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

BULLETIN 212 NOVEMBER 12, 1937

1. APPELLATE DECISIONS - HARBOR INN, INC. vs. BRIELLE.

HARBOR INN, INC., Appellant,	)	
-vs-	)	ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF BRIELLE, Respondent.	)	CONCLUSIONS

Frederic M.P. Pearse, Esq., by George Such Pearse, Esq., Attorney for Appellant.
Mayor Frederick N. Watts and Councilman L.T. Knight, for Respondent, Pro se.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located on Ashley Avenue, between Ashley Avenue and the Manasquan River, in the Borough of Brielle.

Respondent denied the application because of an existing resolution adopted by the Borough Council in November 1934, limiting the number of such licenses to eight, and the prior issuance of the allotted number.

Appellant contends that the resolution is unreasonable at the present time because fishing activities on the Manasquan River have increased more than 300% since the resolution was adopted, thus increasing materially the amount of business in the Borough.

Appellant constructed the building containing its restaurant at its present location during the Spring of 1937. As evidence of necessity, appellant presented to the Borough Council at the hearing below three petitions, one containing eighty-six names of patrons of the restaurant, another containing thirty-five names of patrons of boats sailing from Brielle Yacht Basin, and the other containing fifty-one names of citizens and residents of the Borough, all of which petitions requested that a retail liquor license be granted to appellant. At the hearing below, three Councilmen voted in favor of granting the license, three voted against the granting of the license, and the deciding vote against the granting of the license was cast by the Mayor.

At the hearing on appeal, the President of appellant corporation testified to a great increase in fishing activities on the Manasquan River since 1934, and also that a large percentage of his customers sought to purchase liquor since the restaurant was opened. His testimony as to the fishing activities on the river, especially on Saturdays and Sundays, was corroborated by the owner of a yacht basin which adjoins Harbor Inn.

On behalf of respondent, Mayor Watts testified that the winter population of Brielle is approximately eight hundred, and that in summer the population may almost double. The Mayor admitted there has been a gradual increase in the fishing activities since 1934 but said there had been no noticeable increase in population since that time. As to the fishing activities, he testified:

> "I have repeatedly gone to all of these boat basins Saturday afternoon and Sunday afternoon, which are the heaviest days of the week, from 2:30, when the boats begin to come in, until 5 o'clock when 90% of them are in, and from my observation, 90% of the people who have been fishing get in their cars and go home. They have all they want to drink on the boats, I presume."

Councilman Knight, who voted to deny, testified that there has been a considerable increase in the boating industry since 1934, but said there was a very small increase in the population of the Borough. Both the Mayor and Councilman testified that in their opinion there are a sufficient number of licensed places in Brielle at the present time.

The question of the number of licenses which may be outstanding in any given community is largely a matter of determination by the local issuing authorities. Kalish vs. Linden, Bulletin 71, Item 14. The evidence as to necessity, consisting of petitions mentioned above, was before respondent at the time it decided to deny the application. Even accepting these petitions at their face value, the evidence introduced by appellant is insufficient to show that respondent's determination is unreasonable in view of the small population of the Borough, the comparatively large number of licenses issued and the additional evidence that appellant's premises are located within five hundred feet of three other places licensed for consumption.

Appellant likewise contends that the resolution, when originally adopted in 1934, was not adopted in good faith but solely for the purpose of excluding a colored club. If that was so, it was an abuse of a governmental function for race, creed and color have no place in licensing. Sears Roebuck & Co. vs. Absecon and Jones, Bulletin 185, Item 10. Mayor Watts denied that the resolution was intended to exclude a colored club. He testified that after Repeal every existing restaurant was given an opportunity to apply for a license; that thereafter the Borough Council heard rumors that an undesirable club intended to apply for a license and decided to set a limit on the number of licenses; that in November 1934 members of the Council agreed that enough licenses had been issued, and adopted the resolution in question. The rumors may have spurred the Council to action, but the Mayor's testimony shows that the resolution was adopted in good faith and that it was reasonable under the existing circumstances.

