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

BULLETIN 715 JUNE 17, 1946

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ITEM

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

BULLETIN 715 JUNE 17, 1946.

1. APPELLATE DECISIONS - MOSSMAN v. IRVINGTON AND BRAUER.

JOSEPH MOSSMAN, t/a REX WINE & LIQUOR STORE,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE TOWN OF IRVINGTON and SAMUEL BRAUER, t/a "1056 INN",
Respondents

ON APPEAL
CONCLUSIONS AND ORDER

William J. Bartholomew, Esq., Attorney for Appellant.
John J. Gaffey, Esq., by Herman W. Kurtz, Esq., Attorney for Respondent Board of Commissioners.
Benjamin Romano, Esq., Attorney for Respondent, Samuel Brauer, t/a "1056 Inn".

This is an appeal from the action of the respondent Board of Commissioners in granting to respondent Brauer a place-to-place transfer from premises 1240-1242 Springfield Avenue to premises 1238-1240-1242 Springfield Avenue.

The transfer of the license results in an enlargement of respondent Brauer's formerly licensed premises by adding a space approximately 14 feet in front by 64 feet deep.

Appellant raises the technical objection that the "grant" was premature and that he, by reason of the premature action, was not afforded a hearing by the respondent Board.

It is true that the resolution granting the transfer was passed prior to the second publication of the notice of intention. This is, however, not fatal. Re Novack, Bulletin 174, Item 6; Corado v. Camden et al., Bulletin 190, Item 2.

The resolution granting the transfer was conditioned upon the completion of the advertising and that "no objection to the transfer is received"; and a further condition that the premises be completed in accordance with the plans submitted with the application.

The final advertisement of the notice of application appeared on March 14. The license was indorsed for transfer on March 15, upon receipt of proof of publication. No protests or objections to the granting of the transfer were received by the Clerk of the Town until March 18th, on which date appellant filed with the Clerk notice of objection to the transfer.

Thus, it would appear that no objections were filed within two days of the second advertisement of the notice of intention and that, had the indorsement of the transfer been withheld as suggested by Commissioner Burnett for the two days following the last advertisement, no objections would have been filed within that time limit. Cf. Re Novack, supra, where the rule was set forth as follows:

"The purpose of the notice of intention is not accomplished merely by its publication. The notice is required in order that anyone deeming that good reason exists for the denial of the license or the transfer may have the opportunity of filing objections and a chance to be heard. Objectors must, therefore, be allowed a reasonable time after publication of the notice in which to file their protests. If perchance they do, then they must be afforded an opportunity to be heard. Until such time elapses and such opportunity is afforded, no license should be issued or transfer effected.

"Henceforth, therefore, the rule will be that in all cases where a license issuing authority determines in advance of completion of advertising (but after appropriate investigation, of course), to issue or to transfer a license, the resolution after expressing such determination shall be made subject to a special condition worded (in case of a new or renewal license) substantially as follows: 'Subject to the special condition that the advertising of notice of intention be completed and proof of publication submitted, provided, however, that such license shall not be actually issued until two whole days shall have elapsed after the second publication of notice of intention, not counting the day on which such publication may be made, and, further provided, that if within such period, or at any time before the license is actually issued, an objection or a protest shall be filed against the issuance of such license, the license shall not be issued until the further determination of this board or governing body.'

"If the determination concerns the transfer of an existing license, appropriate changes will, of course, have to be made in the operative language.

"The foregoing ruling applies henceforth throughout the State."

It does not appear that the "grant" prior to the completion of the advertising nor the premature indorsement of the transfer has resulted in prejudicially affecting the rights of the objectors. This, especially in view of the fact that said objectors have had a full opportunity to present their objections at the hearing de novo on this appeal.

The real and substantial objections to the transfer are that the respondent Board acted arbitrarily, without proper consideration of the rights of the public and the public necessity and convenience, and that the enlargement of respondent Brauer's facilities would incur a traffic hazard.

The real purpose of the instant transfer is to enlarge the premises and provide space therein for the display and sale of packaged liquor; a privilege granted under the terms of a plenary retail consumption license. R. S. 33:1-12(1). Cf. Samuels v. Newark and Turk, Bulletin 381, Item 6.

The area of Irvington along Springfield Avenue at this point is admittedly a business section.

