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

BULLETIN 635 SEPTEMBER 25, 1944.

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ITEM

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

BULLETIN 635 SEPTEMBER 25, 1944.

1. REFERENDUM - CERTIFIED COPY OF THE RESOLUTION ADOPTED BY THE MUNICIPAL GOVERNING BODY MUST BE DELIVERED TO THE COUNTY CLERK NOT LESS THAN 30 DAYS BEFORE THE GENERAL ELECTION - R. S. 33:1-47 NOT MODIFIED BY CHAPTER 208 OF PAMPHLET LAWS OF 1944.

August 28, 1944

Howard R. Yocum, Esq.
Solicitor, Township of Chester
Maple Shade, N. J.

Dear Mr. Yocum:

Your letter of August 17th, addressed to the Attorney General, asks for an interpretation of Chapter 208 of the Pamphlet Laws of 1944 and the applicability of that chapter to the referenda provisions of the Alcoholic Beverage Control Law (R. S. 33:1-1 et seq.), in particular Section 47 of the same.

It appears from your letter that the Clerk of Burlington County has interpreted Chapter 208 as possibly precluding him from printing on the ballot to be used at the next general election in Chester Township a public question certified to the County Clerk pursuant to R. S. 33:1-47, where the question is certified to the Clerk subsequent to July 15, 1944, although more than thirty days before the general election.

R. S. 33:1-47 (P. L. 1933, c. 436, as amended by P. L. 1935, c. 257) provides that whenever a petition signed by at least fifteen per cent of the qualified electors of any municipality, as evidenced by the total number of votes cast at the then next preceding election for members of the general assembly in such municipality, shall be presented to the governing board or body thereof, requesting a referendum on the question, "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?", the governing board or body shall adopt forthwith a resolution directing the clerk of the county in which the municipality is situate to print the question upon the official ballot pursuant to Title 19, known as the General Election Law. Section 47 of Title 33 further provides, "Thereupon the clerk or secretary of the governing board or body of such municipality shall forthwith deliver to such county clerk a certified copy of such resolution. If such copy shall be delivered to the county clerk not less than thirty days before such general election, he shall cause such question to be printed in an appropriate place on the ballot to be used in such municipality at the next ensuing general election, pursuant to the general election law***." (Emphasis ours). You will note that Section 47 of Title 33 requires the printing of the question on the ballot if the certified copy of the resolution is delivered to the county clerk not less than thirty days before the general election. While Section 47 does refer to the general election law, it would appear that the reference relates to the placing of the question on the ballot rather than to the time within which the request must be received by the county clerk.

At the time of the adoption of R. S. 33:1-47, the general election law, R. S. 19:37-1 (P. L. 1930, c. 187) provided that requests for the printing of non-binding county or municipal referenda should be filed with the clerk of the county at least thirty days previous to the general election. The authority of R.S. 19:37-1

was limited to those cases where "there is no other statute by which the sentiment can be ascertained by the submission of such question to a vote of the electors in the municipality or county at any election to be held therein***." In addition, it is to be noted that R. S. 19:37-1 et seq. relates to non-binding referenda where an expression of opinion is sought on the initiative of either the municipal or county governing boday. (R. S. 19:37-4.)

In contrast, the municipal referendum provided for in R. S. 33:1-47, is initiated by the voters themselves. Furthermore, the result of the referendum is binding upon the municipality and "no further referendum on the same question shall be held therein prior to the general election to be held in such municipality in the third year thereafter and so long as such referendum remains effective, all ordinances, resolutions or regulations inconsistent with the result of such referendum shall have no effect within such municipality."

In 1942, R. S. 19:37-1 was amended (P. L. 1942, c. 50) to require certification of requests by local and county authorities for non-binding county or municipal referenda to be filed with the county clerk not less than forty days prior to the next ensuing general election. (See, however, 19:37-2, where the thirty-day provision was retained.) The amendment (P. L. 1942, c. 50) contains the same general exception as that found in the original act previously referred to.

Chapter 208 of the Laws of 1944 provides that "All certificates or requests required to be made and filed in said year under sections *** 19:37-1 and 19:37-2 of the Revised Statutes shall be made and filed by the officers required by said sections to make and file the same on or before July fifteenth, one thousand nine hundred and forty-four." By its specific reference to R. S. 19:37-1 and 19:37-2, Chapter 208 clearly limits the requirement for filing prior to July 15, 1944 to non-binding county or municipal referenda. The omission of any reference in Chapter 208 to binding municipal referenda provided for in Title 33, is equally significant.