Appellant has not sustained the burden of proving that respondent's action in denying the license was arbitrary or unreasonable. The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 4, 1937.

2. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 29, 1937.

RE: CASE #188

This is to determine whether solicitor's permit, which was issued pending investigation, should be revoked on the ground that solicitor is disqualified under Section 22 of the Control Act from holding such permit.

Solicitor was arrested on January 24, 1934, for selling beer without a license in violation of the Control Act, was duly convicted and sentenced to one month in the County Jail, the time which he had spent in jail since his arrest to be deducted from that sentence. In consequence, solicitor was incarcerated for 15 days after conviction.

In explanation of his crime, solicitor states that (during the last months of 1933) he held a beer license; that when this license expired he obtained no further license and discontinued the sale of beer in his business; that on January 24, 1934, his next door neighbor, inspired by the police authorities, entered his premises to purchase some beer; that solicitor stated that although he had a dozen bottles of beer on hand for his own use, he was not allowed to sell any; that this neighbor left but soon returned and stated that his mother wanted solicitor to sell her six bottles of the beer because she had "company;" that solicitor assented to accommodate her and delivered over six bottles of his beer, charging the same price which he had paid for them; and that he did not regard this transaction as a sale.

Sale of liquor in violation of the Control Act is not per se a crime involving moral turpitude. Re Case #41, Bulletin 166, Item 5; and see Re Hearing 157, Bulletin 190, Item 12; Re Case 63, Bulletin 195, Item 1.

From the evidence in this case, and the comparatively lenient sentence imposed upon solicitor, it appears that his crime of selling beer without a license was not an aggravated violation of the Control Act. Solicitor seems sincere and earnest, and his fingerprint record reveals no other criminal behavior.

It is recommended that solicitor be declared eligible to hold his permit and that the present revocation proceedings be hereby dismissed.

Nathan Davis
Attorney

Approved:
D. Frederick Burnett
Commissioner

3. STATUTORY AUTOMATIC SUSPENSION - PETITION TO LIFT - APPLICATION GRANTED.

In the Matter of the Application of William Devonmille, Jr., a Retail Licensee of West Milford to Lift Suspension of his License now in Force by Reason of his Conviction of a Violation of the Control Act.	CONCLUSIONS AND ORDER

J. Vincent Barnitt, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

William Devonmille, Jr., the holder of Plenary Retail Consumption License C-27, heretofore issued by the Township Committee of West Milford for premises on the Old Hamburg Turnpike, Charlotteburg, West Milford, was arrested on July 7, 1937, after an inspection by investigators from this Department revealed the presence of a considerable quantity of illicit alcoholic beverages in his licensed premises. He was released on bail to await action by the Passaic County Grand Jury.

A synopsis containing all the facts relative to the seizure was forwarded to the Township Committee of West Milford for disciplinary proceedings. A hearing was scheduled before the Committee for August 20, 1937, at which time the licensee pleaded guilty to the charge of having possessed illicit alcoholic beverages. His license was thereupon suspended for three days, August 23 to 25, 1937.

In the meantime, Devonmille appeared before the Passaic County Court of Special Sessions -- having waived Grand Jury action -- and pleaded guilty to the crime of "possession of illicit alcoholic beverages." He was fined $100.00.

His license thereupon became automatically suspended (P.L. 1935 c. 254). He has been closed since September 16, 1937.

