Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 141. October 7, 1936.

1. APPELLATE DECISIONS - MILLS vs. EAST BRUNSWICK TOWNSHIP.

JOSEPH MILLS,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE) CONCLUSIONS
TOWNSHIP OF EAST BRUNSWICK,)
Respondent.)

Samuel G. Cohen, Esq., Attorney for Appellant.
Kalteissen & Busch, Esqs., by Lewis D. Busch, Esq.,
Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises located on State Highway S-28, Township of East Brunswick.

Respondent contends that the denial was proper because the premises sought to be licensed are located in a residential neighborhood and residents of the vicinity, almost unanimously, objected thereto.

Appellant's premises consist of a two-story brick building containing two stores and apartments upstairs. There is considerable traffic on the Highway. The surrounding area is sparsely populated, but there are a number of residences both on the Highway and on side streets and roads. The Lawrence Brook Country Club property, which contains about one thousand (1,000) acres, is directly across the Highway from the premises in question. The only business places in the vicinity are a lunchroom about two hundred feet away and two gasoline stations, one of which is about twelve hundred (1200) feet and the other about four thousand (4,000) feet from the premises for which the license is sought.

A petition containing about forty-five names was presented to respondent requesting that the license be denied. At the hearing of the appeal, three residents of this section appeared, testified as to the residential character of the community and stated that their objections were based principally upon this ground.

Much of the evidence at the hearing concerned the terms of a zoning ordinance which has been in effect since July 1932. Admittedly, appellant's premises are in a section which is zoned for residential purposes. Appellant contends, however, that the ordinance does not apply to his property because the erection thereon was begun before the ordinance became effective. Whether the ordinance bars appellant from conducting any business at his premises must be determined, if at all, at another time and place, because I find as a fact that the section is residential

in character and, hence, the zoning ordinance restriction is not necessary to justify respondent's action. Vanozzi vs. Trenton, Bulletin #35, item 7.

There is no substantial evidence in the record that an additional licensed place is necessary to take care of local needs. Appellant intended to rely, to some extent, upon trade from friends who reside in New Brunswick, which is about a mile away. Respondent contends that other licensed places along this highway, the nearest of which is twenty-two hundred feet from appellant's premises, can take care of the transient trade. Appellant has not sustained the burden of proof.

In view of the character of the neighborhood, the objections of residents therein, and the existence of sufficient licensed places, it cannot be said that the denial was unreasonable. Apgar vs. Tewksbury, Bulletin #66, item 2; Bowlbyville vs. Randolph, Bulletin #81, item 12; Herrman vs. Landis, Bulletin #88, item 1; Dunster vs. Bernards, bulletin #121, Item 11.

There was no discrimination. The twelve applications granted this year were renewals. No new licenses were granted.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: October 1, 1936.

2. LICENSES - RENEWALS - GAP BETWEEN EXPIRATION OF OLD LICENSE AND ISSUANCE OF NEW LICENSE WILL NOT NECESSARILY PRECLUDE CONSIDERATION OF THE LATTER AS RENEWAL - EACH CASE MUST BE DECIDED ON ITS OWN FACTS AND THE INTENT OF THE LICENSEE TO PRESERVE THE BUSINESS OPERATED BY HIM UNDER THE EXPIRED LICENSE IS GOVERNING FACTOR.

Gentlemen:

On July 9, 1936, the City of Camden passed an ordinance limiting the number of licenses in that city to 200, a copy of which ordinance is in your files in the case of Frida Beringer and New Jersey Licensed Beverage Dealers Association vs. Fannie Mazer and City of Camden.

In lieu of the existing ordinance, will you kindly let me know if the Excise Commission of the City of Camden, through its counsel, has the authority to declare that renewals of outstanding licenses which expired on June 30, 1936 can be renewed at any time up until and including June 30, 1937?

Respectfully yours,

NEIL F. DEIGHAN,
President, NJLBA

September 22, 1936.

Neil F. Deighan, Esq.,
President, N. J. Licensed Beverage Ass'n.,
R.F.D., Palmyra, N. J.

Dear Sir:

As I understand your inquiry, you desire to know whether

a license which expired on June 30, 1936 may be "renewed" at any time prior to July 1, 1937 within the terms of an Ordinance limiting the issuance of licenses, except renewals.

