

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

BULLETIN 329

JULY 7, 1939.

1. ENFORCEMENT DIVISION ACTIVITY REPORT FOR JUNE, 1939

To: D. Frederick Burnett, Commissioner.

ARRESTS: Total number of persons - - - - - 53
Licensees - 2 Non-Licensees - 51

SEIZURES: Stills - total number seized - - - - - 11
Capacity 1 to 50 Gallons - - - - - 1
Capacity 50 Gallons and over - - - - - 10

Motor Vehicles - total number seized - - - - - 13
Trucks - 1 Passenger Cars - - - - - 12

Alcohol
Beverage Alcohol - - - - - 427 Gallons
Denatured Alcohol - - - - - 450 "
Mash - Total number of gallons - - - - - 102,371

Alcoholic Beverages
Beer, Ale, etc. - - - - - 33 Gallons
Wine - - - - - 1941 "
Whiskies and other hard liquor - - - - - 64 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1298
Illicit (bootleg) liquor - - - - - 5
Gambling violations - - - - - 7
Sign violations - - - - - 29
Unqualified employees - - - - - 106
Other mercantile business - - - - - 37
Disposal permits necessary - - - - - 1
"Front" violations - - - - - 3
Improper beer markers - - - - - 2
Other violations found - - - - - 12

Total violations found - - - - - 202
Total number of bottles gauged - - - - - 10,189

STATE LICENSEES:

Plant Control inspections completed - - 47
License applications investigated - - - 644

COMPLAINTS:

Investigated and closed - - - - - 326
Investigated, pending completion - - - 292

LABORATORY:

Analyses made - - - - - 144
Alcohol and water and artificial
coloring cases - - - - - 21
Poison and denaturant cases - - - - - 2

Respectfully submitted,

E. W. Garrett,
Chief Deputy Commissioner.

2. LIMITATION OF NUMBER OF LICENSES - SIXTH CLASS COUNTIES - RENEWAL LICENSES - TO CONSTITUTE A RENEWAL, THE LICENSE MUST BE ISSUED TO THE SAME PERSON WHO HELD THE EXPIRED OR EXPIRING LICENSE - HEREIN THAT A CORPORATION IS A VAIN THING FOR SAFETY.

SPECIAL PERMITS - WHEN ISSUABLE TO RENEWAL LICENSEES WHO HAVE ABANDONED THE IDEA OF INCORPORATING THE ENTERPRISE.

June 28, 1939

Dear Sir:

Today I had before me several applications for plenary retail consumption licenses, which were submitted by corporations, which are succeeding to the licenses formerly held by the same respective persons as individuals. Among these are Lou Booth, Inc., Lavelle Steel Bar, Inc. and Villas Hotel Corporation of Lower Township, N. J.

It appears to me that under Chapter 61, Pamphlet Laws 1939, that even though the same persons are applying for licenses, and the individuals interested are the same, the fact that they are now corporations, would, under the law, make them separate and distinct entities, and consequently take the position of new applicants.

With these conditions, under the recent amendment, there is nothing I can do but deny the licenses if they are pressed. I realize that it will impose severe hardships upon the persons involved, and they have now renewed their applications as individuals, and in the case of Lou Booth, Inc. and the Lavelle Steel Bar, Inc., they have submitted new applications to me with the required fee, and these matters will come on in regular process for a hearing on July 12, 1939.

I understand that in the meantime they are going to make application to you for a temporary permit that they may be open beyond June 30, 1939. I have no objection to the issuance of such a permit, and under the above circumstances it would seem to me that in all fairness the permit should be given.

Very truly yours,
Palmer M. Way

June 30, 1939

Hon. Palmer M. Way,
Wildwood, N. J.

My dear Judge Way:

I have yours of the 28th.

I wholly agree that the corporations in question are new applicants. The statute, Chapter 61, P. L. 1939, Bulletin 325, Item 8, provides, in Section 10:

"Any license which is issued for a new license term for a premises licensed on the last day of the license term which expires immediately previous to the commencement of said new license term shall be considered a renewal of the expired or expiring license provided that said license for said new term is issued to the same person who held the expired or expiring license and is of the same class and type as the expired or expiring license." (Italics mine).

