

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

BULLETIN 702

MARCH 19, 1946.

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

BULLETIN 702

MARCH 19, 1946.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR
A PERIOD OF 15 DAYS.

In the matter of Disciplinary
Proceedings against)

NEAL (CORNELIUS) LANG)
T/a CAT & FIDDLE INN)
White Horse Pike)
Winslow Township)
P. O. Waterford, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-19, issued by the)
Township Committee of the Township)
of Winslow.)

Neal (Cornelius) Lang, Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to a charge alleging that he pos-
sessed on his licensed premises a 4/5 quart bottle labeled "Calvert
Reserve Blended Whiskey", which contained an alcoholic beverage not
genuine as labeled, in violation of R. S. 33:1-50.

On January 17, 1946 an agent of the Federal Alcohol Tax Unit
seized the above mentioned bottle when it appeared that the contents
thereof were not genuine as labeled. Analysis by the chemist of the
Alcohol Tax Unit disclosed a variation in acids and solid content
when compared with an analysis of a genuine sample of the product.
The Federal chemist concluded that the bottle had been refilled.

Defendant has no previous adjudicated record. In the absence of
aggravating circumstances, I shall suspend the license for a period
of fifteen days. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 14th day of March, 1946,

ORDERED, that Plenary Retail Consumption License C-19, issued
by the Township Committee of the Township of Winslow to Neal
(Cornelius) Lang, t/a Cat & Fiddle Inn, for premises on White Horse
Pike, Winslow Township, be and the same is hereby suspended for a
period of fifteen (15) days, commencing at 2:00 a.m. March 20, 1946,
and terminating at 2:00 a.m. April 4, 1946.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against)

MYRTLE MARGARET DOWNIE)
T/a OLD MILL INN)
9437 Westfield Avenue)
Pennsauken Township)
P. O. Palmyra R. D., N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Pennsauken.)

Bernard Konstant, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge that she possessed illicit alcoholic beverages at her licensed premises in violation of R. S. 33:1-50.

On January 2, 1946 an inspector of the Federal Alcohol Tax Unit, Internal Revenue Service, seized in defendant's licensed premises three 4/5 quart bottles labeled "Seagram's 7 Crown Blended Whiskey", two 4/5 quart bottles labeled "Calvert Reserve Blended Whiskey", and a 4/5 quart bottle labeled "Calvert Special Blended Whiskey", when his field test indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist confirmed the findings of the inspector.

The licensee denies any knowledge of the violation. Licensees, however, are responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant at one time held a license in Absecon, New Jersey. This license was suspended for thirty days in 1935. In view of the length of time that has elapsed since the said suspension, I will not consider the prior record in aggravation of the present violation. I shall, therefore, suspend the license for the minimum period of twenty-five days in accordance with the policy announced in Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 14th day of March, 1946,

ORDERED, that Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Pennsauken to Myrtle Margaret Downie, t/a Old Mill Inn, for premises 9437 Westfield Avenue, Pennsauken Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. March 25, 1946, and terminating at 3:00 a.m. April 19, 1946.

ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS - GROZINSKI AND LUBAS v. NEWARK.

VICTOR GROZINSKI and)
FLORENCE LUBAS,)

Appellants,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE)
CITY OF NEWARK,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDERS

Dunn and Bannon, Esqs., by George A. Costello, Esq.,
Attorneys for Appellants.

Thomas L. Parsonnet, Esq., by George B. Astley, Esq.,
Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from a ten-day suspension of the Plenary Retail Consumption License C-285 held by appellants for premises at 267 Ferry Street, Newark. Upon filing of the appeal an order was entered by me on January 10, 1946, staying the suspension, in accordance with the provisions of R. S. 33:1-31.

By agreement of both parties, this appeal has been submitted for decision upon the stenographic transcript of the proceedings before the respondent Board. Rule 8 of State Regulations No. 15.

The suspension of appellants' license was ordered by respondent after appellants had been adjudged guilty of a charge that on September 9, 1945 they allowed, permitted and suffered a disturbance and brawl in and upon their licensed premises, and allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance.

