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

BULLETIN 266 AUGUST 19, 1938

1. ADVERTISING - NOT PERMISSIBLE TO CHEAPEN CHARITY WITH COMMERCE.

August 4, 1938

Dear Commissioner:

We are contemplating the holding of an outing for the benefit of the poor of West Caldwell, New Jersey, at our grove, on Sunday, September 25, 1938.

We propose to ask $1.50 admission and to serve each adult person with eight (8) glasses of beer, and every person may eat and drink of the following from 11:00 A.M. to 7:00 P.M.:

| | |
|---|---|
| Clam Broth | Hot Roast Beef Sandwiches |
| Clam Chowder | Hot Frankfurters on Rolls |
| Steamed Clams | Hot Sausages on Rolls |
| Celery | Fresh Tomatoes |
| Pickles | Soda (assorted). |

We desire to use the entire profit from this venture to purchase (at wholesale prices) groceries and meats and suitable containers, to make up baskets and distribute them on the 22nd and 23rd of December, 1938, to the poor of West Caldwell, New Jersey.

It is now a question whether or not we are permitted to hold such an outing for such a purpose without violating any part of the Alcoholic Beverage Control Act. It is therefore requested that you be kind enough to clear up this matter for us and inform us of your opinion and decision at the earliest possible moment, as we have only a short time to get out tickets and posters and make all other necessary preparations for this event.

Thanking you for your efforts, we remain

Respectfully yours,
Rhineland Gardens,
Kurt Schmitz, Prop.

August 10, 1938

Mr. Kurt Schmitz,
Rhineland Gardens,
West Caldwell, N. J.

My dear Mr. Schmitz:

I have yours of August 4th. It sounds like a bargain which should tax the transit facilities of West Caldwell. But who is this "we" that you speak of so frequently? Is it you and the gardens or just plain editorial?

There is nothing to prevent your offering the beer and the broth, the clams and the chowder, the sandwiches, sausages and soda, from eleven to seven, and devoting the profits, if any, to the poor.

BUT - you may not advertise the scheme either by tickets or posters or otherwise. It is wholly out of order to stimulate the gross receipts of a liquor establishment by appealing to the public's sentimental feelings about Christmas. Charity should not be cheapened by association with commerce. See Re Buddy Beverage Co., Bulletin 162, Item 1. Moreover, if I permitted you to advertise that the profits were to be spent on Christmas baskets, I would be compelled to supervise the affair, audit the accounts, determine the net profits, and see to it that the promise was carried out. I have no such facilities. Besides Christmas is many moons away.

Sympathy for the poor is not to be played up to promote sales of liquor.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. APPELLATE DECISIONS - PURI v. WARREN TOWNSHIP.

"JOSEPH" PURI (the first name "Joseph" amended herein to read "Frank"),

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WARREN,

Respondent

ON APPEAL
CONCLUSIONS

Joseph C. Cassini, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

An appeal from the denial of a seasonal retail consumption license for premises known as Pfister Park, Warren Township, was filed in the name of Joseph Puri, appellant. At the hearing, however, it appeared that the application for said license had been filed by Frank Puri. Thereupon motion was made to amend the pleadings herein by substituting the name of Frank Puri, instead of Joseph Puri, as appellant. No reason appearing to the contrary, the pleadings have been so amended.

On May 16, 1938, Frank Puri filed with respondent an application for a seasonal retail consumption license for the premises hereinabove mentioned. On June 6, 1938, respondent denied said application because of an ordinance, passed on August 2, 1937. The effect of said ordinance has been considered in Asarnow v. Warren, Bulletin 249, Item 8, wherein it was held that, while said ordinance remained unaltered, no more than eight places to sell alcoholic beverages for plenary retail consumption may be outstanding at the same time. It is not contended herein that there is any vacancy under said ordinance, but, rather that the ordinance is unreasonable as applied to appellant.

