COMMISSIONER
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 91. October 10, 1935.

1. APPELLATE DECISIONS - GRANGER vs. OAKLAND and BASSAU

ABBOTT D. GRANGER,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF OAKLAND, BERGEN COUNTY, NEW JERSEY, and LOUIS BASSAU,
Respondents
(Case #1)

ON APPEAL
CONCLUSIONS

ABBOTT D. GRANGER,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF OAKLAND, BERGEN COUNTY, NEW JERSEY, and LOUIS BASSAU,
Respondents
(Case #2)

George Ralph Hendrickson, Esq., Attorney for Appellant.
Walter W. Weber, Esq., Attorney for Respondent Issuing Authority.
Louis Bassau, Respondent, Pro Se.

BY THE COMMISSIONER:

These cases were tried together. The first is an appeal from the issuance of a plenary retail consumption license to respondent Bassau, for premises known as "Cozy Grove", on the east side of Valley Road, in the Borough of Oakland, for the period expiring June 30, 1935. The second is an appeal from the renewal of the license for the period expiring June 30, 1936.

Since the license which is the subject matter of the first case expired before the filing of the appeal and the issue is moot, the appeal therein will be dismissed and will not be considered further except as necessary to a decision in the secon case.

Bassau had previously held a consumption license for "Cozy Grove" until June 30, 1934. His application for renewal of that license was denied by the Borough of Oakland upon the ground among others, that he had improperly conducted his licensed business under his prior license. He appealed. The denial was sustained. Bassau v. Oakland, Bulletin #57, Item #14.

In the latter part of May or early June, 1935, he filed a new application for the balance of the license year expiring June 30, 1935. Appellant filed objections, a hearing was held, and, after consideration, the Borough Council determined that Bassau had been sufficiently punished and, if given another opportunity, would properly conduct his business. Accordingly, the application was granted. Hence the appeal in Case #1, supra.

Within six days after that application was granted, the licensee filed an application for the period expiring June 30, 1936, which was granted for the same reasons over appellant's renewed objection. Hence the appeal in Case #2.

Appellant contends that the issuance of both of these licenses was erroneous because of the licensee's improper conduct in the past which led to the original denial of his application in 1934 and the affirmance on appeal as aforesaid.

The mere fact that a licensee has at one time improperly conducted his business does not necessarily disqualify him forever from receiving a license unless the misconduct was so gross as to involve moral turpitude or demonstrate permanent unworthiness ever to be entrusted with a license. The incidents which caused the original denial aforesaid and upon which appellant's present contention is based fall far short of this. It there appears, Bassau v. Oakland, supra, that Bassau employed his stepdaughter, aged 17, to serve liquor; that complaints had been made of loud noises, singing, yelling and swearing; that sales had been made after closing hours and after his first license had expired. That was sufficient misconduct to justify the Mayor and Council of Oakland in refusing him a renewal license. It is utterly insufficient to brand him for life as an unworthy citizen or to effect a permanent disqualification. While it was wrong, it was not moral turpitude. Whether he should now be entrusted with a license depends largely on his attitude. He is no longer recalcitrant but repentant. If this proves genuine and is backed by good behavior, there is no reason why a license may not be granted. The local issuing authority is primarily charged with passing upon the personal fitness of applicants for retail licenses. Federko v. Piscataway, Bulletin #85, Item #4. Its determination, if reasonable, will be sustained on appeal. Moss and Convery v. Trenton, Bulletin #29, Item #12; Orofino v. Millburn, Bulletin #45, Item #15; Anthony v. Branchville, Bulletin #80, Item #9. The action of the Borough Council in depriving Bassau of a license for over eleven months and now giving him a chance to show whether he has learned anything is reasonable and practical. The licensee misbehaved. He was amply punished. Justice has been done. Mercy is now in order. There is no abuse of discretion in giving him another chance.

Appellant also points to one other incident, occurring on or about July 19, 1935 after the appeal in Case #2 was filed, to demonstrate that the licensee is unfit, viz., that on that day a fight occurred in the licensed premises. The testimony, however, does not show that the licensee was involved in the fight or that the fighters obtained any alcoholic beverages at the licensed premises.

Appellant further contends that the issuance of the license was erroneous because an existing licensed place directly across the street from respondent Bassau's place is adequate to supply the needs of the residents in the vicinity. The determination of the number of licensed premises to be permitted in any given vicinity is a matter confided to the sound discretion of the issuing authority. Kalish v. Linden, Bulletin #71, Item #14; Connolly v. Middletown, Bulletin #81, Item #11. Where, as here, an attack is made upon the exercise of the discretion of the municipal issuing authority in the issuance of a license, the burden rests upon appellant to prove an abuse of that discretion by clear and convincing evidence. The proofs offered in the instant case fall short of sustaining this burden. All that appears is a mere difference of opinion. This is not sufficient. Kalish v. Linden, supra; Voos v. Union, Bulletin #73, Item #1.

Appellant finally contends that the license for the current period, Case #2, was improperly issued because he had filed a written objection thereto and had not been given an opportunity to be heard.