A further reference to Chapter 208 (R. S. 19:55-9) discloses that the military service ballot, for whose benefit the July 15th date was apparently established, shall contain "such public questions to be voted upon, at said (1944) election by the voters of the entire state or of the county in which such military service voter's election district is situated, as shall be ascertained and known on August first, one thousand nine hundred and forty-four***." Thus, in so far as the military service ballot is concerned, it is apparent that the legislature never contemplated the inclusion of public questions limited in their applicability to a single municipality.

Accordingly, it is my opinion that if the certified copy of the resolution referred to in R. S. 33:1-47 is submitted to the county clerk "not less than thirty days before such general election, he shall cause such questions to be printed in an appropriate place on the ballot to be used in such municipality at the next ensuing general election,***."

The adoption of Chapter 208 of the Pamphlet Laws of 1944, in no wise changes or modifies the provisions of R. S. 33:1-47. The time schedule of the latter remains in full force and effect.

This opinion is being submitted at the request of, and in cooperation with the Attorney General. A copy of the opinion is being filed today with the State Department of Law.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

2. COURT DECISIONS - NEW JERSEY SUPREME COURT - JACKIE CLARK v. MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWN OF WEST ORANGE AND ALFRED E. DRISCOLL, COMMISSIONER - ORDER DISMISSING APPLICATION FOR WRIT - COMMISSIONER SUSTAINED.

NEW JERSEY SUPREME COURT

JACKIE CLARK,

Prosecutor,

vs.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWN OF WEST ORANGE, and ALFRED E. DRISCOLL, Commissioner of the Department of Alcoholic Beverage Control of the State of New Jersey,

Respondents.

On Certiorari

ORDER DISMISSING APPLICATION FOR WRIT

This matter having come on for hearing before the Court at the Court House, Newark, on August 21st, 1944, in the presence of Joseph Lerner, Esq., appearing in behalf of William Harris, Esq., attorney for the petitioner herein, and Gerald T. Foley, Esq., attorney for the Municipal Board of Alcoholic Beverage Control of the Town of West Orange, and Thomas Hanson, Esq., appearing for Alfred E. Driscoll, Esq., Commissioner of the Department of Alcoholic Beverage Control of the State of New Jersey, and the respective counsel having been heard and the arguments presented having been considered by the Court, and the Court being of the opinion that the proofs failed to present a debatable question;

It is on this 29th day of August, 1944, ORDERED that the application for a writ of certiorari be and the same is hereby dismissed.

Newton H. Porter
Justice

On motion of

GERALD T. FOLEY
Attorney for Municipal Board of Alcoholic Beverage Control of the Town of West Orange

3. APPELLATE DECISIONS - THOMPSON v. TOWNSHIP OF ROXBURY

CARLTON E. THOMPSON, Appellant,	)	
v.	)	On Appeal
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ROXBURY, Respondent.	)	CONCLUSIONS AND ORDER

George M. Passmonick, Esq., Attorney for Appellant.
Clifford A. Johnson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent denying appellant's application for a renewal of his plenary retail consumption license for premises on Route 6, Kenvil, Roxbury Township.

When the respondent denied the application on June 27, 1944, it adopted the following resolution:

> "Whereas Carleton E. Thompson has made application for the renewal of Plenary Retail Consumption License for 1944-45, and
>
> "Whereas the Township Committee of Roxbury Township has received numerous complaints concerning the conduct of the premises, and believing it to the best interests of the Township of Roxbury that his application be rejected.
>
> "Therefore be it resolved by the Township Committee of the Township of Roxbury that the application of Carleton E. Thompson for a Plenary Retail Consumption License be and the same is hereby denied."

Appellant alleges, in substance, that the action of respondent was erroneous because:

> (1) No proper and legal objections were made either in writing or before the Township Committee at its meeting held on June 27, 1944.
>
> (2) Appellant was never given the right to be heard concerning the alleged numerous complaints made against him.
>
> (3) There are no proper and legal reasons why a denial should be made under any circumstances.

As to (1): Respondent, on its own motion, denied the application for renewal. Even in the absence of objections, respondent is under a duty to investigate and to determine whether an application for a renewal license should be granted. Cf. R. S. 33:1-24. Delbono v. New Brunswick, Bulletin 322, Item 12.

