

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

BULLETIN 669

MAY 31, 1945.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (MUNICIPAL ELECTION DAY), IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

ANDREA SANTANGELO )  
153 Walnut Street )  
Newark, 5, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-169, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Andrea Santangelo, Defendant-licensee, Pro se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that he sold at retail and delivered alcoholic beverages to consumers and permitted the consumption thereof on his licensed premises on a Municipal Election Day, May 8, 1945, in violation of Rule 2 of State Regulations No. 20.

The facts show that the licensed premises were open and that licensee was selling alcoholic beverages. His claim that he had only allowed some friends in out of the rain and had given them one drink obviously does not mitigate the offense. In view of the fact that defendant has no previous adjudicated record, the license will be suspended for the minimum fifteen days. Cf. Re Mitchell, Bulletin 620, Item 7. Five days will be remitted because of the plea, making a net suspension of ten days.

Accordingly, it is, on this 21st day of May, 1945,

ORDERED, that Plenary Retail Consumption License C-169, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Andrea Santangelo, for premises 153 Walnut Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 28, 1945, and terminating at 2:00 a.m. June 7, 1945.

ALFRED E. DRISCOLL  
Commissioner.

## 2. RETAIL LICENSES - RENEWAL - INSTRUCTIONS TO MUNICIPAL ISSUING AUTHORITIES.

May 22, 1945

NOTICE

TO ALL LICENSE ISSUING AUTHORITIES:

All retail liquor licenses except Seasonal Retail Consumption Licenses, expire at midnight June 30th. The issuance of licenses for the next fiscal year must be completed within a few weeks.

A year ago, I recommended to municipal issuing authorities that they refrain from issuing any additional retail licenses or attempting to fill vacancies in existing quotas for the duration of the war. Aside from my conviction that New Jersey suffers from an over-abundance of retail liquor licenses, I made the recommendation because of the scarcity of distilled spirits in the country and the difficulties experienced by existing licensees in their efforts to obtain sufficient supplies to permit them to continue in business. Distilled spirits continue to be scarce. Accordingly, for the reasons expressed a year ago, I desire to repeat my recommendation that municipal issuing authorities refrain from issuing additional retail licenses or filling vacancies in existing quotas.

Herewith is a copy of my Notice of May 14, 1945 (Bulletin 667, Item 9) with respect to the renewal of retail licenses expiring on June 30, 1945. A copy of the aforesaid notice has been forwarded directly to every retail licensee in New Jersey. Please read the notice carefully.

AS a condition precedent to the issuance of a retail liquor license, the premises sought to be licensed must comply with State health and safety laws and regulations applicable to municipal ordinances. **THIS IS IMPERATIVE!** Licensees have been put on notice that dirty and unattractive premises must be improved at once. There is no place in our post-war plans for dirty, dingy, unattractive premises.

Applicants must personally answer every question appearing on the application correctly, completely and honestly. The applicant should do this himself. Under no circumstances, should the municipal clerk assume the responsibility for answering the questions contained in the application.

With respect to the application forms for retail licenses for the fiscal year beginning July 1, 1945, it has been found necessary to make a few changes in the form of application for all municipal retail licenses. To avoid any possible confusion, the new application forms were published in full in Bulletin 650, dated February 2, 1945. Under no circumstances should an application be passed upon unless each question is answered fully and completely.

Kindly furnish each licensee in your municipality with renewal application forms at the earliest moment. Avoid a last minute rush. Delay on your part may result in some licensee closing up shop on June 30th because you have not done your part.

Please give this matter your efficient and careful attention.

ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE AND SERVICE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE - PREVIOUS RECORD - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against, EAST END REPUBLICAN LEAGUE OF THE 12th WARD 300 N. 27th Street Camden, N. J., Holder of Club License CB-9 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Defendant-licensee, by Joseph A. Hubbs, Trustee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded non vult to charges alleging that on Sunday, April 29, 1945, at about 12:10 p.m., it sold and served alcoholic beverages, in violation of an ordinance of the City of Camden which prohibits such sale and service after 2:00 a.m. on Sunday.