Section 23 of the Control Act provides that every applicant for a license shall cause a Notice of Intention to make such application to be published for two weeks successively in a newspaper printed in the English language, published and circulated in

the municipality in which the licensed premises are located. The Commissioner's "Revised Rules Applicable to all Municipal Retail Licenses for Advertising 'Notice of Intention' to Apply for a License", Bulletin #72, Item #2, further provides that "Each municipal clerk shall, immediately upon receipt of a written objection duly signed by a bona fide objector, transmit forthwith to the issuing authority of the particular municipality said objection and everything pertaining thereto, whereupon it shall become the immediate duty of each issuing authority to afford a hearing to all parties and immediately notify the applicant and the objector of the date, hour and place thereof." The obvious purpose of both the statute and the regulation is to provide persons objecting to the issuance of a license with a fair opportunity to be heard. The question to be decided is whether appellant was afforded such an opportunity in fact.

Appellant had filed written objections to the issuance of the license to respondent Bassau for the period expiring June 30, 1935, Case #1. A full hearing was held on these objections on June 5, 1935. Appellant appeared by counsel and produced witnesses and evidence in opposition to the application. After consideration the respondent issuing authority determined the license should be issued. Application for the current period came before the issuing authority on June 18th. Appellant renewed his objections in writing, which objections were identical with those presented at the hearing held on June 5th. In view of this hearing held less than two weeks before, the issuing authority held no further hearing.

The omission to have a hearing on the same objections previously presented was a technical violation of the State regulations. But no harm was done to appellant. Actually, appellant had been heard on his objections. He does not suggest that he could have done more at a rehearing than he had already done. His objections and his evidence had been heard and fully considered by the Borough Council less than two weeks before. The situation had not changed. It would be sacrificing substance to form to decide that, under such circumstances, the mere fact that no additional hearing was held is, in and of itself, sufficient cause for reversing the issuance of the license.

The action of respondent issuing authority is affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: October 2, 1935.

2. MUNICIPAL ORDINANCES - EFFECT OF AMENDMENT OF SECTION 37 OF THE CONTROL ACT.

October 2, 1935.

Mrs. Amy E. Shinn,
Borough Clerk,
Red Bank, New Jersey.

Dear Madam:

I have before me the ordinance regulating the sale and manufacture of alcoholic beverages within the Borough of Red Bank and fixing penalties for violation thereof, passed by your Mayor

and Council on December 3, 1934 pursuant to the Alcoholic Beverage Control Act as amended and supplemented.

Section 20 prohibits the unlicensed manufacture, sale, distribution, bottling, blending, rectifying, mixing, processing, warehousing or transporting of any alcoholic beverages. Section 21 prohibits the unlicensed importing, owning, possessing, keeping or storing in Red Bank of alcoholic beverages with intent to manufacture, sell, distribute or bottle without a license. Section 22 prohibits the owning, possessing, keeping or storing in Red Bank of any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages with intent to use the same in the processing, warehousing or transportation of alcoholic beverages in violation of the ordinance. Section 23 prohibits the aiding or abetting of others in the manufacturing, warehousing, or transportation of alcoholic beverages in violation of the ordinance.

The Alcoholic Beverage Control Act empowers the governing body of each municipality to make, enforce, amend and repeal such ordinances as it may deem necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages within its municipality in violation of the Act. See Section 37, as amended June 8, 1935 by Chapter 257, P. L. 1935. Bulletin 83, item 1, paragraph 14. The express power so conferred removes any doubt as to the legal right of municipalities to enact prohibitory ordinances; it expressly enables them to do so and to fix penalties for violation thereof. The question then resolves itself to the extent of the power conferred.

The statute says specifically that municipalities may prevent unlawful possession, sale, distribution and transportation. It may be argued, predicated upon a strict construction, that, therefore, the unlawful manufacturing, bottling, blending, rectifying, mixing, or processing of alcoholic beverages or the unlawful owning, possessing, keeping or storing of implements or paraphernalia for such purpose would remain, as heretofore, solely a violation of the Act, outside of the jurisdiction of your local magistrates and the legal scope of your local ordinances. If this were sound, it would mean that your ordinance, while valid insofar as it prohibited unlawful possession, sale, distribution and transportation, exceeded its authority in purporting to prohibit the other unlawful acts which it seeks to prevent. On the other hand, specific delegation of powers invariably will convey also certain implied powers not specifically delegated. For example, the power to prohibit carries with it the power to penalize; if this were not true regulation would be unenforceable, ineffective. It is difficult to determine the extent to which these implied powers go. Arguments not unreasonable have been advanced holding the unlawful manufacturing, bottling, blending, rectifying, mixing or processing of alcoholic beverages, actions incidental to and prohibited because designed to facilitate the unlawful possession, sale, distribution or transportation, to fall within these implied powers.

The statute, however, does not make penalty clauses subject to the Commissioner's approval, which is required, according to Section 37, only with respect to regulations of the conduct of licensed businesses and the nature and condition of licensed premises, and according to Section 29, only with respect to conditions imposed upon the issuance of licenses deemed necessary and proper to accomplish the objects of the Act. It is clear that the provisions requiring these approvals do not contemplate the adjudication of constitutional questions which are more properly cognizable in our courts. The approval or disapproval of your

Sections 20 through 23 is therefore outside of my jurisdiction. I hope when tested by the courts that they will be sustained. Summary punishment under such ordinances for violations triable before local magistrates should go a long way in aiding enforcement and producing more effective control.