The testimony in the instant case discloses that, on the afternoon of September 9, 1945, appellant Grozinski, James McGrath, Joseph Soleau and Anthony Iciak attended a picnic at which each consumed alcoholic beverages. McGrath and his two companions accepted an invitation extended by Grozinski to visit the appellants' tavern. The trio arrived at the tavern at approximately 8:00 p.m. in the evening. During the course of the evening, Joseph Soleau became involved in an argument which culminated, according to Soleau's testimony, in his being severely beaten. Soleau claims that he was attacked by an unknown patron and that, while he was on the floor, appellant Grozinski kicked him. All the other witnesses, including McGrath and Iciak, however, testified that they did not observe any person being assaulted on the licensed premises that evening. The testimony of the witnesses disclosed, however, that an argument did take place in which Soleau was involved. McGrath testified that as he and Soleau were leaving the premises in question, they stumbled and fell to the sidewalk outside the tavern.

Appellant Grozinski denies that he assaulted anyone on the evening of September 9, 1945. I am not impressed by his testimony, to which I give little weight, for on September 21, 1945 he told ABC agents investigating the alleged brawl that "I don't know anything because I was drunk."

Victor Grozinski, Jr., son of appellant Grozinski, testified that he telephoned the police when he heard an argument but insisted no actual fight took place. The witness testified further that when

he completed the telephone call he noticed that everyone had left the premises. I am not impressed by the testimony of this witness. Likewise, I am unimpressed by the testimony given by McGrath and Anthony Iciak, Soleau's companions. Even though Soleau may have been responsible to a large degree for the attack made upon him, I am convinced that the assault upon him occurred as he described it.

I am satisfied that a brawl did take place on the licensed premises on the night of September 9, 1945, and, furthermore, that little or nothing was done by appellants either to prevent the fracas or to quell it after it had begun.

The penalty imposed by the respondent Board because of the within violation appears to be reasonable. The action of the respondent Board will be affirmed.

Accordingly, it is, on this 14th day of March, 1946,

ORDERED, that the action of respondent be and the same is hereby affirmed; and it is

FURTHER ORDERED, that the ten-day suspension by respondent of appellants' plenary retail consumption license C-285, for premises 267 Ferry Street, Newark, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence at 2:00 a.m. March 25, 1946, and terminate at 2:00 a.m. April 4, 1946.

ALFRED E. DRISCOLL
Commissioner.

4. LICENSED PREMISES - BINGO - HEREIN OF CLARIFICATION TO SHOW BINGO AND KINDRED GAMES TOTALLY BARRED AT LIQUOR ESTABLISHMENTS.

March 13, 1946

Polish National Home, Inc.
South Plainfield, N. J.

Gentlemen:

Agents of this Department, when visiting the licensed premises of your club on Thursday night, January 24, 1946, found a game of bingo in progress there.

The late Commissioner Burnett allowed bingo and kindred games to be played on licensed premises but subject to certain restrictions. See Rule 16 of State Regulations No. 20. However, when the Chief Justice of the New Jersey Supreme Court indicated last year that bingo constituted gambling and was illegal, I thereupon cancelled the above mentioned Rule.

This cancellation appeared in the Department's April 1945 pamphlet on rules and regulations. See page 45, where the Rule in question is described as "vacant." In view of this cancellation, bingo and like games automatically fell within the ban of Rules 6 and 7 of State Regulations No. 20 which, in general, prohibit gambling on licensed premises.

However, since there may have been possible confusion on the point, I shall, to ensure maximum fairness, take no action in the present matter other than hereby to clarify, for the benefit of all licensees, the fact that under existing regulations neither bingo nor kindred games may be allowed, under any circumstances, on licensed premises.

Violation hereafter will be cause for disciplinary proceedings for suspension or revocation of the license.

Please let me have an immediate letter, signed on your behalf by your president or other authorized officer, assuring me that these games are no longer being permitted on your licensed premises.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - LA ROCCA, ADAMSKI, PAUL, YESATIS AND SELL v. JAMESBURG AND PERRINE (CASES NOS. 1 AND 2).

Case No. 1
JOSEPH LaROCCA, FRANK ADAMSKI,
FRANK PAUL, VERONICA YESATIS
and ABRAHAM SELL,
Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH
OF JAMESBURG and CLIFFORD M.
PERRINE,
Respondents

ON APPEAL

CONCLUSIONS AND ORDER

Case No. 2
JOSEPH LaROCCA, FRANK ADAMSKI,
FRANK PAUL, VERONICA YESATIS
and ABRAHAM SELL,
Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH
OF JAMESBURG and CLIFFORD M.
PERRINE,
Respondents

Sidney Simandl, Esq., Attorney for Appellants.
Guido J. Brigiani, Esq., Attorney for Respondent Borough Council.
Morris Roth, Esq., Attorney for Respondent Clifford M. Perrine.