As to (2): This point is without merit since a local issuing authority, in those cases where the application for a license is denied, is not required to conduct a hearing. The sole purpose of a

local hearing is to insure that, before any application is granted, objectors have a full opportunity to be heard. Moreover, appellant has had his full day in court on the present appeal, where the entire matter was heard de novo. Lipman v. Newark, Bulletin 356, Item 6; Gelber v. Freehold, Bulletin 487, Item 5.

As to (3): At the hearing held herein, appellant admitted that, on the morning of August 19, 1943, after the legal hour for closing, he engaged in a fight with a patron on his licensed premises. He admitted that, as a result thereof, he was indicted for assault and battery, pleaded guilty to said indictment on November 15, 1943, in a Court of Quarter Sessions for Morris County, and was sentenced to pay a fine of $100.00 and placed on probation for one year. He admitted that, as a result of said occurrence, disciplinary proceedings were instituted against him and his license suspended by respondent for ten days in November 1943 after he had pleaded guilty to a charge of selling during prohibited hours and had been found not guilty of permitting a brawl on his licensed premises. He admitted also that, in April 1944, his wife became disorderly in the licensed premises as a result of which he made a complaint against her to the State Police. He testified that a brawl between himself and his wife on June 24, 1944, took place in their home, which adjoins the licensed premises.

Trooper O'Reilly of the New Jersey State Police testified that when he arrived in front of appellant's premises in response to a call on February 10, 1944, appellant was running from behind the tavern and appellant's wife was throwing bottles at him. He testifie also that the State Police were called to the appellant's premises during the early morning hours on August 19, 1943 and August 22, 1944.

Five persons who live in close proximity to appellant's licensed premises testified that they were frequently disturbed during the early morning hours by loud shouting and the use of profane language in and near the licensed premises. These disturbances seemed to involve generally the appellant and his wife.

On behalf of appellant, a former Chief of Police of the Township and a Special Policeman of the Township testified that no complaints had been received by either of them and they and two patrons testified that, to the best of their knowledge, the licensed premises had always been conducted in an orderly manner.

On August 22, 1944, after the renewal of the license had been denied, another disturbance involving appellant and his wife occurred at the licensed premises at about 4:00 A. M. Appellant testified that shortly before 2:00 A. M. on August 22, 1944 his wife, who, he says, is now separated from him, visited his licensed premises and created a disturbance after he had served her a few drinks. It appears from the evidence that when the State Troopers arrived appellant and his wife were calling each other "loud and profane names" and that two windows in the rear of the tavern had been broken.

The evidence, even if the last disturbance is disregarded, is clearly sufficient to justify respondent in refusing to renew the license. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 5th day of September, 1944,

ORDERED that the appeal be and the same is hereby dismissed; and it is further

ORDERED that the extension of appellant's 1943-44 license,

granted by order of June 30, 1944, to permit appellant to continue to operate pending disposition of this appeal, be and the same is hereby terminated, and that appellant cease any alcoholic beverage activity thereunder forthwith.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS.

RULE TO SHOW CAUSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED AS ABOVE - RULE DISMISSED.

In the Matter of Disciplinary Proceedings against ROBERT MEYERS & KERIAN J. PHELAN, t/a Meyers & Phelan, 615 Broad Avenue, Ridgefield, New Jersey, Holders of Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Ridgefield, and transferred during the pendency of these proceedings to HENRY J. LUSTMANN, Sr., t/a Royal Tavern, for the same premises.	CONCLUSIONS AND ORDERS

Carmen La Carrubba, Esq., Attorney for Defendant-Licensees.
Milton H. Cooper, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees Robert Meyers and Kerian J. Phelan pleaded non vult to the following charges:

"1. In your application filed with the Mayor and Council of the Borough of Ridgefield and upon which you obtained your current plenary retail consumption license (1944-45), you falsely stated, in answer to Question 3, that Kerian J. Phelan's residence was Rural Route #1, Hammonton, N. J., whereas in truth and in fact his residence was at 250 West 72d Street, New York, N. Y.; such false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you falsely stated, in answer to Question 27, that Kerian J. Phelan's residence for the sixteen months immediately prior to the date of the application was at Rural Route #1, Hammonton, N. J., whereas in truth and in fact his residence was at 250 West 72d Street, New York, N. Y.; such false statement being in violation of R. S. 33:1-25."