It is elemental that a corporation is a legal entity wholly distinct from the individuals which happen to hold stock therein or constitute its membership. The doctrine, however, works both ways. Sometimes it saves a transfer fee, as in Re Heuring, Bulletin 322, Item 8 - sometimes, as in the instant case, it prevents a renewal. A corporation, like a horse, is a vain thing for safety!

I find from the petition of Louisa M. Booth that her license was duly issued on August 22nd last; that she has operated and still operates in her own name as an individual and has held a plenary retail consumption license for several years last past; that the corporation which she formed, called Lou Booth, Inc., has made application to you for a license for the same premises for the period beginning July 1st next; that she, upon learning of the enactment of Chapter 61, P. L. 1939, and upon ascertaining that the population of the City of North Wildwood, in which her licensed premises are situated, was, according to the last Federal census, about 2,000, and that there are now in existence a number of licenses in excess of the number limited by the statute aforesaid and that the corporation which she had formed would therefore be precluded from operating the business which she has established and in which she has a substantial investment, withdrew her application and has filed with you a new application in her own behalf as an individual and deposited the required fee and done all things required of her in order that she may renew the license which she now holds, but that she will be unable to have a hearing upon her individual application before July 12th next.

She has therefore applied to me for a special permit until July 12th in order that she may continue to operate at her said premises after midnight tonight.

Under the facts, I have granted a special permit, effective from July 1st to July 12th.

The same course will be taken in all cases similarly situated.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. ALIENS - TERMINATION OF ITALIAN TREATY DESTROYED RECIPROCAL PRIVILEGES - INTERIM PERMITS NOT PERMISSIBLE.

July 1, 1939

Dear Sir:

Fannie Cecere is the holder of Plenary Retail Consumption License C-821 for the premises 139 New Jersey Railroad Avenue, Newark, New Jersey. Mrs. Cecere is the widow of Joseph Cecere, who died several years ago, and she is the licensee at the present time. Mrs. Cecere has deposited with the Municipal Board of Alcoholic Beverage Control of the City of Newark, her renewal fee in the amount of \$500.00 under date of June 14th, 1939 and upon the return of the application from the Police Department, we were advised because of the non-existence of the treaty between Italy and the United States which expired April 15th, 1939, Mrs. Cecere is disqualified as a license holder.

Mrs. Cecere is the sole wage earner of the family and because of this disqualification has resulted in a nervous breakdown. This board is willing to consider to an ad interim permit if such a thing is possible, while Mrs. Cecere is transferring the license immediately to her nephew who is an American Citizen and 24 years old and is at present engaged as a bartender for his father, Domenick Malgeri at 118 Pacific Street, Newark.

In the view of the extenuating circumstances and because of this sudden disqualification the Board is inclined to be charitable.

Yours very truly,
H. S. Reichenstein,
Municipal Board of Alcoholic
Beverage Control.

July 1, 1939

Harry S. Reichenstein, Secretary,
Municipal Board of Alcoholic Beverage Control,
Newark, N. J.

My dear Mr. Reichenstein:

I have yours of even date re Fannie Cecere.

I too feel sympathetic for, through no fault of hers, she is disqualified to obtain a liquor license because she is not a citizen of this country. As pointed out, on March 15th, in Re Woertendyke, Bulletin 304, Item 3, alien subjects of Italy resident here could not renew their licenses on June 30th because of the abrogation of the treaty between the United States and Italy, which, when in force, had conferred reciprocal privileges of citizenship.

I understand that, when this notice came out on March 15th, you promptly sent notice to every one of the Newark licenses so that they could prepare themselves accordingly, which initiative is highly commendable. But, whether you did or not, the law of New Jersey expressly provides that no license may be issued to an alien and since the ameliorating and superseding effect of the Federal Treaty is no longer in force, it follows that it would be illegal to confer privileges on her which the law forbids to an alien.

An ad interim permit, while Mrs. Cecere is transferring the license to her nephew, is out of the question simply because she has no license to be transferred. Her privileges under the license expired yesterday at the close of the fiscal year.

