STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 45. August 27, 1934

1. APPELLATE DECISIONS - THE SHOW BOAT CASE

IRVING BRESSLER,
Appellant
-vs-

HON. RUSSELL G. CONOVER,
As Judge of The Court of Common Pleas of Ocean County, sitting pursuant to Chapter 436, Laws of 1933, as amended and supplemented,
Respondent.

ON APPEAL FROM ORDER OF REVOCATION

CONCLUSIONS

Ira F. Smith, Esq., and
William J. Blair, Esq., Attorneys for Appellant.

John J. Ewart, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The session this afternoon has carried along to a point where I see that the issues before me are not so difficult as they seemed at noontime. There are several things which we can just eliminate from the picture. One is the Sheriff and two is the Prosecutor and three is the Grand Jury. I do not see that they enter into this at all. The Prosecutor was engaged in doing his duty in another matter; the Sheriff, I have heard no connection with, except some idle words. As regards the failure of the Grand Jury, --- I don't even call it failure, --- the fact is that they did not indict, but as counsel said in summing up, what difference would it make? Suppose they did indict? An indictment itself does not show the guilt any more than the refusal to indict shows innocence, and so that goes out of the picture entirely, and there again goes out all questions as to the manner of making the raid or whether the raid was justified. I have paid very little attention to that because it is entirely beside the point.

There is no question in my mind whatsoever, after listening to this testimony, that there was a gambling room on this boat and my eyes do not deceive me when I recognize in front of me two roulette tables and wheels. I confess I have never seen a bird cage before; I recognize, very obviously, from a bare inspection what its purpose must be.

There is credible testimony that there was not merely gambling paraphenalia, but also that gambling was, in fact, done upon the boat.

Now, criticism was made as to the manner in which the revocation was made by the Court of original jurisdiction. I have not considered that today, although I did consider it at the time of the issuing of the special temporary permit, but today after a thorough trial, right from the very beginning, where the defendant is summoned and has furnished his witnesses and has a chance to cross examine, I think that if there were any errors permitted by the issuing authority of Ocean County that has been thoroughly cured by the thorough threshing out of the situation that we have had today.

So I have before me the fact that I find that gambling was done; I find that chips were sold on this boat.

Now, the difficulty, in fact the only thing that raises any difficulty in this case is the connection of Bressler with it.

Section 28 of the Alcoholic Beverage Act, Control Act, provides: "Any license, whether issued by the Commissioner or any other issuing authority, may be suspended or revoked for any of the following causes", and then follows the list of the causes, and the only cause which could possibly sustain these proceedings is "Any other act or happening occurring after the ~~time~~ of the making of an application for a license which, if it had occurred before such time, would have prevented the issuance of the license".

Now, there is another cause given in Section 28; that is if a licensee violates any rule or regulation made by the Commissioner. The Commissioner has not yet made any rule or regulation concerning gambling because of the difficulty exemplified in part by the comments made by Mr. Smith here today, of how in some phases the law makes flesh out of one and fish and fowl out of another. Some things may be legally done and other things, which are gambling in their nature may not legally be done, and it is a very difficult line to draw. It is not the easiest thing in the world to tell whether this so-called bagatelle, which you see in the lunch rooms and restaurants, whether it is a gambling device with an electric traveling crane. Arguing on that proposition, no regulation has been made and consequently these proceedings cannot be sustained on that ground.

What the Department has ruled occurred in a case on appeal against the Trenton Board of Alcoholic Beverage Control, in the case of Moss and Convery. In that case Trenton refused to give a license. Moss and Convery appealed. The Trenton Board proved that they had in their possession slot machines and that they were kept there and that on that ground they had refused to issue the license. The Commissioner, on appeal, affirmed the ruling of the Trenton Board because he believed the Crimes Act of New Jersey makes the mere keeping, as distinguished from the operating of slot machines, makes it a misdemeanor. The law is the law and the law has to be carried out; that is the only way to have respect for it.

Now, in this case this afternoon Mr. Bressler on the stand states that he did not know that there was any gambling being done in this gaming room; he did not know that there were roulette wheels and bird cages and other tables and gambling devices; he made it his business not to know that; he never looked in, he never went in, he instructed his employees never to sell any liquor in this place, in that room, and, why, because he understood that it was a Bridge room.