Defendants, however, appeared in opposition to an order to show cause why the license should not be cancelled and declared null

and void because said Kerian J. Phelan was at the time of the application therefor and still is a non-resident of the State of New Jersey.

The words "resident" and "residence", as used in the Alcoholic Beverage Control Law, have been considered in a number of cases. In the recent case of Re Gellert, Bulletin 618, Item 1, it was held that residence contemplates physical presence within the state in addition to domicile. In the Gellert case supra, the authority of Re Conover, Bulletin 16, Item 4, was re-established.

The file in this case discloses that Kerian J. Phelan purchased a farm in Hammonton, New Jersey, in January, 1943, where, during certain periods of the year, he lived with a brother. He never indicated any intention of giving up his New York residence, and after his brother moved from the farm in Hammonton about March, 1943, and Phelan remarried in October, 1943, he spent very little time in New Jersey.

In his application filed for renewal of a New York City liquor license in January, 1944, held by a corporation in which he is the sole owner of all of the stock, Phelan's residence is stated to be in New York City.

Phelan's testimony discloses that he never voted in New Jersey nor did he register so to vote, and that he last voted in New York. Further, he registered for Selective Service in New York and never had his registration transferred to New Jersey.

Defendant Phelan testified that he understood his residence was where his home was and that he could have two or three homes. This, of course, does not meet the requirements of the statute that holders of alcoholic beverage licenses in New Jersey must be residents of the State of New Jersey and continue so to be during their enjoyment of the license privilege. R. S. 33:1-25, as amended by Chapter 46, P. L. 1943. See Re Conover, supra. I conclude that Kerian J. Phelan is not a resident of the State of New Jersey within the purview of the Alcoholic Beverage Law. Robert Meyers, the other partner and co-licensee, appears to be a bona fide resident of this state.

Since these proceedings were commenced, the license has been transferred to Henry J. Lustmann, Sr., who appears to be fully qualified to hold the same, subject of course to the outcome of these proceedings and any suspension that may be imposed by reason thereof. State Regulations No. 15. Under all the circumstances herein, I shall dismiss the rule to show cause and suspend the license, now held by Henry J. Lustmann, Sr., for a period of ten days.

Accordingly, it is, on this 12th day of September, 1944,

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Ridgefield to Robert Meyers & Kerian J. Phelan, t/a Meyers & Phelan, for premises 615 Broad Avenue, Ridgefield, and transferred during the pendency of these proceedings to Henry J. Lustmann, Sr., t/a Royal Tavern, for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. September 18, 1944, and terminating at 3:00 A.M. September 28, 1944; and it is further

ORDERED that the rule to show cause why said license should not be cancelled be and hereby is dismissed.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING ON LICENSED PREMISES IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR PERIOD OF 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JOSEPH F. FERMENT and ANDREW FERMENT T/a TOWNE TAVERN 172-174 Maple Avenue Wallington, N. J.,) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Mayor and Council of the Borough of Wallington.)

Louis P. Bertoni, Esq., Attorney for Defendant-Licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead guilty to the charge of engaging in and permitting bookmaking and gambling at their licensed premises, in violation of Rule 7 of State Regulations No. 20.

The file discloses that, on August 8, 1944, two investigators of the Department of Alcoholic Beverage Control visited the licensed premises of defendants. While there the investigators observed four men sitting at a table in the barroom with a racing form in front of them and heard the men engaging in conversation relative to horse racing. Shortly thereafter a patron placed a bet on a horse with one of the licensees. The investigators left the premises but returned shortly thereafter with two local police officers who had been assigned to them by the Police Chief of the municipality.

The investigators, together with the two policemen, seized various racing paraphernalia which included several racing forms, twenty-seven betting slips and a pad of pink slips used for betting purposes.

The licensees immediately admitted that one of them, with the knowledge of the other, had engaged in bookmaking on the licensed premises for a period of approximately one year.

In the absence of any previous record, I shall suspend the license herein for a period of twenty days, less five days' remission for the guilty plea, making a net suspension of fifteen days. Re Murray, Bulletin 604, Item 3.