This contention is based upon the facts that, in October, 1936, Giacomo Puri and his sister purchased Pfister Park; that Giacomo Puri is the father of Frank Puri; that Pfister Park consists of about fifty acres of ground, on which is erected a twelve-room house, a dance hall, and a small one-story frame building; that the park is equipped to be used for picnics during the summer, and,

at the time of the aforesaid purchase, had been licensed for the sale of alcoholic beverages continuously since Repeal; that in October, 1936, the liquor license for said premises was in the name of Germano Pierangeli, who was then in possession of Pfister Park under a lease which was not to expire until April, 1938. There is some testimony that, within a few months after October, 1936, Giacomo Puri spoke to two members of the Township Committee as to the possibility of obtaining a liquor license for Pfister Park in his own name, and that he was told that a license would be issued to him after Pierangeli's lease had expired.

Thereafter, however, the ordinance, dated August 2, 1937, was adopted. About November, 1937, Pierangeli transferred his outstanding license to other premises. In February, 1938, Frank Puri applied to respondent for a plenary retail consumption license, which was denied, and in May, 1938, he applied for a seasonal retail consumption license, which was also denied and which is the application considered herein.

Apparently the owners of Pfister Park are in the same position as many other owners of property suitable for the conduct of a liquor business who find their property without a license when a tenant transfers his license to other premises. The problem is discussed at length in Re Konesky, Bulletin 217, Item 7. However, no one place is entitled to a license more than any other, no matter how long it has been previously licensed. The evidence produced herein does tend to show that some hardship has been worked on the owners of Pfister Park, but private rights must give way to the general welfare of the community. So long as the members of the Township Committee honestly feel that the public welfare requires the restriction of consumption licenses to eight, such determination should be allowed to prevail in the absence of strong evidence showing that public necessity and convenience require the issuance of an additional license. There is no such evidence in this case, and hence it has not been shown that the ordinance passed on August 2, 1937 is unreasonable as applied to the application which was denied herein.

At the hearing a further motion was made to amend the pleadings by substituting "plenary retail consumption license" instead of "seasonal retail consumption license." Proper procedure requires that where, as here, an appeal is taken from the denial of one type of license, permission should not be granted to amend the pleadings so as to refer to another type of license. While it is not strictly necessary, in view of the conclusion above reached, to decide the point, the practice should be settled, and accordingly the motion to so amend the pleadings is denied.

For the reasons set forth above, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 10, 1938.

3. LIMITED WINERY LICENSE - DENIED BECAUSE OF CONFLICT WITH ZONING ORDINANCE.

In the Matter of the Application )
by )
FRANK BARDESSONO ) CONCLUSIONS
for limited winery license for )
premises located at 976 Maple )
Street, North Bergen, N. J. )

Frank Bardessono, Applicant Pro Se.
Walter Beisch, Secretary, Municipal Board of Alcoholic Beverage Control of the Township of North Bergen.

BY THE COMMISSIONER:

The applicant, Frank Bardessono, filed application with the Department of Alcoholic Beverage Control for a limited winery license for premises located at 976 Maple Street, North Bergen. Objections were urged to the granting of the application on the ground, among others, that the premises sought to be licensed are located within an area restricted to residential purposes under a local Zoning Ordinance in effect since May 28, 1934. Hearing on the objections was duly held pursuant to notice to the interested parties.

The undisputed evidence discloses that 976 Maple Street is located within an area designated by the North Bergen Zoning Ordinance as "Second Residential Zone or District." Section III of the Ordinance provides, in part, as follows:

> "In a second residential zone or district *** no building or structure shall hereafter be erected, altered or used for any of the following purposes:
> 1. Business of any kind
> 2. Commercial enterprises
> 3. Manufacturing of any kind
> 4. Industrial enterprises
> 5. Any use which is a nuisance per se."

The operation of a limited winery business at 976 Maple Street would be in direct violation of the terms of the Ordinance; it is, therefore, clear that no license may properly be issued to authorize such conduct. See Talbot v. Keppler, Bulletin 117, Item 1; East Brunswick Township Board of Adjustment v. East Brunswick, Bulletin 223, Item 5; Nugent and Hignett v. Linden, Bulletin 263, Item 7; Marinaccio v. Ocean Township, Bulletin 264, Item 11.