BY THE COMMISSIONER:

These appeals have been taken from the actions of respondent Borough Council amending a local ordinance, as a result of which the permissible number of plenary retail distribution licenses was increased from one to two, granting the additional license to respondent Clifford M. Perrine for the licensing year ending June 30, 1945, and renewing said license for the licensing year 1945-46. The issues are the same in the two cases.

Historically, the facts are: On February 27, 1942, the Borough Council of Jamesburg adopted an ordinance limiting the number of plenary retail consumption licenses to four and the number of plenary retail distribution licenses to one. On April 10, 1945 the ordinance was amended, increasing the permissible number of plenary retail distribution licenses from one to two. On May 1, 1945 the Borough Council granted a plenary retail distribution license to respondent Perrine. Thereafter the Borough Council renewed Perrine's license for the licensing year beginning July 1, 1945.

The Borough of Jamesburg has a population of approximately 2,200 inhabitants. It is situated in the rural section of Middlesex County and its business section draws from the surrounding territory for some, if not a large part, of its business.

A study of the minutes of the Borough Council discloses that the amendment to the ordinance came up for second and final reading on April 10, 1945. At that time Councilmen Anderson, Hausman and Patten voted in the affirmative, and Councilmen Jaqui and Seminara voted in the negative.

An inspection of the minutes of the meeting of May 1, 1945 shows that it was a special meeting "for the purpose of considering applications for one plenary retail distribution license." The Clerk reported that he had received applications from the following named persons: Clifford M. Perrine (one of the respondents), Lawrence Pergola and Adam Rasciewicz. Because the notice of application in the Rasciewicz application had not been published in time, that application was not considered. After a public hearing on the other applications, the Pergola application was defeated by a vote of four to one. The Perrine application was approved by a vote of three to two; Councilmen Anderson, Patten and Hausman voting in the affirmative and Councilmen Jaqui and Seminara voting in the negative. All five Councilmen who voted on the amendment and the applications, as well as the Mayor of the Borough, testified at the hearing herein.

Four of the appellants are retail licensees in Jamesburg and the fifth appellant is the husband of a licensee. Four of the appellants testified that, in their opinions, there are sufficient licensed premises in Jamesburg, especially if one considers the number of licensed premises in the adjoining communities. Councilman Jaqui testified that he voted against the amendment and both applications because he considered that there were sufficient licensed establishments in Jamesburg. Councilman Seminara testified that he voted against the ordinance on final reading for the reason "we had a lot of complaints and letters from the clergy;" that he "had no personal feeling;" and that he was "doing the Borough a justice by going along with the clergy and the people."

Mayor Tuohy testified that, although he was not called upon to vote either on the amendment or the application, he was in favor of both because he felt that both necessity and public convenience justified an additional license in Jamesburg. He further testified that it had been brought to his attention that Sell's package store, which was then the only premises for which a plenary retail distribution license had been issued, was closed from time to time and that people had complained to him about it. He denied any special interest in the Perrine application.

Councilman Anderson, a resident of Jamesburg for twenty-three years, testified that he moved the adoption of the amended ordinance. He stated he voted in favor of the amendment and application because he felt that there was a need of another package store in Jamesburg. He gave as his reason that persons had told him they did not want to go in a tavern to buy a bottle and that, also, other persons had told him it would be better if there were more than one package store where they could buy liquor. In addition, he felt that, in any line of business, competition would be better; and that, on one occasion, he noticed Sell's place with a sign "closed - call next door." He stated that he did not know Perrine was putting in an application until after the ordinance had been "changed," and that at no time had he ever committed himself to Perrine.

Councilman Patten, a resident of Jamesburg for fifty-three years and formerly Mayor of Jamesburg, testified that he voted for the issuance of the license because he thought that there was necessity for it; that he had been opposed to Sunday opening but, after that had been adopted, he felt there was a need for another place. He admitted that, after Sunday opening had been permitted, he had said, "If there is a package goods store on every corner I would vote for it, why tie the thing up with two or three places."

Councilman Hausman testified he had voted in favor of the ordinance and the license to Perrine because he felt there was a necessity for another license, especially for the reason that there was only one package goods store and that Jamesburg was "a pretty good size town with a population of 2,200 and outlying districts have a population of approximately 5,000 more people." He further stated that the majority of people did not patronize the already existing package goods store. He denied that he was acting upon any prejudice against the licensee, Sell. He denied that he knew about the Perrine application until the night it was presented, but admitted he had told Perrine he was going to vote in favor of his application a few days before the final meeting.

