STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 58 December 19, 1934

1. MUNICIPAL ORDINANCES - THE DIFFERENCE IN EFFECT BETWEEN AN ORDINANCE CLOSING LICENSED PREMISES AT MIDNIGHT ON SATURDAY AND AN ORDINANCE OR REFERENDUM FORBIDDING SALE OF ALCOHOLIC BEVERAGES ON SUNDAYS

December 18, 1934

Mr. J. R. Kintner, Assistant Secretary,
New Jersey Licensed Beverage Association,
Camden, New Jersey.

Dear Sir:

You state, and my records confirm, that referenda in both Hamilton and Lawrence Townships, Mercer County, resulted in the prohibition of the sale of alcoholic beverages in these Townships on Sundays. You also advise that in both instances the Township authorities immediately notified retail licensees to close at midnight on Saturday.

Now you want to know whether certain licensees who provide for dancing and furnish floor shows upon their premises must discontinue the dancing and shows at midnight on Saturday or whether they may allow the shows and dancing to go on and the patrons to consume, after midnight, the alcoholic beverages they had purchased before midnight.

Although it does follow from the negative vote that all sales of alcoholic beverages on Sundays must cease, it does not necessarily follow therefrom that all licensed premises must also close.

However, there is nothing to prevent the Township Committees of Hamilton and Lawrence from adopting regulations closing concurrently with the cessation of sales of alcoholic beverages at midnight on Saturday, certain or all of their licensees' premises. It is undoubtedly within the authority conferred by Section 37 of the Act to regulate the conduct of licensed premises and also is a valid exercise of their police power. Such regulations, similarly as with all other municipal rules, would have to be obeyed by all.

I have from the Township of Hamilton a resolution passed by the Township Committee on November 9, 1934 in which, among other things, it is resolved "that every place licensed to sell alcoholic beverages within the Township of Hamilton, in the County of Mercer, shall be closed to business during the hours hereinafter designated and no licensee, or his agent, shall sell or dispense any alcoholic beverages during said hours: Sunday ..... between Saturday midnight and Sunday midnight."

I also have from the Township of Lawrence a resolution passed by the Township Committee on June 20, 1934 in which, among other things, it is resolved "That hereafter the hours for the sale of intoxicating liquors in the Township of Lawrence in the County of Mercer shall be as follows: From 6 A. M. to 1 A. M. weekdays, except Saturdays when the hours are from 6 A. M. to 2 A. M. .....

no sales on Sundays except between midnight Saturday and 2 A.M. Sunday morning."

Thus it appears that in Hamilton Township licensed premises must be closed at midnight on Saturday, while in Lawrence Township, pursuant to the referendum which superseded the above quoted regulation insofar as it is concerned with Sunday sales, it is required only that the sale of alcoholic beverages cease at midnight on Saturday.

Herewith is copy of ruling made in re: The Township of Hamilton, Bulletin 56, item 12, concerning the consumption of alcoholic beverages after midnight Saturdays in cases where municipalities have voted against Sunday sales. You will note therein that it has no application in cases where, as in Hamilton Township, licensed premises must be closed at midnight on Saturday. It will apply, however, in Lawrence Township where the only requirement is that the sale of alcoholic beverages cease at midnight on Saturdays.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

2. REFERENDUM - PROCEDURE - FAILURE OF GOVERNING BODY TO ACT ON REFERENDUM

Commissioner Burnett.

Dear Sir: Re: Southampton Township

A petition with over 160 signatures of registered voters was presented at the regular Township Committee meeting, asking for a referendum at the coming election for legalizing the Sunday sales of alcoholic beverages.

I have been informed that the Township Committee at a special meeting decided not to forward said petition to the County Clerk, and not to ask for a referendum as petitioned by more than twice the amount of signatures required.

What are the rights of the taxpayers?

October 22, 1934

Dear Sir:

When a proper petition for referendum is presented to a governing body, its duty to proceed is clear. A petition apparently sufficient on its face may, however, fail to meet the statutory requirements. While the Control Act does not indicate by any express language any authority in a governing body to determine whether the petition meets the requirements of the Act, such authority must be inferred for it is inconceivable that a petition which does not comply with the statute, either in law or in fact, imposes upon the governing body the duty to act. See Bulletin #47, Item #9.