On the day in question, agents of the Department of Alcoholic Beverage Control entered defendant's premises and observed on the premises twenty-four persons, many of whom were consuming alcoholic beverages. A trustee of the club signed a statement acknowledging that alcoholic beverages had been served to club members and their guests during prohibited hours.

Defendant has a prior record. On January 21, 1941, its license was suspended for a period of fifteen days after it had pleaded guilty to various charges, including a charge that it had sold alcoholic beverages during prohibited hours on Sunday. Re East End Republican League, Bulletin 441, Item 9. Since this is a second violation of similar character, I shall, under all the circumstances, suspend defendant's license for the balance of its term.

Accordingly, it is, on this 22nd day of May, 1945,

ORDERED, that Club License CB-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to East End Republican League of the 12th Ward, for premises 300 N. 27th Street, Camden, be and the same is hereby suspended for the balance of its term, commencing at 2:00 a.m. May 28, 1945, and terminating at midnight, June 30, 1945.

ALFRED E. DRISCOLL Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR (REFILLS) - LICENSE  
SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against  
WILLIAM ARNOLD  
T/a BILLY ARNOLD'S RENDEZVOUS  
E 331 Route 4  
Paramus, P.O. No. Hackensack, N.J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Paramus.

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

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to a charge that, on April 7, 1945, he possessed three 4/5 quart bottles of "Teacher's Highland Cream Perfection of Blended Scotch Whiskey" and three 4/5 quart bottles of "Canadian Club Blended Canadian Whiskey", all of which bottles contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 53:1-50(e).

On April 7, 1945 agents of the Federal Alcohol Tax Unit, after testing 75 bottles of liquor, seized the six bottles mentioned in the charge when preliminary tests indicated that the contents thereof appeared to be of a color different from that usually found in those particular brands. Subsequent analysis of the contents of each bottle in question by the Federal chemist revealed not only a difference in color but also variations in proof, acids and solids when compared with analyses made of genuine samples.

At the time of the seizure, defendant verbally admitted to the agents that he had refilled the bottles. Subsequently, he confessed that his previous statement was made to protect his wife, who, in fact, had refilled the bottles. Defendant's wife, who says that she seldom assists her husband, has advised me that she refilled the bottles without realizing that a violation was thus committed. Even though defendant had not personally participated in the violation, he is nevertheless responsible for the acts of his agents or employees. Re Kneller, Bulletin 49, Item 4.

Defendant has no previous adjudicated record. I shall, therefore, because of the within violation, suspend defendant's license for a period of twenty days. Re Polonsky, Bulletin 583, Item 2.

Accordingly, it is, on this 24th day of May, 1945,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of Paramus to William Arnold, t/a Billy Arnold's Rendezvous, for premises E 331 Route 4, Paramus, be and the same is hereby suspended for a period of twenty days, commencing at 3:00 a.m. June 1, 1945, and terminating at 3:00 a.m. June 21, 1945.

ALFRED E. DRISCOLL  
Commissioner.



6. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT DURING FIVE YEARS LAST PAST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application )  
to Remove Disqualification )  
because of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 424.  
----- )

BY THE COMMISSIONER:

Petitioner, in order that he may become associated with the alcoholic beverage industry, has renewed his application to remove his disqualification resulting from his conviction in 1931 of keeping a disorderly house (house of prostitution). His original application for removal of this disqualification was denied on December 14, 1942 because he then failed to establish that he had been law-abiding during the five years last past. Re Case No. 244, Bulletin 543, Item 2.

Petitioner, in reapplying for lifting of his disqualification, testified that he has not been involved in any trouble since October 1939, when he was convicted of having violated the Game Laws and as a result thereof was fined \$500.00 by a police magistrate. Independent investigation by the Department of Alcoholic Beverage Control corroborates petitioner's testimony.

At the instant hearing, three character witnesses, including a state employee and two business men who have known petitioner ten or more years, testified that petitioner bears a reputation for being a law-abiding citizen in the community in which he resides. The Chief of Police thereof also has advised that there are no criminal complaints or any charges pending against petitioner at the present time.

