Shafto
10	Jersey City Retail Liquor Dealers Association, Inc.	Edward J. Dorton
10	Knights of Pythias Lodge of Flemington	Judiah Higgins
10	Bergen & Passaic Pamona Grange	Anthony Robbins
11	Red Bank Rotary Club	Stanton J. MacIntosh
11	Verona Rotary Club	Richard E. Silberman
11	Dunellen Rotary Club	David J. H. Murray
11	Optimist Club of West Hudson	Sydney B. White
15	Holy Name Society of St. Peter's Rectory of New Brunswick	David J. H. Murray
16	Manasquan Kiwanis Club	Stanton J. MacIntosh
16	Combination Liquor & Associated Delicatessen Merchants of New Jersey	Earle W. Garrett Erwin B. Hock Edward Lurie
17	The Boosters Club of New Jersey	Sydney B. White
18	American Legion of Salem	Norman Myers
22	New Jersey Restaurant & Diners Association	Earle W. Garrett
23	Men's Club of the Hillside Presbyterian Church	David J. H. Murray
23	Nutley W. C. T. U.	Richard E. Silberman
24	Essex & Union County Retail Liquor Stores Association	Earle W. Garrett
25	Garfield Evening School	Edward Lurie
26	Atlantic Chapter Order of DeMolay	Simon Lippman
28	Assembly of Arlington Avenue Presbyterian Church of East Orange	William S. Codd
30	Camden Rotary Club	Frank M. Middleton
30	Bergen County Distribution Licenses Association	Earle W. Garrett

May

1	Somerville-Raritan Exchange Club	David J. H. Murray
3	New Jersey Hotel Men's Assn. of Atlantic City	Maurice E. Ash

May

5	Retail Liquor Distributors Assn. of Atlantic City	Earle W. Garrett
6	Dover Rotary Club	Judiah Higgins
6	National Beer Wholesalers' Association of America Inc.	Stanton J. MacIntosh
7	South Amboy Rotary Club	David J. H. Murray
8	Middlesex County Association of the Blind	David J. H. Murray
8	Gloucester City Licensed Beverage Association	Earle W. Garrett Frank M. Middleton
13	Rahway Rotary Club	David J. H. Murray
13	Toms River Kiwanis Club	Bayard M. Sullivan
16	Association of Mayors and Chairmen of Township Committees of Somerset County	Stanton J. MacIntosh
16	The Research Council on Problems of Alcohol	Earle W. Garrett Maurice E. Ash
21	American Legion, Fugle-Hammer Post, No. 65, of Metuchen	David J. H. Murray
22	Annual Conference of Law Enforcement Officials of Cape May County	Stanton J. MacIntosh
23	Metuchen Rotary Club	Charles Basile
23	Gloucester County Hotelmen's & Restaurateurs' Association	Frank M. Middleton
23	Men's Club of West Long Branch	Charles Perry
29	The Exchange Club of Newark	Stanton J. MacIntosh

S. B. WHITE
CHIEF INSPECTOR

7. APPELLATE DECISIONS - NICHOLAS v. DOVER.

CHRIST NICHOLAS,)	
)	
Appellant,)	
	)	ON APPEAL
-vs-	)	CONCLUSIONS
)	
BOARD OF ALDERMEN OF THE)	
TOWN OF DOVER,)	
)	
Respondent)	
-----)	

Frederick C. Henn, Esq., Attorney for Appellant.
 William H. H. Ely, Esq., Attorney for Respondent.
 Irving Youngelson, Esq. and Bertram M. Berla, Esq., Attorneys
 for Objectors.

Appellant, who formerly conducted a grocery store at 5 South Sussex Street, applied for and obtained a person to person transfer of a consumption license which had been issued to Helen Rausch for premises located at 241 East Blackwell Street. Thereafter, he moved his grocery business to other premises and applied to transfer said license from 241 East Blackwell Street to 5 South Sussex Street. Respondent denied the application for a place to place transfer and appellant appeals.

There is some evidence that when the application for transfer from person to person was made, some of the members of the Board of Aldermen knew that appellant intended to apply also for a place to place transfer. Appellant, however, does not contend that the granting of the person to person transfer estopped respondent from denying the place to place transfer and, in fact, such action would not work an estoppel since different considerations are involved.

The premises known as 5 South Sussex Street are fifty feet south of Blackwell Street and, admittedly, are in the heart of the business section of Dover. The westerly side of South Sussex Street, on which appellant's premises are located, contains various business places for a distance of one block between Blackwell Street and Dickerson Street. The easterly side of South Sussex Street, opposite this business section, contains a large five and ten cent store and a vacant lot. It appears, however, that on the westerly side of South Sussex Street there already exist two licensed places, one a cafe and the other a liquor store, in buildings which adjoin each other. It appears also that the nearest side of the cafe is only thirty-seven feet from the nearest side of appellant's premises. Thus, the transfer of appellant's license would result in the establishment of three liquor places upon one block within a distance of one hundred feet.

In a business section of this kind, the question as to the number of licenses which should be granted is primarily a matter to be decided in the reasonable discretion of the issuing authority. Rapp v. Linden, Bulletin 185, Item 9; Crociata v. Clifton, Bulletin 189, Item 6; Sobocienski v. Newark, Bulletin 239, Item 8; Hoffman v. Ridgefield Park, Bulletin 334, Item 12. Cf. Lingelbach v. North Caldwell, Bulletin 180, Item 8. There is no convincing evidence that an additional licensed place is necessary, and hence appellant has not sustained the burden of proof in showing that respondent abused its discretion.

After the hearing herein appellant requested a supplemental hearing to examine into the circumstances surrounding the transfer, on April 25, 1940, of a consumption license held by one Woda, to premises known as 40 North Sussex Street. This transfer was granted approximately two months after appellant's application to transfer from place to place had been denied. The evidence presented at the supplemental hearing was material under the rule laid down by the Commissioner in Karpf v. Way, Bulletin 81, Item 15, wherein he said:

"While it is proper to refuse to issue a license for premises located in a vicinity already adequately provided for, nevertheless, where the respondent subsequently issues additional licenses in the same vicinity, the contention that the issuance of additional licenses is socially undesirable falls of its own weight."

In the Karpf case, however, it appeared that after denial of appellant's application two additional consumption licenses had been issued for premises in the same vicinity, one being approximately one hundred and fifty feet away from appellant's premises. In DeVito v. North Arlington, Bulletin 160, Item 1, it appeared that after appellant's application had been denied respondent therein transferred another license into immediate vicinity of appellant's premises. In neither of the cases cited did the respondent therein offer any explanation.

In the present case, however, seven members of the Board of Aldermen and the Mayor were subpoenaed by appellant and testified at the supplemental hearing. A review of their testimony discloses that North Sussex Street is also a business section for a distance of approximately three blocks north of Blackwell Street; that the Woda license was transferred to premises opposite the municipal building and about four hundred eighty-nine feet north of Blackwell Street; that Woda's premises are approximately two hundred feet in one direction and three hundred feet in the other direction from the nearest licensed premises. The members of the Board and the Mayor testified that in their opinion the Woda application was distinguished from the Nicholas application because of the difference in footage between licensed premises. The present case, therefore, is distinguishable from the cases already cited herein. I conclude that appellant has not sustained the burden of proof in showing that respondent unreasonably discriminated against him in denying his application and granting the Woda application.

The action of respondent is, therefore, affirmed.

E. W. Garrett

Acting Commissioner.

Dated: June 6, 1940.