The Control Act contains no definition of the word "renewal" but reference thereto is found in Sections 19, *22A and 76 of the Control Act and in numerous rulings by the Commissioner. See Bulletin #72, Item #1; Bulletin #79, Item #3; and Bulletin #101, Item #1. It is clear that the issuance of a new license of the same type at the expiration of an existing license to the same person for the same place is properly considered as a renewal within the meaning of the Act and the Commissioner's rulings.

The fact that there is a gap between the expiration of the old license and the issuance of the new license will not, of itself, necessarily preclude consideration of the latter license as a renewal. Thus, a licensee may unduly delay publication with the result that the new license is not issued for a short time after the expiration of his old license. Here it is evident that there is no intent to abandon the business and the license ultimately issued can properly be treated as a renewal. Cf. Presbyterian Church vs. Miller, 85 N.J.L. 463 (Sup. Ct. 1914). On the other hand, where a license expired and there is an actual abandonment of the business by the licensee, the license can no longer be "renewed"; an application thereafter made will be for a new license even though made by the same person for the same premises.

Each case will have to be decided on its own facts by the issuing authority and the intent of the licensee to preserve and continue the same business operated by him under the expired license will be a governing factor. Under this line of thought no arbitrary time limit can be fixed, although it would seem that in general renewals of licenses which expired on June 30, 1936 must be issued, if at all, during the current license period.

Very truly yours,

D. FREDERICK BURNETT
Commissioner,

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - FOURTEEN DAY SUSPENSION FOR SALE TO YOUTH OF EIGHTEEN.

October 1, 1936.

John N. DeBrunner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Hillside, New Jersey.

Dear Mr. DeBrunner:

I have staff report and your certification of proceedings before the Municipal Board of Alcoholic Beverage Control of Hillside against Joseph Gross, charged with having sold alcoholic beverages to a minor. I note the licensee pleaded guilty and his

license was suspended for two (2) weeks, October 1 to 14 inclusive.

The report states:

"Pursuant to complaint that alcoholic beverages were being sold and delivered to minors at the above licensed premises, Deputy Chief Mason and Captain Korlesky of the Hillside Police Department proceeded to the licensed premises on August 1, 1936, arriving there about 7 P. M. They observed a young man come out with a bag containing bottles. They stopped him and ascertained that he carried three bottles of beer which he had purchased in the licensed premises. He stated that he was 18 years of age. He identified the licensee as the one who sold him the beer. At that time and also at the hearing the licensee contended that the young man appeared to be over 21 years of age."

The penalty imposed is the sort that will impress licensees that the law and rules and regulations affecting their licenses are made to be obeyed.

Please convey to the members of your Board my respect and appreciation for their splendid cooperation in law enforcement.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - THIRTY DAY SUSPENSION FOR SALE TO GIRL OF FOURTEEN WHO SUBSEQUENTLY WAS ASSAULTED - LICENSEES WHO SELL TO MINORS WILL HAVE TO TAKE THE CONSEQUENCES.

October 1, 1936.

James Y. Bishop, Clerk,
Borough of Brooklawn,
Gloucester City, N. J.

Dear Mr. Bishop:

I have staff report and your certification relative to proceedings before the Mayor and Council against Benjamin Maseloff charged with having sold and delivered alcoholic beverages to a minor - a girl 14 years of age.

The report states:

"By letter of August 31, 1936, David C. Reich, Director of Public Safety of Brooklawn related facts which disclosed that sales of alcoholic beverages had been made to a minor at the above licensed premises. He requested advice as to the procedure in revocation matters, which was immediately furnished. Charges were served and on September 21st, a hearing held. It disclosed that on August 24th a girl - age 14 years - visited the above licensed premises in the company of two men. She was served alcoholic beverages by the waitress in charge and became intoxicated. The minor was served three beers. They left the licensed premises between 1 and 1:30 A.M., August 25th. It is alleged that the girl was later criminally assaulted by one of the men."

I note the licensee was adjudicated guilty and his license suspended for one month, October 1 to 31st inclusive.

No opinion is expressed as to the merits of the case because that, perchance, may come before me by way of appeal.