There is another question which occurs to me with respect to these sections. At the time the ordinance was adopted the statute did not confer specific authority to enact such prohibitory ordinances and there was some doubt that the power to do so existed. Consider then the question as to whether or not these sections are validated by the enabling statute subsequently enacted. If not, their reenactment is necessary. As to this your Borough Attorney should advise.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. COURT DECISIONS - UNION COUNTY COMMON PLEAS - PLAINFIELD v. PEREIRA

MUNICIPAL ORDINANCES --REQUISITES AND VALIDITY --SCOPE AND OPERATION

The Commissioner is indebted to Honorable Edward A. McGrath, Presiding Judge of the Court of Common Pleas of Union County for his conclusions recently rendered in Plainfield vs. Pereira, a case of novel impression, recently heard before him, involving the validity of Municipal Ordinances affecting liquor control. Believing that it will be of great help to Municipalities in this State in their effort to effect a proper liquor control, it is reprinted herewith:

UNION COUNTY COURT OF COMMON PLEAS

TREASURER OF THE CITY OF PLAINFIELD,
Respondent,
vs.
AERIES PEREIRA,
Appellant.

ON REVIEW OF SUMMARY CONVICTION

Decided September 3, 1935.

William Newcorn, Attorney for Respondent.

J. Leroy Jordan and Schneider & Schneider, Attorneys for Appellant.

EDWARD A. McGRATH, J:

The appellant was arrested in the City of Plainfield on May 6, 1935, charged with having in his possession an unregistered still, in violation of the laws of this State, and

on this charge he was held for the action of the Grand Jury and was subsequently indicted. On the same facts he was also charged with having violated the 23rd section of an Ordinance of the City of Plainfield entitled, "An Ordinance to Regulate the Sale of Alcoholic Beverages in the City of Plainfield", in that the said Aeries Pereira did, on the 6th day of May, 1935, have in his possession and under his control, a still and other paraphernalia adaptable for use in connection therewith, connected and in use for the manufacture of illicit alcoholic beverages, at and on the premises known as #1434 Willever Street, in said City, contrary to said ordinance. On this latter charge, in a summary proceeding brought by the Treasurer of the City of Plainfield, under the City charter, he was found guilty of violating the ordinance, and was sentenced by the City Judge to serve sixty days in the County Jail as a disorderly person. The record discloses that the appellant was found in possession of a still in May 6, 1935 in operation, with the gas burners lit and the still working and connected. The conviction recites that Pereira had in his possession and under his control a still and other paraphernalia adaptable for use in connection therewith and in use for the manufacture of illicit alcoholic beverages.

It is well settled that where the legislature has delegated to a municipality the power to regulate intoxicating liquor and the municipality in pursuance of such authority has passed a proper ordinance, the municipality may punish violations of such ordinance by virtue of its general statutory police power to pass ordinances for public peace and good order. (Hershoff vs. Treasurer of Beverly, 45 N.J. L., 288; Howe vs. Plainfield, 37 N. J. L., 145; Staates vs. Washington, 44 N. J. L., 605) Without violating any constitutional principle the municipality, if authorized, may inflict punishment for such violations in addition to the punishment provided by statute for the same act, notwithstanding that the legislature has made the act a misdemeanor. (Howe vs. Plainfield, 37 N. J. L. 145; Bridgeton vs. Zellers, 100 N. J. L., 33, aff'd. 101 N. J. L., 204) Since such violations are not in their nature indictable offences, they may be punished in summary proceedings. (State vs. Rodgers, 91 N. J. L., 212; Caruso vs. Porter, 102 N. J. L., 71; Katz vs. Eldredge, 97 N. J. L., 157; explained in Katz vs. Eldredge, 98 N. J. L., 125 and Lutwin vs. State, 97 N. J. L., 67; State, Klinges vs. Common Pleas, 3 N. J. Misc., 1084).

But before there can be an ordinance regulating intoxicating liquor there must be a statute authorizing such ordinance, and the ordinance cannot be any broader than the authority which supports it. (Schlachter vs. Stokes, 63 N.J.L., 138; State, Rossell vs. Garon, 50 N. J. L., 358; W.J. and S.R.R. vs. Millville, 91 N. J. L., 572)

In this case the City relies on the authority given by its charter to enact ordinances to protect the peace, health and morals of the City, and on the provisions of the Home Rule Act of 1917, giving municipalities power to enact ordinances to prevent vice, drunkenness and immorality, to preserve public peace and good order. It is settled, however, that such statutory powers do not in themselves give any authority to

regulate or prohibit the traffic in intoxicating liquor. (Schlachter vs. Stokes, 63 N. J. L., 138; Salerno vs. Passaic, 88 N. J. L., 87, aff'd. in 89 N. J. L. 370; see also W. J. and S.R.R., 91 N. J. L., at 577) The regulation of intoxicating liquor has always been dealt with in an exceptional way. (Salerno vs. Passaic, 88 N. J. L., 87, aff'd. in 89 N. J. L., 370)

The act in force at the time of the alleged violation was the Alcoholic Beverage Control Act, Chapter 436, P. L. 1933, and its amendments and supplements. This is a new and general act, necessitated by the new situation created by the repeal of the prohibition amendment and obviously designed to lay down a new and general legislative policy with respect to the regulation and control of intoxicating liquor. This act, so far as its provisions stood at the time of the alleged violation, did not give the City of Plainfield any power to pass an ordinance regulating the possession of an unlicensed still or the illegal manufacture of liquor, but, on the contrary, such acts were expressly required to be punished as misdemeanors in the State courts.