Several petitions were offered in evidence which had been presented to the Borough Council and a number of witnesses also testified, both for and against the action of the Borough Council. Petitions offer very little real light on a controversial subject as it is well known how prone the average person is to sign a petition. Also, mere numbers, so far as witnesses are concerned, mean little. I am impressed by the testimony of two witnesses who appear to be absolutely impartial: Daniel Clark, a jeweler who had been in business for thirty-six years, stated that Jamesburg drew at least 15,000 people who came from communities a distance of nearly sixteen miles away because there is a "package store or meat market or a hotel;" Edward Mendoker, a baker who had been in business fourteen years, stated that he felt that there was a necessity for another license because he had gone to the existing package goods store on "several occasions" and found it closed.

Abraham Sell, the proprietor of the package goods store, stated that, when he left the licensed premises for lunch, or to go to the Post Office, he would always put up a sign "Call next door," namely, to a mercantile establishment managed by his wife, who would wait on the customers if they returned with her to the licensed premises.

In accordance with the principles of home rule, the Alcoholic Beverage Law, in effect, provides that the number of retail licenses of each type in a municipality should be determined by the local issuing authority, subject to the exercise of sound and bona fide discretion. Baselici v. Asbury Park, Bulletin 381, Item 4 (and cases cited therein); Siebel v. Randolph, Bulletin 477, Item 1 (and cases cited therein).

The question herein is a close one. While the appellants are all affected with an interest, nevertheless they are entitled to their day in court. Considering only its own population, it might well be argued that Jamesburg has sufficient licenses. However, it appears from the testimony adduced at the hearing that Jamesburg draws upon a great deal of the surrounding territory for its business, and that the people of those neighboring communities come to Jamesburg to do a substantial amount of their shopping. This fact the Borough Council had a right to take into consideration when passing upon the question. All the municipal officials who participated in the matter appeared and testified. That there could be such a difference of opinion is well understood. However, the closeness of the vote does not warrant me to set aside the action of the Borough Council.

The evidence fails to show that the members of the local issuing authority acted other than with proper motives.

Appellants contend that there is no need for the license issued to Perrine. Were I a member of the issuing authority, I might well agree with that contention. However, it is not my function on appeals of this character to substitute my opinion in this discretionary matter but, rather, to determine whether the decision of the issuing authority may reasonably be supported by the evidence produced.

The situation presented in these cases is similar to that with which I was confronted in the recent case of Williams et al. v. Atlantic Highlands and Rich, Bulletin 700, Item 1, where I sustained the issuance of a second distribution license. I there said:

"In reaching this decision I have not been unmindful of the fact that, while all nine of the consumption licensees may sell alcoholic beverages in original containers for off-premises consumption (R. S. 33:1-12(1)), there was but one plenary retail distribution license outstanding in the community when the issuing authority considered the Rich application. This case is, therefore, to be distinguished from those cases where (1) the issuing authority apparently failed to consider public convenience and necessity, and (2) from those cases where a degree of competition between 'package stores' was already provided by the existence of more than one such license."

The action of the respondent Borough is affirmed.

Accordingly, it is, on this 15th day of March, 1946,

ORDERED, that the petitions of appeal be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - SUBURBAN HOTEL SYSTEM v. SUMMIT - DISCONTINUED.

SUBURBAN HOTEL SYSTEM,
a corporation,

Appellant,

-vs-

COMMON COUNCIL OF THE CITY
OF SUMMIT,

Respondent

ON APPEAL
ORDER OF DISCONTINUANCE

Frazer, Stoffer & Jacobs, Esqs., Attorneys for Appellant.
Frederick C. Kentz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises 570 Springfield Avenue, Summit.

The appellant has filed a formal stipulation for withdrawal of the appeal and the respondent has consented thereto.

Since no reason appears to the contrary, the appeal will be discontinued.

Accordingly, it is, on this 18th day of March, 1946;

ORDERED, that the appeal herein be and the same is hereby discontinued.

ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS -- ZAHORBENSKI v. JERSEY CITY, PILIPENKO AND STARVAGGI.