The rule as to the weight given to objections against the grant of a license in a strictly residential area is different from that given like objections when the premises are in a business area.

Cf. Brummer v. North Arlington, Bulletin 426, Item 11, and cases cited. See also De Christie v. Gloucester, Bulletin 121, Item 10, where the late Commissioner Burnett succinctly stated the rule as follows:

> "General objections to the issuance of any license for premises located in a business neighborhood do not justify a refusal."

I do not find that there is in the instant case any substantial objection from residents of the area to the enlargement of Brauer's premises, and this giving full consideration to the two objectors who properly may be said to be such residents.

As to the question of a traffic hazard, the premises are on a heavily traveled thoroughfare, traversed by many private automobiles and one or more bus lines. There is nothing added to the traffic condition by a mere enlargement of the premises when we consider that the evidence discloses that said traffic condition is contributed to by the nature of the use of Springfield Avenue as a business area. The parking of automobiles in the vicinity, cited as a large contributing factor to the traffic condition, seems from the evidence chargeable more to a super-market, a State motor vehicle agency, an automobile salesroom, a theatre, and the busses, all factors in determining that said area is in fact used principally and almost exclusively for business purposes.

The question of public convenience and necessity is one which the respondent Board is best capable of solving -- they know the place and the people. Their opinion is worthy of great weight. The burden of proving that public convenience and necessity will not be served rests, as does all affirmative assertions, upon the appellant. State Regulations No. 15, Rule 6; Hoffman v. Ridgefield Park, Bulletin 354, Item 12.

My function on appeals of this type, however, is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion, and if so to affirm irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; North End Tavern, Inc. v. Northvale, Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7.

I must conclude that there is not sufficient evidence to warrant a finding that the respondent Board abused its discretion in granting the transfer.

Accordingly, it is, on this 4th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against JOHN SKAWIENSKI 146 Locust Avenue Wallington, N. J., Holder of Plenary Retail Consumption License C-13, issued by the Mayor and Council of the Borough of Wallington.	CONCLUSIONS AND ORDER

John Skawienski, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded guilty to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On April 26, 1946, defendant possessed a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled. It appears that the said bottle had been at least partially refilled with another "Canadian" whisky.

Because defendant has no prior adjudicated record, I shall suspend his license for a period of fifteen days. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 5th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Mayor and Council of the Borough of Wallington to John Skawienski, for premises 146 Locust Avenue, Wallington, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. June 11, 1946, and terminating at 3:00 a.m. June 26, 1946.

ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against

PHILIP YELLEN
236 Broadway
Long Branch, N. J.,

Holder of Plenary Retail Consumption License C-38, issued by the Board of Commissioners of the City of Long Branch.

CONCLUSIONS AND ORDER

Milton M. Abramoff, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded not guilty to a charge alleging that he possessed a 4/5 quart bottle of "Hildick Apple Jack 86 Proof Brandy", which contained an alcoholic beverage not genuine as labeled.

There is no dispute as to the facts. On January 19, 1946, an ABC agent, after testing the defendant's open stock of thirty-seven liquor bottles, seized the bottle referred to above. Chemical analysis disclosed that the contents of the seized bottle were substantially lower in acids than a genuine sample of the same product. In addition, the chemist found added artificial color, whereas the genuine product contained only natural coloring. His conclusion was that the contents of the seized bottle were not genuine as labeled. In this testimony, the chemist was supported by a representative of the manufacturer and bottler of the product.

The defense is rested upon the licensee's disclaimer that he personally tampered with the bottle and his denial of any knowledge as to how the violation occurred. While it is true that there is no evidence to link the defendant with any actual refilling or to indicate that he personally was aware that the bottle had been refilled, he must, nevertheless, be found guilty as charged. Cf. Re Kurian, Bulletin 517, Item 2. Under the statute, the mere possession on licensed premises of the bottle in question constituted a violation. See R. S. 33:1-50.

The defendant's previous record includes a suspension for sales to minors. See Bulletin 609, Item 5. Under the circumstances, a penalty of twenty days will be imposed herein. Cf. Re Burns, Bulletin 711, Item 7.

Accordingly, it is, on this 6th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-38, issued by the Board of Commissioners of the City of Long Branch to Philip Yellen, for premises 236 Broadway, Long Branch, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. June 10, 1946, and terminating at 2:00 a.m. June 30, 1946.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATE OF SUSPENSION (SEE BULLETIN 715, ITEM 2).