The applicant places reliance upon the fact that there are now in existence certain business establishments within the same area, namely, a garage and a store at the corner of Maple Street and Church Lane. The record of the hearing indicates that these businesses are continuations of non-conforming uses existing before the Zoning Ordinance was adopted, and are expressly authorized by the terms thereof. Furthermore, even if it be assumed that the conduct of these other businesses is improper, that would furnish no reason for authorizing the applicant likewise to operate in violation of the Ordinance. See Nugent and Hignett v. Linden, supra; Marinaccio v. Ocean Township, supra. The remedy in such situation is to terminate the illegal operations by appropriate proceedings rather than to authorize additional illegal operations.

The application is denied.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 10, 1938.

4. APPELLATE DECISIONS - BELY v. BAYONNE and DEVANEY.

Case #1

PAUL BELY,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF BAYONNE and GEORGE J. DEVANEY,

Respondents

ON APPEAL
CONCLUSIONS

Case #2

PAUL BELY,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF BAYONNE and GEORGE J. DEVANEY,

Respondents

Irving Meyers and Irving Grodberg, Esqs., Attorneys for Appellant.
Alfred Brenner, Esq., Attorney for Respondent Board.
James M. Dolan, Esq., Attorney for Respondent-Licensee, George J. Devaney.

BY THE COMMISSIONER:

On May 17, 1938, the respondent Board granted a place-to-place transfer of respondent Devaney's then outstanding plenary retail consumption license from 182 West First Street to 568 Broadway, Bayonne. On June 29, 1938, the Board granted a renewal of Devaney's license for 568 Broadway for the current licensing period.

Appellant, resident and owner of adjoining premises at 566 Broadway, appealed from the transfer and later from the renewal on the ground that Devaney's tavern at 568 Broadway is within 200 feet of a school in violation of R. S. 33:1-76 (Control Act, Sec. 76). Although hearing was held on only the first appeal (viz., from the transfer), it is agreed that the determination in both appeals may be based upon the evidence produced at that hearing.

R. S. 33:1-76 (Control Act, Sec. 76) provides, with certain exceptions here not material, that no license for the sale of liquor shall be permitted for premises whose entrance is within 200 feet of the nearest entrance of any school or church.

Devaney's tavern is at Broadway and 26th Street, in close proximity to two public schools. The Philip G. Vroom (or No. 2) School, a grammar and first-year high school, is located but a short distance up 26th Street. The school playground adjoining the side of the school building, runs along Broadway directly across the street from the tavern. An almost equally short distance from the

tavern, but in an opposite direction, is the Lincoln (or No.9) School, which contains only grammar grades. In view of the conclusions hereinafter stated, it is unnecessary to determine the distance between the tavern and the Lincoln School.

The entrance to the Vroom School, nearest the tavern, is a gate in the school fence on 26th Street leading onto a concrete walk of some 65 feet to a side door of the school building used by children in entering and leaving school. The gate is kept open for this purpose from 6:30 A. M. until 5:00 P. M., and is used in common with the other entrances. On Tuesday, June 21, 1938, 110 school children were observed exiting through this gate during the 35 minutes between 2:30 P. M. and 3:05 P. M.

I find as fact that this gate is less than 180 feet from the entrance to Devaney's Tavern. The gate and not the door constitutes the "entrance" from which measurement is to be made. Stacewicz v. Trenton, Bulletin 148, Item 2. The fact that the gate is a side and not the main entrance is immaterial. The statute, requiring measurement of the proscribed distance of 200 feet to be made from the "nearest entrance", contemplates more than one entrance. Memorial Presbyterian Church v. Newark, Bulletin 191, Item 8.

It is therefore manifest, that the transfer of Devaney's license to 568 Broadway and the subsequent renewal of his license for those premises were in violation of the statute.

There is no merit to Devaney's contention that appellant is appealing for ulterior motives and, in any event, should not be heard on the second appeal because, although having protested before the Board against the transfer, he failed similarly to object to the renewal. The statutory provision against taverns or similar places being within 200 feet of a school or church is mandatory. Appellant, as a taxpayer and resident in Bayonne, has adequate standing, irrespective of his motives and irrespective of his prior silence, to undertake an appeal to set aside a license which violates the law. Haines v. Burlington, Bulletin 223, Item 3. Cf. Trustees of The First Particular Baptist Church of Paterson v. Paterson, Bulletin 245, Item 8. East Brunswick Board of Adjustment v. East Brunswick, Bulletin 223, Item 5.

