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

BULLETIN 223 JANUARY 3, 1938

1. APPELLATE DECISIONS - HINDIN vs. ATLANTIC CITY

SAMUEL HINDIN,	)	
Appellant,	)	
-vs-	)	ON APPEAL
BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY,	)	CONCLUSIONS
	)	
Respondent.	)	

. . . .

William C. Egan, Esq., Attorney for Appellant.
Samuel Backer, Esq., Attorney for Respondent.
Isaac H. Nutter, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from denial of a renewal of a plenary retail consumption license for premises located at 922 North Ohio Avenue, Atlantic City.

Appellant obtained his first license on June 30, 1934, which license was renewed in 1935 and 1936. No disciplinary proceedings have ever been instituted against him.

After appellant filed his application for renewal for the present fiscal year, objections were filed and a hearing held on June 3, 1937. On August 19, 1937 respondent denied the application for renewal. Hence, this appeal.

At the hearing on June 3, at which appellant was present, testimony was given that minors had been served upon the licensed premises. Appellant apparently presented no testimony at that time, and the hearing was adjourned first to June 10, and then to June 17, at which time appellant was advised that the Board intended to refuse his renewal. At some time prior to June 17th, further testimony of sales to minors was given at a hearing at which appellant was not present. Renewal of the license was formally denied on August 19th.

Appellant complains, in the first place, that he was not confronted by the witnesses below. That seems to be true as to some of said witnesses. However, all of these witnesses testified at the two hearings on appeal, and appellant was given full opportunity to cross-examine these witnesses and to present evidence in rebuttal of their testimony.

The evidence given on appeal clearly establishes that Officers Freeman and Lang visited the licensed premises on a Saturday night in April 1937. They discovered five colored girls, each sixteen years of age, being served alcoholic beverages in the presence of appellant. Their testimony is corroborated by the five girls. The Officers testified that at

New Jersey State Library

the same time they ordered fifteen or twenty other minors to leave the the licensed premises. The five girls testified that on one occasion when they visited the licensed premises the waitress refused to serve them because of their age; that after appellant learned that his waitress had refused to serve them, he himself served the drinks. All of this testimony is denied by appellant. He produced the waitress who testified that she had refused to serve the girls, but she refused to swear that appellant did not serve them himself, stating that she did not know because she immediately left the room.

There are some discrepancies as to dates in the evidence given by the five young colored girls, but severe cross-examination did not break down their stories. Three of them testified that they had been served liquor many times upon the licensed premises. All of their stories have the ring of truth. Since I find that these witnesses have told the truth, the evidence clearly justified respondent in denying renewal of appellant's license.

Appellant lastly charges the respondent Board with ulterior motive and lack of good faith. This contention is based on appellant's testimony of a remark alleged to have been made by the Chairman immediately following the turn-down of the renewal application viz.:-

> "The Liquor Board was in session, and the Chairman of the Board, when it came to my license, he said the license was rejected at 922 North Ohio Avenue; but that I could get a license anywhere else in Atlantic City, and as soon as I found a location the license would be granted."

On this testimony appellant claims that the license was denied for other reasons than for sales to minors because, as he well says if he were really guilty of selling to minors, he should not be entitled to hold a license anywhere. The Chairman of the Board was not present when the foregoing testimony was given against the vigorous objections of the attorney for the respondent. It is not necessary to decide whether it was properly admissible as rebuttal for, even if proved, it has no bearing on the real issue in this case which is whether or not alcoholic beverages were sold by appellant to minors. Finding as the fact that they were, that of itself is sufficient to affirm. It is from the refusal to renew an old license that this appeal is taken, and not from a promise to give him a new license elsewhere. Error in making such a promise does not cancel the evidence produced at the trial de novo on this appeal which convincingly proves that there was no error in refusing a renewal because of sales to minors.

The action of respondent in denying the renewal is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: December 22, 1937.

2. LICENSEES - RULE 20 - THE RULE FORBIDS LIQUOR LICENSEES FROM BEING MIXED UP DIRECTLY OR INDIRECTLY IN PASSING OUT ANY INDUCEMENTS IRRESPECTIVE OF WHO PAYS FOR IT.

Dear Sir:

We are about to go on an advertising campaign with quart bottles of soda water, ginger ales, rickeys, etc. Our campaign goes as follows:

Our salesmen call on all types of outlets with the following:

Every case we sell we allow six postcards. We leave a sheet of paper with our customer, to give us names and addresses, and we in turn pick them up and mail each of his customers a postal card telling him to go to his store and receive one bottle of beverage free, only pay the 5¢ bottle deposit, we in turn pay the storekeeper 10¢ for each postal card. This is our method for home consumption.