A petition has been filed by William Devonmille, Jr., wherein he requests that the suspension be lifted. Therein he sets forth that he has been in business in West Milford since 1921, conducting an inn and tavern up to September 16, 1937, the day his license was confiscated by investigators of this Department; that during all this period he has strictly adhered to the law and, particularly referring to the Alcoholic Beverage Control Act and the rules and regulations promulgated thereunder, states he has endeavored to comply strictly with his duty as a licensee; that he has had a license since Repeal and never, until the incident connected with his arrest, has he ever been involved in any trouble. He maintains that he is unable to account for the underproof liquor found in the two bottles taken from his service pantry; that the 17 fifth bottles (full) and the one bottle (3/4 full) of whiskey bearing no strip stamps or labels were in a storage room; that, as he had explained to the investigators, this whiskey had been purchased by him about nineteen years ago and was government tax paid; that due to many robberies and stick-ups at the time -- the liquor being very valuable -- he had buried two cases (either "Old Taylor" or "Old Crow") and had forgotten where he had buried them until a few

days before the visit of the investigators, when, while digging in his garden, he accidentally dug up the cases which he took into the kitchen; that he proceeded to wash the bottles, the labels having been removed by decomposition and the corks rotted; that he replaced the rotted corks with new ones.

In commenting on this case to the Township Committee of West Milford after it had imposed the three-day penalty which I considered most meager, I said:

> "We have had all sorts of excuses offered by licensees when caught red-handed with illicit liquor, but this is the first time I have encountered a claim of treasure-trove. I have heard of pirates burying their gold and of dogs their bones, but never of 'Old Crow' being aged in the sod. What a thrill of discovery it must have been after fifteen winters of pernicious amnesia!"

However, the truth or falsity of the petitioner's story cannot be decided in this proceeding. Devonmille has twice pleaded guilty to the charge of having possessed illicit alcoholic beverages; once before the Township Committee of West Milford and again in the Court of Special Sessions in Passaic County. I cannot go behind the record.

The question to be decided in this proceeding is whether or not I should exercise the discretion vested in me and allow the licensee to again resume operations under his now suspended license.

Devonmille states he is forty-five years of age and a widower; that his wife died some years ago leaving him with three children, ages ranging from twelve to sixteen years; that these children are entirely dependent upon him for support; that the oldest child, a boy, recently met with a serious accident resulting in the loss of his leg above the knee, which accident Devonmille states was caused by a drunken driver whose car was not covered by insurance, as a result of which he has been put to enormous expenses for medical and hospital bills. He expresses regret for the situation in which he finds himself and sets forth that such a state of affairs will not occur again; that he feels he has been sufficiently punished by reason of (a) the three-day suspension imposed by the West Milford Township Committee, (b) his conviction of crime in the Passaic County Court of Special Sessions, the $100.00 fine, coupled with the resultant loss of reputation, and (c) his present period of suspension which now has been in force for over thirty days, since September 16, 1957.

Attached to Devonmille's petition are the following:

1. A certification over the signatures of the Chairman, two Township Committeemen, and the Township Clerk of West Milford attesting to the excellent reputation of Devonmille for the past fifteen years; setting forth that the violation is his first and only offense and requesting leniency.

2. A letter from the Chief of Police of West Milford setting forth that Devonmille runs one of the most respectable places in the Township and requests leniency for him as a first offender.

3. A letter from the Recorder of West Milford Township attesting to the good reputation of Devonmille and requesting that his license be restored.

4. A letter from Thomas P. Byrnes, Superintendent of the City of Newark's Pequannock Water Shed -- a neighbor of Devonmille. Mr. Byrnes attests to Devonmille's excellent reputation and comments upon the high-class character of the licensed premises. He also requests a restoration of the license.

I have consistently ruled it is the policy of this Department that a licensee should suffer a minimum penalty of thirty days' suspension of his license for the type of offense charged against Devonmille, viz. possession of illicit alcoholic beverages. See Re Morris, Bulletin 98, Item 10; Re Honsell, Bulletin 164, Item 10; Re Aldarelli, Bulletin 166, Item 11; Re Liwacz, Bulletin 180, Item 13.

Devonmille has already served the three-day suspension inflicted by the Township Committee of West Milford; he has been fined $100.00. In addition, he has now been closed since September 16, 1937.

I believe he has been sufficiently punished for this offense.

Accordingly, it is on this 3rd day of November, 1937, ORDERED that the statutory suspension now in force against William Devonmille, Jr., be lifted and that license C-27 heretofore issued to him by the Township Committee of West Milford be, and it is hereby declared to be, again in full force and effect.