Accordingly, it is, on this 13th day of September, 1944,

ORDERED, that Plenary Retail Consumption License C-22, heretofore issued by the Mayor and Council of the Borough of Wallington to Joseph F. Ferment and Andrew Ferment, t/a Towne Tavern, for premises 172-174 Maple Avenue, Wallington, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A. M. September 18, 1944, and terminating at 3:00 A. M. October 3, 1944.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against INLET HOTEL BAR & CAFE, INC. N/W Cor. New Jersey and Spruce Aves. North Wildwood, N. J., Holder of Plenary Retail Consumption License C-13, issued by the Mayor and Common Council of the City of North Wildwood.	CONCLUSIONS AND ORDER

Inlet Hotel Bar & Cafe, Inc., by Robert Moore, Sr., President.
Nathan Davis, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through its president, pleads non vult to a charge alleging that, on or about July 25, 1944, it possessed two bottles labeled "Carstairs White Seal Blended Whiskey, 86.8 Proof", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The file discloses that on July 25, 1944 agents of the Federal Alcohol Tax Unit, after testing 22 bottles of liquor in defendant's licensed premises, seized two bottles of "Carstairs White Seal Blended Whiskey, 86.8 Proof" when the contents thereof appeared by the agents' tests to be darker in color than is usual for that brand. Subsequent analyses of the contents of the bottles in question by the Federal chemist revealed variations in proof, acids and solids when compared with an analysis made of a genuine sample.

It is contended on behalf of defendant that an employee had treated a number of his friends to whiskey and, in an attempt to conceal this fact from his employer, had refilled the bottles with some other liquor. Despite personal innocence, however, the licensee must be held strictly responsible for any "refills" found in its stock of liquor. Re Kurian, Bulletin 517, Item 2.

Robert Moore, Sr., President of the defendant corporation, while operating as an individual licensee in the premises wherein the present business is being conducted, had his license suspended, in 1936, for a period of thirty days by the local issuing authority for possession of "refills." Ordinarily, a second similar offense would warrant the doubling of the minimum ten-day suspension. However, in view of the fact that eight years have elapsed since the previous violation, I shall, in this case, suspend the license for a period of fifteen days.

Accordingly, it is, on this 14th day of September, 1944,

ORDERED, that Plenary Retail Consumption License C-13, heretofore issued by the Mayor and Common Council of the City of North Wildwood to Inlet Hotel Bar & Cafe, Inc. for premises N/W Corner New Jersey and Spruce Avenues, North Wildwood, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A.M. September 20, 1944 and terminating at 2:00 A. M. October 5, 1944.

ALFRED E. DRISCOLL
Commissioner.

7. FAIR TRADE - PRICE ADVERTISING - HEREIN OF MODIFICATION OF RULING OF SEPTEMBER 11, 1944, RELATIVE TO PRICE ADVERTISING OF ITEMS NOT LISTED ON FAIR TRADE.

September 14, 1944

The ruling effective September 11, 1944 is amended to permit price-advertising of alcoholic beverages not listed on Fair Trade for an experimental period terminating OCTOBER 31, 1944, provided: (1) the merchandise advertised was owned and in the possession of the retailer prior to September 11, 1944; and (2) the merchandise is advertised at the O.P.A. ceiling price for such merchandise in effect on September 11, 1944.

This modification of the ruling of September 11, 1944 shall take effect immediately.

ALFRED E. DRISCOLL
Commissioner.

(Those wishing to price-advertise alcoholic beverages not on Fair Trade, as hereinabove permitted, may submit the proposed price to be used in the advertisement to the Department of Alcoholic Beverage Control for the purpose of ascertaining whether or not the same is in fact the ceiling price.

ALL LICENSEES SHOULD READ THE RULING APPEARING ON THE FRONT PAGE OF THE SEPTEMBER 11, 1944 SUPPLEMENTAL LIST OF MINIMUM RESALE PRICES IN CONNECTION WITH THE MODIFICATION OF THAT RULING HEREINABOVE SET FORTH).

8. PLENARY RETAIL CONSUMPTION LICENSEES - OTHER MERCANTILE BUSINESS - INCIDENTAL SALE OF PEANUTS, POTATO CHIPS, POPCORN OR PRETZELS TO PATRONS FOR CONSUMPTION ON LICENSED PREMISES NOT FORBIDDEN BY R. S. 33:1-12(1).

September 14, 1944

John and Tessie Kulik
81-89 Monroe Street
Garfield, N. J.