The action of the respondent, Board of Commissioners of the City of Bayonne, in granting the transfer of George J. Devaney's license and in later granting a renewal of that license, is therefore reversed. The renewal license issued to Devaney is hereby set aside and declared void. All alcoholic beverage activity under that license must cease forthwith, and the license certificate must be surrendered at once to the Municipal Clerk of the City of Bayonne.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 11, 1938.

5. APPELLATE DECISIONS - SZYCHER v. BAYONNE

STEPHANIE SZYCHER,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF BAYONNE,
Respondent
ON APPEAL
CONCLUSIONS

Irving Meyers, Esq. and Irving Grodberg, Esq., Attorneys for Appellant.
Alfred Brenner, Esq., Attorney for Respondent.
Patrick J. O'Connell, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal is from a refusal to transfer appellant's plenary retail consumption license from 442 Broadway to 546 Broadway, Bayonne.

Respondent contends that the proposed site is within 200 feet of the Lincoln or No. 9 School.

R. S. 33:1-76 (Control Act, Sec. 76) provides, with certain exceptions here not material, that no license for the sale of liquor shall be permitted for premises whose entrance is within that distance of the nearest entrance of a school or church.

The proposed site is located on the corner of Broadway and 25th Street. The Lincoln School - a grammar school - is located but a short distance away. The school driveway, with a double gate at its entrance, fronts on 25th Street. That driveway leads into a recessed court in the school building. A concrete walk adjoins and parallels the driveway, and likewise leads between the court and a single gate (on 25th Street) which stands next to the double gate. For the sake of convenience, the single gate is chained shut and only the double gate used, since the latter, when open, blocks the single gate.

The evidence amply establishes that the double gate is used by the children in entering and leaving school. Pupils in various classes enter or leave the building by two ground floor doors and also by two fire escapes located in the court. These pupils use the double gate on 25th Street (or a corresponding gate on 26th Street). The principal of the school testified that it has been the custom for at least 29 years to use the double gate in this way; that the various classes which use the doors and fire escape at the court, do so under permissive school routine; that no one in the school is permitted to use the driveway for automobile purposes; that the Board of Education trucks and automobiles use it only during the hours when the children are not entering or leaving school. On Friday, May 27, 1938, 165 pupils and 10 teachers were observed exiting through the double gate between 11:30 A. M. and 12:00 noon.

I conclude that this gate is an "entrance" to the school. Bely v. Bayonne, Bulletin 266, Item 4. The fact that it is a "side" (and not the main) entrance is immaterial. Bely v. Bayonne, supra.

The question remaining, therefore, is whether this gate is within 200 feet of the entrance to the proposed tavern.

The tavern faces Broadway. To reach the school driveway from its entrance, it is necessary merely to round the corner and go down 25th Street. In front of appellant's premises and for a short distance alongside on 25th Street, the public walk is flush with the building line. However, for a considerable distance along 25th Street, it narrows into an ordinary flagstone walk, which is set off some 6 feet from the building line.

Appellant, in order to eke out that the proposed entrance is more than 200 feet from the "nearest entrance" to No. 9 School, first measures 5 feet from the receded doorway of her premises to the front building line; then continues into the front sidewalk for some 4 feet and swings left until she reaches the middle of the walk leading down 25th Street; then proceeds down that walk to a point opposite, not the double gate at the driveway, but the closed gate which adjoins it immediately beyond; and then turns left into that gate. In this way appellant laboriously aggregates the sum total of 205.4 feet.

Methods of measurement calculated to add unnecessary distances in order to piece out 200 feet have been tried before but without success. The law is not to be flouted. The salutary protection to church and school is not to be frittered away or subtly evaded by transparent artificialities or subterfuge. St. Mary's Greek Catholic Church v. Manville, Bulletin 187, Item 1; Re Simon, Bulletin 238, Item 6; Trustees of the First Particular Baptist Church of Paterson v. Paterson, Bulletin 245, Item 8.

The correct method of measurement has been heretofore laid down in Aldarelli v. Asbury Park, Bulletin 186, Item 12. It requires that the distance shall be measured straight along the side walls and the street lines nearest to school or church and tavern. It eliminates appellant's flimsy devices of walking several feet away from the tavern in a direction opposite to the school, and of walking out to and later returning from the middle of the sidewalk on 25th Street.