In the Matter of Disciplinary Proceedings against

JOHN SKAWIENSKI
146 Locust Avenue
Wallington, N. J.,

Holder of Plenary Retail Consumption License C-13, issued by the Mayor and Council of the Borough of Wallington.

ORDER

John Skawienski, Petitioner, Pro se.

An Order having been entered herein on the 5th day of June, 1946, suspending Plenary Retail Consumption License C-13, issued by the Mayor and Council of the Borough of Wallington to John Skawienski, for a period of fifteen days, commencing at 3:00 a.m. June 11, 1946, and terminating at 3:00 a.m. June 26, 1946; and

It appearing in a petition filed herein for postponement of the commencement of suspension of the license that, prior to the entry of the Order of suspension, arrangements had been completed for numerous social affairs to be held at the licensed premises between June 14, 1946 and June 29, 1946; and

It appearing further that numerous innocent persons would be inconvenienced by the suspension of the license for the fifteen-day period beginning June 11, 1946;

It is, on this 10th day of June, 1946,

ORDERED, that the said suspension of fifteen days, effective at 3:00 a.m. June 11, 1946, is hereby lifted, and in view of the fact that said license will expire on June 30, 1946, it is

FURTHER ORDERED, that the fifteen-day suspension heretofore imposed upon License C-13 is hereby imposed upon any license which shall be granted to the petitioner herein, or to anyone else for the said premises, for the licensing year 1946-1947, commencing at 3:00 a.m. July 2, 1946, and terminating at 3:00 a.m. July 17, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - NIXON v. EASTAMPTON TOWNSHIP.

ERNEST R. NIXON,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EASTAMPTON,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

James M. Davis, Jr., Esq., Attorney for Appellant.
Bayard Allen, Esq., Attorney for Respondent.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises on the west side of State Highway Route 39, south of Powell Road, Township of Eastampton.

It appears from the testimony in the instant case that appellant was the holder of a plenary retail consumption license for a period of six years, i.e., from July 1, 1939 to June 30, 1945, inclusive, for premises on the west side of State Highway Route 39, at the end of Harvey Snyder's Lane. A short time previous to the end of the 1944-45 licensing period, appellant moved the building in which his licensed premises had been located to its present site about a mile south on the same highway. In June, 1945, his application for a place-to-place transfer from his old location to his new location was refused by the local issuing authority. The respondent, however, in July, 1945, granted an application made by appellant for a plenary retail distribution license for the current 1945-46 period for the new location of his premises.

Respondent assigned, in substance, the following grounds for its action in refusing to authorize the issuance of a plenary retail consumption license to the appellant on the west side of Route 39: (1) it has been respondent's policy to reduce the number of plenary retail consumption licenses in the Township of Eastampton upon the surrender of any such license; (2) public necessity and convenience does not require the issuance of a plenary retail consumption license for the premises in question; (3) there are sufficient licenses existing in the vicinity of appellant's premises to adequately serve the needs of the public; (4) the location of the licensed premises is in a purely rural residential neighborhood, and it is the policy of respondent Township Committee to reserve same for residential purposes; and (5) the present location is situate in such a manner that, in the judgment of respondent Township Committee, it would constitute a traffic hazard.

Appellant testified that there is a licensed premises two and three-quarter miles north on Route 39 and another approximately five miles south on the same highway. He also testified that both of these licensed premises are in other municipalities and are not permitted by local regulation to be open on Sundays. The nearest place permitted to sell alcoholic beverages on Sundays, according to the appellant, is about twelve miles from his premises.

Harry F. Hogan, chairman of the respondent Township Committee, testified that he voted against the issuance of the license to appellant because the residents near the new location objected to the issuance of such a license. Edward H. Brown, also a member of the Township Committee, testified that he voted against the issuance of such license for a similar reason.

Several other witnesses also voiced objections thereto. Among these was one Wilmer Collins, who testified that he was the president of an association which used the property adjoining the site on which appellant's premises are located as a camp which accommodated about 150 people over each week-end, and, in addition thereto, Collins testified that 100 to 150 other persons attend the Sunday school conducted by his association. This camp is approximately 2/10 of a mile from appellant's premises or, as Collins stated, less than 1100 feet away.