The penalty inflicted is appropriate. True, the licensee did not actually mean to injure that girl, but he should have foreseen that serving liquor to a fourteen year old girl might well lead to disastrous results. It is no excuse to say that he did not know what was going to happen. I daresay the man who sold a few beers to that Bayonne boy and girl little dreamed that a few hours later they would be charged with the brutal, unnatural murder of the girl's mother. Licensees who serve minors will have to take the consequences. It takes no great degree of intelligence for anybody to determine that a girl of fourteen years is a minor. No sympathy is to be wasted on any licensee who makes such a sale.

The refreshingly drastic action of your Board is deeply appreciated.

Please also extend to Mr. David C. Reich my respect and esteem for his prompt and salutary action as Director of Public Safety.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. CLUB LICENSES - BONA FIDE GUESTS - IF GUESTS ARE IN FACT BONA FIDE THERE IS NO LIMIT ON THE NUMBER.

CLUB LICENSES - PRIVILEGES CONFERRED - SALES TO NON-MEMBERS AND PERSONS WHO ARE NOT BONA FIDE GUESTS MAY BE MADE ONLY PURSUANT TO SPECIAL PERMIT.

October 1, 1936.

J. Elmer Hausmann, Esq.,
Newark, N. J.

My dear Mr. Hausmann:

There is no limit on the number of persons which a member of a club may invite to the club as his guests. The question is: Are they or are they not bona fide guests. As to what constitutes a bona fide guest, see Notice to Club Licensees, Bulletin 100, item 3 and re Greer, Bulletin 50, item 6, copies enclosed. If the guests are bona fide, the member may invite as many as he chooses and the club, under its club license, may serve them. If the guests are not bona fide, it makes no difference whether there is one or a hundred; under the club license, they may not be served - a special permit would first have to be obtained.

Of course, if tickets for social functions are sold to non-members, those non-members are clearly not bona fide guests. And unless the club holds a plenary retail consumption license which allows sales of alcoholic beverages to the general public, it would be necessary for the club to obtain a special permit before the non-members could purchase or be served with alcoholic beverages.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - REFRESHING ATTITUDE OF LICENSEE WHO HAD BEEN PUNISHED.

Hamburg, N. J.

Mr. Burnett,
State Beverage Commissioner.

Dear Sir:

Re the recent penalty that was inflicted upon me for selling to a minor, may I say that I also felt the penalty inflicted was both fair and lenient. The violation was unintentional inasmuch as I try to conduct a clean law-abiding establishment. It is with much regret that I have any violation recorded against me. I can assure you that I will be more careful and cautious in the future and that there will be no further violations of its kind to mar the otherwise clean record that I have had until the present time.

Yours truly,

ELSIE M. LUTZ
Castle Inn,
Hamburg, New Jersey.

October 4, 1936.

Miss Elsie M. Lutz,
Castle Inn,
Hamburg, N. J.

My dear Miss Lutz:

Your attitude is refreshing. If every licensee in the State reacted as you, there would be no fear of the return of Prohibition. It's our common human failing to make mistakes. Too seldom we profit. Never - well, hardly ever - do we admit, as you, that our chastening is deservedly fair. That's why you have my respect and kindliest wishes.

Sincerely yours,

D. Frederick Burnett
Commissioner

7. APPELLATE DECISIONS -- GREENBERG vs. CALDWELL.

LOUIS GREENBERG,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS.
MAYOR AND COUNCIL OF THE)
BOROUGH OF CALDWELL,)
Respondent.)

. . . . . .

Alexander P. Waugh, Esq., Attorney for Appellant.
Philip D. Elliot, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The Caldwell Ordinance forbids sale of alcoholic beverages on Sundays. Appellant, nevertheless, sold a bottle of whiskey on Sunday, was arrested, pleaded guilty and fined. Afterwards, he applied for a renewal of his license, which was denied. Hence this appeal.

To state the facts is to decide the case. A licensee who violates the rules is not entitled to renewal.