I regret very much the hardship which the denunciation of the treaty has brought upon Mrs. Cecere.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. RECAPITULATION OF ENFORCEMENT DIVISION ACTIVITIES BY QUARTERLY PERIODS FOR THE FISCAL YEAR 1938-39

To: D. Frederick Burnett, Commissioner

	1st Quarter Jul. Aug. Sept.			2nd Quarter Oct. Nov. Dec.			3rd Quarter Jan. Feb. Mar.			4th Quarter Apr. May June			Totals
<u>ARRESTS</u>													
Licensees		23			5			5			4		37
Non-Licensees		215			155			159			203		732
Total Number		238			160			164			207		769
<u>SEIZURES</u>													
<u>Stillis</u>													
1 To 50 gal. capacity		27			18			22			16		83
Over 50 gal. capacity		29			33			23			22		107
Total Number		56			51			45			38		190
<u>Motor Vehicles</u>													
Trucks		3			3			3			3		12
Passenger cars		21			12			16			33		82
Total Number		24			15			19			36		94
<u>Alcohol</u>													
Beverage Alcohol (Gals.)		619			428			846			1368		3261
Denatured Alcohol (Gals.)		0			0			0			450		450
<u>Mash</u>													
Total Number Gallons		91863			102981			111981			158749		465574
<u>Alcoholic Beverages</u>													
Beer, Ale, etc. (Gals.)		438			110			23			72		643
Wine (Gals.)		5672			2848			1770			2985		13275
-Whiskies and hard liquors (Gals.)		1160			269			337			197		1963
<u>RETAIL INSPECTIONS</u>													
Licensed premises inspected		5199			4683			4764			4524		19170
Illicit (bootleg) liquor		7			24			37			17		85
Gambling violations		90			149			73			44		356
Sign violations		217			120			101			106		544
Unqualified employees		771			238			156			300		1465
Other mercantile business		197			173			217			119		706
Disposal permits necessary		27			25			7			4		63
"Front" violations		5			7			3			11		26
Improper beer markers		16			18			7			4		45
Other violations found		160			113			49			62		384
Total violations found		1490			867			650			667		3674
Total number of bottles gauged		35332			32988			34654			33291		136265
<u>STATE LICENSEES</u>													
Plant Control Inspections Completed		649			681			734			188		2252
License Applications Investigated		64			80			47			753		944
<u>COMPLAINTS</u>													
Investigated and closed		953			1072			1123			966		4114
Investigated, pending													292*
<u>LABORATORY</u>													
Analyses made		441			525			456			467		1889
Alcohol and water and artificial coloring cases		75			75			68			63		281
Poison and denaturant cases		0			6			2			4		12

Respectfully submitted,

E. W. Garrett,
Chief Deputy Commissioner

* Pending at end of fiscal year.

5. PLENARY RETAIL TRANSIT LICENSE - BY CONCESSIONAIRE FOR FLOATING SALOON AT ATLANTIC CITY - DENIED FOR LACK OF REQUISITE CONTROL.

In the Matter of Application)
of)
ISADORE FEDNER,)
242 S. New Hampshire Ave.,)
Atlantic City, N. J.,)
-and-)
DAVID DAVIS,)
108 S. New Jersey Ave.,)
Atlantic City, N. J.,)
for Plenary Retail Transit)
License.)
-----)

CONCLUSIONS

Isadore Fedner and David Davis, Applicants, Pro Se.
Hyman's Restaurant Co., an Objector, by Joseph Hyman,
Secretary-Treasurer.
New Jersey Licensed Beverage Association, an Objector, by
William G. Wellhofer, Vice-
President and Chairman ex officio.
L. W. Crowley, an Objector, Pro Se.

BY THE COMMISSIONER:

Applicants, partners, are applying for a plenary retail transit license for the "Mary Ann", a 43-ton boat, which its owner, the Atlantic Yacht Cruises, Inc., plans to take on short excursions, several times daily, over local waters along the shore at Atlantic City. R. S. 33:1-12(4).

Written objections being filed, hearing was held on the application.

Though not raised by the objectors, it appears from applicants' testimony at the hearing and a copy of their agreement with the owner of the "Mary Ann", that applicants have no more than a bare permission, as a concessionaire, to sell and serve sandwiches and liquor aboard. They have no right of any management or control over the boat or any part.