Everett Lindsey, a resident of Southampton Township, which adjoins the municipality in which the licensed premises are located, objected to the issuance of the license to appellant because of its close proximity to a camp for children, which is conducted during the summer season, and also because of the traffic hazard that might result at the intersection of Powell Road and Route 39.

The issue on an appeal from the denial of an application for a consumption license is not to be confused with the issues raised on an appeal from a revocation of a license, or the refusal to grant a transfer, or the refusal to grant an application for the renewal of a license. The question to be decided in an appeal such as this is whether the application was denied in the reasonable exercise of a proper discretion and in good faith. Within the State of New Jersey no one has a right to demand a license. A license to sell alcoholic beverages is a special privilege granted to the few and denied to the many. Cf. Bumball v. Burnett, 115 N. J. L. 254. The neighborhood wherein the licensed premises are located appears to be residential in character. The mere fact that respondent had previously issued consumption licenses to appellant when his building was located at the end of Harvey Snyder's Lane does not mean that it must necessarily issue a consumption license to him for his present location. Whether the Township Committee was even justified in issuing a plenary retail distribution license to appellant, of course, is not an issue in this case. Furthermore, such action is not dispositive of the present matter. A consumption license, which permits drinking on the premises, may be objectionable in a certain location whereas a distribution license may not be objectionable in the same location.

The burden of proof rests with appellant to show that there was an actual need for a plenary retail consumption license at his present premises. I am satisfied that he has utterly failed in this respect.

In view of the facts adduced at the instant hearing, it is quite obvious that the denial of the application by the local issuing authority was not arbitrary or unreasonable. The action of the respondent is, therefore, affirmed.

Accordingly, it is, on this 11th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

6. APPELLATE DECISIONS - HNEIDAY AND GOLDSMITH v. NEWARK.

MICHAEL HNEIDAY and SIMON GOLDSMITH, t/a KINGS AND QUEENS CLUB, Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondents	ON APPEAL CONCLUSIONS AND ORDER

Maurice H. Pressler, Esq., Attorney for Appellants.
Thomas L. Parsonnet, Esq., by Charles S. Gansler, Esq., Attorney for Respondent.

This is an appeal from the imposition of a fifteen-day suspension of the appellants' plenary retail consumption license after the respondent had found them guilty of charges alleging the sale and service of alcoholic beverages to a minor. Upon the filing of the appeal, the suspension was ordered stayed until the outcome of these proceedings.

This matter was brought to the attention of the local Board after the female minor and her male companion were apprehended, about 1:00 a.m. on Sunday morning, September 9, 1945, while committing an immoral act in the latter's automobile. Upon being questioned by the police, they mentioned that they had visited several taverns on Saturday night, September 8, 1945, one of which was that of the appellants. In addition, they stated that they had also consumed alcoholic beverages at the appellants' premises on September 6, 1945. Because, however, their statement as to the occurrence on September 8, 1945 "was confused", the police limited their complaint to the date of September 6, 1945, and the charge brought against the appellants likewise was confined to September 6, 1945. Indeed, the respondent's attorney stated that "I am not concerned with the 8th or 9th. It has no bearing on this case at all. We are not alleging any occurrence on the 8th."

The entire case against the appellants revolves about the testimony of the minor and her escort. It appears that she entered the appellants' tavern, struck up an acquaintance with the male and consumed a beverage. That much, at least, is clear from the record. The balance of their testimony, however, is replete with inconsistencies and admitted contradictions. It is impossible to make a definite determination as to the time the minor entered the tavern on September 6, 1945, or the number and kind of drinks she allegedly consumed. At the hearing below, she first stated that she had arrived at the premises "around 7:30, 8:00 o'clock", after going to an early moving picture show at RKO Proctor's Theater. Her statement to the police, however, alleged that she had gone to the "Capitol Theater.....to the 10:00 p.m. show and I got out....about 12:30 a.m." and then went to appellants' tavern. Later in her testimony, she said that she had arrived at the tavern "around 10:30" and stayed there until "12:00 o'clock". Concerning the kind and number of drinks that she had, she

variously stated "two beers", a "coke and one beer" and a "coke and two beers".

Her companion, a married man, testified that the minor had one beer and nothing else, and that she had entered the tavern "about a quarter after one". In his police statement, however, he alleged that the minor "came into the tavern about 1:45 a.m." and that she consumed two glasses of beer.