Section 37 of the Act, as amended by P. L. 1934, Chapter 85, on which the ordinance is based, obviously gives no authority to a municipality to punish for the possession of a still or the manufacture of illicit liquor by an unlicensed person. This section was amended in 1935, to give additional power to the municipalities, but this amendment even if it applied to the facts in this case, was not in effect at the time of appellant's alleged offence.

Moreover, if the City did have authority to pass an ordinance such as the one which the defendant is alleged to have violated, the ordinance itself does not sustain the conviction. The ordinance is an ordinance to regulate the sale of alcoholic beverages in licensed places, and no mention is made of the possession of an unlicensed still or the illegal manufacture of liquor, except that in the penalty clause it is provided among other things that any person who shall own, possess, keep or store in said City of Plainfield any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages "in violation of this ordinance", shall be deemed and adjudged a disorderly person and punished by a fine of not less than $50.00 and not more than $200.00, or imprisonment for not less than thirty days and not more than six months, or both such fine and imprisonment, in the discretion of the court. Obviously, the penalty clause cannot impose a penalty for acts which are not mentioned in the body of the ordinance and which the ordinance was not intended to regulate and does not regulate.

The conviction in this case is not supported by the statutes nor is it supported by the ordinance, and must be set aside.

4. APPELLATE DECISIONS - WALKER v. VERONA

JAMES WALKER,

Appellant,

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF VERONA (ESSEX COUNTY),

Respondent

ON APPEAL
CONCLUSIONS

Saul and Joseph E. Cohn, Esqs., by Milton Lowenstein, Esq., Attorneys for Appellant.

Chester C. Beekman, 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 #730 Bloomfield Avenue, Verona.

Respondent contends the application was properly denied because the six plenary retail consumption licenses issued and outstanding in the Borough of Verona are adequate to supply all reasonable demands of the community, and that the issuance of any additional licenses would be socially undesirable.

To crystallize this conclusion, respondent, after denying appellant's application, adopted a resolution limiting the number of plenary retail consumption licenses to be issued to six.

Appellant concedes that public necessity and convenience do not require more than six consumption places in Verona but argues (1) that he should have received one of the six licenses issued, and (2) the limitation as applied to his application is unreasonable.

There were eight plenary retail consumption licenses issued in Verona for the license period expiring June 30th, 1935. On June 25th, 1935 respondent met for the purpose of issuing licenses for the current period. Five of the existing licensees applied for renewals. Two additional applications were filed, one by appellant, the other by one Whitrock. Both appellant and Whitrock were new applicants but both were purchasers of businesses of prior licensees. Whitrock's application, together with the five renewal applications, were granted. Consideration of appellant's application was adjourned for a week for further investigation of rumors which had come to respondent that appellant was not the sole person interested in the business to be conducted under the license applied for by him. On July 2nd, 1935, at the adjourned meeting, respondent conceded that investigation disclosed these rumors to be unfounded in fact, but nevertheless denied the application for the reason aforesaid.

The mere fact that on June 25th, 1935 respondent issued a license to Whitrock and adjourned consideration of appellant's application is no indication that Whitrock was improperly preferred over appellant. It is not contended that Whitrock's application was out of order or that he was not qualified both as to person

and place. There was no reason to postpone final action on his application. The rumors that other persons would be interested in appellant's business were, on the other hand, very properly the cause for further investigation of his application, thus necessitating a postponement. Appellant does not even suggest that the postponement was improper. Respondent was under no duty to withhold action on the Whitrock application simply because final disposition of appellant's application was impractical and inexpedient at the time. The resulting situation is not cause for reversal.

Appellant's second argument that the limitation as applied to him is unreasonable rests upon the fact that he purchased a business which had been licensed for the period expiring June 30th, 1935. That does make it hard for him. But not even licensees have a right to renewals of their licenses. See Re Marritz, Bulletin #61, Item #8. As the Commissioner there said:

> "Licenses are good, at the maximum, for the term of one year only. All rights conferred by the license cease upon its termination. While a licensee who has lived up to the law and complied with all requirements ought, in fairness, to have first consideration when renewals are determined, nevertheless it is overstating the principle to conclude that he is therefore 'entitled' to a renewal. No one has a vested right to a renewal. Whether a renewal should be granted or not is, like the original issuance of the license, a matter to be decided in the light of what is then determined as the best common interest of the public at large."

A fortiori purchasers of licensed businesses, in the absence of legislative acts, have no such right. The hardship caused by denial of the privilege cannot override a reasonable adjudication that the issuance of a license would be socially undesirable.

The action of respondent is affirmed.

D Frederick Burnett

Commissioner.

Dated: October 3,1935.

5. REFERENDUM - SPECIAL MEETINGS OF MUNICIPAL GOVERNING BOARD -- WHEN PROPER.

October 4, 1935.