Please advise whether or not this affects any of the retail liquor stores.

Very truly yours,

Atlantic County Bottling Co., Inc.,

December 24, 1937.

Atlantic County Bottling Co., Inc.,
Absecon, N. J.

Gentlemen:

I take it that your inquiry is prompted by Rule 20 of the State Rules Concerning Conduct of Licensees, which provides:

"20. No retail licensee shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, discounts or similar inducements with the sale of any alcoholic beverage for consumption off the licensed premises; provided, however, that nothing herein contained shall prohibit retail licensees from furnishing advertising novelties of nominal value."

In re Liebesman, Bulletin 219, Item 7, referring to this rule, I said:

"The purpose of the rule is to forbid liquor licensees from directly or indirectly furnishing any special inducements to their customers in respect to off-premises consumption at any time."

The method of distribution you have chosen utilizes your retail outlets as the medium through which your free goods are given to the consumer. So far as liquor licensees are concerned they may not participate in any such scheme. This is not a matter of who foots the bill for the inducement. It is rather that liquor licensees are not to be mixed up directly or indirectly in passing out any inducements.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - HAINES vs. BURLINGTON

CAROLINE H. HAINES, :
Appellant, :
-vs- : ON APPEAL
COMMON COUNCIL OF THE CITY : CONCLUSIONS
OF BURLINGTON and GEORGE ZEKIS, :
Respondents. :

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Caroline H. Haines, Pro Se
Alexander Denbo, Esq., Attorney for the respondent-licensee, George Zekis
No appearance for respondent, Common Council of the City of Burlington

BY THE COMMISSIONER:

This appeal is from the issuance of a plenary retail consumption license for premises located at 220 High Street, City of Burlington.

Within 200 feet of these premises, there is a synagogue, Temple B'Nai Israel, established in 1916, since which time it has constituted a place for the worship of God with a regular congregation and an ordained Rabbi, located in a building exclusively devoted to religious purposes.

No consent has ever been given by the synagogue to the issuance of the Zekis license. Neither has it objected at any time to the license.

Appellant attacks the license on the ground that it was issued contrary to Section 76 of the Control Act which provides:

> "...for the benefit not of property but of persons attendant therein, no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or public schoolhouse...; <u>provided</u>, <u>however</u>, that the protection of this section may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body on authority of such church or school, such waiver to be effective until the date of the next renewal of the license."

The Common Council of Burlington entered no appearance but it was stipulated that it granted the license, despite the proximity of the synagogue, for three reasons: (1) that a synagogue technically was not within the meaning of the word "church"; (2) that it believed it had the right to issue the license because no objection had been made by the synagogue with reference either to past licenses at the same place or to the issuance of the present; (3) that it would improve the neighborhood because of repairs being made to the premises by the applicant and at the same time better the financial condition of a local bank closed in 1931, which had acquired the premises by foreclosure and had contracted to sell the place to the licensee.

The second and third reasons go only to the good faith of the Common Council but not to the validity of its action. So far as concerns previous licenses in past years, that fact affords no basis for disregarding Section 76 in respect to the current term. Even had an express waiver been given by the synagogue during any of those previous years (which was not the case), any such waiver would have been good only for the fiscal year for which it was given, or, as the Act declares, "effective until the date of the next renewal." Re Gordon O'Neill Co., Bulletin 189, item 13, (the statutory "requirement of annual renewal of the waiver is a most excellent check upon the manner in which business is conducted on the licensed premises"); Memorial Presbyterian Church vs. Newark, Bulletin 191, item 8 ("the fact that alcoholic beverages had been sold for three years under a previous license at the premises in question without protest from appellant is without force".)

A synagogue is a church - in fact about the earliest form of a church.

Since it is stipulated that no waiver has ever been obtained from the synagogue, it follows that a license has been issued for the sale of alcoholic beverages within 200 feet of a church contrary to the statute in such case made and provided.

The contention of the licensee, however, is that the appellant has no standing to prosecute this appeal because she is not a member of the synagogue and has not been authorized by it to proceed in its behalf; that if a synagogue is to be regarded as a church, the Act was passed for the protection of the synagogue and hence if there is any grievance it should be on complaint filed by the synagogue and not by an outsider - in short, that this affair is none of her business.