The Alcoholic Beverage Control law contemplates that an applicant for a retail liquor license must, to obtain such license, have the right to possession and control over the premises sought to be licensed.

In Re Sebold, Bulletin 326, Item 7, the lessee of a barroom in a hotel applied to a local issuing authority for a retail license not only for the barroom and restaurant, where he had possession and control, but also for the rest of the hotel, where he had merely permission from the hotel owner to sell and serve liquor. In ruling that the applicant could not obtain a license other than the barroom and restaurant, I stated:

"It would not have any possession or control. Control over licensed premises, however, is essential for the licensee is bound to see to it that the law and the rules are obeyed. What about drinks served to minors behind closed doors? Again, licensees may not allow lewdness, immoral activities, brawls, or unnecessary noises, or lotteries, slot machines or gambling, or

gangsters, prostitutes, female impersonators or other persons of ill repute, upon the licensed premises. Lacking the power to control the other parts of the hotel, the licensee could not be held accountable for what goes on in those other places. Although seeking the privilege of selling throughout the whole hotel, the licensee would be responsible only for what occurred on that part of the premises within its exclusive possession. Hence, the licensed privilege should be confined to just that part."

Also see Re Cashner, Bulletin 199, Item 12; Re De Stefano, Bulletin 227, Item 4; Re Epstein, Bulletin 240, Item 9. Cf. Havenson et al. v. South Orange et al., Bulletin 283, Item 8.

Applicants lack requisite possession and control over the boat for which they seek a plenary retail transit license.

The application is therefore denied.

D. FRÉDERICK BURNETT,
Commissioner.

Dated: July 1, 1939.

6. CANCELLATION PROCEEDINGS - FLOOR SPACE LESS THAN 400 SQUARE FEET - CASE DISMISSED.

In the Matter of Proceedings to)
Cancel and Declare Void Plenary)
Retail Consumption License)
No.C-60, issued to)
NEIDEN BAR & GRILL, INC.,)
For Premises located at 300)
Market Street, Newark, N. J.)
-----)

CONCLUSIONS

Joseph Zemel, Esq., Attorney for the Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Notice was served upon the licensee to show cause why the above license should not be cancelled and declared void on the ground that said license was issued in violation of Section 2 of a resolution, adopted May 23, 1934 by the Municipal Board of Alcoholic Beverage Control of the City of Newark, which provides:

"No plenary retail consumption license shall be issued for the operation of any place of business with a floor space of less than four hundred square feet."

The facts are not disputed. The licensed premises, as described in the application, consist of "storeroom, restaurant and kitchen", at 300 Market Street, Newark. The storeroom located in the cellar of the building contains approximately four hundred square feet; the restaurant located on the first floor contains 232½ square feet, including space occupied by bar, lunch counter and shelves, but only 88.27 square feet exclusive of said fixtures; the kitchen, located on the second floor of the building, contains approximately 232½ square feet.

Licensee contends that (1) the resolution is a nullity because Section 5 of the Alcoholic Beverage Control Act, as it existed at the time of the creation of the Municipal Board which passed the resolution in question, was unconstitutional; (2) Chapter 257, P. L. 1935, which amended Section 37 of the Control Act, repealed said resolution; (3) the Control Act did not confer power upon the Municipal Board to adopt the resolution; (4) the resolution was not first approved by the Commissioner of Alcoholic Beverage Control; (5) the resolution is unreasonable and, therefore, invalid; (6) the licensed premises and place of business contains more than four hundred square feet.

As to (1): It is contended that Section 5 of the Control Act, as originally enacted, was unconstitutional as a special local law because it provided for the establishment of a Municipal Board of Alcoholic Beverage Control in municipalities having a population of fifteen thousand or more by the last Federal census. If a constitutional defect then existed, it was cured by Chapter 257, P. L. 1935. In any event, the Municipal Board of Alcoholic Beverage Control which adopted the resolution in question had at least a de facto existence and, hence, antecedent to a judicial declaration of the unconstitutionality of the Section creating the Board, its acts are valid in so far as they involve the interest of the public and third persons. Lang v. Bayonne (Ct. E. & A. 1907), 74 N. J. L. 455.