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - ERRONEOUS PUBLICATION IN TRADE JOURNAL OF HOUR AT WHICH POLLS CLOSE

November 4, 1937.

Walter A. Bredder,
Borough Clerk,
East Paterson, N. J.

Dear Mr. Bredder:

I have staff report of the proceedings before the Borough Council of East Paterson against Edith Brindle,

t/a Elmwood Country Club, charged with having sold alcoholic beverages on Primary Election Day, September 21 last, while the polls were open for voting.

I note the charges were dismissed after the manager for the licensee testified that he had been misled as to the time the polls were to close by an article in a trade journal published in New York, which set forth that the closing hour for the polls was 8:00 P.M. instead of 9:00 P.M.

Please extend to the members of the Council my appreciation for their prompt attention to this case. While the excuse offered by the licensee is one which, perhaps, is not legally sufficient, nevertheless I am satisfied that the charges were dismissed by your Board in absolute good faith. I have before me a copy of the trade journal in question, issue of September 20th, 1937, and note, on the front page, the erroneous statement that the polls closed at 8:00 P. M. on Primary Election Day. I have written the journal in question calling their attention to the embarrassment caused this Department by their inadvertent misstatement.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

5. PAY CHECKS - CASHING IN TAVERNS - THE PRACTICE DEPLORED - HEREIN OF ILLEGAL ACTION BY A BREWERY ADVANCING MONEY TO TAVERN-KEEPERS FOR THE VERY PURPOSE OF CASHING PAY CHECKS.

November 5, 1937.

Mr. George Mroz, Jr.,
Trenton, New Jersey.

My dear Mr. Mroz:

I have before me your letter of October 27th.

So far as retail licensees are concerned, it is not presently against the law, in the sense that a violation would be cause for the imposition of a fine or the suspension or revocation of the license, for them to cash pay checks.

So far as breweries are concerned, investigation has brought to light a practice by one of them which is against the law. A notice was sent to that brewery this week together with copies to all others in the State, viz.:

"November 3rd, 1937.

"Gentlemen:-

"Investigation discloses that you have heretofore advanced to retail licensees substantial sums of cash intended to be used by the retailers for the purpose of cashing customers' pay-checks; have accepted retailers' checks for the money advanced, notwithstanding the fact that the bank accounts against which these checks were drawn did not contain sufficient balances to meet them at the time of their issuance; and have refrained from presenting the checks for payment until the retailers have had an opportunity to deposit their customers' paychecks cashed by them with the money ad-

vanced by you.

"In substance, the foregoing conduct constitutes the making of loans to retailers for short periods of time within the express prohibition of Section *40A of the Control Act (P.L. 1935, c.254). It must be stopped forthwith. Evidence of future violation will result in the institution of disciplinary proceedings.

"Kindly acknowledge receipt of this letter.

"Very truly yours,

"D. FREDERICK BURNETT,
Commissioner.

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

I have disapproved the practice of cashing pay checks in taverns because I think it is a vicious custom and bad policy. See re Blackwell, Bulletin 206, Item 13, re Avenue Realty Co. Inc., Bulletin 177, Item 5. Pay checks belong in the home or bank, not in the saloon, for that is where they are really needed. It is a sorry situation to have the family deprived of necessities while the pay check is squandered on drink. Licensees will do well to respect and sympathize with the needs of the family. It means that they will be more highly regarded by their fellow men and respect for the business they engage in will increase, all of which will help to insure the continuance of their privilege to hold licenses.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. LICENSE APPLICATION HEARING - RE ALEXANDER KONKE, LINDEN.

In the Matter of an Application for Plenary Retail Consumption License by

ALEXANDER KONKE

For premises located at

400 Helen Street,
City of Linden.

CONCLUSIONS

Emanuel Margolies, Esq., Attorney for Applicant.
Elmer O. Goodwin, Esq., Attorney for Linden Methodist Episcopal Church, an Objector.