Although petitioner's past record is not an enviable one, I am satisfied that he has made a conscientious attempt to rehabilitate himself. I conclude, therefore, that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 22nd day of May, 1945,

ORDERED, that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 ARTURO SOCCOL )  
 T/a SOCCOL'S CAFE )  
 66 Lake Avenue )  
 Clifton, N. J., )  
 Holder of Plenary Retail Consumption License C-58 issued by the )  
 Municipal Council of the City of )  
 Clifton. )  
 ----- )

CONCLUSIONS  
 AND ORDER

Arturo Soccol, Defendant-licensee, Pro se.  
 Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges alleging that he permitted the sale of alcoholic beverages on his licensed premises between midnight and 6:00 a.m. on Wednesday, May 9, 1945, in violation of Rule 1 of State Regulations No. 40, and that at the same time he failed to have his entire premises closed, in violation of Rule 2 of State Regulations No. 40.

ABC agents report that, at 1:10 a.m. on May 9, 1945, they and two members of the Clifton Police Department entered defendant's premises and observed the licensee and seven patrons consuming alcoholic beverages, which apparently had been served by the licensee's wife.

In a statement given to the ABC agents, defendant stated that he had remained open beyond midnight because he and his patrons wanted to celebrate V-E Day and because somebody had told him that he could remain open until 3:00 a.m. on the morning in question. However, Regulations No. 40 were in full force and effect at the time the violation was committed and were not abrogated until midnight, May 9, 1945.

Defendant has no prior record. In fairness, however, to the overwhelming number of patriotic licensees who scrupulously obeyed the provisions of Regulations No. 40, I believe that the usual suspension should be imposed in this case. See Bulletin 667, Item 6. I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on this 25th day of May, 1945,

ORDERED, that Plenary Retail Consumption License C-58, issued by the Municipal Council of the City of Clifton to Arturo Soccol, t/a Soccol's Cafe, for premises 66 Lake Avenue, Clifton, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. June 4, 1945, and terminating at 3:00 a.m. June 14, 1945.

ALFRED E. DRISCOLL  
 Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (MUNICIPAL ELECTION DAY), IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

CHARLES PENSICK )  
372 Broad Street )  
Newark, 2, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-372, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
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Charles Pensick, Defendant-licensee, Pro se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he sold at retail and delivered alcoholic beverages to consumers and permitted the consumption of alcoholic beverages on his licensed premises on May 8, 1945, a Municipal Election Day in Newark, during the time the polls were open, in violation of Rule 2 of State Regulations No. 20.

The defendant seeks to explain the occurrence by alleging that the men served were workmen employed by him to paint his barroom and that no charge was made for the beer served. The regulation as published in the 1939 edition and in the April 1945 edition prohibits the sale, service or delivery of alcoholic beverages to consumers by any licensee. There was certainly service and delivery in this case. Moreover, the Alcoholic Beverage Law provides that a "sale" includes "the gratuitous delivery or gift of any alcoholic beverage by any licensee." R. S. 33:1-1(w). (Cf. Piotti, Bulletin 615, Item 10). I find defendant guilty as charged.

The licensee has no other adjudicated record. I shall suspend the license for a period of fifteen days, with a remission of five days because of the plea, leaving a net penalty of ten days. (Santangelo, Bulletin 669, Item 1).

Accordingly, it is, on this 25th day of May, 1945,

ORDERED, that Plenary Retail Consumption License C-372, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Charles Pensick, for premises 372 Broad Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. June 4, 1945, and terminating at 2:00 a.m. June 14, 1945.

ALFRED E. DRISCOLL  
Commissioner.

## 9. APPELLATE DECISIONS - BLUMBERG v. BROOKLAWN.

MARY BLUMBERG, )

Appellant, )

-vs- )

MAYOR AND COUNCIL OF THE  
BOROUGH OF BROOKLAWN, )

Respondent )

ON APPEAL  
CONCLUSIONS AND ORDERBenjamin F. Friedman, Esq., Attorney for Appellant.  
A. Moulton McNutt, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to transfer the plenary retail consumption license held by appellant, as executrix of the estate of Israel J. Blumberg, deceased, to herself individually.