I find as fact that the distance between the proposed tavern entrance and the "nearest entrance" to No. 9 School, when correctly measured, is but 188.45 feet.

The action of the respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 11, 1938.

6. OTHER MERCANTILE BUSINESS - THE RULE APPLIED - SPARKLET SIPHONS AND BULBS MAY NOT BE SOLD BY PLENARY RETAIL DISTRIBUTION LICENSEES IF THERE IS AN ORDINANCE PROHIBITING THE CONDUCT OF OTHER MERCANTILE BUSINESS.

August 11, 1938

Gold's Drug Stores,
Jersey City, N. J.

Gentlemen:

I have your letter of August 3rd re the McCauley ruling, Bulletin 264, Item 15.

Sparklet Siphons and Sparklet Bulbs are not accessory beverages. They are not beverages at all. They are simply mechanical contrivances for making charged water at home.

Their sale, therefore, the same as any other gadget, would constitute the conduct of other mercantile business, and would not be permissible by plenary retail distribution licensees in any municipality where there was an ordinance prohibiting the issuance of distribution licenses for premises in which any other mercantile business was carried on.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - PASZEK v. NEWARK.

STEPHEN PASZEK, )
Appellant, )
-vs- ) ON APPEAL
) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, )
Respondent. )

Klein & Klein, Esqs., by Nathaniel J. Klein, for the Appellant.
William S. Cantalupo, Esq., Assistant Corporation Counsel, for the Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for the renewal of a plenary retail consumption license for premises at 30 South Orange Avenue in the City of Newark.

The application was denied for the reason that the premises did not comprise at least four hundred square feet, as required by resolution of the Municipal Board of Alcoholic Beverage Control. That resolution, adopted May 23, 1934, provides by Section 2:

> "No plenary retail consumption license shall be issued for any place of business with a floor space of less than four hundred square feet."

Appellant's premises consist of a barroom having an area of approximately 270 square feet; a hallway 30 feet long connecting the barroom and the street, with an area of 130 square feet; and a cellar with an area of 1200 square feet. In his application for license, in answer to question 7, "Describe in detail the floors, rooms and grounds where alcoholic beverages are to be sold, served or stored", appellant stated "Bar Room and cellar."

Appellant does not claim to conduct any business in the cellar, and he admits that he conducts no business in the hallway. He serves alcoholic beverages only in the barroom.

While the requirement of minimum floor space might well be more specific, I believe that its purpose is plain. It declares a municipal policy against licensing a place that is a mere hole-in-the-wall. That policy would be defeated and rendered nugatory if I were to consider as part of the place of business such adjuncts as cellars and hallways. If they are part of the place of business, then so are kitchens and toilets.

The "place of business", within the intendment of the quoted resolution, is that portion of the licensed premises having

facilities for the service of alcoholic beverages and where patrons are customarily served with such beverages. Consequently, neither the hallway nor the cellar can be considered part of the "place of business."

If this were all, I should have no hesitation in affirming the denial of appellant's application for license for these premises. But after his application was denied and while this appeal was pending, appellant made arrangements to lease and use a hall adjoining his barroom. That hall is 800 square feet in area, and together with the barroom, will bring the total area well over the minimum. Appellant testified that he is willing to cut an archway in the wall between the barroom and the hall, thus providing public view of the hall from the street entrance to the premises.

Had the rear hall been part of the place of business at the time application was made, there would have been no objection on the basis of the deficient floor area. Appellant has held a license for the same premises since Repeal, and it does not appear that he was ever informed that the premises were unsuitable or alterations necessary or that any objection to the size of his place ever made. After the municipal resolution was adopted on May 23, 1934, as aforesaid, appellant's license was renewed by the City on June 30, 1934 and again on June 20, 1935 and again on June 23, 1936 and again on July 1, 1937. In view of his willingness to alter his premises so as to enlarge his place of business, to a size more than twice and a half the required minimum, it would be inequitable to deny him a renewal now because somebody had slumbered four years.