As to (2): Chapter 257, P. L. 1935, amended Section 37 of the Control Act by transferring the power to regulate the conduct of any retail licensed business, and the nature and condition of the premises upon which any such business is to be conducted, from the issuing authority, as Section 37 originally provided, to the governing board or body of each municipality. The amendment did not repeal or declare void local regulations then in effect. The Statute, as usual, is taken to be prospective in operation and not retroactive unless expressly so stated or the context plainly requires. Hence, the resolution which was adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark previously to the 1935 amendment remains in full force and effect unless and until changed or repealed by the Board of Commissioners of the City of Newark. Re Bocca, Bulletin 109, Item 2.

As to (3): Section 37 of the Control Act, as it existed at the time the resolution was adopted, conferred the power upon the Municipal Board to regulate the nature and condition of the premises upon which any such business is to be conducted. Authority to regulate the size of the licensed premises is clearly conferred by said provision.

As to (4): The resolution adopted on May 23, 1934 was approved by me on September 13, 1934. Such approval was ex parte and subject to review on appeal. The fact, however, that the approval was given after the resolution was adopted, instead of before its adoption, is immaterial. Peck v. West Orange, Bulletin 147, Item 1.

As to (5): A resolution which seeks to prevent the licensing of a place that is a mere hole in the wall is reasonable in itself. Paszek v. Newark, Bulletin 266, Item 7. Licensee, however, contends that the resolution is unreasonable as applied to it. The general rule is that a license may not be lawfully issued contrary to and in contravention of a municipal ordinance

or resolution. Re Loeb, Bulletin 206, Item 14; Hudson Bergen County Retail Liquor Stores v. West New York and Loris, Bulletin 254, Item 10. However, even if a municipal regulation is reasonable in itself, it should not be enforced against a licensee who can successfully show that said regulation is unreasonable as applied to him.

Licensee held a plenary retail consumption license for its present premises at the time the resolution was adopted. Its license has been renewed by the Municipal Board of Alcoholic Beverage Control of the City of Newark for each fiscal year since and despite the adoption of the resolution. The evidence shows that it would be practically impossible to enlarge the premises. To enforce the resolution would destroy the licensee's business. There is nothing in the case to show that any unsatisfactory conditions have resulted merely from the size of the premises. While the fact that the license has been renewed a number of times would, of itself, be no warrant for continued disregard of the resolution (Re Henry, Bulletin 295, Item 9; Re McCauley, Bulletin 295, Item 10), the fact that the licensed premises have existed in their present condition for a long period of time without any unsatisfactory conditions arising from their physical condition is a factor to be considered in determining the reasonableness of the resolution as applied to the licensee. Since practical experience over a long period of time has shown that the application of the terms of the resolution to the licensee's premises is not necessary to promote public health, morals or order, I conclude that, as applied to the licensee, the resolution is unreasonable.

As to (6): Licensee contends that the kitchen should be included as "part of its place of business." In Re Paszek, *supra*, I decided that a hallway and cellar were not to be so considered. The kitchen of a licensed restaurant, however, is closely connected with the conduct of a licensed business. A restaurant requires a kitchen. Including the floor space of the kitchen as part of the "place of business", the floor space used for the operation of the place of business exceeds four hundred square feet.

For the above reasons, the order to show cause filed herein is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 3, 1939.

7. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDERED.

In the Matter of the Seizure of a still and a Ford Sedan on premises occupied by Emil Grundler, on Church Lane, Preakness, in the Township of Wayne, County of Passaic and State of New Jersey.

On Hearing CONCLUSIONS and ORDER

Appearances: Emil Grundler, Pro Se.

Investigators of this Department discovered a large un-registered alcohol distillery being operated by Anthony Ferraro in a garage on premises occupied by Emil Grundler, located on Church Lane, Preakness. They arrested Ferraro and Grundler, and seized the still equipment, appurtenant paraphernalia, and a quantity of mash and illicit alcohol (described in Schedule "A" annexed hereto) as unlawful property under the provisions of R.S. Title 35, Chapter 2.