Color is given to this contention by the statutory language "for the benefit not of property but of persons attendant therein." The quoted words, however, were not in the statute as originally enacted on December 6, 1933. P. L. 1933, C. 436. They came about in the following manner, viz.: On December 29, 1933, the Department of Public Safety of the City of Newark requested a ruling on the question whether or not a liquor license might be issued within 200 feet of the Belmont Avenue Public School which had not been used as a schoolhouse for several years. I there ruled:

> "Section 76 was designed for the protection of persons and not of property. The objective was stated in deference to the feelings, the sentiments and the ideals of the persons who worshipped in a church or who attended a public school. In the case of a public school the additional objective was to protect immature children from sights, sounds and influences which in the judgment of the school authorities might be deemed against the public welfare. It follows that if an edifice or building is not actually used as a church or as a public schoolhouse and there is no present intention of so using it at the time that the license is issued, the case does not fall within the so-called 200 foot rule." Bulletin 8, item 4.

Thereafter, on January 15, 1934, in my first report to the Governor and Legislature I called their attention to the fact that I had interpreted Section 76 to mean "That the protection afforded was not in respect of the property of the church or schoolhouse but rather in respect to the persons attendant therein and thereon." The words above quoted were thereupon incorporated into the statute. P.L. 1934, C. 85. Therefore, the meaning of the term "benefit...of persons attendant therein" is confined to a legislative confirmation of the interpretation made in Bulletin 8, item 4, and is not to be amplified as constituting some new concept of Section 76. All it did was to declare that Section 76 was not to be construed as imposing a servitude upon land within 200 feet of a church or school in favor of the church or school property, as such, irrespective of its use, but rather to point out that it was designed for the benefit of persons attendant at church or school only when the buildings were actually used as such.

There remains, however, the licensee's contention that this appellant has no standing to prosecute this appeal because she is not aggrieved.

The Control Act, Section 19, provides that "any taxpayer or other aggrieved person opposing the issuance of such license may...appeal to the Commissioner from the action of the issuing authority". It affirmatively appears that appellant is not only a taxpayer in the City of Burlington but also resides within 100 to 125 feet of the premises in question.

The adjudicated cases hold these qualifications to be sufficient to warrant private initiative in the proper observance of the liquor control act by everybody whom it affects.

As long ago as 1879, the New Jersey Supreme Court, in Ferry vs. Williams, 41 N.J.L. 332, held that a citizen of Orange who desired to ascertain whether the provisions of the City Charter in regard to licensing saloons had been observed, with a view to securing due obedience to the law, was entitled to mandamus to inspect the letters on which then existing licenses had been granted. The learned Justice Dixon said:

"These cases seem to indicate that with us the exception to the rule is extended so far as to justify this court in acting by mandamus, certiorari, or quo warranto, at the instance of private persons, for the redress or prevention of public wrongs by public bodies and officers, whose official sphere is confined to some political division of the state, whenever the applicant is one of the class of persons to be most directly affected in their enjoyment of public rights, and the public convenience will be subserved by the remedy desired. The general indifference of private individuals to public omissions and encroachments, the fear of expense in unsuccessful and even in successful litigation, and the discretion of the court, have been, and doubtless will continue to be, a sufficient guard to these public officials against too numerous and unreasonable attacks.

"The present controversy relates to a matter of public police of universally recognized importance, concerning a traffic which, in the opinion of many, largely adds to the disorders of society and the burdens of taxation; and it cannot be alleged that private interests are not as much involved in its due regulation by law as they are in other public questions about which heretofore individuals have maintained a standing in this court. Hence, I think the relator, in his capacity of inhabitant and taxpayer in the city of Orange, has such an interest in the proper observance of the provisions of the city charter for licensing saloons, that he may, under certain circumstances, litigate for its protection, and, in order to ascertain whether those circumstances exist, being actuated by such motives as are disclosed in the present application, he is entitled to an inspection of the letters of recommendation, filed with the collector of taxes, upon which pending licenses were granted."

Later, in White vs. Atlantic City, 62 N.J.L. 644 (1899), the Supreme Court set aside a license to sell intoxicating liquors granted by a municipal body, contrary to law, at the instance of a citizen and taxpayer of such municipality. The standing of the plaintiff to prosecute the writ of certiorari for the purpose of contesting the legality of the license was challenged just as in the instant case. The late and lamented Justice Gummere, later Chief Justice, tersely disposed of the point, viz.:

"John Weidemer having applied to the city council of Atlantic City for a license to keep an inn and tavern, his application was denied and a license refused. This action of the city council was had on the 7th day of February, 1898. Two weeks later the city council reconsidered its action, and granted to Weidemer the license which it had originally refused to him. The legality of this action is challenged by the prosecutor.