The action of the respondent, Municipal Board of Alcoholic Beverage Control, is, therefore, reversed, and it is ordered that the renewal license applied for be issued, subject, however, to the following special conditions:

1. That there be used as part of the place of business, the hall adjoining the rear of the barroom, and

2. That within 15 days from date, an open archway, six feet in width, be provided between the barroom and the rear hall, to be so located that a view of the rear hall may be had from the street door of the premises.

3. The application heretofore filed is amended at once to state, in answer to question 7, "Barroom and hall in rear on street floor, and cellar."

D. FREDERICK BURNETT,
Commissioner.

Dated: August 15, 1938.

8. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS AND EMPLOYMENT OF DISQUALIFIED PERSONS.

In the Matter of Disciplinary Proceedings against

ALEX CHVAT,
66 South Orange Avenue,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-713, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Luke T. Flood, Esq., Attorney for Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served on the licensee may be summarized as follows:

Charges 1, 2, 5, 6, 9 and 10 allege that on June 11th, 1938, licensee sold a glass of beer, which was an alcoholic beverage, to each of three minor girls, one of whom was 16 and the others 18 years of age, contrary to R. S. 33:1-77 (Control Act, Section 77) and Rule 1 of State Regulations No. 20.

Charges 3, 4, 7, 8, 11 and 12 allege that on June 12th, 1938 licensee sold a glass of beer, which was an alcoholic beverage, to each of three minor girls, one of whom was 16 and the others 18 years of age, contrary to R. S. 33:1-77 (Control Act, Section 77) and Rule 1 of State Regulations No. 20.

Charges 13 and 14 allege that on June 11th, 1938, licensee knowingly employed and had connected in a business capacity with the operation of his licensed premises, one Joseph Rewa, a minor of the age of 18 years, contrary to R. S. 33:1-25 (Control Act, Section 22) and R. S. 33:1-26 (Control Act, Section 23), and Rule 1 of State Regulations No. 11.

Charge 15 alleges that on June 11th, 1938 licensee employed one Anna Rewa, a female, to tend bar, sell and serve alcoholic beverages in his licensed premises where the principal business is the sale of alcoholic beverages, contrary to a resolution of the Municipal Board of Alcoholic Beverage Control of the City of Newark adopted August 29th, 1934.

Licensee's premises consist of a barroom in the front, with a rear room which is used for dancing. On June 11th, 1938, at about 11:30 P. M., Investigators Kaufman and Ilaria visited the licensed premises. Investigator Kaufman entered the barroom and remained there until about midnight; Investigator Ilaria entered the rear room and sat at a table on the easterly side of the room. He testified that he saw the service of alcoholic beverages to patrons by Mrs. Rewa and Joseph Rewa; that he saw two services of alcoholic beverages to a table on the opposite side of the room where the three minors were seated with their escorts; that he could not see whether or not they were alcoholic beverages from where he was sitting when the deliveries were made, but that at one time while the dancing was going on he walked around to where the minors were

seated with their escorts and saw two of the girls take a drink from a glass of beer, but he could not tell what else was on the table. This is the only evidence as to an alleged sale of alcoholic beverages to the three minors on June 11th, 1938. In view of the testimony of the three girls, of Anna Rewa and Joseph Rewa, all of whom testified that three glasses of soda were served to the girls and three glasses of beer to their escorts, on three or four occasions on the evening in question, I find that the evidence is not sufficient to show that any beer was sold to the minors on June 11th, 1938 and hence charges 1, 2, 5, 6, 9 and 10 are dismissed.

At about 12:10 A. M. on June 12th, 1938, Investigator Kaufman, having left the barroom, was in the rear room with Investigator Ilaria. Both of them testified that about that time Anna Rewa served six glasses of beer at the table where the minors and their escorts were seated. Investigator Kaufman testified as follows:

> "Q What happened when you went to their table?
> A Just before going to the table, I observed the girls consume a portion of the beer. Each took a small drink.
>
> THE HEARER: The three girls?
> THE WITNESS: The entire party, for that matter; we went over and identified ourselves and were making the rounds of other tables. We took the three girls together and told them we would have to take them to police headquarters."