Frankly I do not believe a word which the witness testified on that point. Everybody else who has ever been in the boat knew what was going on in that room. Mr. Cohen very frankly testified that he had found it out before the raid and that he was displeased and he ordered this thing stopped, he wanted a New Deal; he even went so far as to get rid of this man Slade. Mr. Morse likewise, with refreshing candor, says that, yes, in fact he knew that it was used for gambling and he knew it 3 or 4 days and he says, in fact, perhaps a good deal longer than that. Everybody knew it was used for gambling except Bressler. I find that Bressler knew it too.

The question, therefore, is what should be done. Mr. Bressler pronounced his own sentence. He said he would not have asked for a liquor license if he knew that gambling was being done in the room next adjoining him. Judge Conover, in the record follows in the language of the statute and indicates that if he had known that gambling were being done upon these premises that he would not have issued the license.

I therefore conclude that his revocation was correctly made and it will therefore be affirmed. An order will be made terminating the special permit tomorrow at 12 o'clock noon. We stand adjourned.

2. APPELLATE DECISIONS - YOLE VS. TRENTON

HARRY YOLE, Trading as the Hotel Kurland,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

John J. Boscarell, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Respondent issued a Plenary Retail Consumption License to appellant for the period expiring June 30, 1934. On July 2, 1934, respondent denied appellant's application for a license for the period expiring June 30, 1935. An appeal was duly filed from the denial and has come on for hearing.

Respondent contends that the appellant improperly conducted the licensed place of business and was, consequently, unfit to hold a license. In support of its charge respondent produced a private detective. He testified that he had been engaged specially to investigate the conduct of the licensed premises; that on June 23, 1934, he, in the company of another person who was not called as a witness by respondent, visited the premises and observed four girls circulating among the male customers and requesting them to purchase drinks; and that one of the girls danced to the tune of the Carioca, "going through many unnecessary motions, picking up her dress above her knees and so on". He intimated that the girls were prostitutes but there is not an iota of credible testimony to support this intimation, and he admitted that no improper suggestions or advances were made to him. No further investigation of the girls was ever made, nor were they arrested by the police authorities of Trenton.

Appellant and his son Joseph Yole, who is employed at the licensed place of business, denied that any improper conduct had taken place. Joseph Yole testified that the girls described by the private detective were regular customers of appellant who visited the premises for meals and drinks; that they never gave any indication that they were of questionable character or reputation; that the dance referred to was not in any wise improper; and that they had never, to his knowledge, requested any male customers to purchase drinks for them. Several witnesses testified that appellant's reputation and character were good and that although they had visited the licensed place of business on many occasions, they had never ob-

served any improper conduct. Two of these witnesses testified that they were present on the night of June 23, 1934, and that they had observed no conduct which could be questioned.

In In Re: Russell Thomas Lamerding, Bulletin #38, Item #9, the Commissioner said:

> "It is entirely clear that a licensee who knowingly permits prostitution upon the licensed premises is not a fit person to enjoy the privilege of conducting a licensed place of business. Proof of such conduct will invariably result in revocation of the license. But the charge is serious and must be established by satisfactory evidence."

Careful examination of the uncorroborated testimony of the private detective fails to convince that the licensee knowingly permitted any improper practices on the licensed premises, and in view of the denials by the licensee and other witnesses, and the favorable testimony with respect to the character and reputation of the licensee, it cannot be said that respondent has satisfactorily proved its charges.

The action of the respondent is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 16, 1934.

5. CLUB LICENSES - LICENSE FEES - DISCRIMINATION NOT PERMISSIBLE

August 20, 1934

Robert Bright, Esq.,
109 East First Ave.,
North Wildwood, N. J.

My dear Mr. Bright:

I have yours of July 23rd re license to Wildwood Shrine Club.

I appreciate the factual situation and realize that this is but a small club, but nevertheless Judge Loder was absolutely right in refusing to discriminate in favor of one club as against another by permitting one to get a license for a lesser fee than the other.

Once the fee has been fixed by the issuing authority, all within the class must be treated alike. The statute places all clubs within the statutory definition on the same basis and makes no discrimination as to the number of members. If a given club does not come within the statutory definition it is thereby barred from having any license.