Douglas V Aitken Esq
Feinstein Building
Bridgeton
New Jersey

WHERE PROPER PETITION FOR REFERENDUM UNDER CONTROL ACT IS DULY FILED MORE THAN THIRTY DAYS BEFORE DATE OF NEXT GENERAL ELECTION BUT THERE WILL BE NO REGULAR MEETING OF THE GOVERNING BOARD OF THE MUNICIPALITY UNTIL WITHIN THIRTY DAYS THEREOF IT WOULD BE EMINENTLY FAIR AND PROPER TO CALL A SPECIAL MEETING OF THE GOVERNING BOARD TO PERMIT THE ADOPTION OF A RESOLUTION DIRECTING THE COUNTY CLERK TO PRINT THE QUESTION UPON THE OFFICIAL BALLOT TO BE USED IN SAID MUNICIPALITY AT THE NEXT ENSUING GENERAL ELECTION STOP SOUND POLICY REQUIRES THAT EVERY REASONABLE EFFORT BE MADE TO ASCERTAIN THE WILL OF THE ELECTORATE

DEPARTMENT OF ALOCHOLIC BEVERAGE CONTROL
D FREDERICK BURNETT COMMISSIONER

6. SOLICITORS' PERMITS --MAY BE ISSUED TO MUNICIPAL TAX ASSESSOR -- THE REASON FOR THE RULES RE-STATED.

October 7, 1935.

COMMISSIONER:

Question has arisen whether or not a solicitor's permit may be issued to a municipal tax assessor. He is not within the strict wording of the Rule but may possibly be within its spirit, because of his power to determine local valuations. Please rule.

ERWIN B. HOCK

DEPUTY COMMISSIONER

Dear Mr. Hock:

Rule 8 of the Rules and Regulations governing solicitors' permits reads:

> "8. No Solicitor's Permit may be issued to any member of a municipal governing body or municipal issuing authority or to any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever."

The purpose was to divorce the alcoholic beverage industry, not only from the license issuing function and municipal bodies having control of the industry, but also from any person charged with the enforcement of the laws governing the industry. The Rule was designed to prevent salesmen of manufacturers and wholesalers from forcing sales upon the very licensees to whom such salesmen in their dual capacity as municipal officials had granted the licenses or laid down local rules governing them.

If a municipal tax assessor is not a member of a municipal Governing Body or Issuing Authority, his official duties in no wise concern or relate to alcoholic beverage control.

It is true that a tax assessor <u>might</u> misuse his power but there is no such presumption. Such misuse is remote and indirect and quite different from the immediate and almost inevitable abuse of power when any man attempts to serve two masters. The known frailty of human nature requires a rule that when there is a collision between duty and self-interest, self-interest shall be barred. That is the reason why salesmen who, as municipal officials, issue licenses and sit in judgment upon licenses and are specifically charged with control of the liquor traffic, cannot get solicitor's permits.

A tax assessor is under no such duty. Since there is no such collision, there is no disqualification.

I see no reason to expand the rule at the present time.

D. FREDERICK BURNETT

Commissioner

7. REHEARING - NOT PERMISSIBLE AFTER DENIAL OF APPLICATION FOR A LICENSE.

October 7, 1935.

Mr. Otto E. Braun,
City Clerk,
Camden, New Jersey.

Dear Sir:

I have before me the resolution passed by your Board of Commissioners on September 26, 1935, in which a previous resolution of September 12, 1935 denying a plenary retail consumption license to Albert Eckerle, 2277 South Seventh Street, Camden, was reconsidered and rescinded and the plenary retail consumption license was thereupon granted.

Such reconsideration was held invalid and not within the jurisdiction of the Board of Commissioners in Plager vs. Atlantic City, Bulletin 80, item 11, because the law is settled that the right of a deliberative body to reconsider its action in a matter of a judicial or quasi judicial character ceases when a final determination has been reached. See also Gulnan vs. Board of Chosen Freeholders, 74 N. J. L. 543, (E. & A. 1906), and re Hendrickson, Bulletin 47, item 10. In the latter case, the Commissioner ruled that no rehearing may be granted by a municipal issuing authority after it had denied an application for a license, and that the sole method of review provided by the Act from such a denial was by appeal to the Commissioner, pursuant to Section 19.

The issuance of this particular license may be ultimately justified by the facts of the situation but your Board of Commissioners having once adjudicated upon the question, no longer had jurisdiction to decide it.

The license, therefore, is void and of no effect. I cordially suggest that it be cancelled at once as inadvertently issued and that his application be formally denied, not on the merits, but as not within the jurisdiction of the Board.

Albert Eckerle's proper course is to appeal to me from the denial of his application.

For the convenience of Mr. Eckerle, herewith is a copy of the Rules Governing Appeals which you may give him.

The procedure on appeal may, if it meets with the approval of your Board, follow that outlined in Maurer vs. Sussex, Bulletin 82, item 11, which dealt with an analogous situation.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

8. SOLICITOR'S PERMIT -- BREWERY EMPLOYEE WHOSE SOLE ACTIVITY IS COLLECTION OF ACCOUNTS AND WHO DOES NOT SELL OR SOLICIT SALE OF ALCOHOLIC BEVERAGES DOES NOT REQUIRE SOLICITOR'S PERMIT AND THEREFORE DOES NOT COME WITHIN THE RULES AND REGULATIONS GOVERNING THE ISSUANCE OF SUCH PERMITS --SUCH EMPLOYMENT OF MEMBERS OF MUNICIPAL GOVERNING BODIES, WHILE NOT LOOKED ON WITH FAVOR, IS, NEVERTHELESS, NOT PROHIBITED.

Dear Commissioner:

I am a member of the Governing Body of the Borough of North Arlington. I was formerly employed by the Camden Brewery in the capacity of salesman. Through your recent rulings, I have been notified by the Camden Brewery that they have dispensed with my services as solicitor but that they would like to retain my services strictly for the purpose of making collections. On that basis I cannot solicit any orders whatsoever.