BY THE COMMISSIONER:

Application herein is made to the Commissioner because one of the owners of the premises in question is Michael Kreidl,

a member of the Common Council of the City of Linden. See Chapter 44, P.L. 1934.

In accordance with Rule 2(b) of Rules and Instructions Governing the Issuance of Municipal Retail Licenses by the State Commissioner, a copy of a resolution adopted by the Municipal Board of Alcoholic Beverage Control of the City of Linden has been filed, wherein it is set forth that said Board "has no objection to the issuance of the license applied for and consents thereto, and furthermore is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance of the license."

Written objections to the issuance of the license were filed with the Commissioner by Reverend George M. Muller on behalf of Linden Methodist Episcopal Church. These objections are based upon: (1) the proximity of the premises to the church; (2) the residential character of the neighborhood; (3) the history of attempted changes in zoning ordinances so as to render the premises eligible for a license; (4) the fact that there are already more than enough taverns in the vicinity.

As to (1): The evidence shows that the church faces on Wood Avenue, a business street, but the church property extends in a southerly direction from Wood Avenue along the easterly side of Knopf Street, a distance of 120.57 feet. The premises for which license is sought, as leased to applicant, face on Helen Street but extend northerly from Helen Street on the westerly side of Knopf Street, a distance of sixty feet. Measuring along the sidewalks on Knopf Street and crossing Knopf Street at the usual crosswalk, the distance between the nearest entrance to the licensed premises and the walk leading to the side door of the church is 292 feet. The distance along the walk from Knopf Street to the side of the church is an additional 84 feet. Thus the premises are substantially more than two hundred feet away from the church. Despite this fact, however, an issuing authority may consider the proximity of the church in deciding whether or not a license should issue. Rafalowski vs. Trenton, Bulletin 155, Item 8. The evidence shows that the nearest point in a direct line between the property owned by the church and the property leased to the applicant is approximately 160 feet.

As to (2): The evidence shows that for one block in each direction from applicant's premises there are no business houses or stores of any character. On these four blocks, which center at Knopf and Helen Streets, there are approximately seventeen one-family and two-family houses. It is true that by a recent amendment to the zoning ordinance the premises in question have been included in a business district, but, despite this fact, the section is still devoted to residential purposes. Where a section is strictly residential in character, the mere fact that the premises are zoned for business under a zoning ordinance does not entitle an applicant to a license. Vannozzi vs. Trenton, Bulletin 35, Item 7; Mills vs. East Brunswick, Bulletin 141, Item 1. A license should not be issued for premises located in the midst of homes. In re Passaic Elks, Bulletin 95, Item 4, and cases therein cited; Lavelle vs. Way, Bulletin 140, Item 1.

Under the circumstances, it is unnecessary to consider the third or fourth grounds of objection.

The application is, therefore, denied.

D. FREDERICK BURNETT
Commissioner

Dated: November 5, 1937.

7. WINE PERMITS - MANUFACTURE FOR HOME CONSUMPTION - EXTENT OF THE PRIVILEGE - WINE SO MANUFACTURED MAY BE SERVED TO FAMILY AND GUESTS.

October 26, 1937.

Dear Sir:

I wish to thank you for your prompt reply to my request for application forms to make wine for family use only. After reading the forms over carefully I find it is illegal to even treat friends when they come in and what little I drink myself it is not worth all the trouble so I am returning the forms and will not bother making any. If I should want any wine I will buy some from a licensed dealer. Thanking you, I am,

Sincerely yours,

Edward J. Carney

November 1, 1937.

Mr. Edward J. Carney,
Eatontown, N. J.

Dear Sir:

I have your letter of October 26th.

In so far as the Control Act and the regulations of this Department are concerned, you would be authorized pursuant to a special wine permit to make, during the period thereof, up to 200 gallons of wine for the consumption of yourself, your family and your guests. The main restriction contemplated by the Legislature is that you shall not, in any event, sell any of the wine manufactured pursuant to the special wine permit. The only reference to "wine for the family use" is in the forms which have been prepared by the Federal authorities. I have written to the Federal authorities with respect to the limitations contemplated by their phraseology and will communicate with you further as soon as I receive a reply.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

November 1, 1937.