Very truly yours,

D. Frederick Burnett,
Commissioner

SALES - POSSESSION WITH INTENT TO SELL - WHAT CONSTITUTES

August 20, 1934

Mr. ----------,
Hightstown, N. J.

Dear Sir:-

I have your inquiry in which you ask if you have the right to keep beer, without having a license, in your roadstand in order to give, but not sell, to friends who happen to stop in.

The answer, as you ask the question, is technically in the affirmative since the mere possession of beer, or other alcoholic beverages, for personal use, is not prohibited by the Alcoholic Beverage Control Act. Nor is a purely gratuitous gift of alcoholic beverages a violation of the Act.

But I thoroughly disapprove any such action on your part. It smacks of evasion and subterfuge. Why not entertain your friends at your home? Why seek to do it at your place of business? It does not look right.

The mere possession of alcoholic beverages with intent to sell in violation of the Act is a misdemeanor and punishable as prescribed in Section 48. You open yourself to this charge and I would have no sympathy for you if the judge or a jury found as a fact that you kept these goods at your roadstand with intent to sell to favored and known close mouthed customers. If you deliberately assume the appearance of evil, don't cry in the jail that you are cruelly misunderstood.

Furthermore, to give the beer to your friends purely gratuitously does not mean that it can be given away in conjunction with or to promote the sale of any article, or with meals and included in the price of the meal, or in consideration for or as part of any other fee, because the delivery of alcoholic beverages in such manners is a sale and if not properly licensed is also a misdemeanor.

You had better think it over. The thirsty "friends", if real ones, will keep.

Very truly yours,

D. Frederick Burnett,
Commissioner

5. CLUB LICENSES - SALES - SUNDAY SALES.

August 14, 1934

Dear Sir:-

I would like you to render a decision in regards to whether it would be permissible under our present license to allow members of our club to buy and pay for their beer or whiskey on Saturday and be allowed the privilege of the grill room on Sunday. We have a club license and it distinctly reads no Sunday sales and a lot of discussion has arose about getting a drink on Sunday, some feel that it being a fraternal order and absolutely not open to the public, and it being our home that we should have this privilege. I have argued that until such time that we are granted permission either by you or by our City Council that we should not open the bar and I suggested a committee be appointed to interview Council.

At our last regular meeting Aug. 6th motion was made and carried for me to write to you for a decision as to members paying for their drinks on Saturday and being allowed to drink them on Sunday.

Respectfully yours,
----------, Secretary

August 20, 1934

----------, Secretary.

Dear Sir:-

I can quite understand your member's views that the Clubhouse is their fraternal home and not a public place. The difficulty is, however, that it is not a private home, where no license is necessary to consume alcoholic beverages, but is a place where such liquors are sold, and thus requires a license.

Holding such a license entails the obligation to abide by all municipal regulations applying thereto, including the ban on Sunday sales. You were therefore quite right in your opinion that no consumption should be allowed on Sunday of drinks technically purchased on Saturday. The thin guise of allowing the members to consume their previous purchases would be a patent evasion, which, however it might be winked at in Prohibition days, is not to be tolerated today. When the -------s ask for a club license they promise by acceptance to live up to all the rules.

Yours very truly,

D. Frederick Burnett,
Commissioner

6. LICENSES - CONVERSION - SEASONAL LICENSE NOT CONVERTIBLE INTO PLENARY LICENSE

August 21, 1934

Robert Bright, Counselor-at-Law,
109 East First Avenue,
North Wildwood, N. J.

Dear Mr. Bright:

I have yours of the 23rd ult. The question is whether your client by paying the additional amount of $87.50 may change his seasonal retail consumption license, the fee for which is $262.50, into a plenary retail consumption license, the fee for which is $350.

The answer is in the negative. It is true that the nature of the privileges accorded by each license are the same in kind and that the only difference is one of time, the seasonal license being good for four months and the plenary for twelve. But these two types of licenses are not only listed and treated in the Control Act as different kinds of licenses, but also there is an express provision in Section 28 which denies any refund to a seasonal licensee on voluntary surrender of his license. Again, a plenary license extends from July 1st to June 30th; whereas a summer seasonal license runs from May 15th until September 15th, and a winter seasonal license from November 15th until April 15th.