The fact that the sale was made to a woman who was sent to the appellant's premises for the express purpose of making the purchase is immaterial. One would hardly expect a sale to a policeman in uniform. The fact that it was appellant's wife who made the sale makes no difference. The licensee is responsible for his employees. Wellens v. Passaic, Bulletin #134, Item #4. Sales made by his wife under his license are in legal effect made by him. He knew "I wasn't supposed to sell on Sunday." She knew it too for she herself testified that she said to the purchaser whom she thought would buy and not tell "Don't you know we are not allowed to sell on Sunday?" The fact that the Mayor and Council, in view of the few days between conviction on June 9th and the expiration of the license on June 30th, did not revoke it, is appellant's luck and not a cause of complaint by him.

It is essential to sound control of the liquor traffic that issuing authorities shall have full right to deny renewals to those who violate the rules.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 5, 1936.

8. APPELLATE DECISIONS - LALLIKER vs. NEW MILFORD.

CATHERINE E. LALLIKER, :

Appellant, :

-vs- : ON APPEAL

BOROUGH COUNCIL OF THE BOROUGH OF NEW MILFORD, : CONCLUSIONS

Respondent. :

James H. White, Esq., Attorney for Appellant.
William M. Seufert, Esq., by Walter C. Seufert, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at the northwest corner of River Road and Main Street, New Milford, Bergen County.

Respondent denied the application because, among other grounds alleged, of the manner in which the premises have been conducted in the past and the objections of neighboring residents.

The premises have been licensed continuously since Repeal. During practically that entire period they have been the cause of numerous complaints to the police department from neighboring residents. The Chief of Police testified that the place in question has been more trouble than all the other eight taverns together. Both he and numerous objectors testified to the boisterous, noisy conduct of the patrons, the constant profanity and the dancing and congregating on the sidewalks in front of the premises. Brawls among intoxicated customers are not infrequent. People living 200 feet from the premises are unable to sleep because of the unnecessary noises which continue long after midnight.

The management of the place has changed hands frequently. Appellant is the third to take over the premises within the past year. No material improvement has been observed as the result of previous changes in management. Apparently the same undesirable crowd drifts back each time.

Appellant argues that she has no connection with the former licensees and should not be penalized because of the improper manner in which they conducted the premises in the past.

The reputation of the premises sought to be licensed is a proper factor to be considered by the issuing authority in determining whether to issue a license for that place. Zito v. Newark, Bulletin #69, item 14; MacGrath v. Haddon, Bulletin #44, item 9; Alexander v. Trenton, Bulletin #37, item 13.

It may well be that the license should not have been renewed in previous years. However, it is evident that the respondent is now convinced that it should not again hazard the recurrence of the neighborhood annoyance caused by the previous opera-

tion of the saloon in question. Such a determination, when made in good faith and substantially supported by the evidence, will be sustained. Goodman v. Atlantic City, Bulletin #128, item 8.

Accordingly, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 5, 1936.

9. APPELLATE DECISIONS - ELEUTERI vs. TRENTON.

PETER ELEUTERI, :

Petitioner, :

-vs- :

CITY COUNCIL OF THE CITY OF TRENTON, :

Respondent. :

ON PETITION

CONCLUSIONS

Felcone & Felcone, Esqs., by Joseph Felcone, Esq., Attorneys for Petitioner.
Adolph F. Kunca, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On June 26, 1936 respondent adopted a resolution renewing petitioner's plenary retail consumption license for premises located at #184-186 Anderson Street, Trenton, on condition that "the outdoor rolle bocci game be discontinued".

The licensee filed a petition in the nature of an appeal complaining that the special condition imposed upon his license was unreasonable and discriminatory, and praying that the Commissioner withhold his approval thereof. Thereupon a hearing was held upon notice to all parties and evidence taken.

"Bocci" is an Italian game similar to lawn bowling, played out-of-doors with wooden balls about twice the size of a baseball. Any fairly level ground is suitable. Sometimes, to keep the balls from rolling too far away, wooden boards are set up surrounding the particular area where the game is to be played. Any number of players, up to eight, may participate, each ordinarily using two balls. A small wooden ball known as a cue ball is rolled twenty-five to thirty feet away from the starting line. Each player in turn then takes his place at the starting line and rolls a ball towards the cue ball, his purpose being to roll his ball in such fashion that it will stop closest to the cue ball. The one succeeding in doing this wins the point. The balls are frequently rolled with considerable speed and, in striking against each other or the wooden sides of the alley, make a resounding noise.