> "A preliminary question is presented for determination, namely, whether the plaintiff has any right to stand as the prosecutor of a writ of _certiorari_ for the purpose of contesting the legality of Weidemer's license. Where a license to keep an inn and tavern is granted by a local body contrary to law, a _certiorari_ to review such action may be granted at the instance of a resident and taxpayer of the place where the license is to be exercised. Many cases may be found in our reports where this has been done. _Dufford v. Staats_, 25 _Vroom_ 286, and cases cited. It has usually happened in such cases that the party applying for the writ has not only been a resident and a taxpayer but also that he has remonstrated before the local body against its action. But the fact that the applicant for the writ has been a remonstrant against the action complained of, although it may be persuasive in determining whether or not his application should be granted, is not jurisdictional. The fact that the applicant is a resident and taxpayer, without more, is sufficient to justify the action of the court in allowing the writ."

In view of this holding, it is superfluous to point out that appellant objected to the issuance of the license to the Common Council at the time.

The instant case is stronger for here a license was issued against the mandatory words of the statute which expressly provide that "no license shall be issued for the sale of alcoholic beverages within 200 feet of any church" unless waived in a certain way, whereas in the Atlantic City case the reason the license was set aside at the instance of a private citizen was because of a general principle of law that the power of the City Council was exhausted when it originally rejected the license so that it could not at a subsequent day reconsider its action.

In _Wilson vs. Commissioners of Jersey City_, Supreme Court of New Jersey, 107 Atl. Rep. 797 (1919), reversed on another point, 94 N.J.L. 119, Mr. Justice Swayze, answering an argument on behalf of defendants that the prosecutor had no standing to prosecute the writ of certiorari to set aside a liquor license because he was not specially injured in distinction from the rest of the public, said:

> "He is a citizen of Jersey City, as was admitted at the argument. This brings the case within Ferry v. Williams, 41 N.J.Law, 332, 32 Am.Rep. 219. The prosecutor has the right to question by direct attack the validity of municipal action which may stand in the way of a prosecution for crime by the federal authorities."

Haney vs. Keyport, Bulletin 39, Item 5, is distinguishable. There the waiver appeared to be valid on its face having been executed by the Senior Warden and attested by the Secretary of the Governing Body. The instrument had been approved

at a meeting of the Rector, Wardens and Vestrymen of the Episcopal Church. I therefore hold it could not be attacked collaterally by the appellants in that case who were in no way connected with the Church.

I conclude that the appellant has sufficient standing to maintain this appeal.

The Zekis license having been issued contrary to the provisions of Section 76 of the Control Act, the action of the Common Council of the City of Burlington in issuing said license is hereby reversed. The license is hereby set aside and declared void. The respondent George Zekis is directed to cease forthwith doing business under said license and to surrender the certificate of same to the Municipal Clerk of the City of Burlington.

D. FREDERICK BURNETT
Commissioner

Dated: December 26, 1937.

4. APPELLATE DECISIONS - HILL vs. PENNSAUKEN.

CHARLES F. HILL, Appellant,	)	
-vs-	)	ON APPEAL
TOWNSHIP COMMITTEE of the TOWNSHIP OF PENNSAUKEN, Respondent	)	CONCLUSIONS

George G. Tartar, Esq., Attorney for Appellant.
Thomas F. Salter, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from a thirty days suspension of his consumption license, for selling alcoholic beverages to a minor.

The evidence as to the alleged purchase was given by two young men, George M. Taylor and George Hice. Taylor testified that Hice and another youth named Fisher met him at a carnival; that they drove a short distance and parked the car; that he and Hice walked five or six blocks to appellant's premises, known as the White Owl Inn; that Hice remained outside but that he, Taylor, entered the premises, purchased from the bartender a pint bottle of "Maryland Valley" liquor for ninety cents, carried the bottle from the premises and handed it to Hice; that both returned to the car where Fisher was sitting, after which Taylor left the party and went home.

Hice testified that he walked with Taylor to appellant's saloon, remained outside on the corner while Taylor entered the premises; that about five minutes later Taylor came from the premises, handed the bottle to him and returned with him to the car. Hice said that, while he did not look at the name on the

bottle, he believed it was "Mountain something." He further testified that, after Taylor went home, he and Fisher drove some distance in the car and that, after about half the contents of the bottle had been consumed, the bottle was thrown from the car.