Israel J. Blumberg held a consumption license for the premises in question, located at 112 New Broadway, Brooklawn, from Repeal to September 26, 1944, when he died. Pursuant to the Alcoholic Beverage Law (R. S. 33:1-26) the decedent's license was extended to his wife, the appellant, as executrix of his estate, on October 30, 1944 for a period of two weeks. Another extension was granted from November 14, 1944 to January 9, 1945, when a third extension was granted to March 14, 1945, "with no extension to be made after March 14, 1945."

The appellant admits that when she applied for her first extension, she represented to the respondent that her purpose was to "dispose of the merchandise." The minutes of the meeting at which the second extension was granted disclose that appellant's attorney was "asked if this is for the purpose of selling stock. Mr. Lipkin (the attorney) said it was."

Following Mr. Blumberg's death, the premises remained closed until March 6, 1945. It was then opened for business and operated by the appellant until March 14, 1945, the expiration date of the last extension, ever since which time the premises have been closed. The application for transfer was submitted on March 5, 1945 and considered by the respondent at a meeting held on March 22, 1945, at which time the application was denied upon the unanimous vote of the four councilmen present at that meeting. One of the reasons assigned by respondent for its action is that the remaining four consumption licenses outstanding "are sufficient to take care of the needs of the people of the Borough."

The municipality has a population of approximately 2,000 inhabitants. It is apparent that a policy of limiting consumption licenses in a community to a ratio of one for every five hundred residents is not subject to the criticism that it provides for an inadequate number of such licenses. Cf. Holland v. Bridgeton, Bulletin 659, Item 9, where I remarked:

"It is difficult for me to imagine a local situation in which one plenary retail consumption license to each one thousand of population would not adequately serve the public convenience and necessity."

To evidence the bona fides of such policy, the respondent introduced on March 14, 1945, and finally passed on April 3, 1945, an ordinance limiting the number of consumption licenses to four. While the appellant does not attack the reasonableness of the ordinance as such, she apparently contends that it is unreasonable as applied to her because her husband had held a license at the same address for more than ten years.

This would be a meritorious argument if this case concerned an application for transfer of the license during the lifetime of Mr. Blumberg. Generally speaking, a reduction in the number of licenses in a municipality may not be achieved in total disregard of individual interests. Licensees invest time, effort and money in their businesses and, in fairness, the privilege of transfer should not be denied merely because the local authority desires to correct its previous mistake in granting too many licenses. See Kirschhoff v. Millville, Bulletin 254, Item 8; Lehn v. Caldwell, Bulletin 560, Item 7.

However, upon the death of the licensee, the privileges under the license lapse and may be revived only by extension to the decedent's legal representative. The determination of whether such extension shall be granted and, if so, whether for the full balance of its term or for a more limited period, rests within the discretion of the issuing authority (see R.S. 33:1-26), and such determination is not subject to appeal to the State Commissioner. Roche v. Paulsboro, Bulletin 566, Item 8.

Since the respondent was empowered to deny outright any extension of the license to the appellant as executrix, thus rendering impossible any further activity thereunder, it could grant such extension for a limited period short of its term, upon such reasonable conditions as it sought to impose. I can find nothing arbitrary in respondent's grant of the various extensions, beginning October 30, 1944, and terminating March 14, 1945, for the sole purpose of permitting the appellant to effectuate a sale of the alcoholic beverages owned by the decedent.

It was not incumbent upon the respondent to grant an unconditional extension of the license to the appellant, as executrix, for the full balance of its term and thus virtually perpetuate the decedent's license despite the respondent's avowed desire to reduce the number of consumption licenses issued in the Borough. This being so, it follows that no abuse of discretion is discernible in the respondent's refusal to transfer the license to the appellant in her individual capacity.

The action of respondent is affirmed.

Although the foregoing disposition renders unnecessary any discussion of the problem, query whether this appeal is not now moot in view of the limited extension of the license until March 14, 1945?

Accordingly, it is, on this 25th day of May, 1945,

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

ALFRED E. DRISCOLL  
Commissioner.