At the appeal hearing, their testimony was equally unimpressive. In several material respects, they gave differing versions of what occurred on the occasion in question. It is impossible to reconcile all of their inconsistent statements. Although there is no reason to believe that they deliberately falsified their testimony, it may well be that they confused the appellants' tavern with several others that they had visited.

The appellants do not deny that the minor was at their premises on September 6, 1945, but insist that she was served only a soft drink because her appearance stamped her as an obvious minor. In this testimony, the appellants have the support of three apparently disinterested witnesses, all of whom testified that the minor was served only one drink of Coca Cola.

While the local Board is to be commended for the institution and prosecution of these proceedings, the record is so confused with respect to the alleged events on the date charged that they must be found not guilty of the charges brought against them. The testimony of the minor and her companion at the appeal hearing only tended to further weaken their testimony given before the Board. In addition, the respondent did not have the benefit of the evidence offered by the three disinterested witnesses referred to above. In my opinion, the evidence is insufficient to sustain the determination of the local Board. I therefore have no alternative other than to reverse its action.

Accordingly, it is, on this 11th day of June, 1946,

ORDERED, that the respondent's action in finding the appellants guilty of the aforesaid charges and suspending their license for a period of fifteen days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

ERWIN B. HOCK
Deputy Commissioner.

7. APPELLATE DECISIONS - WILLIAMS ET AL. v. ATLANTIC HIGHLANDS AND ANNA E. SMITH.
WILLIAMS ET AL. v. ATLANTIC HIGHLANDS AND STANLEY E. SMITH.

ROY E. WILLIAMS, JR. and DONALD N. CORREAL,

Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF ATLANTIC HIGHLANDS and ANNA E. SMITH,

Respondents

ON APPEAL

ROY E. WILLIAMS, JR. and DONALD N. CORREAL,

Appellants,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF ATLANTIC HIGHLANDS and STANLEY E. SMITH, t/a HOMESTEAD INN,

Respondents

CONCLUSIONS AND ORDER

Elmer O. Goodwin, Esq., Attorney for Appellants.
John M. Pillsbury, Esq., Attorney for Respondent Borough Council.
Parsons, Labrecque & Borden, Esqs., by John T. Smith, Esq., Attorney for Respondent-licensee, Anna E. Smith.
Stanley E. Smith, Pro se.

These appeals are closely related and will be decided together.

On August 28, 1945, respondent transferred a plenary retail consumption license held by Anna E. Smith from premises known as 118 Center Avenue to 115 First Avenue, and at the same time issued a new license to Stanley E. Smith for the premises known as 118 Center Avenue.

Appellants have filed these appeals alleging, in substance, that respondent abused its discretionary power by transferring an existing license and granting a new license, thus increasing by one the number of plenary retail consumption licenses in the Borough of Atlantic Highlands. In the case involving the transfer of a license held by Anna E. Smith, it was alleged also that the premises to which her license was transferred is within two hundred feet of a church.

For many years the Homestead Inn has been operated at 118 Center Avenue. Anna E. Smith was the holder of a plenary retail consumption license at the Homestead Inn from April 14, 1942 until the termination of her lease upon the said premises. Thereupon she sought and obtained a transfer of her license to 115 First Avenue, and Stanley E. Smith obtained a new license for the Homestead Inn.

No question has been raised as to the personal qualification of either Anna E. Smith or Stanley E. Smith. There is no ordinance limiting the number of licenses which may be issued in the Borough of

Atlantic Highlands. Prior to the action taken by respondent on August 28, 1945, nine plenary retail consumption licenses, including the license held by Anna E. Smith, had been in existence, and the issuance of the license to Stanley E. Smith resulted in an increase in the number of plenary retail consumption licenses from nine to ten.

In attempting to show that respondent abused its discretionary power, appellants rely to a large extent upon the fact that in November, 1944, respondent Council denied an application for a distribution license to one Lemberg on the ground that "there (was) a sufficient number of licensed premises in the Borough". It appears that since November 1944 the population of the Borough has increased by some 1,000 residents (Williams et al. v. Atlantic Highlands and Richard, Bulletin 700, Item 3) and that there presently exists one plenary retail consumption license for every three hundred forty residents of the Borough. These licenses were issued prior to the enactment of P. L. 1946, c. 147. While experience, prior to the enactment thereof, has demonstrated the desirability of limiting consumption licenses to one per 1,000 population, it is not my function on appeal to substitute my private opinion for the decision reached by respondent Council but, rather, to determine whether there is reasonable basis for such decision and, if so, to affirm, irrespective of my personal views. The burden of establishing that respondent abused its discretionary power rests upon the appellant. Winner v. Delran and Ott, Bulletin 701, Item 4.