The licensee has constructed two so-called alleys in his back yard, each approximately 12x30 feet in area and bounded by wooden planks several feet high. Until their use was ordered discontinued, these alleys were used every day and evening, the games attracting large numbers of players and vociferous onlookers.

The licensed premises are located in a neighborhood zoned for business, but which in fact is mostly residential, there being but a few small local stores in the vicinity.

The principal objector, a citizen of Italian extraction, resides next door to the licensed premises. He claims that not only does the boom, the thumps and the staccato of the balls disturb him, his wife, and his two young daughters, but also that the players and spectators frequently, in fact usually, get excited during the course of the game and shout unsought advice and running commentary upon each play, ranging from the zenith of laudation to the lower depths of mortification, dependent, of course, upon the vagaries of the ball and the interest of the particular loud-speaker, - all in native Roman. Besides this, he tells of strange oaths and imprecations, some blasphemous, some scandalous, but all resonantly voluble and all born of the moment's fierce pang or paean such as only the Latins know, and of which attempted translation into prose presents hopelessly variant versions.

The testimony of the complaining witness, his wife and one of his daughters as to noise and shouting is corroborated by another neighbor, not of Italian blood, and by three police officers who testified as to the shouting and the tumult although they could not understand what was being said, which is quite understandable. Mrs. Moore, an investigator of respondent, testified that she had received several complaints during the past two years about these games and found that they were unduly noisy and warned the licensee. The other investigator, White, who visited the premises on numerous occasions, declared the game was noisy but opined that any game the Italians play is noisy.

On the other hand, most of the neighbors testified that they were not disturbed by the games and that they heard no swearing or undue noise.

The condition that the bocci game be entirely discontinued seems over-severe. It is not a gambling game. It is one of skill. It is a healthy outdoor sport. There is no more wrong in bocci than baseball. I am loath, therefore, to approve total exclusion from licensed premises of any innocent game. Still, it is not right to enjoy diversion at the expense of discomfiture of one's neighbors. Night noises are particularly disturbing. Outdoor play should end at dusk. From that time on it is wholly reasonable that bocci be discontinued.

The condition attached to the issuance of appellant's plenary retail consumption license is hereby modified to read: "provided, however, that the outdoor rolle bocci game be promptly discontinued at 5 p. m. Eastern Standard Time, except when Daylight Saving Time is in effect, during which it shall be discontinued at 8 p. m. Daylight Saving Time; and further provided that the licensee shall not allow, permit or suffer in or upon the licensed premises any disturbances, brawls or unnecessary noises or conduct said premises in such manner as to become a nuisance."

As thus modified, the action of respondent in imposing such condition is hereby affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 6, 1936.

10. MUNICIPAL ORDINANCES - PLENARY RETAIL DISTRIBUTION LICENSES - ORDINANCES RESTRICTING SUCH LICENSEES TO THE SALE OF ALCOHOLIC BEVERAGES EXCLUSIVELY MUST APPLY TO EXISTING AS WELL AS TO NEW LICENSES AND TO ALL MERCANTILE BUSINESS WITHOUT FAVOR TO SOME AS AGAINST OTHERS.

October 5, 1936

Charles Swensen
Town Clerk
West New York, New Jersey

Dear Sir:

I have carefully considered the resolution adopted by your Board of Commissioners restricting certain plenary retail distribution licensees to the sale of alcoholic beverages exclusively and the proposed ordinance relating to plenary retail distribution licenses, which passed first reading on September 22d and will come up for final consideration on October 13th.

The resolution purports to prohibit the holders of plenary retail distribution licenses, excepting restaurants, delicatessens, food stores, clubs or fraternal organizations, from engaging in any business other than the sale of alcoholic beverages on the licensed premises.

In the first place, this cannot be done by resolution. The statute, Section 13, sub. 3a, authorizes the governing body of each municipality to enact that plenary retail distribution licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, but requires that it be done by ordinance. Hence, the regulation, in order to be effective, must be enacted by ordinance. Mere resolution will not suffice.