10. STATE LICENSES - APPLICATION FOR PLENARY WINERY LICENSE DENIED.

In the Matter of an Application )  
 by )  
 FRED A. CATALANO )  
 T/a SANTA MONICA WINE CO. )  
 for a Plenary Winery License for )  
 premises at )  
 111 Washington Street )  
 Hoboken, N. J. )  
 ----- )

CONCLUSIONS  
AND ORDER

Benedict A. Beronio, Esq., Attorney for Applicant.  
 Samuel Moskowitz, Esq., Attorney for Hudson-Bergen County Retail  
 Liquor Stores Association, an Objector.

BY THE COMMISSIONER:

Fred A. Catalano, a resident of the Borough of Brooklyn, New York City, filed with me an application for a plenary winery license, with retail privileges, for premises at 111 Washington Street, Hoboken. A written objection to the issuance of the license having been filed, a hearing was held thereon in accordance with the provisions of Rule 1.1 of State Regulations No. 1.

At the hearing three members of the Association which filed the objection testified that each is the holder of a plenary retail distribution license and that each sells wine and other alcoholic beverages in original containers at his licensed premises in Hoboken. An inspector of the Department of Alcoholic Beverage Control testified that the City of Hoboken has issued plenary retail distribution licenses for premises at 93, 102, 124-126, 200 and 410 Washington Street. Applicant testified that he intends to conduct his business on the ground floor and in the basement of the building which he has leased and which is located on the principal business street of the City of Hoboken. The store has an entrance from the Street and applicant admits that, if the license is granted as applied for, he intends to sell wine to consumers. At the hearing the objector confined its objection to the retail privileges sought to be obtained.

R. S. 33:1-10(2)a, which provides that a plenary winery licensee, upon payment of an additional fee of \$100.00, shall have the right to sell wine at retail on the licensed premises, varies the general rule that a manufacturer may not be interested in the retailing of alcoholic beverages. See R. S. 33:1-43. Under certain circumstances, the additional privileges may be unobjectionable, but I do not intend to permit this Section to be used as a means of obtaining additional retail outlets for wine in sections of a municipality already crowded. In the exercise of my discretion, I would ordinarily grant the license without the retail privileges.

Aside from the objection filed, it is my duty to administer the issuance of manufacturers' licenses. R. S. 33:1-18. The records of the Department of Alcoholic Beverage Control show that Fred A. Catalano previously engaged in the retailing of alcoholic beverages in New Jersey although he was then ineligible to do so because of the lack of necessary residential requirements. This he accomplished by setting up a corporate "front" and the corporation's license was subsequently suspended for this reason in disciplinary proceedings. Re Annita Wine & Liquor Co., Inc., Bulletin 578, Item 10; Bulletin 580, Item 8. No one has a right to a license. The issuance of a

State license is confided to the sound discretion of the Commissioner of Alcoholic Beverage Control. Because of the fraud which he perpetrated in the past, I am not convinced that applicant herein is a proper person to hold a liquor license in this State. In the exercise of my discretion and for the reason aforesaid, I have concluded that the application for the license should be denied.

Accordingly, it is, on this 25th day of May, 1945,

ORDERED, that the application filed by Fred A. Catalano for a Plenary Winery License, with retail privileges, be and the same is hereby denied.

ALFRED E. DRISCOLL  
Commissioner.

11. APPELLATE DECISIONS - BYER v. TRENTON - APPEAL DISMISSED.

MILTON BYER, )  
Appellant, )  
-vs- )  
BOARD OF COMMISSIONERS OF THE )  
CITY OF TRENTON, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

George Pellettieri, Esq., Attorney for Appellant.  
Louis Josephson, Esq., by John J. Connell, Esq.,  
Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent in denying appellant's application to transfer License C-260 from his present licensed premises at 137 South Stockton Street to his present licensed premises and additional premises at 139 South Stockton Street, Trenton.

At the hearing it appeared, according to appellant's testimony, that the stores at 137 and 139 South Stockton Street are located in the same building but are separated by a hallway. R. S. 33:1-26 provides that a separate license is required for each specific place of business. In Re Schlenger, Bulletin 165, Item 11, it was ruled that a consumption licensee may not maintain, under a single license, a tavern and package goods store which are conducted distinctly and are separated by a hallway. Under the circumstances, the attorney for appellant requested leave to withdraw the present appeal without prejudice, and the attorney for respondent consented to said request.