In the event that a governing body fails to act upon a

petition because of its alleged insufficiency, review by some tribunal should be permitted. Such review must be by a proceeding in which testimony can be taken with respect to the qualifications of the signers of the petition, the validity of the signatures attached thereto and the sufficiency of the petition in general. The Control Act contains no provision authorizing the Commissioner to conduct such a proceeding.

The proponents of the petition, however, have an adequate remedy in court to compel action by the governing body. See Ryer vs. Holland, 10 N.J.Misc. 1039 (Sup. Ct. 1932), where the court said:

> "Whether, therefore, the petition is sufficient would seem to be required to be determined by him in the first instance. **** If he fails to act upon an adequate petition after such determination, the remedy is in the court to compel action".

In a proper proceeding, the Supreme Court will determine the adequacy of the petition and will direct the governing body, if the petition is found adequate, to forward it to the county clerk for printing on the official ballot, pursuant to the provisions of the Control Act.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

3. MUNICIPAL ORDINANCES - REFERENDUM - INVALIDITY OF REFERENDUM WITH RESPECT TO MATTERS NOT SPECIFIED BY STATUTE FOR SUBMISSION TO THE ELECTORATE

December 13, 1934

Mr. Charles S. Ball,
Borough Clerk,
Merchantville, New Jersey.

Dear Sir:

Supplementing mine of November tenth:

Pursuant to the referenda submitted to your electorate on November sixth it appears that the sale of alcoholic beverages within the Borough of Merchantville is now permitted only for consumption off the licensed premises and that all sales on Sundays are prohibited. There is, however, no provision in the Alcoholic Beverage Control Act for referenda on any questions other than those expressly stated in Sections 41, 42, 43 and 44. Hence, the referendum with respect to the limitation of hours between which sales may be made, standing alone, is not binding. Said hours are made effective, however, by your resolution of November 13, 1934 which, pursuant to Section 37 of the Act, so enacts.

You are correct in your conclusion that the club license held by the Merchantville Country Club became void and inoperative on December 6, 1934, for the result of the referendum by which sales for consumption on the licensed premises were prohibited is mandatory, and no exceptions may be made.

In fairness to the Merchantville Country Club and also to your other licensees which may be affected by the referenda, I cordially suggest that each be notified of the results.

Rules governing refunds in these circumstances are being devised. They will be forwarded immediately upon their promulgation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

4. MUNICIPAL ORDINANCES - DAYLIGHT SAVING TIME - WHEN APPLICABLE

December 18, 1934

Charles Wagner, Esq.,
Elizabeth, N. J.

Dear Mr. Wagner: Re: Union Township, Union County

Supplementing mine of November 5, 1934:

You raised the question as to whether Standard or Daylight Saving Time would control, during the period when the latter was in effect, if a local regulation fixing the hours between which the sale of alcoholic beverages was to be permitted did not specifically state which time should govern. You refer to Carroll vs. The City of Bayonne, 99 N.J.L. 493 (E. & A. 1923) in which it was held that when, according to the provisions of the statute, an old Board of Commissioners gave place to a new one at noon on May 15, 1923, "noon" meant "noon" of Standard Time as provided by another statute bearing on that subject (P.L. 1884, p. 175) which, in turn, provides "That the Standard Time of the State of New Jersey shall be the time of the seventy-fifth meridian west from Greenwich, and that the time named in any of the statutes of this State and in public proclamations, in the rules and orders of the senate and general assembly, in the decrees and orders of the courts and in all notices and advertisements in any legal proceedings, shall be deemed and taken to be the standard time aforesaid."

It should be noted that the Board of Commissioners, in the case above referred to, took office pursuant to the provisions of a statute of this State.