While the seizure was in progress, a Ford Sedan, registered in the name of Frank Rizzo, and driven by William Poalillo, arrived on the premises and was found to contain six bags of sugar, five bags of coke and a fifty pound box of yeast. The motor vehicle and its contents were likewise seized as unlawful property.

At a hearing duly held to determine whether the seized articles should be confiscated and the premises padlocked, no one appeared to contest the proceedings.

Under the statute, an unregistered still, articles used of adaptable for use in connection therewith, and all personal property of whatsoever nature found in or upon the premises where such still is found, are subject to confiscation and, in addition, a padlocking penalty may be imposed upon such premises. No cause was shown at the hearing why confiscation and padlocking should not result in the instant case.

However, subsequent to the hearing Emil Grundler sought to avoid padlocking of his dwelling. He was afforded a supplemental hearing at which he appeared and testified, in effect, that the premises, owned by his wife, have been the family home since 1921 and are presently occupied by himself, his wife, and two minor children; that he is in straitened financial circumstances, having been unemployed and receiving relief from the community until recently when he obtained employment as a laborer; that if he is evicted from his home he will have no place to go since he has no funds either to move or to rent other quarters.

As to the presence of the still in his garage: He testified that, in a misguided effort to earn a few extra dollars, he rented the garage with the knowledge that an illicit still was to be erected therein; that a short time thereafter, not having received any rent, he reported the presence of the still to the police authorities and maintained constant communication with them during a period of approximately two weeks which ensued before the authorities determined that the proper time had arrived to make the seizure; and that it is his first offense. The police authorities confirm Grundler's statement that he reported to them the presence of the still in his garage.

Where, as in the instant case, an illicit still is operated with the knowledge of the owner of the realty, he will not be entirely relieved of the padlocking penalty. However, extenuating circumstances will be given due consideration in determining to what extent the penalty should be imposed.

While Grundler has no one to blame but himself for his present difficulties, nevertheless he did repent, and materially aided the authorities in the enforcement of the law. No evidence has been presented that he personally participated in the operation of the illicit still. He does not seek to avoid padlocking of the other buildings on the premises but merely seeks to retain his home. He was arrested, pleaded non vult, and sentenced to pay a fine of \$100.00 for permitting the still on his premises, and it appears that his present eviction from his home will result in undue hardship. Under these circumstances and in view of the other penalties provided for by law, the interests of society would seemingly be best served by permitting him to remain in his dwelling.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:2-5, and shall be retained for the use of hospitals and State, county and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

It is the Commissioner's further order that all of the buildings, excepting the dwelling, occupied by Emil Grundler, on Church Lane, Preakness, in the Township of Wayne, County of Passaic and State of New Jersey, being the premises on which the still was found, shall not be used or occupied for any purpose whatsoever for a period of six months commencing the first day of August, 1939, and terminating the first day of February, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 1, 1939.

SCHEDULE "A"

- 1 - High pressure boiler
- 1 - Galvanized cooker
- 5 - Sections of copper dephlegmator
- 1 - 15 gallon galvanized cooler with cooper coil
- 1 - 20 gallon receiving tank with copper coil
- 1 - 5 section copper dephlegmator
- 11 - bags coke
- 10 - steel drums
- 6 - 100 lb. bags sugar
- 1 - 50 gallon galvanized tank
- 8 - 200 gallon galvanized tanks with mash
- 2 - 5 gallon cans alcohol
- Miscellaneous personal property
- 1 - Ford Coach, Engine No. 2283160, New Jersey
1939 Registration RB 474.

8. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK DENIED.

In the Matter of the Seizure
of a still and two motor vehicles
on premises occupied by Carnio
Adiletto, located on Bayview Avenue,
in the Borough of Union Beach, County
of Monmouth and State of New Jersey.

On Hearing
CONCLUSIONS and ORDER

Appearances:
Ruth Casey, Pro Se.

Investigators of this department discovered an unregistered alcohol distillery being operated by Carnio Adiletto in his home located at Bayview Avenue, in the Borough of Union Beach. They seized the still equipment, a quantity of mash and illicit alcohol, and Adiletto's Ford Sedan and Nash Sedan, (described in Schedule "A" annexed hereto), as unlawful property under the provisions of R. S. Title 33, Chapter 2.