North Arlington is governed by a Mayor and six Councilmen, of which I am one. We have a license committee composed of three Councilmen which investigates applications for liquor licenses. I am not a member of the license committee. All of our committees have three Councilmen serving so that I alone without the vote of at least one more Councilman on any commitee could accomplish nothing.

I might also state that if I am permitted to remain in the employ of the Camden Brewery I will be paid on a salary basis. The amount of money which I collect will have no bearing on my salary.

In addition, I also desire to bring to your attention that I shall not collect in the Borough of North Arlington. My entire activity will take place outside the Borough limits.

Trusting that you can see your way clear to grant me permission to remain in the employ of Camden Brewery under these conditions, I am,

Very truly yours,

JOHN D. REECE

September 21, 1935.

John D. Reece, Esq.,
North Arlington,
New Jersey.

Dear Sir:

Under P. L. 1935, c. 256, individuals, except licensees themselves and employees of retail licensees in connection with their licensed businesses, may not sell or solicit the sale of any alcoholic beverages without solicitors' permits. The Commissioner's rules and regulations governing the issuance of solicitors' permits provide that:

"No solicitor's permit may be issued to any member of a municipal governing body or any issuing authority or to any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever." Bulletin #81. Item #2.

The object of the rule was to break up unholy alliances with the alcoholic beverage industry by those charged with the enforcement of the laws governing the same. The statutory provision and the rule pursuant thereto apply only to solicitors' permits. They have no application where the employee does not sell or solicit the sale of alcoholic beverages.

Consequently a brewery employee, whose sole activity consists of collection and who does not sell or solicit the sale of alcoholic beverages, does not come within the prohibition. Although such employment is not prohibited, it is not looked upon with favor by the Commissioner because of the evident dangers of abuse and subterfuge. Cf.Bulletin #84, Item #17.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

9. SOLICITOR'S PERMIT - BREWERY EMPLOYEE WHOSE SOLE ACTIVITY IS COLLECTION OF ACCOUNTS AND WHO DOES NOT SELL OR SOLICIT SALE OF ALCOHOLIC BEVERAGES DOES NOT REQUIRE SOLICITOR'S PERMIT AND THEREFORE DOES NOT COME WITHIN THE RULES AND REGULATIONS GOVERNING THE ISSUANCE OF SUCH PERMITS -- WHERE SOLICITOR'S PERMIT HAS BEEN ISSUED AFTER RESIGNATION SUBMITTED BUT NOT ACCEPTED, SUCH RESIGNATION MAY BE WITHDRAWN AND SOLICITOR'S PERMIT SURRENDERED FOR CANCELLATION.

October 3, 1935.

My dear Mr. Burnett:

I represent the Borough of Hasbrouck Heights. Two members of the Borough Council, were engaged as employees in concerns holding licenses from your Department. Both tendered their resignations as members of the Council, on the advice of their employers, considering themselves affected by the recent regulation of your Department.

During the Summer vacation there was never any quorum to act on the resignations and the matter was forced to lay until recently. The Mayor and Council was then confronted with the situation when it had pending before it two Ordinances to authorize the issuance of Bonds, under the new Bond Act. This Act provided that there must be an affirmative vote of two-thirds of the Mayor and Council and the Bonding Attorneys ruled that this required the vote of five Councilmen. If the resignation of both Councilmen were accepted, there would only be four Councilmen remaining. The Council at that time was not in a position to agree on successors to the resigning members, if the resignations were acted upon.

Councilman Chamberlin, one of the resigning members was employed by a Hackensack concern, and it was my opinion that he came directly within the terms of your Rule. Councilman Julie was employed by a Jersey City brewery concern, primarily in the capacity of a collector, and it was my thought that he was not affected by your Rule. I, therefore, advised the Mayor and Council to accept Councilman Chamberlin's resignation and advised Councilman Julie to withdraw his resignation pending a determination by you as to whether or not his case was embraced within the provisions of your Rule. I considered that before any final action was taken, Councilman Julie would be entitled to be heard by you on the question involved. He has two more years to serve as a member of the Council, and I think it is the decision of his colleagues to have him continue as a member of their Body, if the same can be done, without affecting his employment. Naturally, I do not desire any action on our part in anywise to injure his standing with his employer, or to affect his position there.

I am writing you at this time to ask for an appointment when I could see you to present to you the version of the Mayor and Council in respect to Councilman Julie's status and at the same time I could obtain your opinion as to whether he is barred under your regulation.

Very truly yours,
RALPH W. CHANDLESS
Borough Attorney.

October 9, 1935.

Ralph W. Chandless, Esq.,
Hackensack, N. J.

Dear Sir:-

I have considered your letter of October 3d.

There is nothing in the Control Act nor in the present regulations of this Department which prohibits breweries from employing members of municipal governing bodies. The rules governing solicitors' permits, however, prohibit the issuance of such permits to such employees. In Bulletin #91, Item #8, a copy of which is enclosed, the Commissioner ruled that a brewery employee whose sole activity consists of collection and who does not sell or solicit the sale of alcoholic beverages does not require a solicitor's permit. Not being the holder of such permit, he is not controlled by the rules governing their issuance. The danger of abuse, however, inherent in such employment, is evident and it may ultimately be necessary to consider the promulgation of additional restrictive regulations. In the meantime, the operation of the present regulations will be carefully observed.