I do not believe that the case and statute above recited necessarily have any bearing upon the present question. Our consideration is of the effect of Standard or Daylight Saving Time upon a municipal ordinance which, it appears, does not fall within the scope of said statute. I am of the opinion that the municipal ordinance or resolution, by which a municipality has adopted the convention of Daylight Saving Time,

will undoubtedly convert into Daylight Saving Time, when it is in effect, the hours prescribed for any particular purpose in other municipal resolutions or ordinances. Considered in this light, the ruling of Bulletin 27, item 3 would not be contrary to nor would any exception therefrom have any confirmation in the case or the statute.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

5. MUNICIPAL ORDINANCES - BLUE LAW REFERENDUM - REGULATORY POWERS CONCERNING SUNDAY SALES AND CONDUCT OF LICENSEES ON SUNDAY

(Gloucester County) December 18, 1934

Mr. Harry F. Bach,
Clerk of Franklin Township,
Franklinville, N. J.

Dear Sir:

I have yours of November 12th.

It appears that a referendum held in your Township at the primary election in 1933 resulted in the repeal of certain laws prohibiting amusements on Sundays. Now you raise the question as to whether, subsequent to said referendum, your Township Committee has the power to regulate or to prohibit dancing on Sundays in places licensed for the sale of alcoholic beverages.

A referendum repealing your so-called "blue laws" need not necessarily be construed as a mandate for totally unrestricted and uncontrolled Sundays. The referendum expressed the will of the electorate with respect to the laws at question. If represents an attitude, not legislation, and does not preclude the imposition of proper regulations when necessary in the interest of public order and decorum.

Undoubtedly you are within your authority in limiting the hours of Sunday sales from two p.m. on Sunday until one a.m. on Monday. Such a regulation is reasonable and may properly be based both on Section 37 of the Control Act, which empowers each municipality to regulate the hours of sale and the conduct of businesses licensed to sell alcoholic beverages at retail, and on your right to control said sales as conferred by your inherent police power.

Likewise, irrespective of the referendum above referred to, I believe you are within your authority otherwise to regulate on Sundays, even if none are imposed on weekdays, premises licensed for the sale of alcoholic beverages. The authority, as I have explained above, is conferred by the Control Act, the exercise of which is independent of, and separate and apart from, the referendum. Hence, I see no objection to your regulating said music and dancing on Sundays and not on weekdays, for it is generally conceded that Sundays, being a day set apart and different from others, may be so distinguished.

If Sunday night dancing is to be permitted, I see no reason why a license so to permit, in addition to the license

permitting the sale of alcoholic beverages, cannot be required and a fee charged therefor, provided there is nothing in municipal law so to prevent.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

6. LICENSE FEES - INCREASE IN PLENARY RETAIL CONSUMPTION LICENSE FEE HAS NO EFFECT ON SEASONAL RETAIL CONSUMPTION LICENSES THEN EXTANT

MUNICIPAL ORDINANCES - SUNDAY SALES - REGULATIONS

December 18, 1934

Hon. Palmer M. Way,
Union Bank Building,
Wildwood, New Jersey.

My dear Judge Way:

Yours of October 29th raises the question as to whether, upon an increase in the plenary retail consumption license fee effective July first, a seasonal licensee, whose license was procured upon payment of a fee based upon the original and lower plenary retail consumption license fee, is subject to an additional charge of the net difference between his fee and the seasonal fee based upon the second and higher plenary retail consumption license fee, both prorated from July first to September 15th. It is true that if the plenary retail consumption license fee were raised, effective July first, that seasonal licensees who procured their licenses after July first, would pay a higher rate per diem than would those who procured their licenses before July first. However, this does not constitute grounds for the imposition of an additional fee upon seasonal licenses already in effect at the time of the increase. Said licensee, with faith in his license, in all probability has incurred expenditures or otherwise changed his position and has acquired a vested right in his license which should not be disturbed by subsequent legislation. It follows that the answer to the question is in the negative. Upon increasing the plenary retail consumption license fee, effective at any time during the terms of seasonal licenses, no additional charge may be imposed upon seasonal licenses then extant.

I also have yours of November 8th.