Dear Sir and Madam:

This acknowledges your letter of August 25th, advising that you have discontinued the sale of candy, peanuts and potato chips at your licensed premises.

You ask whether it may be permissible for you to sell merely peanuts and potato chips. When you were at the Department about two weeks ago, you indicated that these items would be the usual bags of salted peanuts and bags of potato chips.

The argument for allowing the sale of these two items is that, by custom and usage, they have become an incidental and accepted part of a regular tavern business, and that the sale of such items is merely to furnish patrons with tidbits that commonly accompany drinking at taverns. I take it that the same argument may be made for popcorn and pretzels.

I believe that there is much merit to the argument. Hence, the Department, unless some manner of abuse appears, will not interfere with the incidental sale of peanuts, potato chips, popcorn or pretzels for consumption along with drinking on the licensed premises. In your case, you had gone beyond this limit and had virtually established a confectionery line of candy, cough drops, peanuts and potato chips for sale. As a result, you were directed to cease sale of all the items.

However, if you restrict yourself to sale of peanuts, potato chips, pretzels and popcorn for consumption at the premises, as an incident to drinking, it will not be regarded as engaging in a forbidden mercantile business.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS (NON-RESIDENCE) - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against WALTER HEESCH T/a WALTER'S TAVERN 119 Hudson Street Hoboken, N. J., Holder of Plenary Retail Consumption License C-74, issued by the Board of Commissioners of the City of Hoboken.	CONCLUSIONS AND ORDER

Walter Heesch, Defendant-Licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded guilty to the following charge:

"In your application filed with the Board of Commissioners of the City of Hoboken and upon which you obtained your current plenary retail consumption license, you falsely stated, in answer to Question 3, that your residence was 165 - 3rd Street, Hoboken, New Jersey, whereas in truth and fact you were a resident of the State of New York; such false statement being in violation of R. S. 33:1-25."

Defendant, however, appeared in opposition to an order to show cause why the license should not be cancelled and declared null and void because the said licensee was, at the time of the application therefor, a non-resident of the State of New Jersey.

The facts in this case disclose that the licensee moved from Hoboken, New Jersey to Brooklyn about ten years ago, at the request

of his brother who was ill, in order to take care of the brother's home. He voted in New York, registered for Selective Service in New York, and his son went to school there.

He has maintained many of his former interests in Hoboken, but in view of the plea and the law as it now stands, I must determine that he was not in fact a bona fide resident of New Jersey at the time his application was filed. Cf. Meyers & Phelan, Bulletin 635, Item 4, and cases cited.

It appears, however, that shortly after the investigation in this matter was made, the licensee, because of the investigation, found a home for his family in Hoboken, and that he now and has since about June 15th lived with his wife (his son has entered the armed forces of this country) at 917 Clinton Street, Hoboken, N. J. He is the owner of an automobile now registered in New Jersey, holds a New Jersey driver's license, has registered as a voter in Hoboken, and has notified his draft board of his change of address to his Hoboken home. He appears now to be a bona fide resident of this state.

In view of the change in licensee's circumstances, I shall dismiss the rule to show cause and, because of the plea of guilty to the charge made, I shall suspend his license for a period of ten days. Cf. Meyers & Phelan, supra.

Accordingly, it is, on this 18th day of September, 1944,

ORDERED, that Plenary Retail Consumption License C-74, issued by the Board of Commissioners of the City of Hoboken to Walter Heesch, t/a Walter's Tavern, for premises 119 Hudson Street, Hoboken, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. September 25, 1944 and terminating at 2:00 A. M. October 5, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - REFILLING IN VIOLATION OF R.S. 33:1-78- SALE OF ALCOHOLIC BEVERAGES CONTRARY TO TERMS OF LICENSE IN VIOLATION OF R. S. 33:1-2 AND R. S. 33:1-12(1) - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR PERIOD OF 25 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

MAE SMITH
47 Houston Street
Newark, 5, N. J.,

Holder of Plenary Retail Consumption License C-524, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Mae Smith, Defendant-Licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to the following charges:

"1. On Saturday, July 15, 1944, at about 1:30 A.M., you sold alcoholic beverages not pursuant to and within the terms of your license as defined by R. S. 33:1-12(1) in that you made a sale of a 4/5 quart bottle of wine for consumption off the licensed premises in other than the original container, thereby violating R. S. 33:1-2.