Samuel Cohen, Esq.,
Technical Advisor,
Alcohol Tax Unit,
Newark, N. J.

Dear Mr. Cohen:

Form 1541 of the Treasury Department, Internal Revenue Service, Revised January 1937, is entitled as follows:

"Notice of intention to produce wine <u>for the family use</u> of the producer thereof not in excess of 200 gallons and not for sale or to be otherwise removed or consumed" (underlining mine).

I have an inquiry as to whether, under Federal regulations, a person who manufactures wine pursuant to a special wine permit may furnish and serve gratuitously such wine to guests who are not members of his family. Will you be good enough to advise me?

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

November 1, 1937.

Dear Mr. Jacobs:

In reply to your letter dated November 1, 1937, with reference to Section 1300 (a) (1) of Title 26 of the United States Code, which provides for the production of 200 gallons of wine for the family use of the producer without payment of tax thereon, you are advised that the term "family use", as used in the Statute, is given its commonly accepted meaning. This will not prevent a person from serving such wine produced by him to guests as a hospitable gesture and without thought of compensation, as one might serve any other refreshment to guests who might be visiting him.

Very truly yours,

W. L. RAY,
District Supervisor.

8. RETAIL LICENSES - LIMITATION OF NUMBER - MUNICIPAL LIMITATIONS ARE REVIEWABLE ON APPEAL - PROCEDURE.

Dear Sir:

If it is not taking up too much of your valuable time and if consistent with the policy of your office, will you please advise me on a matter of grave importance to me.

I have been operating a restaurant in the above named town (Township of Pequannock, Morris County) since 1926, or over 11 years. Having operated for a number of years during prohibition without ever selling a drink of alcoholic beverage and making a good living at that, I did not apply for a liquor license after repeal.

I find now that a place of this type just has to sell liquor or watch all their business disappear as most of mine has, leaving me in great debt.

I have several people interested in the place and would buy it, but refuse to touch it owing to the license situation.

This township has an ordinance limiting the number of licenses to 7. Six have already been granted and one is now before your office for decision in an appeal.

I am informed by the township officials (who by the way do not patronize me because I have no license) that if this seventh applicant is granted his license by your office my place is just out of luck and anybody applying for a license for my place will be out Thirty Dollars which is 10% of the license fee.

The situation sums up to this sir, if I am unable to sell my place on account of this license business it will be taken away from me for unpaid taxes and mortgage interest and all my wife and I have worked, struggled and sacrificed for all our lives will be swept away, forcing us at past middle age to start all over again.

I am not trying to enlist your sympathy or getting sentimental but I would like to know whether this town has any legal right to practically confiscate my property by refusing a license for same considering the fact that the place has been operated, all those years, in a clean respectable manner.

The building contains over 1500 Sq. feet of floor space all on one floor, seats over 60 persons and serves full course meals.

I have been informed that a place of this type cannot be refused a license providing they do not run an open bar and only serve drinks at the tables.

I would greatly appreciate any advice you can give me on this matter as I cannot afford to hire a lawyer for same.

Yours respectfully,

S. C. MANCK

November 4, 1937.

Mr. S. C. Manck,
Pompton Plains, N. J.

My dear Mr. Manck:

The situation, I understand, is that the limitation of the number of licenses the Pequannock Township Committee has adopted prevents the issuance of a license to your restaurant.

Municipalities have the power to limit the number of licenses. It is expressly conferred by Section 37 of the Control Act. Any such limitation, so long as duly enacted in accordance with the statutes, is binding upon the municipality until amended or repealed in the manner prescribed by law.

The first thing for you to do is to endeavor to get the Township Committee to raise the quota. They have the legal power to alter the limitation if they see fit.