I believe you are within your authority, as conferred by Section 37 of the Act, to regulate the conduct of any business licensed by you for the retail sale of alcoholic beverages and also conferred by the general police power which it is your duty to exercise in this respect, in regulating Sunday sales in municipalities which have decided the question in the affirmative via referendum. It appears that such a result need not necessarily be construed as a mandate for unrestricted Sunday sales; Section 44 of the Act which controls said referenda, provides that if a majority of the legal voters shall vote "yes", the sale of alcoholic beverages on Sundays "pursuant to the provisions of this act", shall continue in said municipality "as if

no such election had been held". Thus your power to regulate, as differentiated from your power to prohibit Sunday sales, is neither enlarged nor diminished or in any other way changed from what it was prior to the referendum. The propriety of a regulation will now, as before, be measured by public choice and necessity.

The necessity of revising your Rules for Sunday Sales, Section IV, sub. 1, 2, 3 and 4, to permit sales by plenary retail distribution licensees, and concomitantly, for consumption off the licensed premises by plenary retail consumption licensees, follows. If a referendum upon Sunday sales has been returned in the affirmative, your power to prohibit, as differentiated from your power to regulate in this respect, has been abrogated. Hence, it would not be proper to deprive one class of licensee of a privilege granted to all. By the same token, any such referendum will supersede the procedure you have set up for petitioning to permit Sunday sales and your reservation of discretion in the granting of said permission, Section III, sub. (b) and (i).

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

7. PARTNERSHIP - NO NEW LICENSE NECESSARY UPON RETIREMENT OF PARTNER - WHERE PARTNERS OPERATE TWO PLACES OF BUSINESS UNDER TWO LICENSES PARTNERSHIP MAY BE DISSOLVED AND EACH PARTNER MAY OPERATE UNDER SEPARATE LICENSE PROVIDED LICENSES ARE PROPERLY ENDORSED

December 1, 1934

Clara Christensen,
Deputy Township Clerk,
Teaneck, N. J.

Dear Madam:

I have your letter of November 26th, in which you state that license #20 for premises located at #1452 Queen Anne Road, and license #21 for premises located at #1358 Queen Anne Road, were issued to Muller & McKenna, as partners; the two partners now wish to dissolve the partnership and conduct the places of business independently; and inquire whether one of the partners may operate under one of the licenses and the other partner under the other license.

In Bulletin #19, Item #6, the Commissioner ruled that although a literal construction of section 23 of the Control Act, which provides that licenses are not transferable, might result in the prohibition of operations under a partnership license by the remaining partner after the retirement of a partner, no such conclusion was contemplated by the Legislature. The issuing authority must pass upon the qualifications of each member of a partnership applicant. When, therefore, a license is issued to a partnership, presumably each member thereof is qualified to obtain a license and the retirement of a partner should not prevent the remaining partner from continuing under the partnership license without being required to pay another license fee.

Upon a parity of reasoning, your inquiry must be

answered in the affirmative. The retirement of partner A from the business operated at #1452 Queen Anne Road should not prevent partner B, who is qualified to hold a license individually, from continuing business under license #20, without being required to pay another license fee; similarly, the retirement of partner B from the business operated at #1358 Queen Anne Road should not prevent partner A, who is likewise qualified to hold a license individually, from continuing business under license #21, without being required to pay another license fee.

Each of the licenses should bear an endorsement indicating the retirement of the partner in the manner set forth in Bulletin #20, Item #7.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

8. APPELLATE DECISIONS - DOHERTY VS. ATLANTIC CITY

MARY G. C. DOHERTY, Appellant
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY, Respondent

ON APPEAL
CONCLUSIONS

Albert C. Abbott, Esq., Attorney for Appellant
Anthony J. Siracusa, Esq., Attorney for Respondent

BY THE COMMISSIONER:

Appellant complied with all the formal requirements pertaining to her application for a plenary retail consumption license. Her personal fitness and the suitability of the premises sought to be licensed, aside from their location, are admitted.

Respondent contends that the application was properly denied because the appellant's premises are located in a residential area and a large number of persons residing in the vicinity objected to the issuance of the license. The premises are located at the southwest corner of Atlantic Avenue and Iowa Avenue, Atlantic City. Atlantic Avenue is admittedly one of the most important business streets in the city. A map introduced in evidence discloses that numerous stores of all kinds abound thereon. Two licensed places of business are located along Atlantic Avenue within a half block of appellant's premises. The objectors reside on the side streets which are clearly residential in character. The objections are directed not to appellant, but to the issuance of any licenses in the vicinity.