"2. On or about the occasion aforesaid, you, not being the holder of any license so to do, bottled alcoholic beverages in that you refilled the above mentioned 4/5 quart bottle of wine for the purpose of sale; such bottling being in violation of R. S. 33:1-78.

"3. On or about the occasion aforesaid, you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., one quart bottle of beer, at retail in its original container for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38, which prohibits any such type of sale or delivery before 9:00 A. M., or after 10:00 P. M., on any weekday."

On the evening in question, agents of the State Department of Alcoholic Beverage Control entered the licensed premises at about 1:00 A. M. They observed six male patrons who were being served by the licensee and her bartender. Three of the patrons were drinking together. About 1:30 A. M. the licensee took a burlap bag from a cooler and handed it to one of the group. Immediately after this incident an argument developed among the three, and the agents stepped in, stopped the argument and took possession of the burlap bag. An examination of its contents disclosed a one-quart bottle of beer and an unsealed 4/5 quart bottle labeled "Castanet Brand Cuban Rum", filled with what appeared to be wine. The licensee admitted this to be the fact and stated that she filled the bottle from a gallon jug labeled "Rico Brand Port Wine" because she did not have a one-quart bottle of wine available. She further states that the original sale was made at 10:30 P. M. although she did not deliver the merchandise until after 1:30 A.M. the following morning.

In addition to the sale for off-premises consumption after 10:00 P.M., in violation of Rule 1 of State Regulations No. 38, the licensee is likewise guilty of "refilling" or "bottling" wine for sale. As pointed out by me Re Fiorello, Bulletin 585, Item 2, I considered this to be a serious violation. It goes to the very heart of liquor control.

The licensee has no previously adjudicated record. For these violations I shall suspend the defendant's license for a period of twenty-five days, less five days for the plea, making a net suspension of twenty days.

Accordingly, it is, on this 19th day of September, 1944,

ORDERED, that Plenary Retail Consumption License C-524, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Mae Smith, for premises 47 Houston Street, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. September 25, 1944 and terminating at 2:00 A. M. October 15, 1944.

ALFRED E. DRISCOLL
Commissioner.

11. APPELLATE DECISIONS - LINDSTROM v. TOWNSHIP OF DELAWARE.

Case No. 2
JOHN W. LINDSTROM,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DELAWARE,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Frank M. Lario, Esq., Attorney for Appellant.
Bruce A. Wallace, Esq., by William T. Cahill, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal for the current fiscal year of appellant's plenary retail consumption license. The premises involved are located at Route 38 and Church Road, Delaware Township.

The renewal was denied on July 24, 1944 by a two-to-one vote of the Township Committeemen. At that time apparently no reason for the denial was stated by the members of the Township Committee. I have repeatedly pointed out that it is better practice for the issuing authority to state its reasons when an application is denied. However, the answer filed herein sets forth that renewal was denied because at the hearing held on July 24, 1944, many residents in the immediate vicinity in which the appellant's property is situated appeared and voiced their objections to the granting of the license on the grounds that (a) it is a residential and not a business area; (b) the property for which the license is sought is adjacent to a Sunday school and a license is, therefore, undesirable; (c) the vicinity is amply provided with establishments distributing alcoholic beverages; and (d) it is detrimental to the citizens of said neighborhood in that their property valuation will be lessened and the quietude of their neighborhood jeopardized by loud and boisterous noises which will emanate from the proposed place of business.

In order to understand clearly the issue in this case it is necessary to review the record of appellant's efforts, successful and otherwise, to obtain a license in Delaware Township. On June 17, 1943