A hearing was duly held to determine whether the seized articles should be confiscated and the premises padlocked. Ruth Casey appeared and sought to avoid padlocking. No one appeared to contest the forfeiture of the seized articles.

Under the statute, an unregistered still, articles used or adaptable for use in connection therewith, and all personal property of whatsoever nature found upon the premises in or upon which the still is found, are subject to confiscation, and in addition, a padlocking penalty may be imposed upon such premises. No cause is here shown why confiscation should not result in the instant case, but the Commissioner is satisfied from the evidence presented that the premises should not be padlocked.

Ruth Casey testified that her husband, William Casey, and his two brothers, John Casey and James Casey, inherited the property upon the death of their uncle, Joseph Kane; that she was entrusted with the management of the property and rented the premises to Carnio Adiletto, approximately a year prior to the seizure, for residential purposes; that to her knowledge Adiletto was apparently employed on a WPA project in Union Beach; that she visited the premises on an average of once a month and was there approximately a week before the seizure in connection with some repairs to the premises, but at no time did she observe any suspicious activities to indicate the presence of a still on the premises; that after the seizure she ascertained that a major portion of the still had been erected in the attic, and for that reason she could not readily detect its presence on her casual visits to the premises; and that Adiletto vacated the premises after the seizure.

No evidence was presented at the hearing to implicate either Ruth Casey or the owners of the realty in the illicit still activities. In view of the foregoing, good cause appears why the padlocking penalty should not be imposed.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:2-5, and shall be retained for the use of hospitals and State, county and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 1, 1939.

SCHEDULE "A"

- 1 - cast iron boiler
- 1 - galvanized receiving tank
- 1 - galvanized cooler with cooper coil
- 1 - copper cooker
- 2 - copper columns
- 1 - galvanized mixing tank
- 1 - copper dephlegmator
- 1 - copper pre-heater
- 18 - 50 gal. barrels (empty)
- 2 - vats with mash
- 3 - 5 gal. cans alcohol
- Miscellaneous personal property
- 1 - Nash Sedan, Serial #121127, Engine #120869, New Jersey 1939 Registration M 32B
F
- 1 - Ford Sedan, Engine #A1814838, New Jersey 1938 Registration M30756

9. APPELLATE DECISIONS - MORROVITZ v. BELLMAWR.

EDNA MORROVITZ,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS

BOROUGH COUNCIL OF THE)

BOROUGH OF BELLMAWR,)

Respondent)

Frank M. Lario, Esq., Attorney for the Appellant.
Madden & Goldstein, Esqs., by Thomas M. Madden, Esq.,
Attorneys for the Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to grant a place to place transfer of appellant's plenary retail consumption license from premises on Browning Lane to a log cabin to be erected on the east side of the Black Horse Pike, north of Hendrickson Avenue, in the Borough of Bellmawr.

Respondent contends, inter alia, that the transfer was properly denied because the vicinity into which appellant seeks to transfer is residential in character.

The Borough is about three square miles in area and contains a population of 1200. Appellant's present tavern is about $1\frac{1}{2}$ miles from the place where she seeks to locate.

The proposed site is at the foot of two hills on the Black Horse Pike. Appellant's land fronts on that highway and runs back along the Little Timber Creek, a small stream of water that crosses the Pike. Bellmawr lies to the south of the creek; to the north, on the west side of the Pike, is the Borough of Mt. Ephraim and, on the east side, the Borough of Haddon Heights.

The nearby side streets contain a number of residences, some bunched and others scattered.

Homes are also scattered along the Pike in the vicinity with occasional business properties. Going down that highway in Bellmawr, south of the proposed site, there are two residences within 250 feet, one apparently taking in "tourists" and having an adjoining "hot house" for flowers. Within 300 feet or so further south, there are three more residences. 40 feet beyond, there is another dwelling which at one time (apparently before 1930) had been licensed to sell soft drinks. Two more dwellings follow within the next 450 feet. Further south (about 1280 feet below the proposed tavern), there is a building containing five stores, two of which are used as living quarters, two occupied by clubs, and one by a furniture dealer (this last store having been a storage place for a limited liquor wholesaler from December 1937 to January 1939). Thereafter, there are two residences and a church and cemetery, and, approximately one-half mile from appellant's proposed site, a tavern and also a store.