A municipality may properly refuse to issue a license for premises located in a residential neighborhood. Vanozzi vs.

Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #7. General objections to the issuance of any licenses, however, for premises located in a business neighborhood are without force. Sullivan vs. Township Committee of the Township of Ocean, Bulletin #38, Item #14.

The entrance to appellant's premises is catercornered facing partly on Atlantic Avenue and partly on the residential sidestreet. The location of the premises is governed by the entrance thereto. So long as the premises front, even in part, on a residential street, respondent will not be directed to issue a license therefor. If appellant will, however, alter the premises so that the premises front exclusively on Atlantic Avenue, there can be no valid objection to her receiving a license.

Respondent also contends that the application was properly denied because the premises sought to be licensed are subject to a restrictive covenant against the sale of alcoholic beverages. The Commissioner has held, however, that such covenants are not properly the concern of the issuing authorities but are cognizable only by the courts. Gamble vs. Board of Commissioners of the Borough of Avon-by-the-Sea, Bulletin #35, Item #6.

The action of respondent is reversed on condition that appellant alter the entrance to the premises sought to be licensed so that said premises front exclusively on Atlantic Avenue.

D. FREDERICK BURNETT,
Commissioner

Dated: December 17, 1934

9. APPELLATE DECISIONS - MONTGOMERY VS. TEANECK

CHARLES R. MONTGOMERY,
Appellant
-vs-
MAYOR AND COUNCIL OF THE TOWNSHIP OF TEANECK (BERGEN COUNTY),
Respondent

ON APPEAL
CONCLUSIONS

Chandless, Weller & Selser, Esqs., by Ernest Weller, Esq., Attorneys for Appellant
Donald M. Waesche, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

Respondent contends that the application was properly denied by virtue of its policy not to issue licenses for premises within 500 feet of existing licensed places. A resolution enunciating the municipal policy was adopted by respondent and approved by the Commissioner pursuant to Section 37 of the Control Act.

Appellant filed his application on July 17, 1934. The premises sought to be licensed are approximately 75 feet from an existing licensed place. Counsel for appellant contends, however, that the prohibition contained in the municipal resolution does not apply to appellant's premises for reasons hereinafter stated.

The pertinent provision of the resolution reads:

> "* * * no additional licenses shall be granted above such number as may have been granted and for which fees have been paid on August 1st, 1934, and thereafter no new licenses shall be granted until the total number of licenses in effect have been reduced to twenty, which number of licenses shall not again be exceeded. No such new licenses shall be granted for any premises within five hundred feet of any existing licensed premises."

Counsel for appellant suggests that the phrase "no such new licenses" refers to the phrase "no new licenses" which is contained in the preceding sentence; that the phrase "no new licenses" does not include a license issued before or pursuant to an application accompanied by the fee, filed before August 1, 1934; that since appellant's application, accompanied by the fee, was filed before said date, the prohibition does not apply to his application.

Respondent contends that the true intent of the resolution was to cover all licenses issued for the first time after the enactment of the resolution. Counsel for appellant frankly concedes that his proposed interpretation would do violence to respondent's actual policy.

The language of the resolution may not, perhaps, be well chosen to express the intent aptly but respondent's interpretation, supported by the words, is reasonable and has been uniformly applied by respondent. I shall, therefore, construe it as it was actually intended.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 18, 1934

10. APPELLATE DECISIONS - BISANTE VS. CAMDEN

PASQUALE BISANTE,
Appellant
-vs-
CAMDEN MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

ON REARGUMENT
OF APPEAL
CONCLUSIONS

- - - - - - - - - - - - - - - -

Ethan P. Westcott, Esq., Attorney for Appellant
Lewis Liberman, Esq., Attorney for Respondent

BY THE COMMISSIONER:

After decision was announced on the appeal filed in

the above matter (see Bulletin #37, Item #6), appellant moved for reargument on the ground that the factual finding that the premises sought to be licensed are located in a residential neighborhood, was erroneous. Appellant's application was for the period expiring June 30, 1934. The issue is therefore moot. There is some question, however, whether the prior opinion debars appellant from receiving a license for the current period. In order to dispose of the issue with a minimum of delay and expense, after reexamining the transcript of the prior hearing, I granted the motion for reargument with leave to appellant to introduce further evidence as to the character of the neighborhood. Cf. Snyder vs. Middletown, Bulletin #56, Item #2.