No reason appearing to the contrary, it is, on this 25th day of May, 1945,

ORDERED, that the within appeal be and the same is hereby dismissed, without prejudice.

ALFRED E. DRISCOLL  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against )

THEODORE HAWRYSZ )  
T/a WHITEY'S CAFE )  
782 State Street )  
Perth Amboy, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-87, issued by the )  
Board of Commissioners of the )  
City of Perth Amboy. )  
-----)

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

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that he pos-  
sessed one 4/5 quart bottle labeled "Wilson 'That's All' Blended  
Whiskey" and one 4/5 quart bottle labeled "Penn Maryland DeLuxe A  
Blend of Straight Whiskies", which bottles contained alcoholic bever-  
ages not genuine as labeled, in violation of R. S. 33:1-50.

During the course of an investigation on May 5, 1944, ATU  
agents found the two bottles in question on the back bar. A chemical  
analysis disclosed that the contents thereof varied in proof, solids  
and acids from genuine samples of the same products.

Defendant admits that he filled the two bottles with rum,  
stating that he did not have any of these particular brands in stock.

Licensee has no prior record. I shall, therefore, suspend his  
license for a period of ten days. Re Muller, Bulletin 662, Item 2.

Accordingly, it is, on this 25th day of May, 1945,

ORDERED, that Plenary Retail Consumption License C-87, issued  
by the Board of Commissioners of the City of Perth Amboy to  
Theodore Hawrysz, t/a Whitey's Cafe, for premises 782 State Street,  
Perth Amboy, be and the same is hereby suspended for a period of ten  
(10) days, commencing at 2:00 a.m. June 4, 1945, and terminating at  
2:00 a.m. June 14, 1945.

ALFRED E. DRISCOLL  
Commissioner.

13. APPELLATE DECISIONS - CHILDREY v. CAMDEN.

ALPH D. CHILDREY, JR. and )  
 LORETTA E. CHILDREY, )  
 Appellants, )  
 -vs- )  
 MUNICIPAL BOARD OF ALCOHOLIC )  
 BEVERAGE CONTROL OF THE CITY )  
 OF CAMDEN, )  
 Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Milton C. Nurock, Esq., Attorney for Appellants.  
 John R. DiMona, Esq., Attorney for Respondent.  
 Carlton W. Rowand, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

The respondent denied appellants' application for transfer of their plenary retail consumption license from 1819 Broadway to 1157 Haddon Avenue, Camden. Hence this appeal.

The contention of respondent is that the transfer was properly refused because of the number of existing licensed establishments in the area in question.

The proposed site is located on the westerly side of Haddon Avenue, between Sycamore Street and Kaighn Avenue. Within one thousand feet of these premises there are now outstanding six consumption licenses. Three are located on Haddon Avenue, two to the north and one to the south. Two others are located on Kaighn Avenue, less than 150 feet from the westerly side of Haddon Avenue. The sixth consumption license is situated on Chestnut Street, which is one block north of Sycamore Street, about 300 feet west of Haddon Avenue.

In addition, there is a distribution license almost immediately across the street from the proposed location, and another, also on Haddon Avenue, about 800 feet distant.

Thus, there are eight liquor places confined within a distance of one thousand feet of the premises to which appellants seek to transfer their license.

The mere recital of the foregoing makes it evident that respondent was fully justified in its refusal to add an additional liquor license in the vicinity in question.

The action of respondent is affirmed.

Accordingly, it is, on this 28th day of May, 1945,

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

ALFRED E. DRISCOLL  
Commissioner.

14. APPELLATE DECISIONS - WILLNER'S LIQUORS v. CAMDEN.

WILLNER'S LIQUORS, )  
a corporation, )

Appellant, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

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

Respondent )

----- )  
Milton C. Nurock, Esq., Attorney for Appellant.  
John R. DiMona, Esq., Attorney for Respondent.  
Carlton W. Rowand, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal is from respondent's denial of appellant's application for a transfer of its plenary retail distribution license from 1240 Haddon Avenue to 1301 Kaighn Avenue, Camden.