In the second place, there is no authority conferred to impose the restriction with respect to some mercantile businesses and not others. If a municipality desires to restrict plenary retail distribution licenses to the sale of alcoholic beverages exclusively, it must prohibit all other mercantile business without discrimination. It cannot allow the conduct of some, such as in delicatessens and food stores, and prohibit the conduct of others. The statute declares that at the option of the municipal governing body, the conduct of all other mercantile business may be denied to distribution licenses as a class. It provides for no exceptions. Hence, the exceptions cannot be approved. Special privileges may not be conferred upon certain groups at the expense of others equally well qualified and standing essentially in the same position. See re Verona, Bulletin 105, item 5 and the items cited therein.

Now, as regards the proposed ordinance:

Section 1 of the ordinance would provide that no plenary retail distribution license shall thereafter be issued or transferred to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on. Section 2, that no present licensee may change his business so as to include the carrying on of any other mercantile business. Section 3, that those presently conducting other mercantile business may obtain renewals allowing them to continue doing so.

Section 1 will be approved. It is, according to the statute, within your legal power to enact. Section 2 also will be approved. Section 1 restricts only those distribution licenses issued after the effective date of the ordinance and Section 2 prevents present license holders from adding other mercantile lines. Thus, distribution licensees presently conducting other mercantile businesses could continue to do so until the expiration of their licenses on June 30th next, at which time they, as well as all others, would have to conform with Section 1. Each year all licenses are issued new. By allowing present license holders until June 30th to segregate their alcoholic beverage businesses, you will have given them ample time in which to comply.

But Section 3 which would exempt those presently conducting other mercantile business from complying with the regulation at any time in the future, is disapproved. The purpose of the regulation in the first place is to divorce the sale of alcoholic beverages from the sale of other commodities so that persons desiring to purchase one, need not of necessity be brought into contact with the other. I assume that your Board of Commissioners determined that the public good required this segregation. But what is required of one licensee for the public good must also be required of the others. It is not necessary, in order to save present licensees from undue economic loss, to permit them for all time to conduct their businesses in a way that the governing body has declared to be socially undesirable. The most they are entitled to, as a matter of fairness, is a reasonable opportunity in which to liquidate their investments and to alter the conduct of their businesses so as to comply. This you have given them by wording as you did Sections 1 and 2. Anything more would intrench present licensees with special privileges and discriminate unfairly against new licensees of the same class. Section 3 must, therefore, be exscinded.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. LICENSEES -- WOMEN DRINKING AT BARS -- THE VIEWS OF ONE TAVERN KEEPER.

August 13, 1936.

Dear Commissioner:

There has been much talk about women sitting at bars and drinking and enjoying a cigarette and, now and then, peeking in the bar mirror in front of her. Well, from my point of view, a woman has just as much right to drink at a bar as a man has. From my personal observation serving the public since repeal and seeing ladies mixing with their male friends at the bar I find their presence has a salutary influence and makes men drinkers keep better order. Presence of the women also keep them from using vile and profane language. I would rather hear good conversation and a good clean story any time than unclean talk. The presence of women at a bar, I find, acts as a barrier to dirty talk.

If a hotel or tavern keeper installed a bar for women patrons only it would not prove a success. It is not drink in itself women enjoy but drinking in company with members of the

opposite sex. Whatever thrill a woman finds in drinking is lost when she does not have the company of a man. The day is gone when men objected to the presence of women in saloons. And, remember, we don't have saloons today but taverns.

I spent thirty-five years in the hotel and tavern business and have created hundreds of new drinks. Conducting a saloon or tavern is like rearing a family. If you live in a clean atmosphere, good surroundings and respect your neighbors you are likely to have good children. The same holds true of taverns. Keep your places clean, serve the best quality food and liquor, close on time and obey the laws of our city. Don't let your patrons run your business and you will never go wrong. If we follow the directions of Commissioner Burnett and support him morally we will have a better condition and we will win greater respect of all the people.

I do not believe in women bartenders. A large percentage of women are obligated because of necessitous circumstances to accept whatever wage is offered them. They are not paid a living wage. They take a job for little and expect to receive tips from men customers. This frequently results in men trying to date the girl up. The girl in question may not get through her work until the early morning hours but an unscrupulous tavern owner doesn't care what happens to this girl bartender. I had a chance to see a tavern in Asbury Park last week and learned from one of these girl bartenders the conditions she worked under. A girl has a right to serve drinks with meals, yes, but not behind the bar -- that is a man's job.