The intent of the Legislature in creating a seasonal retail consumption license and imposing upon it these special conditions, differentiating it from a plenary license, was to afford a seasonal privilege for a limited time at a cheaper price. To take out in the first instance a seasonal license and later to convert it into a plenary license by merely paying the difference in the fee would permit the licensee to gamble at the expense of the Municipality. If the venture proved profitable, he would be at

liberty, by paying a very small sum, to extend his limited four months privilege into a whole year. If it were unprofitable, the Municipality would get nothing. Such a transaction would be entirely one-sided. The Legislature had no intent of affording any such option to the licensee.

Again, to permit such conversion by applying the full amount paid for a seasonal license toward the purchase of a plenary license would be equivalent in effect to a voluntary surrender of the seasonal license accompanied by a rebate in full of the unearned fee, whereas the statute, as aforesaid, prohibits any rebate.

I, therefore, rule that such conversion cannot be made.

It follows that if your client desires to take out a plenary retail license, he may do so by applying for it in the regular manner, to become effective at the termination of his seasonal license on September 15th, and be accompanied by the full pro-rated fee from September 15th to June 30th. Such new application, since it covers a different time, will require a new advertisement and regular procedure throughout.

Very truly yours,

D. Frederick Burnett,
Commissioner

7. SALES - WHAT CONSTITUTES - PASSING THE BASKET

August 21, 1934

Dear Sir:

The only question is whether the practice adopted by your club in dispensing alcoholic beverages to its members constitutes a sale.

Section 1 (v) defines a sale as every delivery of an alcoholic beverage "otherwise than by purely gratuitous title". The beer furnished at your affairs cannot be said to have been furnished gratuitously since each member at the time he obtains a glass deposits the price in a basket. Nor is it furnished gratuitously when the members chip in for the beer. The real nature of your transaction appears to be that the club buys the beer and is reimbursed by each member paying his pro rata share according to the amount he drinks. This constitutes a sale.

It follows that your club must be licensed.

The mere fact that only beer is dispensed does not alter the situation as beer is included in the term "alcoholic beverages" as defined by the Control Act.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By: Gilbert E. Crogan,
Legal Assistant.

8. SPECIAL PERMITS - PUBLIC OCCASIONS - NOT ISSUED FOR PRIVATE COMMERCIAL PURPOSES

August 22, 1934

Dear Sir:-

I have your petition of August 22nd seeking special one-day permit for August 25th. Your petition sets forth that that day is to be the occasion of a mass meeting of 125,000 people in honor of the Democratic candidates for United States Senator and Governor; that there are but two plenary retail consumption licenses issued in Sea Girt; that the holders thereof do not have the capacity for serving the crowd expected; that you have a serving capacity of approximately 200 persons at a time.

Your petition bears the written consents of the Chief of Police and the Mayor.

Your petition, while grounded upon a public occasion is nevertheless sought for purely commercial purposes and as such must be denied. Regular licensees are entitled to protection from competitors who would pay only a fraction of the regular fee and pick their own days. Special permits for private gain, which are in substance a plenary consumption license, are never issued, otherwise every similar public occasion would be commercially capitalized.

Very truly yours,

D. Frederick Burnett,
Commissioner

9. APPELLATE DECISIONS - MORTON VS. LODER

EDWARD F. MORTON, et als,
Appellants
-vs-
HON. LEROY W. LODER, by designation, JUDGE OF THE COURT OF COMMON PLEAS OF CAPE MAY COUNTY,
Respondent.

ON APPEAL
CONCLUSIONS

A. J. Cafiero, Esq., Attorney for Appellants.
Hon. Leroy W. Loder, Attorney Pro Se.

BY THE COMMISSIONER:

Appellants filed applications for Seasonal Retail Consumption Licenses on May 16, 1934, for premises located on the Boardwalk, North Wildwood, New Jersey. On May 29, 1934, respondent announced a regulation prohibiting the issuance of any licenses within one hundred feet of the Boardwalk. On May 31, 1934, the applications were denied and the license fees accompanying them, less the statutory investigation fee of ten percentum, were returned. Appellants then applied for a return of the ten percentum investigation fee and their application was denied. An appeal was filed and the foregoing facts were stipulated.