The appellant is presently located on the easterly side of Haddon Avenue, approximately 175 feet southerly of Kaighn Avenue. It desires to move to the northeast corner of Haddon and Kaighn Avenues, or a distance of about 240 feet from the store it now occupies.

At the outset, it may not be amiss to set forth several of the guiding principles applicable to an application of the nature here involved. It is well settled that the privilege of transfer is not inherent in a liquor license. While this privilege may not be arbitrarily denied, nevertheless, where a refusal to transfer is based upon reasonable grounds, it will be sustained on appeal. It is also settled that, in reaching a determination of such issue in these appeal cases, it is not my function to substitute my opinion for that of the local issuing authority, but rather to decide whether the decision below is necessarily unreasonable or in any wise an abuse of discretion.

More specifically, it has been held unreasonable for an issuing authority to deny a person-to-person transfer merely as a means of effecting its general desire to reduce the number of licenses which it has permitted in the municipality or in a particular neighborhood. Kirschhoff v. Millville, Bulletin 254, Item 8; DiMattia v. Bellmawr, Bulletin 294, Item 4; Pappalardo v. Newark, Bulletin 466, Item 2. The same result has been reached where the refusal of a place-to-place transfer in the same general vicinity was motivated solely by a policy of reducing the number of licensed establishments in that vicinity. Costa v. Verona, Bulletin 501, Item 2; cf. Donovan v. South River, Bulletin 537, Item 2.

However, while the issue has not heretofore been squarely raised, it has been recognized that it would not be unreasonable to deny a place-to-place transfer within the same general area if it appeared that the change of location would appreciably aggravate the concentration of licenses in that area. See Dame v. Fort Lee, Bulletin 428, Item 5; Pappalardo v. Newark, supra; Costa v. Verona, supra; Metropolitan Liquor Corporation v. Jersey City, Bulletin 645, Item 1.

That is the situation which the respondent contends exists in the instant case. It bases its refusal to grant the appellant's application on the "more harmful concentration" of licenses in the vicinity if appellant were permitted to move its premises to the corner of Haddon and Kaighn Avenues. An examination of the record tends to support respondent's contention.

The physical distribution of the licensed establishments in the general area discloses that a congestion exists northerly of appellant's present location. This general area is said to include ten liquor places, of which seven are located north of 1240 Haddon Avenue and two south thereof. The northeast corner of Haddon and Kaighn Avenues, where appellant seeks to locate, is considerably closer to two consumption licenses situated on Kaighn Avenue within 150 feet of the westerly side of Haddon Avenue. In addition, the move would bring appellant's premises 240 feet closer to another "package" store located on Haddon Avenue, some 467 feet away from the corner of Kaighn Avenue. Of the two licensed premises to the south, the nearest is about 1200 feet distant and the other about 400 feet beyond it.

The respondent's position seems to be that it has fallen heir to an undue concentration of licenses in the section to the north of appellant's store and, while it disapproves of confining so many licenses within so short a distance in the particular neighborhood here involved, nevertheless it has, in fairness to those licensees, permitted such condition to continue. However, respondent argues, it is opposed to aggravating that condition by bringing those licenses in closer proximity to each other and thus cause a "more harmful concentration" in that area. According to the testimony given by the chairman of the local Board, there would have been no objection had appellant sought a transfer to the south of its present location rather than to the north. This statement is consistent with respondent's desire of "spreading out" the licenses in that neighborhood.

The issue here is a close one. Reasonable minds might differ as to the more equitable solution of the problem. Where, as here, there is room for a reasonable latitude of opinion, the determination reached by the local issuing authority, if supported by the record, should not be disturbed on appeal. I find that the respondent's opinion that the allowance of the transfer in the instant case would aggravate to an appreciable degree an already existing concentration of licenses in the area in question is sustained by the proofs and, therefore, affirm its action.

Accordingly, it is, on this 28th day of May, 1945,

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

*Alfred E. Driscoll*  
Commissioner.