Our records disclose that Howard A. Julie obtained solicitor's permit #1359 under date of August 2d, 1935, upon certification that he had filed with the Borough Clerk of Hasbrouck Heights his resignation as Councilman thereof. There is no prohibition against the withdrawal of Mr. Julie's resignation, which had not been accepted, and his continuance as Councilman, provided he forthwith surrenders his solicitor's permit for cancellation and provided further that he does not, at any time, solicit the sale of or sell alcoholic beverages on behalf of his brewery employer, either in his capacity as brewery collector or otherwise. This latter condition must be strictly complied with at all times and violation thereof constitutes a criminal offense under P.L. 1935, c. 256.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

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

10. LICENSES - AUTOMATIC SUSPENSION - WHEN LIFTED BY COMMISSIONER FOR SPECIAL CAUSE SHOWN.

October 8, 1935.

William J. Egan, Esq.,
Newark, N. J.

Dear Sir:

The petition filed on behalf of James Sadanokis, of #66 Liberty Street, Newark, has been duly considered.

The petition alleges that: the petitioner is the holder of a plenary retail consumption license for premises located at #55 Vincent Street, Newark; on August 6, 1935 petitioner's wife, in his absence, permitted Mrs. Breede, an alien and petitioner's sister, to tend bar; petitioner was arrested and admitted that Mrs. Breede was the owner of the business conducted under the license; petitioner was adjudged guilty of having violated the Control Act and was fined $100.00 in the Newark Police Court; Mrs. Breede was not the owner of the licensed business but had merely loaned petitioner the money paid for the license fee; the admission to the contrary was the result of petitioner's confusion and his inability to understand the questions propounded; petitioner is desirous of selling his business to Jurgis Jadelis of #239 Elm Street, Newark, who presently holds a license issued by the Municipal Board of Alcoholic Beverage Control of Newark and prays that the automatic statutory suspension, resulting from the aforesaid conviction, be lifted in order to permit the sale of the licensed business. The petition bears the consent of the Municipal Board of Alcoholic Beverage Control of Newark to the temporary lifting of the suspension.

Under the provisions of section 82 of the Control Act (P.L. 1935, c. 254), the license held by petitioner was automatically suspended for the balance of its term upon his conviction for violation of the Act. The Act permits the Commissioner to lift the suspension in his discretion and for good cause shown. See Bulletin #84, Item #1. This power will be sparingly exercised and in case of major violation, such as the manufacture and sale of bootleg liquor, the automatic suspension will invariably be continued.

In the instant case, however, there is nothing to indicate that the petitioner was a wanton wrongdoer or that the violation was intentional. The municipal issuing authority, which is primarily charged with the supervision of the licensee and the licensed business, is apparently satisfied that the other penalties imposed by law are sufficient to meet the situation and has consented to a lifting of the suspension. In addition, the licensee will not continue in business and the lifting of the suspension is requested for the sole purpose of enabling a transfer of the license to another licensee in accordance with law.

In the light of all of the foregoing, an order lifting the suspension will be entered in the event that the license is transferred by the Municipal Board of Alcoholic Beverage Control of Newark to the prospective purchaser after compliance with the provisions of section 28 of the Control Act and proof thereof is duly submitted to the Commissioner. Pending such transfer and entry of such order, the suspension will continue in full force.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

11. APPELLATE DECISIONS - GREAT NOTCH VILLA vs. CLIFTON

Great Notch Villa, a corporation,
Appellant,
-vs-
Mayor and City Council of the City of Clifton,
Respondent.)

On Appeal
CONCLUSIONS

Harold Sokobin, Esq., for Pelenfriend, Sokobin & Duff, Esqs., Attorneys for Great Notch Villa

John C. Barbour, Esq., Attorney for Mayor and City Council of the City of Clifton

Mortimer J. Shapiro, Esq., Attorney for Department of Alcoholic Beverage Control

BY THE COMMISSIONER:

This is an appeal from an order entered by respondent after hearing duly held, adjudging the appellant guilty of possessing illicit beverages and suspending its license for premises located at#838 Valley Road, Clifton, for a period of twelve (12) days.

At the hearing on appeal, investigators of the Department testified that on July 3, 1935, they inspected the licensed premises; that during their investigation they discovered in a room which had been locked, a funnel, caps, internal revenue stamps, and a whiskey bottle, partly filled with wine, which was capped and bore a label reading "Penn State Brand - Whiskey a Blend". In addition, they took possession of a bottle bearing the label "*****Blended Scots Whisky - Haig & Haig - 86.8 proof" for purposes of analysis. The analysis by the Department's chemist of the contents of this bottle disclosed that its properties varied considerably from the properties of an admittedly genuine bottle of Five Star Haig & Haig Blended Scots Whisky. The comparative analysis is as follows:

Bottle seized at Licensed premises			Admittedly genuine bottle		
Proof	84.70		Proof	86.8	
Alcohol by Volume	42.35%		Alcohol by Volume	43.8%	
Alcohol by Weight	35.46%		Alcohol by Weight	36.77%	
Specific Gravity	0.9481		Specific Gravity	0.9456	
Acidity Total	1.70	grams	Acidity Total	14.6	grams
Acidity Volatile	1.42	"	Acidity Volatile	8.94	"
Acidity Fixed	0.28	"	Acidity Fixed	5.66	"
Esters	4.55	"	Esters	20.3	"
Aldehyde	2.36	"	Aldehyde	5.75	"

Furfural	- 0.71 grams	Furfural	- 1.73 grams
Fusel Oil	-14.5 "	Fusel Oil	-46.0 "
Extract	59.5 "	Extract	159.0 "
Sugars	-None	Sugars	- None
Color - All artificial		Coloring- About 95% artificial	
Tannins in terms of tannic acid	-None	Tannins in terms of tannic acid-	11.5
Flavor	-Scotch	Flavor	- Scotch

The materiality of such evidence of comparative analysis is clearly recognized in the recent case of People ex rel. Yates vs. Mulrooney, 281 N. Y. Supp. 216 (1935), where the court said:

> "We may assume that there is uniformity in the same blend of whiskey, and the fact that the contents of these open bottles differed so materially from that in the sealed container is some evidence that it had been diluted and that the liquor offered for sale was not kept in the same original container in which it was received by the retailer."