In considering the application to transfer the license held by Anna E. Smith, the members of the Borough Council were faced with the alternative of granting her application to transfer her license to other suitable premises, or denying her application, thus forcing her to discontinue her activities as a liquor licensee. Her record as a licensee for a period of approximately three-and one-half years is clear of any adjudicated violations, and the place to which her license was transferred is located on the principal business street of the Borough. The transfer to other premises is a privilege not inherent in a license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. Under the circumstances, it does not appear that respondent abused its discretionary power in granting the place-to-place transfer of the license held by Anna E. Smith.

It is true that the issuance of the license to Stanley E. Smith increased the number of plenary retail consumption licenses in the Borough. However, it has been stipulated by the parties to this appeal that the Homestead Inn is the only bona fide hotel in the Borough of Atlantic Highlands.

While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses (see Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1, and Peck v. West Orange, Bulletin 147, Item 1), nevertheless it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no "must" in the Control Act, which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. Lincoln Avenue Corporation v. Wildwood, Bulletin 540, Item 2.

The evidence herein discloses that various fraternal and civic associations hold their meetings at Homestead Inn. A restaurant is conducted in conjunction with the hotel business and the premises have been continuously licensed for the sale of alcoholic beverages since repeal of the National Prohibition Act. As stated above, Homestead Inn is the only bona fide hotel in the Borough. Cf. Cassullo v. White, Bulletin 399, Item 4.

The members of the Borough Council voted unanimously to grant the license to respondent, Stanley E. Smith. Nothing has been presented on the appeal indicating that the members of the Council acted other than with proper motives.

I am satisfied that the members of the respondent Borough Council, based on the evidence of need presented to them, together with their personal knowledge of the use of the hotel premises by the various fraternal and civic associations, were of the opinion that the issuance of a liquor license to Stanley E. Smith was warranted.

Under the peculiar facts of this case, I conclude that appellants have not established that respondent abused its discretion by its action taken on August 28, 1945, despite the fact that the number of plenary retail consumption licenses was thereby increased from nine to ten.

Since the hearing of the appeal, respondent Anna E. Smith has closed off the part of her licensed premises formerly used as a restaurant, which part was nearest to the church, and the sole entrance to her licensed premises is now beyond 200 feet from the nearest entrance to the church.

For the reasons aforesaid, I shall affirm the action of respondent in transferring the license held by Anna E. Smith and issuing a new license to Stanley E. Smith.

Accordingly, it is, on this 11th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (PRIMARY ELECTION DAY) - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MILDRED TANTON, Executrix of the Estate of William Tanton
3523 Hudson Boulevard
Jersey City 2, N. J.,

Holder of Plenary Retail Consumption License C-93 issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Mildred Tanton, Executrix, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that, on June 4, 1946, a Primary Election Day, she sold and permitted the consumption of alcoholic beverages on her licensed premises while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20.

On June 4, 1946, at about 11:30 a.m., ABC investigators, who were then outside the licensed premises, observed in the barroom a man with a glass of beer in his hand. The door was locked but, in response to a knock, the bartender opened the door and admitted the investigators. The bartender orally admitted that he had served the beer to the patron, but stated that no charge had been made therefor.

A gift of any alcoholic beverages by a licensee constitutes a sale. R. S. 33:1-1(w). Moreover, Rule 2 of State Regulations No. 20 prohibits the consumption of alcoholic beverages on licensed premises while the polls are open on a Primary Election Day.

I find defendant guilty as charged.

The licensee has no prior adjudicated record. I shall suspend the license for a period of fifteen days, with a remission of five days because of the plea, making a net suspension of ten days. Re Hrycenko, Bulletin 672, Item 5.

Accordingly, it is, on this 12th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-93, issued by the Board of Commissioners of the City of Jersey City to Mildred Tanton, Executrix of the Estate of William Tanton, for premises 3523 Hudson Boulevard, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 17, 1946, and terminating at 2:00 a.m. June 27, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. STATE LICENSES - APPLICATION FOR PLENARY WHOLESALE LICENSE DENIED.