John W. Lindstrom applied to respondent for transfer of a plenary retail consumption license, issued for the fiscal year 1942-43, from Edward B. Schultz to himself and from premises at Chapel and Kennilworth Avenues to premises at Church Road and Coles Avenue, which are owned by appellant and which are the same premises described in this appeal as being located at Route 38 and Church Road, Delaware Township. That application for transfer was denied and the action of respondent in that case was affirmed on appeal. Lindstrom v. Delaware, Bulletin 586, Item 3. While that appeal was pending, Edward B. Schultz renewed his plenary retail consumption license for the fiscal year 1943-44 for premises at Chapel and Kennilworth Avenues. In October 1943, on an application duly filed, respondent transferred the license issued for premises at Chapel and Kennilworth Avenues from Edward B. Schultz to John W. Lindstrom, who thereafter conducted business under said license at said premises until some time in May 1944, when he voluntarily closed those premises. In June 1944 John W. Lindstrom applied to respondent for a transfer of his license from Chapel and Kennilworth Avenues to the premises considered herein. No objections were filed at that time, and respondent granted the transfer on June 26, 1944. When, however, Mr. Lindstrom applied for a renewal of his license at the premises in question for the present fiscal year, numerous objections were received by respondent and a hearing held on July 24, 1944, at which time the renewal was denied. Appellant herein operated at the premises in question from June 28, 1944 until midnight, June 30, 1944, at which time he ceased operation because of the expiration of the license which he then held. When the appeal herein was filed, an application for extension of appellant's plenary retail consumption license pending the outcome of this appeal was made to me, but, because of all the circumstances of this case, I denied said application. Hence the appellant operated his business at Route 38 and Church Road only for a period of three days, and has not operated business at said premises since midnight June 30, 1944.

Appellant contends that, since respondent transferred the license to the premises in question on June 26, 1944, it was required to renew the license for said premises for the present fiscal year in the absence of valid objections to the conduct of the establishment from the time of said transfer to midnight June 30, 1944 -- the end of the fiscal year. Respondent contends that its action was justified by reason of the facts set forth in the answer filed herein.

Appellant relies upon the case of Conway v. Haddon, Bulletin 251, Item 3, wherein the Commissioner said:

> "Applicants for renewal, however, have generally, as the appellant did here, expended monies and incurred commitments in reliance upon the justifiable assumption that their licenses will be renewed in the absence of improper conduct on their part or a strong public policy which overcomes their private interests."

However, it was also pointed out in the cited case that a renewal, like the granting of an original liquor license, is a privilege and not a right and may, therefore, be denied for cause. I do not know what prompted members of the Township Committee to transfer the license to the premises in question on June 26, 1944, except that it may be that such action was taken because no written objections to the transfer of said license had been filed. Even in the absence of objections, respondent was under a duty to investigate and determine whether the application should be granted, and to reach a decision consistent with the best interests of the public based on its investigation. Delbono v. New Brunswick, Bulletin 322, Item 12. The testimony herein shows that numerous persons who objected to the renewal had not filed written objections to the transfer of the license because they had no actual knowledge of such application, despite the formal advertisement of the application. They immediately filed objections to renewal as soon as appellant obtained the transfer of the license. Moreover, appellant operated only three

days before the expiration of the license and incurred no substantial obligations. Whatever may be the rule in other cases, I conclude that, under the circumstances of this case, respondent was not required to renew the license in the absence of valid objections to the conduct of the establishment. In deciding this appeal, therefore, it must be determined whether the objections to the renewal were valid and whether the denial was reasonable despite the prior action of respondent.

The evidence produced herein discloses no substantial variation in the factual situation from that set forth in the prior appeal between the same parties. Lindstrom v. Delaware, supra. It was determined in the prior appeal that respondent's action was reasonable because the neighborhood was a residential community and because the territory was amply supplied with plenary retail consumption licensed establishments. The only additional facts disclosed at the hearing herein were that eight persons who resided nearby testified that there was need for an additional license at appellant's premises, and that ten persons who resided nearby testified that the territory was amply supplied by the "Cottage Cafe" and by a place known as "Gallagher's", which is approximately 2,000 feet from appellant's premises but located in another municipality. It appears also that petitions containing the names of one hundred twenty-six persons in favor of granting the renewal, and eighty-eight persons opposing the granting of the renewal, were presented at the hearing held by respondent. No question is raised in this appeal as to appellant's personal qualifications, and the sole question herein concerns the location of the licensed premises.

After considering all the evidence, I conclude that respondent did not abuse its discretion in refusing to renew the license for the present fiscal year because it appears that appellant's premises are located in a residential area and because the area is sufficiently provided with premises licensed to sell alcoholic beverages. The previous action of the respondent Township Committee granting the transfer, viewed in the light of its subsequent action denying renewal, appears to have been ill-advised and unfortunate. This apparent error of judgment on respondent's part, however, should not influence the decision herein in view of the paramount interest of the general public. Hence the action of respondent denying renewal of appellant's license for the current fiscal year is affirmed.

Accordingly, it is, on this 18th day of September, 1944,

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

Alfred E. Driscoll
Commissioner.