Although no express appeal from a denial of such an application is provided for in the Control Act, it may be argued that the entire structure of the Act contemplates the allowance of such an appeal. This issue need not, however, be determined since the action of the respondent must be sustained on another ground.

Section 22 of the Control Act provides that upon the denial of an application, ninety percentum of the amount deposited with the application shall be returned "and the remaining ten percentum shall constitute an investigation fee". Appellants contend, nevertheless, that since respondent's regulation was adopted after their applications were filed, they should not be subjected to the statutory investigation fee. See Bulletin #11, Item #4.

The statute contains no exceptions with respect to the ten percentum investigation fee, and the situation presented does not warrant any construction thereof relieving appellants therefrom. When appellants filed their applications, they knew that under the statute the respondent was charged with the duty of conducting investigations and might, either as a result thereof or apart therefrom, adopt reasonable restrictive policies and regulations. And they are charged with the further knowledge that, pursuant to the provisions of the Control Act, such reasonable restrictive regulations might result in the denials of their applications and the retention of the ten percentum statutory investigation fee. Consequently, appellants' contention cannot be sustained. Any contrary result would, in large part, defeat the legislative purpose to provide that an issuing authority be compensated for its investigation resulting in the denial of an application.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 22, 1934.

10. APPELLATE DECISIONS - AMERICAN HOUSE,INC. VS. TRENTON

AMERICAN HOUSE, INC., Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Howard K. Shaw, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license. The application was denied. An appeal was duly filed and has come on for hearing.

Appellant complied with all the formal requirements pertaining to its application. The character of the persons interested in the corporation and the suitability of the premises are unquestioned.

Respondent contends that the number of licensed places within the vicinity of the premises sought to be licensed is sufficient to supply the demand of the locality for alcoholic beverages and additional places are not desirable. It appears that the premises consist of a hotel located on one of the three busiest streets in Trenton. The only other consumption license on the block is located in another hotel. No reputable hotel in the city was denied a license. Respondent has issued as many as five and six licenses in a single block in other parts of the city. Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #41, Item #9. Accordingly, its contention in the instant case cannot be sustained.

Respondent also relies upon a resolution adopted by it on May 31, 1934, limiting the number of retail consumption licenses in the City of Trenton to 250 and the issuance of the allotted number. For the reasons expressed in Central Restaurant, Inc. vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #44, Item #5, this contention cannot be sustained.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 21, 1934.

11. APPELLATE DECISIONS - GAMBLE VS. AVON-BY-THE-SEA

GEORGE H. GAMBLE, Appellant -vs- BOARD OF COMMISSIONERS OF THE BOROUGH OF AVON-BY-THE-SEA, (MONMOUTH COUNTY), Respondent.	ON APPEAL CONCLUSIONS

Peter Cooper, Esq., Attorney for Appellant
Samuel Y. Hampton, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at 224 Main Street, Avon-by-the-Sea, N. J., for the period ending June 30, 1934. His application was denied on May 15, 1934, and an appeal was duly taken from the denial. Under date of June 11, 1934, the action of the respondent Board in denying the appellant's application was reversed. See Gamble vs. Board of Commissioners of the Borough of Avon-by-the-Sea, Bulletin #35, Item #6. Thereafter, respondent issued a license to the appellant to expire June 30, 1934, and the appellant conducted business thereunder until the expiration thereof.

An application was made for the period beginning July 1, 1934, for the same premises, which application was denied and an appeal duly filed. Several reasons for the denial of the application were assigned by the respondent but it is only necessary to consider Section 6 of their resolution passed on June 29, 1934, providing

"No plenary retail consumption license or seasonal retail consumption license shall be issued in the Borough

of Avon-by-the-Sea, excepting for hotel premises containing forty or more guest rooms, which hotels shall be in operation for a period of two years prior to the date of the filing of the application for either of said licenses."

It is admitted that the premises sought to be licensed is not a hotel.

Section 37 of the Control Act confers express power upon the issuing authority of a municipality to regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business should be conducted. Bulletin #16, Item #8. Confining consumption licenses to hotels in order to control the enforcement of the liquor law is not unreasonable. DiBono vs. City Council of Bridgeton, Bulletin #30, Item #9, also MacCracken vs. Mayor & Common Council of the Town of Belvidere, Bulletin #38, Item #18.