Fisher testified that he knew nothing of the facts concerning the purchase but corroborated Hice's testimony as to what occurred after the bottle had been brought to the car.

On the morning after, a policeman took Hice to the place where the bottle had been thrown from the car. They found nearby an empty pint whiskey bottle, which Hice identified. This bottle had a multi-colored label reading "Myrtle Valley Straight Whiskey." The Police Officer testified that, when he found the bottle, the label was soaking wet and partly loose. The bottle was produced at the hearing on appeal. Portions of two white labels, apparently duplicates, are pasted to the bottle underneath the "Myrtle Valley" label. The portions of the under labels are so small that the labels cannot be identified. On the "Myrtle Valley" label appears the figure "90" in pencil, which respondent contends confirms Taylor's testimony that he paid ninety cents for whiskey.

The evidence shows that some time later the Chief of Police took Taylor to the licensed premises, pointed out the bartender, Heinemann, and asked Taylor if he was the man who had sold him the whiskey. Taylor said that he was.

At the hearing below, the bartender, Heinemann, testified that he was working in the licensed premises at the time of the alleged purchase by Taylor; that he never saw Taylor prior to the day the Chief of Police brought him to the licensed premises; that he has no liquor for sale by the name of "Maryland Valley" or "Mountain something"; that he has no liquor for sale in pints for ninety cents. William Hill, a brother of the licensee, testified that he was on duty as a bartender on the night in question; that he never saw Taylor in the licensed premises; that no liquor by the name of "Maryland Valley" or "Mountain something" or "Myrtle Valley" was ever sold in the licensed premises; that no whiskey was sold in the premises for ninety cents a pint; that he does the purchasing of the liquor. The licensee himself testified that he never heard of any of the brands mentioned, and that he does not sell liquor other than applejack and corn liquor for ninety cents a pint.

At the hearing below there was a discussion as to whether the licensee should be given an opportunity to produce his books, but the Committee felt that this was not necessary. After recessing, they returned and found the licensee guilty because they believed the testimony of the boys.

There is no question in this case but that these boys had a pint bottle of whiskey, but the real question is whether or not it was purchased by Taylor, a youth then eighteen years of age, in appellant's premises.

There is no direct corroboration of Taylor's testimony that he purchased the bottle of liquor from Heinemann. On cross-examination Taylor testified that, when he entered the licensed premises, ten or twelve persons were there, but that he did not know whether there was anyone else behind the bar except Heinemann. He was unable to identify the interior

of the White Owl Inn, stating that he was not in there long enough to find out. His identification of Heinemann at a later date loses some of its weight by reason of the fact that Heinemann was the only bartender on duty when Taylor returned with the Chief of Police.

The charge of selling to minors is very serious. It should be proven by a clear preponderance of the evidence. Respondent contends that appellant's evidence should not be given much weight because it is of a negative character. Naturally, in a case such as this, the evidence by a licensee is necessarily of a negative character to a great extent. Weighing the evidence given by the two boys against the evidence given by appellant, and giving weight particularly to the evidence offered by appellant that no liquor by the name of "Maryland Valley", "Myrtle Valley" or "Mountain something" was ever on sale in the licensed premises, I do not find that the guilt of the licensee is proven by the preponderance of the evidence.

The action of the Township Committee in suspending the license of Charles F. Hill is, therefore, reversed and its order of suspension set aside.

D. FREDERICK BURNETT
Commissioner

Dated: December 27, 1937.

5. APPELLATE DECISIONS - EAST BRUNSWICK TOWNSHIP BOARD OF ADJUSTMENT vs. TOWNSHIP OF EAST BRUNSWICK.

EAST BRUNSWICK TOWNSHIP BOARD OF ADJUSTMENT, Appellant,	
-vs-	ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EAST BRUNSWICK and JOSEPH MILLS, Respondents.	CONCLUSIONS

. . . .

Klemmer Kalteissen, Esq., Attorney for Appellant.
Robert L. Hood, Esq., Attorney for Respondent, Joseph Mills.
No appearance for Respondent, Township Committee of the Township of East Brunswick.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license by the respondent, Township Committee, to the respondent, Joseph Mills, for premises located on State Highway S-28, in the Township of East Brunswick.