Going up the Pike, north of appellant's proposed place, there are, on the west side (Mt. Ephraim), four residences within 480 feet, and another within the next 210 feet. Thereafter, up to a distance one-third of a mile or more above the proposed tavern, there are, in order, two residences, a gas station, three residences, a sign-making shop, a tavern (about 1600 feet from appellant's proposed place), a residence, a gas station, a beauty parlor and a barber shop.

Going up the Pike, north of appellant's proposed site, but on the east (or Haddon Heights) side, there is a restaurant and tourist home within 290 feet; a food store 300 feet further on; a real estate office 600 feet further; and then, in order, up to about one-third of a mile above the proposed tavern, a Ford agency and service station, a residence, a grocery store, a residence and another grocery.

I find that the vicinity, even though not closely developed, is generally residential in character. It presents the not unfamiliar picture of a rural residential area, with a number of homes on side streets, traversed by a well-traveled road that contains along it scattered homes and occasional business properties. Cf. *Krug v. Paramus*, Bulletin 213, Item 8. Although two real estate men testified, on behalf of appellant, that the Pike is business in character in this vicinity, their opinion is based, apparently, not on the factual situation as it now exists, but upon the belief that the Pike can be more profitably developed into business rather than residential properties.

At the hearing below, a petition was submitted containing 57 names protesting against appellant's application and 19 objectors there appeared and personally voiced protest. At the hearing

on appeal, 15 objectors appeared, representing 12 homes in the general neighborhood.

A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik v. Milltown, Bulletin 283, Item 10.

On the other hand, where it appears that the refusal of a transfer was arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 294, Item 7.

In view of the fact that the proposed vicinity is of a general residential character with inhabitants therein protesting against appellant's application, and the further fact that a tavern already exists on the Pike approximately half a mile below appellant's proposed place and another about 1600 feet above it, it cannot be said that respondent's denial of appellant's application was unreasonable. Krug v. Paramus, supra; Wenzel v. Maywood, Bulletin 310, Item 3. Cf. Dries v. Hainesport, Bulletin 191, Item 6; Paini v. Bloomsbury, Bulletin 300, Item 13.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 3, 1939.

10. DISCIPLINARY PROCEEDINGS - MISCELLANEOUS MINOR OFFENSES COUPLED WITH GUILTY PLEA - 8 DAYS.

In the Matter of Disciplinary)
Proceedings against)
)
JOSEPH ZOKAS,)
202 Jefferson Street,)
Newark, N. J.,)
)
Holder of Plenary Retail Consump-)
tion License C-478, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

CONCLUSIONS
AND ORDER

Philip Lowits, Esq., Attorney for Licensee
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges of employing a female to tend bar on May 17, 1939, contrary to Section (a) of a resolution adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark on August 29, 1934; keeping his licensed premises open on May 21, 1939 between the hours of 3:00 A.M.

and 7:00 A.M. (Daylight Saving Time), and of failing to draw aside the curtains and screens obscuring the view to the interior of the licensed premises during the time aforesaid, both contrary to Section 1 of Ordinance No. 3930 adopted December 21, 1938 by the Board of Commissioners of the City of Newark.

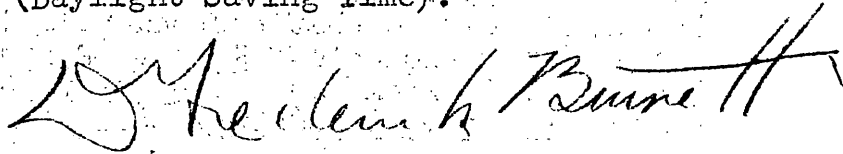
The usual penalty for each violation is five days, or a total of fifteen days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for eight (8) days instead of the usual fifteen (15) days.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of Plenary Retail Consumption License C-440.

Accordingly, it is, on this 3rd day of July, 1939,

ORDERED, that Plenary Retail Consumption License C-440, heretofore issued to Joseph Zokas by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of eight (8) days, effective July 6, 1939 at 3:00 A.M. (Daylight Saving Time).



Commissioner.