WASYL ZAHORBENSKI,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDERS

BOARD OF COMMISSIONERS OF THE)
CITY OF JERSEY CITY, and OLGA)
PILIPENKO and SALVATORE STARVAGGI,)
Respondents)
-----)

Abraham Lightdale, Esq., Attorney for Appellant.
John J. Meehan, Esq., Attorney for the Respondent Board of
Commissioners of the City of Jersey City.
Solomon & Miller, Esqs., by Irving Solomon, Esq., Attorney for the
Respondents, Olga Pilipenko and Salvatore Starvaggi.

BY THE COMMISSIONER:

This appeal is from a place-to-place and person-to-person transfer of a plenary retail consumption license. Appellant at the time the appeal was filed was the holder of a plenary retail consumption license (C-453) for premises 521 Jersey Avenue, Jersey City, which license has since been transferred.

On or about June 26, 1945, the respondent Board approved the transfer of Salvatore Starvaggi's License C-485 from 79 Clinton Avenue to 203 Railroad Avenue, and on July 17 or 18, 1945 the license was transferred from Starvaggi to Olga Pilipenko.

The appellant alleges, among other things, that the transfers were contrary to law; that there was no proper advertisement of Notice of Application for Starvaggi's place-to-place transfer; and that the place-to-place transfer was in violation of the City's "distance between premises" ordinance.

No proof of publication of Notice of Application for transfer of Starvaggi's license from 79 Clinton Avenue to 203 Railroad Avenue was found, or produced at the appeal hearing. Furthermore, an employee of the Jersey Journal (which regularly carried such Notices by the City's applicants) stated that she handled such advertisements and testified, after reference to the records of the newspaper, that no advertisement of the particular place-to-place transfer had been published in that newspaper. A municipal issuing authority cannot waive the requirements of the law (R. S. 33:1-25 and R. S. 33:1-26) or of the State Regulations (Regulations No. 2 and No. 4) governing the advertising of Notice of Application for those requirements are jurisdictional prerequisites to the consideration of an application. Trotts v. Trenton, Bulletin 46, Item 11. Thus, the failure to advertise the required Notice of Application left the municipality without jurisdiction to consider the application.

The respondents contend that appellant be deemed in laches because he perfected the appeal beyond the thirty-day statutory period. (R. S. 33:1-22 and 26). I am not impressed, in view of the circumstances herein, with such contention. As Commissioner Burnett stated in Parker v. Newark et al., Bulletin 425, Item 12:

"...even assuming (but by no means deciding) that ordinarily an objector must, to have technical standing or be heard on appeal, have protested to the local issuing authority before it took definitive action, necessarily such an assumed rule would not apply where, as here, the applicant failed to properly put possible objectors on notice of his application. Otherwise, an applicant could seek to preclude the possibility of an appeal by potential objectors by merely failing to publish an adequate 'notice of intention' and hence not apprizing them of what is going on.

"Furthermore, in any event, the State Commissioner may, on his own motion in this proceeding, and irrespective of appellant's standing, set aside the transfer in question, at least in so far as such transfer, in being granted despite the fatally defective 'notice of intention', was thus granted contrary to the jurisdictional requisites of law. For analogous cases cf. Haines v. Burlington et al., Bulletin 223, Item 3; East Brunswick Board of Adjustment v. Township of East Brunswick, Bulletin 223, Item 5; Cocciolone v. West Deptford and Bafile, Bulletin 238, Item 3; The Trustees of The First Particular Baptist Church of Paterson v. Paterson et al., Bulletin 245, Item 8; Caledonian Club et al. v. Paterson et al., Bulletin 269, Item 12."

Another ground of appeal advanced by appellant in the instant case is that respondent municipal issuing authority violated an ordinance, heretofore approved by it, regarding the distance wherein a transfer of a plenary retail consumption license may be made. The pertinent section of the ordinance, enacted October 5, 1937, as amended April 1, 1941, entitled "An Ordinance to limit the number of Plenary Retail Consumption Licenses and Plenary Retail Distribution Licenses to sell alcoholic beverages at retail in the City of Jersey City" is as follows:

"Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the Board of Commissioners of the City of Jersey City be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated. The provisions of this section relating to distances between licensed premises shall not apply to the issuance or transfer of any license to premises which will be operated by the licensee as a Bowling Academy. A premises shall be deemed to be operated as a Bowling Academy if it contains four or more pairs of bowling alleys."