In lieu of further testimony, counsel stipulated that the record of Dieghan vs. Camden (unreported), which involved the identical issue, be admitted in evidence.

After examining the additional testimony and exhibits I think the true conclusion is that appellant's premises are not located in a residential neighborhood. It is true that the side streets are strictly residential, but the street and the block on which the premises sought to be licensed are located are properly classed as a business neighborhood. The evidence shows and the exhibits confirm that the premises are located in a small business area consisting of a group of so-called neighborhood stores, some three or four blocks in length. The stores, which consist of groceries, butcher shops and the like, service the immediate neighborhood. Included in this group of stores is one operated under a plenary retail consumption license. This particular store, however, is located in the Township of Pennsauken, which immediately adjoins the City of Camden.

This small business area is entirely surrounded by residences and a large number of persons residing therein object to the issuance of any license for premises in the store colony. They objected also to the issuance of the license for the premises now licensed, but inasmuch as they were residents of Camden, they were unable to persuade the issuing authority of Pennsauken Township to deny the application.

The refusal to issue a license for premises located in a residential neighborhood clearly is proper. Vannozzi vs. Trenton, Bulletin #35, Item #7. On the other hand, an issuing authority is not justified in refusing to issue a license for premises in an ordinary business neighborhood simply because of objections to the issuance of any licenses for premises located in such neighborhood. Sullivan vs. Ocean, Bulletin #38, Item #14; Brighton Hotel Company vs. Loder, Bulletin #41, Item #6; Bunks vs. Atlantic City, Bulletin #45, Item #14; Seashore Beverage Co. Inc. vs. Way, Bulletin #47, Item #12; Elias vs. Trenton, Bulletin #54, Item #12.

In the instant case the neighborhood is clearly business and already contains one licensed place. The fact that this licensed place is in an adjoining municipality does not justify its exclusion from consideration in determining whether the neighborhood is in fact residential. Cf. Skwara & Proneska vs. Trenton Bulletin #57, Item #7. Nor can it be excluded from consideration in determining whether the neighborhood consists of only a few neighborhood stores, under which circumstances it may be that the refusal to issue a license is proper. In considering the character of the neighborhood it must be viewed in its entirety without regard to artificial political divisions.

The neighborhood here involved not only is devoted almost exclusively to business purposes, but also includes a place of business already licensed for the sale of alcoholic beverages. In view thereof, respondent's action in refusing to issue a license to appellant simply because of objections to the issuance of any licenses in this neighborhood cannot be sustained.

The action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 18, 1934

11. APPELLATE DECISIONS - A.B.C.HOLDING COMPANY VS. NEWTON

A. B. C. HOLDING COMPANY,)
Appellant)
-vs-)
TOWN COMMITTEE OF THE TOWN) ON APPEAL
OF NEWTON (SUSSEX COUNTY),) CONCLUSIONS
Respondent)
- - - - - - - - - - - - - - - -

Dolan and Dolan, Esqs., By William A. Dolan, Esq., Attorneys for Appellant
Lewis Van Blarcom, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary consumption license.

Respondent contends that the application was properly denied because a sufficient number of licenses had been issued in the town and an additional license would be socially undesirable. No resolution limiting the number of licenses has ever been adopted.

The population of Newton is approximately fifty-four hundred. Six plenary retail consumption licenses have been issued therein. Appellant operates a hotel which furnishes overnight accommodations for transients. This hotel was licensed for the period expiring June 30, 1934. Due to financial difficulties it did not file it application for renewal until after the six licenses now outstanding were issued. There is no suggestion that appellant's conduct of its business under its prior license was in anywise improper nor that the persons interested in appellant corporation are not qualified.

There are now two other hotels operating in Newton, whereas before prohibition there were approximately five. If Appellant does not receive a license it will not be able to operate its hotel.