Trusting my experiences as related here may be of assistance to you in your valuable and constructive efforts to place the tavern on a sound footing and gain the respect of all for the business, I remain,

Sincerely yours,

JOE ROSE.

October 7, 1936.

Mr. Joe Rose,
Newark, N. J.

Dear Mr. Rose:

Upon my return from vacation, I found awaiting yours of August 12th. With the pressure of work demanding instant action, I am only beginning to catch up with back correspondence. Hence the delay in acknowledgment.

I am glad you took your pen in hand and gave me the benefit of your thirty-five years' experience. It is a subject, as you know, on which there is great diversity of opinion.

I am keeping an open mind, but am glad to get views on both sides of the question.

There can be no dissent, however, from one bit of your sage advice: "Don't let your patrons run your business and you will never go wrong". The attitude that a customer must always be pleased and is always right has gotten a lot of tavern keepers into hot water.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

12. APPELLATE DECISIONS - BELL'S DRUG STORE, INC. vs. CRANFORD.

BELL'S DRUG STORE, INC.,
a New Jersey corporation,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CRANFORD
(UNION COUNTY),

Respondent.

ON APPEAL

CONCLUSIONS

Needell & Needell, Esqs., by David Needell, Esq.,
Attorneys for Appellant.
Carl H. Warsinski, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for premises known as 9 Union Avenue, Cranford.

Respondent contends that the denial was proper because of a resolution limiting the number of such licenses to five and the prior issuance of that number.

Appellant filed its application on or about July 15, 1936. The number of distribution licenses had been limited to six by the Township Committee's resolution of February 5, 1935. On July 15, 1936 there was one vacancy which had existed since July 1, 1935.

A hearing was held on the application on July 28th, at which the Township Committee stated that their decision would be rendered on August 11th. On the latter date, respondent adopted the following resolution:

> "Be it resolved by the Township Committee of the Township of Cranford that the number of licenses for the plenary retail distribution of alcoholic beverages, that is to say the number of plenary retail distribution licenses, be and the same is hereby limited to five (5) in number; and that so much of a resolution adopted by this Committee on February 5th, 1935, as fixes the limit of such licenses as six (6) in number, be and the same is hereby rescinded."

At the same meeting, appellant's application was denied because of the resolution last set forth.

This case must depend upon the Cranford resolution effective at the time of this decision and not upon the resolution in force at the time of the application. Franklin Stores vs. Elizabeth, Bulletin #61, item 1; Stein vs. West New York, Bulletin #101, item 7; Tenenbaum vs. Salem, Bulletin #109, item 1, where

it was said:

> "I, therefore, conclude that the municipal policy exhibited by the Salem ordinance, properly enunciated and in force at the time of this decision, is the true criterion on which this decision must be based rather than the factual situation as it existed at the time of the denial of the application."

Appellant argues that the cases cited above do not apply because in those cases there was evidence that the ordinances or resolutions were contemplated when the applications were denied, whereas, in the present case, "there was no contemplation until after the application was denied". This is not correct for the resolution limiting the number to five was adopted before and not after the application was denied. It may well have been in contemplation at the time decision was reserved on July 28th or even before because, for over a year preceding that hearing, there had been in fact only five distribution licensees. The year's experience may well have demonstrated that the time had come when Cranford could reasonably reduce the number of package goods stores to five.

There remains to be considered the question as to whether or not the resolution is unreasonable in itself, or as applied to appellant. Cranford is a residential community with a population of 11,400. Besides the five distribution licensees there are six consumption licensees in Cranford which also have the privilege of selling package goods for off-premises consumption. There is no substantial proof showing that six distribution licenses are a matter of public necessity or convenience. The Township has been able to get along nicely for over a year with only five. It, therefore, cannot be fairly said that the resolution itself is unreasonable. There is no evidence that the resolution is unreasonable as applied to appellant, for while its store is located in the business district, there is a distribution licensee on the same side of the street about 100 feet away.

The action of respondent is, therefore, affirmed.

D Herbert Burnett

Commissioner.

Dated: October 7, 1936.