Should this prove of no avail, your only remaining remedy is to appeal to me. Until such an appeal has been taken, however, and both sides have been given full and equal opportunity to be heard, it would be wholly inappropriate for me to express any opinion on the merits of the case one way or the other. In making the appeal, there are two courses which you could follow.

You may bring the matter up pursuant to Section 38 of the Act or pursuant to Section 19. If pursuant to Section 38, no formal application for the license with the attendant advertising of notice of intention to apply need be made, but the validity and reasonableness of the numerical limitation will have to be contested on general grounds, i.e, as socially undesirable or opposed to public convenience and necessity, and not in its specific application to your case. If, however, you chose to come up under Section 19, both application to the municipality and the advertising must first be made, the appeal being predicated upon a denial, but you may introduce material designed to show the unfairness of the limitation as specifically applied to you.

I have sent you under separate cover a copy of the Alcoholic Beverage Control Act, of the Rules Governing Appeals, and of conclusions filed in Rosania v. Readington, Bulletin 123, Item 4, and Sadovsky v. Millstone, Bulletin 120, Item 4, which will illustrate for you the decisions made in previous cases of somewhat similar nature; also re Monks, Bulletin 183, Item 6, and Re Lowe, Bulletin 181, Item 6, and the items cited therein, and Current v. Fredon, Bulletin 184, Item 1, which illustrates the burden of proof the appellant must bear and the weight of arguments concerned respectively with public convenience and necessity on one hand and private profits on the other.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. MUNICIPAL OFFICIALS - LICENSEES - EXTENT OF DISQUALIFICATION.

Dear Sir:

A retail license holder (saloon-keeper) who is a candidate for Township Committeeman, if elected, can he take the oath of office and still carry on business under his name as licensee. Licenses are granted and issued by County Judge and not by Township Committee.

Yours very truly,

Michael Mazzolla
Township Recorder

November 5, 1937.

Michael Mazzolla, Esq.,
Manchester Township Recorders' Court,
Whitings, N. J.

My dear Judge:

I have sent you, under separate cover, copies of ruling made in re Lederer, Bulletin 196, Item 15, and the items cited therein, which will give you complete information regarding your inquiry.

There is nothing to prevent the licensee concerning whom you write from running for the Township Committee and if elected, from qualifying for and assuming the office, provided he does not act as police officer, magistrate or Justice of the Peace. It will not, of course, interfere with his official duties as committeeman, for Manchester is in Ocean County where the licensing function is vested in the County Judge, and no matters relating to alcoholic beverages will come before the Township Committee.

The mere fact that he serves on the Township Committee would not disqualify him from holding a liquor license, as the law now stands. I hope sometime this statute will be amended to provide that no member of any governing body of any municipality may hold such license because, even if such members do not participate in decisions concerning the issuance or revocation of licenses or the formulation of regulations governing licensees, they do have direct control over the local police who are in duty bound to enforce the law and the rules.

His application for successive licenses should, as in the past, be made directly to the County Judge.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. CONSUMPTION LICENSES - SPECIAL CONDITIONS - CONDUCT OF OTHER MERCANTILE BUSINESS ON THE LICENSED PREMISES - THE LAW DOES NOT PREVENT A CONSUMPTION LICENSEE FROM CONDUCTING A GROCERY BUSINESS ON OTHER PREMISES SO LONG AS THE TAVERN AND GROCERY PREMISES ARE SEPARATE AND DISTINCT.

Dear Sir:

I note in Bulletin 199, page 5, paragraph 4, a letter written by Mr. Howard Roberts, Attorney for Mr. James Martin, relative to issuing a Plenary Retail Consumption License to Mr. Martin under special conditions imposed by the Mayor and Council of the Borough of Highlands, in which it states that the building in which Mr. Martin is conducting his liquor business is a separate building and has no connection whatsoever with the adjoining building used as a grocery store.