Investigator Ilaria testified as follows:

> "At that time there were six glasses of beer partly consumed — one glass had three ounces of beer, and I took a sip, and I went to three or four other tables and did not return to that table until we were ready to go to Police Headquarters."

Despite the testimony offered on behalf of the licensee, namely, that on this occasion three glasses of soda and three beers were served at this table, I find as a fact that on June 12th, 1938, a glass of beer was served to each of the three minors. Hence, I find the licensee guilty of charges 3, 4, 7, 8, 11 and 12.

As to charges 13 and 14, Joseph Rewa, who is 18 years of age, admits serving alcoholic beverages on the licensed premises on the evening of June 11th, 1938. He testified that on that evening he returned from the movies at about 10:30 P. M. and that he made these services in order to assist his mother, Anna Rewa, and the licensee, whom he described as his intended father-in-law. There is nothing to show that Joseph Rewa received any salary, but there is evidence that the licensee contributes to the support of the boy, who resides with his mother above the licensed premises. These facts are sufficient to show that the licensee is guilty as to charges 13 and 14.

As to charge 15: Anna Rewa admits that she was serving alcoholic beverages in the dance hall on the evening of June 11, 1938. While there is no evidence that she received any salary for her services, the licensee admitted that he pays her rent and supports her three children and that, in return for said support, she helps out in the tavern by cooking and serving drinks. This evidence is sufficient to show that she was employed on the premises.

The licensee does not hold a restaurant license. In his application he states that his principal business is "Tavern." The portion of the municipal resolution referred to in charge 15 is as follows:

> "(a) It shall be unlawful for the holder of a plenary retail consumption license to employ any female to tend bar, sell or serve alcoholic beverages to patrons where the principal business is the sale of alcoholic beverages."

Under the circumstances, the licensee is guilty as to charge 15.

A suspension of fifteen days will be imposed on charges 3, 4, 7, 8, 11 and 12; a further suspension of ten days on charges 13 and 14, and a further suspension of ten days on charge 15, making a total suspension of thirty-five days.

Since these proceedings were instituted, the license then outstanding has expired. The licensee is now the holder of plenary retail consumption license No. C-123, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Accordingly, it is on this 16th day of August, 1938,

ORDERED that Plenary Retail Consumption License No. C-123, issued to Alex Chvat by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for a period of thirty-five (35) days, effective midnight (Daylight Saving Time) August 20, 1938.

D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - COAKLEY v. MOUNT OLIVE TOWNSHIP.

THOMAS J. COAKLEY, )
Appellant, )
-vs- ) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE )
TOWNSHIP OF MOUNT OLIVE, )
Respondent. )
- - - - - - - - - - - - - - - - - - -)

Milford Salny, Esq., Attorney for Appellant.
William A. Hegarty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from a fifteen day suspension of his plenary retail consumption license No. C-5, for premises located on State Highway #6, Mount Olive Township, Budd Lake, N. J.

On or about July 29, 1938 charges were duly served upon appellant by the respondent herein, alleging, in substance, (1) that on July 15, 1938 he kept his licensed premises open beyond the hour set for closing, namely, 2:00 o'clock A. M. (Daylight Saving Time); (2) that on July 15, 1938, between 2:00 A. M. and 2:40 A. M., he permitted and allowed persons other than himself and employees to be and remain on his licensed premises, drinking and consuming alcoholic beverages; (3) that on July 24, 1938 he kept his licensed premises open beyond the hour set for closing and continued to do business therein between 3:00 A. M. and 8:30 A. M. (Daylight

Saving Time); (4) that on July 24, 1938, between 3:00 A.M. and 8:30 A.M. (Daylight Saving Time) he permitted and allowed persons other than himself and employees to be and remain in said licensed premises, drinking and consuming alcoholic beverages; all of which conduct was in violation of the rules and regulations of the Township of Mount Olive, concerning the sale of alcoholic beverages, and also in violation of the terms of appellant's license.

At a hearing held by respondent on said charges on August 3, 1938, appellant herein pleaded guilty and his license was immediately suspended for a period of fifteen days. It is from this action that appellant appeals.

I shall not pause in this case to consider whether or not he is precluded from any appeal because of his plea of guilty for affirmance upon the merits is plainly indicated throughout the record.