It may be argued that so much of the resolution as prohibits the issuance of licenses to hotels containing less than forty guest rooms or which have been operated for less than two years is invalid as having no reasonable relationship to administration of the Control Act. Since, however, appellant does not operate any hotel, he cannot be aggrieved by such provisions.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 23, 1954.

2. APPELLATE DECISIONS - RUFEISEN VS. ASBURY PARK

HENRY RUFEISEN,
Appellant
-vs-
CITY COUNCIL OF THE CITY OF ASBURY PARK,
Respondent.

ON APPEAL
CONCLUSIONS

- - - - - - - - - - - - - -

Herman W. Brams, Esq., Attorney for Appellant
Benjamin C. VanTine, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at the southwest corner of Fourth Street and Ocean Avenue, Asbury Park. The application was denied. An appeal was duly filed and has come on for hearing.

All the formal requirements pertaining to the application were complied with. There is favorable testimony with reference to the character of the appellant.

Appellant conducts a restaurant upon his premises with a seating capacity of 50. Regular meals are served. In addition to conducting the restaurant however, he sells candy, popcorn, ice-cream cones and soft drinks upon the premises. Respondent contends that the sale of these items are not incidental to the conduct of the restaurant and therefore the issuance of the consumption license would violate the prohibition of Section 13 (1) of the Control Act. Appellant offered, however, to discontinue the sale of these items in the event a license is issued.

Respondent also contends that the nature and location of the premises sought to be licensed render same unfit and socially undesirable for the reason that the premises are located on Ocean

Avenue, which parallels the boardwalk about 75 feet therefrom and has a counter fronting on said avenue over which frankfurters and the like are sold to persons standing along the street. The refusal to issue licenses for premises situated close to a boardwalk or for premises upon which a frankfurter stand is conducted, may be proper. But such refusals are justified, if at all, only when uniformly applied to all applicants. In the instant case it appears that respondent has issued two licenses for premises substantially similar both in nature and location to appellant's. One of these licenses was issued to a party by the name of Brody, and the other to one Jacobs. An examination of all three places reveals that the policy upon which respondent rests its denial was applicable to the premises for which those licenses were issued as well as to appellant's. No reason is shown for the attempted discrimination. Having issued two such licenses, respondent cannot now allege that the granting of appellant's application would violate its municipal policy.

The action of respondent is reversed upon express condition that appellant confine the business conducted upon the licensed premises, to that of a restaurant.

D. FREDERICK BURNETT,
Commissioner

Dated: August 24, 1934

13. APPELLATE DECISIONS - OSTERTAG VS. ATLANTIC CITY

EUGENE OSTERTAG,
Appellant
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY,
Respondent.

ON APPEAL
CONCLUSIONS

William Charlton, Esq., Attorney for Appellant
Anthony J. Siracusa, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license for premises located at 2712 Atlantic Avenue. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied for the reason that a grill, already licensed, is located immediately adjoining appellant's premises, and that the resulting economic competition, if appellant's application were granted, would be ruinous to that other licensee. Without passing upon the validity of a municipal policy to shield existing licensees against economic competition, it is clear that such a policy, if enforced at all, must be uniformly applied. In the instant case, it appears that respondent has heretofore issued licenses for other adjoining premises without regard to resultant competition and its alleged evils.

Respondent further contends that it had adopted a policy against the issuance of licenses to persons who do not intend to remain in business all year but merely sought to take advantage of the summer season at the seashore. There is some question whether such a policy is valid. This question need not

be determined, however, since appellant testified that if he receives a license, he will remain open all year.

Respondent also sets out that the premises sought to be licensed are too near a school, albeit more than 200 feet away. This might have weight, Staciewicz v. Trenton, Bull. 35, Item 10, if it were not for the fact that the grill, heretofore licensed, is closer to this school than are appellant's premises.

The action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 24, 1934

14. APPELLATE DECISIONS - BUNKS VS. ATLANTIC CITY

JOHN BUNKS,
Appellant
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY,
Respondent.