Hotels, as such, must be distinguished from ordinary liquor stores. Hotels are vested with a quasi-public function. They are charged with the duty of accepting all proper persons as guests and of furnishing them with accommodations so far as the capacity of the hotel permits. See Watkins vs. Cope, 84

N.J.L. 143 (Sup. Ct. 1913); see also Re Corona, Bulletin #29, Item #5. They discharge a public function. They are, therefore, not to be classed as ordinary drinking places. It is not fair to discriminate against a hotel unless good cause exists.

In the instant case, no numerical limitation of licenses was ever adopted by respondent. In fact, none was even under contemplation until after appellant's application was filed. In view of the public nature of appellant's hotel, the interests of the community would be best served by the issuance of a license to it.

The case of Sussex County Drug Co. vs. Newton, Bulletin #47, Item #3 is not in point. There the application was for a plenary retail distribution license, and the burden of proving that public necessity or convenience dictated the issuance of an additional license of that class was not sustained.

The action of respondent is reversed.

D. FREDERICK BURNETT,
Dated: December 18, 1934 Commissioner

12. APPELLATE DECISIONS - UKRAINIAN PRESBYTERIAN CHURCH VS. NEWARK ET AL

UKRAINIAN PRESBYTERIAN CHURCH,)
Appellant
-vs-)
ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC) CONCLUSIONS
BEVERAGE CONTROL OF NEWARK AND
UKRAINIAN LABOR BUSINESS CORP.,)
Respondents.

- - - - - - - - - - - - - - - - - -

Hodes & Hodes, Esqs., Attorneys for Appellant
Raymond Schroeder, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control of Newark
Simon L. Fisch, Esq., Attorney for Respondent, Ukrainian Labor Business Corporation

BY THE COMMISSIONER:

This is an appeal from the action of respondent, Municipal Board of Alcoholic Beverage Control of Newark, in issuing a plenary retail consumption license to respondent, Ukrainian Labor Business Corporation, on the ground that the licensed premises are within 200 feet of appellant's church.

Section 76, P. L. 1933, C. 436, as amended by P. L. 1934, C. 85, provides: ".....no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or ..... school ..... provided, however, 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 .....

"The prohibition contained in this section shall

not apply to the renewal of any license where no such church or school house was located within two hundred (200) feet of the licensed premises as aforesaid at the time of the issuance of the license, nor to the issuance and/or renewal of any license where such premises have been heretofore licensed for the sale of alcoholic beverages or intoxicating liquors, and such church or school house was constructed and/or established during the time said premises were operated under said previous license."

Appellant is an incorporated church located at #49 Beacon Street, Newark. It has been located at that address since 1910. The licensed premises are located at #59 Beacon Street, Newark, and are admittedly within 200 feet of the church. The records of the City of Newark reveal that from the year 1908 to the year 1913 (both inclusive) the premises at #59 Beacon Street, Newark, were licensed as a saloon for the sale of alcoholic beverages. Thus the premises in question were licensed for the sale of alcoholic beverages at the time the church was established at its present location.

Counsel for appellant argues that the phrase "heretofore licensed" contained in the quoted paragraph should be construed to read "heretofore licensed under the Control Act" and that the exemption cannot, therefore, be applied to the present licensee's premises even though they were licensed before the Control Act was passed and the church was established while the premises were so licensed. It is a well settled rule of statutory construction, however, that a statute which is amended is thereafter as to all acts subsequently done, to be construed as if the amendment had always been there. Farrel vs. State, 54 N.J.L. 421 (Sup. Ct. 1892). In accordance with this rule, section 76 of the Control Act must be deemed to have been enacted on December 6, 1933 in its present form, including the phrase "heretofore licensed". This phrase, therefore, refers to a period prior to the enactment of the Control Act. Accordingly, the Commissioner has held that premises licensed for the sale of alcoholic beverages before the Control Act was passed and at the time the church or school was constructed and/or established, come within the exemption above quoted. Berlangieri vs. Newark, Bulletin #38, Item #16. Appellant's contention cannot, therefore, be sustained.