In the Matter of an Application for a Plenary Wholesale License by

PHILLIP HOFFMAN
T/a HOFFMAN IMPORT & DISTRIBUTING CO.
115 Railroad Avenue
Jersey City, N. J.

CONCLUSIONS

This is an application for a new Plenary Wholesale License filed by Phillip Hoffman who, from 1933 to 1935, was connected in business with the holders of wholesale licenses issued in the State of New Jersey. From 1937 until August 23, 1945, applicant was a stockholder of a corporation holding a Plenary Retail Distribution License in the City of Jersey City. He has rented as his proposed licensed premises a space containing approximately 2,500 square feet on the fourth floor of the building known as 115 Railroad Avenue, Jersey City, which will be used for offices and salesroom. He has arranged to have his alcoholic beverages warehoused by the Sherman Warehouses, Inc., which occupies the balance of the fourth floor of said premises.

Investigation has been made with particular reference to the alleged source of supply in order to determine whether the facts of this case warrant the issuance of a new wholesale license. The applicant alleges that he has arranged with Dreyfus, Ashby & Co., Inc., 350 Fifth Avenue, New York City, for the exclusive right to handle their line of wines and liquors in New Jersey. Dreyfus, Ashby & Co. does not hold a liquor license in the State of New Jersey and has been in existence for a period of approximately one year. Among the items which applicant alleges he will receive from Dreyfus, Ashby & Co. are the following:

Page & Sandeman Scotch
Seagers, Evans Gin

During the course of a subsequent investigation a representative of Dreyfus, Ashby & Co. stated that his company has been expecting a shipment of Page & Sandeman Blended Scotch Whiskey since December 1945 but to date the shipment has not arrived. He stated that, depending upon the quantity of scotch received, he would sell some to Hoffman, and that the same situation prevailed as to Seagers, Evans Gin, which is imported from England.

The representative also stated that he would sell Hoffman two or three carloads of California wine.

The applicant also stated that he had arranged with one Joseph Schuquette to handle "French cordials, wines, Irish whiskey and other spirits which he may be able to obtain on exclusive import." Applicant stated that it was his intention, "if Mr. Schuquette was successful in obtaining any lines abroad," to leave for abroad to sign for exclusive contracts for importation of their lines.

In addition, the applicant has indicated that he has been offered the exclusive distribution of some Spanish sherries and brandies and that he could obtain a quantity of imported Swiss cordials.

The net result of the investigation is that it does not appear that applicant has any present prospect of obtaining any substantial supply of alcoholic beverages except California wines and perhaps some imported wines, brandies and cordials. There is no dearth of the aforesaid products at the present time. Under the circumstances, I do

not believe that the applicant has demonstrated that the issuance of a Plenary Wholesale License to him would serve any public convenience or necessity. No one has a "right" to obtain a liquor license.

For the reason aforesaid, in the exercise of my discretionary power, the application for a Plenary Wholesale License is denied.

Dated: June 13, 1946.

ERWIN B. HOCK
Deputy Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (PRIMARY ELECTION DAY) - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
JOSEPH J. GANLEY)
T/a GANLEY'S CAFE) CONCLUSIONS
710 Summit Avenue) AND ORDER
Jersey City 6, N. J.,)
)
Holder of Plenary Retail Consumption License C-444, issued by the Board of Commissioners of the City of Jersey City.)

William T. Cahill, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that on June 4, 1946, a Primary Election Day, he sold and permitted the consumption of alcoholic beverages on his licensed premises while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20.

When ABC investigators entered defendant's premises on June 4, 1946, at about 9:35 a.m., they observed six men at the bar drinking beer which had been served to them by the licensee. I find defendant guilty as charged.

The licensee has no prior adjudicated record. I shall suspend the license for a period of fifteen days, with a remission of five days because of the plea, making a net suspension of ten days. Re Hrycenko, Bulletin 672, Item 5.

Accordingly, it is, on this 12th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-444, issued by the Board of Commissioners of the City of Jersey City to Joseph J. Ganley, t/a Ganley's Cafe, for premises 710 Summit Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 17, 1946, and terminating at 2:00 a.m. June 27, 1946.

Erwin B. Hock
Deputy Commissioner.