Samuel Friedman, a lawyer and title searcher, testified that he scaled the distance between the premises formerly operated by appellant at 521 Jersey Avenue and the premises at 203 Railroad Avenue on the assessment map of Jersey City and that the greatest distance between those premises is 520.32 feet. He testified, also, that the distance between 79 Clinton Avenue (from which Starvaggi's license was transferred) to 203 Railroad Avenue is approximately two miles. Friedman's testimony was not refuted or challenged. It is obvious, therefore, that the place-to-place transfer of Starvaggi's license was contrary to the provisions of the City's "distance" ordinance and, consequently, that the respondent Board had no jurisdiction to grant the transfer. (See Bachman v. Phillipsburg, 68 N. J. L. 552; Re Loeb, Bulletin 206, Item 14).

As already noted, this appeal is from the place-to-place transfer of Starvaggi's license and also from the person-to-person transfer to Olga Pilipenko. It may be that the transferee is an innocent party in the matter. She stands, nevertheless, in no better position than the transferor. It is unfortunate for her that the Board had no jurisdiction to grant the place-to-place transfer to Starvaggi, and the person-to-person transfer conveyed no greater rights or privileges than had the transferor.

In keeping with the conclusions herein, I must reverse the action of the respondent Board.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the action of the respondent Board of Commissioners of the City of Jersey City transferring Salvatore Starvaggi's plenary retail consumption license from premises at 79 Clinton Avenue to premises at 203 Railroad Avenue, Jersey City, be and the same is hereby reversed; and it is further

ORDERED, that the action of the respondent Board of Commissioners of the City of Jersey City transferring the license from Salvatore Starvaggi to Olga Pilipenko, for premises at 203 Railroad Avenue, Jersey City, be and the same is hereby reversed; and it is further

ORDERED, that all operations under the license now held by Olga Pilipenko for premises at 203 Railroad Avenue, Jersey City, cease forthwith.

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - NEW JERSEY TAVERN ASSOCIATION ET AL. v. ANDOVER TOWNSHIP AND CURRENT.

Cases Nos. 1 and 2

NEW JERSEY TAVERN ASSOCIATION and)
SUSSEX COUNTY TAVERN ASSOCIATION,)

Appellants,)

-vs-)

TOWNSHIP COMMITTEE OF THE TOWN-)
SHIP OF ANDOVER, and LURA CURRENT,)

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

William C. Egan, Esq. and William B. Harley, Esq.,
Attorneys for Appellants.
Peter Friedman, Esq., Attorney for Respondent Township Committee
of the Township of Andover.
Harold Simandl, Esq., Attorney for Respondent-licensee Lura Current.

BY THE COMMISSIONER:

These appeals relate to the issuance of a plenary retail consumption license to the respondent, Lura Current, on April 14, 1945, and the renewal thereof for the current licensing year commencing July 1, 1945.

The appellant Associations, all of whose members are tavern owners, contend that public necessity and convenience did not require the issuance of a license to the respondent, Lura Current.

Prior to April 14, 1945, the Township Committee had limited to seven the number of plenary retail consumption licenses that could be outstanding in the municipality at one time. On that date, however, it repealed the limiting ordinance and issued the license in question. In May 1945 it granted a ninth consumption license to Camp Clearwater, Inc. and, on appeal by the parties appellant herein, this action was sustained. See Bulletin 696, Item 3. Subsequently, a tenth consumption license was issued but no appeal was taken therefrom.

Based solely on the permanent population (591 according to the 1940 census), the Township would appear to have been adequately serviced by the seven consumption licenses in existence before April 1945. Both respondents, however, introduced evidence on the question of the need for an additional license at the location in question. In addition to an increase in population, both during the summer and winter seasons, the evidence shows that there had previously been four taverns in the so-called Northern section of the municipality where the premises of the respondent-licensee are located, whereas in April 1945, when the license in question was issued, there was only one other tavern in that section. The premises of the respondent-licensee are situated on a county highway which is well-traveled and is about a mile and a quarter distant from the only other tavern in the Northern section of the municipality.

It also appears that one of the other seven consumption places is closed during the winter months; another operates a night club and is not patronized by the local residents, and another, a private club, caters only to its members.

Several witnesses testified on behalf of the respondents. They stated that in their opinion there was a need for the license at its particular location and, in the words of one of these witnesses who has found it impossible to travel over some of the dirt roads to reach other licensed premises during the winter months, "It would be quite an accommodation to get into a place of that kind to get something to eat and drink."

The issue herein is a close one. My personal view is that the municipality would have been on sounder ground had it retained its prior limitation against the issuance of further licenses. However, the circumstances disclose a situation similar to that with which I was confronted in the Camp Clearwater, Inc. case, supra. In affirming the granting of the application there, I stated:

"On appeal, where there is some evidence of a public convenience or necessity to be served by the issuance of a license, it is not my function to substitute my judgment for the judgment of the municipal issuing authority. Had I been a member of the municipal issuing authority, I might well have voted to deny the application. Despite this fact, on appeal, the burden of proof rests with the appellants to show that the action of the Township Committee was unreasonable or arbitrary. After a very careful study of the entire record, I conclude that the appellants have not sustained the burden in this case and, therefore, the action of the municipal issuing authority must be affirmed."

I may further add that it would appear to be manifestly unfair to deprive the individual respondent herein of her license, which was the eighth issued by the Township Committee, when the grant of the ninth license was sustained, and no appeal was taken from the issuance of the tenth license.

The action of the respondent Township Committee is affirmed.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN AND LUPO.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,)

Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN and ANGELO ANTHONY LUPO,)

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

Samuel Moskowitz, Esq. and Samuel J. Davidson, Esq.,
Attorneys for Appellant.

John J. Fallon, Esq., by E. Norman Wilson, Esq., Attorney for
Respondent Board.

Anthony P. LaPorta, Esq., Attorney for Respondent-licensee,
Angelo Anthony Lupo.

BY THE COMMISSIONER:

This is an appeal from the issuance by the respondent Board of a plenary retail distribution license in the City of Hoboken. This appeal was heard the same time as the appeals decided in Re Hudson Bergen County Retail Liquor Stores Association v. Hoboken et als., Bulletin 700, Item 7. The same general questions are at issue.

Counsel for respondent-licensee argued at the hearing, as well as in his brief, that the appellant is not "an aggrieved party" within the contemplation of R. S. 33:1-22, and on this ground this respondent contended that appellant had no right to prosecute the appeal. This question was disposed of in the above stated cases and the reasons cited therein need not be reiterated. Respondent-licensee's counsel further raised the question of laches, maintaining that appellant did not appear in objection before the local issuing authority and, because of such absence of objections, respondent has expended a considerable sum of money in setting up the licensed business. The record, however, indicates that written objections were filed by the appellant with the local Board and, as the appeal was taken well within time, the claim of laches lacks merit.

Because of a discrepancy between statements in the application and the testimony, a further hearing was held at which time the respondent-licensee was afforded opportunity to offer testimony as to his right of possession to the entire licensed premises. However, this question need not be considered because of the broader issues involved.

This appeal falls squarely in the category of the other Hoboken appeals recently decided, which decisions are set forth in Bulletin 699, Item 5 and Bulletin 700, Item 7. The principles set forth in those decisions are dispositive of the instant appeal.

The action of the respondent Board must be reversed and the license issued to respondent-licensee will be cancelled.

Accordingly, it is, on this 18th day of March, 1946,

ORDERED, that the action of the respondent Board of Commissioners of the City of Hoboken in granting the application of the individual respondent herein be and the same is hereby reversed; and it is

FURTHER ORDERED, that the plenary retail distribution license issued to respondent, Angelo Anthony Lupo, be and the same is hereby cancelled, set aside and declared null and void, and said respondent-licensee is hereby directed forthwith to cease all alcoholic beverage activity under the license heretofore issued to him.

ALFRED E. DRISCOLL
Commissioner.

11. APPELLATE DECISIONS - ALEXANDEROWITZ v. STILLWATER TOWNSHIP - DISCONTINUED.

MARY ALEXANDEROWITZ,)

Appellant,)

-vs-

ON APPEAL
ORDER OF DISCONTINUANCE

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF STILLWATER,)

Respondent)
-----)

Vito A. Concilio, Esq., Attorney for Appellant.
Willis H. Sherred, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for a plenary retail consumption license for premises on the Middleville Road, Township of Stillwater.

The attorney for appellant has advised, in writing, that his client desires to discontinue and withdraw the appeal. The attorney for respondent has consented, in writing, to discontinuance of the appeal.

No reason appearing to the contrary, it is, on this 18th day of March, 1946,

ORDERED, that the within appeal be and the same is hereby discontinued.

Alfred E. Driscoll

Commissioner.