The action of the Municipal Board of Alcoholic Beverage Control of the City of Newark is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 18, 1934

13. APPELLATE DECISIONS - SCHULTE VS. PERTH AMBOY

D. A. SCHULTE, INC.,
Appellant
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF PERTH AMBOY,
Respondent

ON APPEAL
CONCLUSIONS

- - - - - - - - - - - - - - -

Messrs. Osborne, Cornish & Scheck, by Harry V. Osborne, Esq.,
Attorneys for Appellant
John E. Toolan, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license for premises located at 120 Smith Street, Perth Amboy.

Respondent contends that the application was properly denied for the reason that there are an adequate number of licensed places of business in the vicinity of appellant's premises and an additional license would be socially undesirable.

Comprehensive and helpful briefs have been submitted by each side so that the law and rulings have been fully marshalled. The real difficulty, however, is in applying the law to the facts.

Appellant's premises are located at a five-cornered intersection, which admittedly is the "hub" of the business district. A plenary retail consumption license has been issued to one Spitzer for premises located at another of these five corners, under which license, however, only a distribution business is conducted. Respondent believes that not more than one of the five corners should be occupied by a liquor store; that the governing body of the city had the right and was under the duty to establish some rule concerning the location of liquor stores at this intersection.

Appellant claims discrimination. Appellant shows that respondent has issued as many as six licenses in a single block in a business neighborhood, as a basis for the arugment that respondent has not uniformly applied the policy on which it now relies; that there is but one other distribution license that has been issued in Perth Amboy, and that at a distance of about two city blocks from the "hub"; that 127 consumption licenses have been issued; that except for this, Spitzer controls the entire package goods business in Perth Amboy; that the real motive of respondent is to protect Spitzer from the economic competition which appellant would afford; that a purchaser of a package of liquor should have the right to make his purchase in a place other than a bar room; that appellant should have the right to compete with Spitzer for the package trade.

Respondent answers that it was actuated only by the loftiest motives of local public policy; that the neighborhood in which appellant's premises are located is unique in that it is the business heart of the city and therefore the differentiation in treatment is reasonable.

Appellant's charge of corrupt motive is serious. It must be proved by clear and convincing evidence. Mere innuendo and suspicion are of no avail. Every presumption must be made that respondent performed its duty honestly. There is nothing in the instant case to show that respondent did not perform its duty in this manner. Appellant's charge that respondent was motivated improperly is therefore overruled.

The remaining question is whether the differentiation in treatment accorded the vicinity in which appellant's premises are located is reasonable.

The "hub" does stand apart from the rest of the city. The local "four corners" is often the main source of the impression which outsiders receive of a municipality. The appearance

of those "four corners" may be and often is of real economic importance to the welfare of a municipality. While the question is not entirely free of doubt, I conclude that the business heart of the city may reasonably be treated differently from the remaining business sections and that respondent's action in doing so in the instant case did not constitute an unreasonable discrimination against appellant.

Accordingly, the action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 18, 1934

14. REFUNDS - AFTER REFERENDUM

December 18, 1934

Harold L. Bailey, Clerk,
Downe Township,
Dividing Creek, N. J.

Dear Sir:

I have yours of November 7th, wherein you request a ruling on the correct procedure to be followed in determining the amount of refund due to those licensees whose licenses, through the result of a referendum, become void and inoperative thirty (30) days after the date of the vote.

Although such refund is not expressly provided by law, it was not the intention of the Legislature to forfeit the money which had been paid for license, which by its terms was to continue to June 30, 1935. The prohibitive provision as to refund in Section 28 was not meant to apply wherein the licensee had done no wrong; neither does the procedure apply as set forth in connection with voluntary surrender of a license. What evidently happens is that by virtue of a referendum the retail licensee is deprived of privileges previously granted to him and which under ordinary circumstances he would continue to enjoy for the balance of the licensing period and in all respects comply with the law.

Under the circumstances, it would be unjust to allow any more than the earned fee to be retained. Hence, where a license previously issued becomes void and inoperative by virtue of a referendum adopted pursuant to section 43 of the Control Act, said licensee shall be entitled to a refund of that prorated portion of the license fee representing the unexpired term of the license.

Very truly yours,

D. Frederick Burnett

Commissioner