The facts are that the north side of the grocery store forms the south side of the tavern and the two buildings are

connected through a door in the tavern. On or about June 25th, members of the Borough Council inspected the building and found the aforesaid condition. They informed Mr. Martin that paragraph 6 of the Ordinance passed by the Council and approved by Commissioner Burnett read in part as follows:

"Such licenses shall not permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen or drug store, or other mercantile business is carried on."

Mr. Martin then and there volunteered and agreed to dispense with the grocery business. On June 30th, at the meeting of the Mayor and Council who sat for the purpose of granting liquor licenses, Mr. Martin being present was asked if he had disposed of his grocery business as agreed and he stated "as yet he had not", and again he volunteered and agreed that if the Council would grant him his license and give him ten days he would positively dispose of it.

The Mayor and Council agreed to grant Mr. Martin a Plenary Retail Consumption License under the following conditions as per his agreement with the committee who inspected his building to dispense with his grocery business before the license was granted, and Mr. Martin stated at this time that he could not do so in one or two days and asked for more time.

Therefore, a Resolution was offered by Councilman Fehlhaber, seconded by Councilman Hoffman, that the license be granted and that Mr. Martin be given ten (10) days to dispose of his grocery business and that Mr. Martin sign a sworn agreement to the effect that he would dispense with his grocery business, and, if the agreement were not complied with in the specified time his license would be revoked. Adopted upon roll call; ayes, Fehlhaber, Hoffman, Duffy and Parker; nays, none.

The special condition was not imposed on Mr. Martin as stated in the bulletin by the Mayor and Council, it was Mr. Martin's own volunteered condition in order to obtain his license during the Fourth of July.

Trusting that this will give you a better picture of the situation, I am,

Yours very truly,

U. GRANT JOHNSON
Borough Clerk

November 4, 1937.

U. Grant Johnson,
Borough Clerk,
Highlands, N. J.

My dear Mr. Johnson:

I have your letter with reference to the license granted to James Martin on condition that he dispose of his grocery business within ten days after the granting of the license. Your letter is very helpful and gives me a much better picture of the situation than I had. I am therefore in position definitely to dispose of the problem to be solved.

You tell me that the two buildings, the tavern and the grocery store, are connected by a door. Whether there is a door, as you report, or not, as Mr. Roberts alleges (Bulletin 199, Item 4), has no bearing on the validity of the special condition.

There is nothing in the law which would prevent a person holding a plenary retail consumption license from conducting a grocery business on other premises.

What the statute and your ordinance do require is that he not conduct the tavern and grocery on the same premises. In other words, the tavern and the grocery premises must be separate and distinct.

They are separate and distinct if there is no direct public access between them.

Thus, where two premises are side by side connected by a door at the rear of the dividing wall, not usable by customers of either place, the premises are substantially separate and distinct. See Re Rockefeller, Bulletin 200, Item 1, and Retail Liquor Distributors v. Atlantic City, Bulletin 88, Item 5.

But, on the other hand, if instead of a mere service door connecting the tavern and the grocery, there is an archway or door through which the public may freely pass from one premises to the other, then the premises would not be substantially distinct. See Shapiro v. Trenton, Bulletin 34, Item 8; Re Millville, Bulletin 35, Item 15; Reed v. Independence, Bulletin 57, Item 10.

If, by the foregoing tests, the premises were not separate and distinct, the condition should have called for appropriate alteration, such as, for instance, the closing up of the connecting door, as in the Reed case, supra. In that way the tavern and the grocery store would be completely separated. If, on the other hand, the premises were separate and distinct, there would be nothing, as indicated above, unlawful about it.

I appreciate that Mr. Martin may have expressed his willingness to comply with the special condition. I understand from Mr. Roberts that he has arranged for the sale of the grocery business, as the condition requires. But even if the sale had gone through and the tavern and grocery are now owned by different persons, it will still be necessary for the Council to determine if the premises are separate and distinct. Mere separation of the business is not enough; it is separation of the premises the statute requires. If the premises are not separate, the Council should at once adopt a resolution, in line with the foregoing, directing that such changes as may be necessary, be made.

Very truly yours,

Commissioner