At the hearing on appeal, Investigators Slater and Roxbury testified that, on July 15, 1938, at approximately 2:20 A.M., they purchased a beer and highball at the licensed premises. There is no substantial denial of the investigators' testimony.

On July 24, 1938, Chairman Harvey, of the Township Committee, visited the licensed premises at 8:30 A. M. with Committeeman McLaughlin. They testified that they found the place wide open, with several people at the bar, and Coakley behind the bar. Chief of Police Vital corroborated this testimony. Since July 24th was a Sunday, the licensed premises were required to be closed from 3:00 A. M. until 12:00 Noon. Licensee testified that on the morning in question he closed his licensed premises at 3:00 A. M. and reopened them at about 8:30 A. M. for the purpose of paying off the entertainers who had performed at his premises on the previous evening; that the only persons in his premises, when the members of the Township Committee appeared, were employees who had returned to receive their pay and two friends who had called for the purpose of "borrowing club soda." Some of the entertainers corroborated his testimony. A Mrs. Frake, however, who resides next door to the licensed premises, testified that on the morning in question the place was open and operated, with music playing from closing time until the Committeemen arrived at about 8:30 A. M. The testimony that the entertainers left the premises at 3:00 A. M. and returned five and a half hours later for the purpose of being paid does not sound plausible. The evidence of the Committeemen and Mrs. Frake convinces me that the place was open and conducting business from 3:00 A. M. until 8:30 A. M. on Sunday, July 24th.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 17, 1938.

10. APPELLATE DECISIONS - MITA v. ORANGE

DANE MITA, )

Appellant, )

-vs- ) ON APPEAL
) CONCLUSIONS

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

Respondent )

Sam E. Goldner, Esq. and Lawrence E. Burns, Esq., Attorneys for Appellant.
Edmond J. Dwyer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to grant a place-to-place transfer of appellant's plenary retail consumption license from 79 North Center Street to 9-11 Park Street, Orange.

The transfer was denied, by a vote of two to one, on the ground that there are sufficient liquor places in the vicinity of the proposed tavern.

The proposed site is located on Park Street between William and Main Streets, the latter being the City's chief business thoroughfare. Park Street, on this block, is zoned and used for business. North of William Street it is of a mixed residential and business character. William Street, however, is residential. Within an estimated 260 to 600 feet from the proposed site there are located the Orange Y.M.C.A., a Jewish Synagogue, the North Orange Baptist Church, the Grace Episcopal Church, the German Presbyterian Church, and the Colored Baptist Church.

A substantial number of liquor places already exist in the vicinity. There is a tavern on Park Street three short blocks north of the proposed site. Another is located on Main Street, about one block and a half from the proposed site. Near that tavern there is also a package store, with another tavern being located a block farther away, on Canfield Street. On or near Main Street, east of Park Street, between 1000 and 1500 feet away from the proposed site, there are three taverns and a package store.

Determination of the number of liquor establishments to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Santoriello v. Howell, Bulletin 252, Item 8. The privilege of a place-to-place transfer of an outstanding liquor license is subject, among other things, to the reasonable and bona fide exercise of that discretion. Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Polansky v. Millburn, Bulletin 258, Item 2.

In Healey v. Orange, Bulletin 85, Item 9, I ruled that respondent did not abuse that discretion in refusing to permit a liquor establishment at premises next door to the proposed site on the ground that the vicinity (which has not changed in any material respect) already contains a sufficient number of liquor places. I find no reason to alter that opinion. Although the Healey case involved the denial of a new license whereas the present case involves

the refusal to transfer an existing license, nothing of consequence here turns upon that fact.

Appellant contends, however, that it would benefit the City to grant the proposed transfer; that his present place is near a children's playground; that, further, it is located in a poor section occupied by many negroes, whereas the proposed site is in a more affluent neighborhood occupied by whites; that in his present vicinity there are also three other taverns within a several block radius. Perhaps that conclusion is sound, but the fact that appellant's tavern may be located in an undesirable area does not give him the right to transfer his license and create an undesirable condition in another neighborhood. If it was an error to license appellant at his present site, it is not a cure to create a fresh mistake in a new area.

The action of respondent is affirmed.

Frederick Burnett

Commissioner.

Dated: August 18, 1938.