The licensee denies that it ever possessed any illicit beverages and its President and a bartender employed by it testified in support of such denial. The bartender testified that he had placed the wine in the whiskey bottle for his own personal consumption. Neither witness, however, could explain the presence of the internal revenue stamps and the paraphernalia described above, nor was any evidence introduced on behalf of the licensee with respect to the Haig & Haig Scots whisky.

From all of the foregoing it seems clear that respondent's finding that illicit beverages were possessed on the licensed premises was not unreasonable. It may be that neither appellant's President nor any other officer knew of the violation. Such lack of knowledge, however, would be no defense since the appellant corporation must be held responsible for what transpires at the licensed premises. Any other conclusion would permit ready circumvention of the Act. Cf. Riewerts vs. Englewood, Bulletin #60, Item #9.

Appellant contends that since the formal charges preferred against it by the respondent referred solely to the bottle partly filled with wine, the other evidence of unlawful alcoholic beverage activity was improperly received and cannot be invoked to sustain the suspension of the license. This contention is without merit. All of the evidence related above tends to support the formal charge that the alcoholic beverage contained in the whiskey bottle labeled "Penn State Brand" was illicit. Furthermore, appellant had full opportunity to be heard, not only before the respondent, but also at the hearing de novo before the Commissioner and at a supplemental hearing held thereafter at appellant's request. At the supplemental hearing, appellant introduced no testimony, even though it had been acquainted prior thereto with the nature of the foregoing evidence. Under these circumstances, it cannot be said that appellant was in anywise prejudiced by the fact that the formal charges did not refer to all of the illicit beverages found on the licensed premises.

The action of respondent is affirmed.

D. FREDERICK BURNETT

Dated: October 10, 1935. Commissioner

12. SCHEDULE OF FEES
FOR LISTS OF HOLDERS OF 1935-36 MUNICIPAL ALCOHOLIC BEVERAGE LICENSES ISSUED IN THE STATE OF NEW JERSEY

For supplying entire list comprising the names and addresses of approximately 10,920 licensees: $25.00

For supplying County lists:

Counties	No. Licenses	Schedule of Fees
Atlantic	523	$3.00
Bergen	1,067	7.50
Burlington	202	1.00
Camden	509	3.00
Cape May	135	1.00
Cumberland	114	1.00
Essex	1,735	10.00
Gloucester	124	1.00
Hudson	1,916	10.00
Hunterdon	69	1.00
Mercer	522	3.00
Middlesex	615	3.00
Monmouth	573	3.00
Morris	395	2.00
Ocean	164	1.00
Passaic	1,012	7.50
Salem	57	1.00
Somerset	191	1.00
Sussex	127	1.00
Union	731	3.00
Warren	148	1.00

Names and addresses of license holders are arranged according to counties and the municipalities within each county and are classified as to type of license held.

Licenses are recorded daily as reported by the issuing authorities. Therefore, the total number of licensees, as shown, are subject to change as of the date the list is issued.

October 1, 1935.

I respectfully recommend this schedule.

ERWIN B. HOCK
Deputy Commissioner

Approved

D. FREDERICK BURNETT
Commissioner

13. MUNICIPAL ORDINANCES - REGULATIONS STOPPING MUSIC AND DANCING IN RESIDENTIAL DISTRICTS BEFORE THE REGULAR CLOSING HOUR APPROVED.

October 8, 1935.

Edwin G. C. Bleakley, Esq.,
City Counsel,
Camden, New Jersey.

Dear Sir:

I have before me the proposed ordinance to amend the ordinance to fix license fees, to regulate the sale and distribution of alco-

holic beverages and to provide penalties for violation thereof, adopted December 27, 1934, as amended June 27, 1935, by adding thereto Section 19 reading:

"SECTION 19. Any licensee hereunder operating a saloon in which music or other entertainment is provided to the patrons thereof shall be designated as a cabaret saloon. It shall be unlawful for any such cabaret saloon to operate by providing music or other similar entertainment on Sunday, the first day of the week, or after 12.30 A.M. of any other day of the week, in a residential district.

A residential district hereunder shall be deemed and construed to be any city square or block on both sides of which the majority in number of the buildings located in such city block or square are used, occupied or adapted for or to residential purposes."

In effect, the proposed ordinance will require that in residential districts, as defined, music and similar entertainment must cease at twelve o'clock midnight on Saturday night and at 12:30 a. m. on other week days, and none is to be permitted on Sundays. It is entirely reasonable to require that music and entertainment cease at an hour earlier than that fixed for stopping sales or closing licensed premises and to distinguish residential districts from others. The regulation will therefore be approved.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

Commissioner