ON APPEAL
CONCLUSIONS

John Rauffenbart, Esq., Attorney for Appellant
Anthony J. Siracusa, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for plenary retail consumption license for premises located at the Southeast corner of Baltic and Pennsylvania Avenues, Atlantic City. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied because of the improper manner in which the business had been conducted under a prior license, which expired June 30, 1934. The only evidence offered in support of this contention was: (1) Testimony by Mr. and Mrs. Donoway, who conduct a funeral parlor on the Northeast corner of the intersection across the street from the corner on which appellant's premises are located, that music from appellant's radio disturbed the services in their funeral chapel. Appellant and his employees all testified, however, that they had received no request to turn off the radio at any time that services were being conducted in the funeral parlor, and, if they had, they would have willingly complied. The Donoways did not testify that they had ever made any such request. (2) Their testimony that one evening a drunkard was forcibly evicted from appellant's place of business. He should have been. He entered the premises drunk and was not served any drinks. (3) Their testimony that ministers on their way to conduct services in the funeral parlor were embarrassed in passing appellant's place because of the persons who lounged thereabouts. The only minister who was called to corroborate, however, testified that the annoyances emanated from persons in the group congregated in front of the funeral parlor and he was unable to identify any of the persons responsible therefor or to say that such persons were patrons of appellant.

The testimony of the Donoways must be weighed against their admission that they had objected to the issuance

of appellant's original license and would object to the issuance of any license near their funeral parlor regardless of how well the place was conducted. Mrs. Donoway further admitted that appellant's business was conducted no worse than the general run of licensed places.

On the other hand there is considerable favorable testimony with reference to the manner in which appellant conducted his place. The three police officers assigned to the beat in which appellant's premises are located testified that the place was conducted properly. Several other witnesses testified to the same effect.

The real objection appears to be the existence of any licensed place for liquor close to the funeral parlor. The question is reduced to the inquiry whether for that reason alone the municipality may properly refuse to issue a license. In a crowded urban community, almost any business use of property involves, to a certain extent, some interference with the enjoyment of neighboring property. Unless the interference is unduly burdensome, it should be regarded as merely an incident of our economic system and social set-up. In determining what constitutes an undue interference, however, we must weigh the nature of the several businesses and the neighborhood in which they are located. The appellant's premises and the Donoway funeral parlor are in a business area. When one conducts a funeral parlor in such a neighborhood, he cannot demand that all other legitimate and reasonable business activity cease because it to some extent, although not unduly, interferes with the absolute quiet which is desirable but not practicable.

The action of respondent is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 24, 1934

15. APPELLATE DECISIONS - OROFINO VS. MILLBURN

SALVATORE OROFINO,
Appellant
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MILLBURN (ESSEX COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Hyman M. Goldstein, Esq., Attorney for Appellant.
R. J. Wortendyke, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that its action was proper for the reason that appellant's application disclosed the fact that in October, 1933, appellant had been convicted of a violation of the 3.2 Beer Act. Such a conviction does not necessarily involve moral turpitude. Bulletin #26, Item #5. If this were all, it is clear that appellant is not disqualified.

Aside, however, from the question of statutory disqualification, respondent has the power and is under the duty to examine into the character and fitness of all applicants, and to deny the applications of those who they determine are unfit to receive a license. On appeal, such determination will be given great weight and, if reasonable, will be sustained. See Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #29, Item #12.

On the question - is it reasonable to determine that an applicant is unfit on the basis of a single conviction of a liquor law without more? - reasonable men may differ. It may, perhaps, be forcibly argued that during the period of prohibition, many otherwise law-abiding persons directly or indirectly violated the law or condoned the practices and hence it is unfair to cast the stone of disapproval and condemn the applicant as unworthy of a license. But this argument, if sound, cannot fairly be made today, when it is possible to engage in the liquor industry pursuant to law. It is, therefore, significant that appellant's conviction was for a crime committed while the sale of beer was legal and at a time when he could have legitimately engaged in such business and conducted his privilege without abuse. Instead, he chose to violate the law which gave him that opportunity. He was convicted thereof. Having abused his privilege once before, it was not unreasonable for respondent to determine that appellant is not entitled to a further chance.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: August 24, 1934

16. APPELLATE DECISIONS - PLATNICK VS. BELMAR

SAMUEL PLATNICK and NATHAN PLATNICK partners, trading as PLATNICK BROS., Appellants vs- BOARD OF COMMISSIONERS OF THE BOROUGH OF BELMAR (MONMOUTH COUNTY), Respondent.	ON APPEAL CONCLUSIONS

Henry C. Schragger, Esq., Attorney for Appellants
Joseph Silverstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants applied for a seasonal retail consumption license for premises located at 1205 Ocean Avenue. The application was denied. An appeal was duly filed and has come on for hearing.