In the previous case of Mills vs. East Brunswick Township, Bulletin 141, Item 1, the Township Committee denied a license to Mills and on appeal was sustained because the place sought to be licensed was in a residential neighborhood and there was no proof that the denial was unreasonable.

In the instant, and later, case the Township Committee granted the license to Mills for the same place by a two to one vote. Hence, this appeal.

The appellant contends inter alia that the license was issued in violation of a local zoning ordinance. It is not disputed that the premises are located within an area zoned for residential purposes, by ordinance adopted in 1932, and have not heretofore been licensed. See Mills vs. East Brunswick, supra. The issuance of the license was, therefore, in direct disregard of the ordinance restrictions. See Speake vs. Closter, et al. (N.J.Sup. Ct. decided on April 4, 1934, not reported); Talbot vs. Keppler, Bulletin 117, Item 1; and Corradi vs. Closter, Bulletin 219, Item 3. Apparently, it is the contention of the respondent-licensee that since the erection of his building was begun before the ordinance became effective, he is entitled to conduct his business as a non-conforming use. This contention is without merit so far as the sale of alcoholic beverages is concerned, for such sale pursuant to license would constitute a new use contrary to the terms of the ordinance. See Speake vs. Closter, et al, supra, where Mr. Justice Bodine said:

> "It was a well recognized fact that the very character of a place licensed for the sale of alcoholic beverages, whatever the content, changed the character of the neighborhood and that the business of selling malt liquors was quite different from that of dispensing food alone. No one conscious of the use and abuse of malt liquors can regard the license as otherwise than authorizing a new use in a zoned area."

The respondent-licensee contends, however, that the appellant Board of Adjustment is neither a taxpayer nor an aggrieved person within the purview of Section 19 and is consequently not authorized to maintain the present appeal. The appellant Board was created by the zoning ordinance of 1932 and its functions appear to be solely appellate and quasi-judicial. Enforcement of the ordinance is entrusted by its terms to the Township Clerk and nowhere, either in the ordinance or in the statute, is the Adjustment Board authorized to take, on its own initiative, any independent action for enforcement of the ordinance. Furthermore, the record affirmatively establishes that the Board of Adjustment, as such, never met to consider and determine whether an appeal should be taken from the issuance of the Mills license. Apparently the appeal was taken after one of the members, who was desirous of appealing, ascertained that two others, constituting with him a majority, agreed with his views.

The fact that a majority of the members individually decided that the appeal should be taken did not dispense with the legal necessity of a meeting at which dissenting voices might be heard and considered which might perhaps have effected

a change in result. The Board must act as a board. That, at least, requires a meeting and a motion, if no minutes. See Dey vs. Jersey City, 19 N.J. Eq. 412 (Ch. 1869); Holcombe vs. Trenton White City Co.; 80 N.J. Eq. 122, 134 (Ch. 1912), aff'd 82 N.J. Eq. 364 (E. & A. 1913).

There is thus presented a grave question as to how far the term "aggrieved person" may be stretched and also a very serious question as to whether there is any appellant at all properly before me.

I shall assume, for the purpose of this decision, that these contentions of respondent are valid. Thus, assuming that the appellant is not qualified and has no standing to prosecute this statutory appeal and, on the record disclosed, is but a phantom party, the question remains whether the State Commissioner, on his own motion, either in this or in some other proceeding, has authority to declare a license void if, in fact, it has been issued in violation of a municipal zoning ordinance. It has already been decided that such power exists and should be exercised in cases where such fact has been made to appear in the course of a regular appeal and no question is raised as to the standing of the appellant. See Talbot vs. Keppler, supra, and Corradi vs. Closter, supra. Does the Commissioner have less power or none at all, and owe less or no duty because the fact of the violation of the zoning ordinance happens to be brought to his attention by someone who lacks the technical standing to do so? If the law is broken and the subject matter is within the Commissioner's jurisdiction, what difference does it really make who brings the matter to his attention? Is the Commissioner, charged with superintendent responsibility to see to it that the liquor law is enforced, to be divested of the plenary power which has been conferred upon him simply because the information did not come to him garnished with the usual formalities? Should there be any difference in his power in respect to the same factual situation, depending on whether the information came to him in the course of an appeal or by anonymous letter? What should govern should be the law and the facts -- not how proof of the facts occurred. Am I to sit idly by because there is no qualified person before me to say what I see? Is administrative law to be foundered on the forensic shoals that all too often have diverted attention of the common law from the merits of a case to the mere incidentals of the right form of action or the plaintiff's status to bring it or the intricacies of pleading? All too often vast reservoirs of power have been tapped by Parliament and Legislatures in the effort to advance justice and remedy the defects of the common law only to find, after some years, that its force has been spent on partial results and the rest of it atrophied because diverted, by consuetude, back into the old accustomed channels, as witness, the Statute of Westminster II, the Statute of Frauds, the Statute of Uses. What may be necessary and wholly appropriate when private rights are concerned may be quite out of place when the law imposes definite duties upon an administrator to enforce the public law. The Courts of New Jersey have risen to the occasion when public interests are concerned and declared it a mere matter of public convenience as to who shall raise the question. Ferry vs. Williams, 41 N.J.L. 332; White vs. Atlantic City, 62 N.J.L. 644 (1899). After all, the major thing is whether the law is violated -- not whether a particular person can say what everybody sees.

Section 20 of the Control Act makes it the duty of the Commissioner "to administer and enforce this act..... and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this act."

Section 28 confers power upon the Commissioner to revoke any license for "any violation of any ordinance..... of any other issuing authority or governing board or body."

Section 35 empowers the Commissioner "to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of the act."

Section 74 provides that the act "shall be liberally construed."

Pursuant to the plenary power so conferred in the public interest, I declared a retail license void on my own motion where it had been issued in clear violation of a municipal ordinance limiting the number of licenses in Atlantic City. Re Loeb, Bulletin 206, Item 14, where I said:

> "***In view of the terms of the ordinance, the Board of Commissioners had no jurisdiction to grant the application filed by Mrs. Loeb on June 14, 1937 (see Backman vs. Phillipsburg, 68 N.J.L. 552, 554 (Sup.Ct. 1902)), and the license issued pursuant thereto was void (see Gundrum vs. South Amboy, 86 N.J.L. 450 (Sup.Ct. 1914)). The license was obtained with full knowledge by the licensee of the controlling limitation in the ordinance and in disregard thereof.....
>
> "Furthermore, the provision in Section 36 authorizing the Commissioner to make 'such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act' furnishes express authority for the instant proceeding and the finding pursuant thereto that license C-245 issued to Rhea R. Loeb for premises 131-135 South Kentucky Avenue, Atlantic City, is void."

There is nothing unfair in such procedure. The respondent-licensee, Joseph Mills, has had his day in court and been afforded full opportunity to be heard; it clearly appears that the respondent Township Committee had no jurisdiction to issue the license, and that if this appeal had been brought by any one of the residents who signed the petition against the issuance of a license and who may well have refrained from making any appeal believing that the Board of Adjustment was championing their rights, the license would have been declared void. The licensee knew of the zoning ordinance and that his license was issued in disregard thereof. He has no defense to the retention of his license except a counter attack on the status of those who complain of him. Nothing is gained in dismissing the present appeal and immediately instituting direct proceedings on rule to show cause as in Re Loeb, supra. On the other hand, the public convenience is served, time saved, and circuity avoided by making the finding, ruling, decision and order in the present case as may be right and proper and consonant with the spirit of the Act.

Accordingly, the license issued to Joseph Mills is hereby declared void; the action of the respondent Township Committee in issuing the license is hereby reversed; all operations under said license must cease forthwith, and the license certificate must be surrendered to the Township Clerk of the Township Committee of East Brunswick.

D. FREDERICK BURNETT
Dated: December 23, 1937. Commissioner

6. LICENSEES - HOURS OF SALE - WHEN THE HOURS ARE FIXED BY ORDINANCE AS DISTINGUISHED FROM REFERENDUM A VIOLATION IS NOT A MISDEMEANOR.

My dear Commissioner:

My attention has been called to a Release by you to the local licensees of the Township of Bogota, with reference to the referendum on Sunday sales, and the warning therein contained for violation of the liquor laws on Sunday openings.

Since the City of Camden has had a referendum on the question of open Sunday, which was defeated by a majority vote of 8,000, the New Jersey Licensed Beverage Association feels that the instructions given to the Township of Bogota should be repeated to the Municipal Excise Board of the City of Camden, who in turn should notify all licensees of the City of Camden with reference to the punishment of offenders who fail to observe the Sunday closing laws of the City of Camden.

Will you kindly therefore officially notify our Municipal Excise Board and ask that they in turn notify the retailers of the punishment for failure to properly observe Sunday closing?

Our Association feels that in doing this, we may be able to eliminate many of the abuses now present in the City of Camden with respect to this particular question.

Thanking you most kindly, I am,

Yours very truly,

Harry M. Mendell
Attorney of New Jersey Licensed
Beverage Assoc. Div. No. 5

December 27, 1937.

Harry M. Mendell, Esq.,
Camden, N. J.

My dear Mr. Mendell.

Sales on Sundays in Bogota, except between the hours fixed by the referendum, constitute a violation of the Act and are misdemeanors. Re Bogota, Bulletin 213, Item 3. The reason is that in Bogota the hours have been fixed by referendum. That is not, however, the situation in Camden. In Camden, the hours have been fixed by ordinance. Ordinance of December 27, 1934, Section 5. Hence, sales on Sundays in Camden during hours prohibited by the ordinance would be punishable only by suspension or revocation of the license and the fine or imprisonment provided by the ordinance.

You see, a majority voting on the Bogota referendum voted in the affirmative. The statute provides that in such case the retail sale of alcoholic beverages may be made only between the hours fixed by the referendum and that sale at any other time within the municipality shall be unlawful and constitute a violation of the Act - hence a misdemeanor.

A majority voting on the Camden referendum, however, voted in the negative. The statute provides in such case, that the hours between which the sale of alcoholic beverages may be made may be regulated, as theretofore, pursuant to the provisions of the Act.

See in the pamphlet reprint of the Act, Section *44A (C.254, P.L. 1935, supplementing C. 436, P.L. 1933).

The attitude of the New Jersey Licensed Beverage Association in urging that violation of Sunday closing hours be made a misdemeanor is, to say the least, refreshing and gratifying. I am sorry, for the reasons aforesaid, that it cannot be done.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. REFERENDUM - ALL QUESTIONS TO BE SUBMITTED TO THE ELECTORATE MUST BE ORIGINATED BY WAY OF PETITION SIGNED BY A CERTAIN PERCENTAGE OF THE QUALIFIED ELECTORS - THE INITIATIVE IS SOLELY THEIRS - A GOVERNING BODY MAY NOT SUBSTITUTE A DIFFERENT QUESTION FOR SUBMISSION FROM THAT PRESENTED BY THE PETITION - A REFERENDUM BASED ON SUCH SUBSTITUTED QUESTION IS VOID AND OF NO EFFECT.

December 27, 1937.

John Gaunt
Borough Clerk
Runnemede, N. J.

My dear Mr. Gaunt.

I understand that petition was submitted to the Council requesting referendum at the last general election on the question, "Shall the sale of alcoholic beverages be permitted on Sundays in the municipality after 1:00 P.M.?"; that the Council, however, inadvertently adopted a resolution directing the County Clerk to print on the ballot the question "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?"; that, therefore, the latter question, instead of the former, was printed on the sample and official ballots and was voted on at the election, the results being 646 votes in favor of Sunday sales and 586 votes opposed.

The petition asked for submission of a question concerning specific hours of Sunday sales. The Council's resolution called for the question of whether or not there should be <u>any</u> Sunday sales. The procedure set forth in the Act requires that all referenda questions be originated by way of petition signed by a certain percentage of the qualified electors. The initiative is solely theirs. Such petition must set forth the very question to be submitted. It is to such a petition that signatures are affixed. The governing body cannot substitute some other question. The petition sets out a question which was authorized only by P. L. 1935, c. 254 (Control Act Reprint, Section *44A). Re Reesman, Bulletin 208,

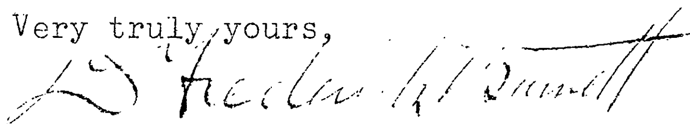
Item 3. The Common Council substituted an entirely different question, which was authorized only by a different statute, viz. P. L. 1933, c. 436 (Control Act Reprint Section 44). The question actually submitted to the electorate originated with the Council and, therefore, not in the manner prescribed by the Act.

The vote at the election did not and could not cure or ratify the action of your Council. There is no substitute for compliance with the law. The referendum is, therefore, void and of no effect.

It follows that the previous referendum, held on November 6, 1934, which resulted in a prohibition of Sunday sales, has never been superseded and, therefore, it is now in full force and effect.

Hence, at the present time, no sales of alcoholic beverages may be lawfully made at any time on Sundays in Runnemede.

Very truly yours,



Commissioner

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