Respondent contends that the application was properly denied by virtue of a municipal policy not to issue any licenses for premises located on Ocean Avenue, which parallels the boardwalk about 75 feet therefrom, except to hotels. No resolution embodying this policy had been adopted at the time the application was rejected. Appellant's premises admittedly are not a hotel.

Under Section 37 of the Control Act, a municipal issuing authority may regulate the nature of the premises to be licensed

for the sale of alcoholic beverages. It has been held that under this provision a uniform policy confining the issuance of licenses to hotels is valid. MacCracken vs. Belvidere, Bulletin #38, Item #18. It has also been held that a valid municipal policy governing the issuance of licenses may be applied, even though not announced by resolution or ordinance. Dann vs. Manasquan, Bulletin #37, Item #12.

Appellants argue, however, that the municipal policy was unreasonable because expressly confined to premises along Ocean Avenue. The very nature of the boardwalk, however, has heretofore been recognized as sustaining restrictive regulations pertaining solely to the boardwalk and the adjacent premises. Dann vs. Manasquan, supra. A boardwalk is, in essence, a seashore public park.

After the denial of appellants' application, respondent adopted a resolution prohibiting the issuance of retail licenses along Ocean Avenue, or 100 feet adjacent thereto, except to large hotels. This resolution was disapproved by the Commissioner for the reason that the term "large" did not furnish a sufficiently definite guide by which to determine which hotels, as such, were eligible for licenses. Since, however, appellants do not operate any hotel, they cannot be aggrieved by this defect. Gamble vs. Avon-by-the-Sea, Bulletin #45, Item #11. Aside therefrom, for the reasons above stated, the resolution is proper and supports the action of respondent.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated; August 24, 1934

17. SALES - WHAT CONSTITUTES - LOANS OF ALCOHOLIC BEVERAGES

August 23, 1934

Mr. Isaac Wides,
Englewood, N. J.

Dear Sir:

I have your inquiry: "May a licensee loan alcoholic beverages to another licensee without intent to make any profit but merely to help him meet a customer's demand?"

The answer is in the negative. One retail licensee may not sell to another, Bulletin 13, Items 2 and 3. The statutory definition of "sale" includes every delivery of an alcoholic beverage otherwise than by purely gratuitous title. The delivery of alcoholic beverages for the purpose of a loan is therefore prohibited. The absence of profit motive is immaterial.

Very truly yours,

D. Frederick Burnett,
Commissioner

18. MORAL TURPITUDE - WHAT CONSTITUTES - ADULTERY

August 24, 1934

Raymond Schroeder, Esq.,
Assistant Corporation Counsel, Law Department,
Newark, N. J.

My dear Mr. Schroeder:

I have yours of the 21st re Olga Hudson, 73 Lincoln Park, Newark.

The real question is whether her conviction of adultery with Albert Hudson, her present husband, to whom she has been married for the past ten years, constitutes the conviction of a crime involving moral turpitude.

There is no question but that adultery is an offence against morals but whether those convicted are guilty of moral turpitude within the meaning of the Alcoholic Beverage Act is one which leaves room for reasonable difference of opinion. This is so because of the inherent difficulty of defining the term "turpitude". The dictionaries side-step it with the words "inherent baseness or vileness of principles, words or actions; shameful wickedness; depravity". Turpitude is a conclusion based on or an inference derived from the facts of a given case. In every case of adultery it is a breach of plighted troth and a personal sin, but we cannot jump from that to the general conclusion that every commission signifies shameful wickedness or constitutes, per se, depravity. Everything depends on the facts.

I call your attention to the principles laid down in the drunken driver case, Bull. 43, Item 17, where there was somewhat analogous latitude for reasonable difference of opinion.

The duty to hear the facts and make the decision in the first instance is upon the issuing authority.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner