

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

BULLETIN 389

MARCH 5, 1940.

1. DISCIPLINARY PROCEEDINGS - FRONTS - OPERATING BUSINESS WITHOUT TRANSFER - 15 DAYS' SUSPENSION.

February 26, 1940

Daniel J. Lane,
City Clerk,
Gloucester City, N. J.

My dear Mr. Lane:

I have before me staff report and your letter of February 8th re disciplinary proceedings conducted by the License Committee of the Common Council against Harry Moss, 238 Essex Street, charged with being a front for a non-licensee who bought the business and proceeded to operate it without the formality of transfer, and note that on confession of guilt the license was suspended for fifteen days.

Please express to the Mayor and Council my appreciation for their conduct of these proceedings and the penalty imposed. Although the license was suspended for only fifteen days, I understand that the license certificate was picked up on November 17th and not returned to the licensee until December 13th - a period of 26 days during which no business was done under the license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. STATE BEVERAGE DISTRIBUTORS - MAY IMPORT ALCOHOLIC BEVERAGES INTO NEW JERSEY FROM OUT-OF-STATE FIRMS NOT LICENSED TO SELL IN NEW JERSEY, PROVIDED THERE IS NO SALE OR SOLICITATION BY THE UNLICENSED FIRM IN NEW JERSEY.

Dear Sir:

We would like to purchase Falcon Imported Holland Beer from the Beer Import Company, 245 - 7th Ave., New York City.

We would like you to advise us if it is legal for us to make this purchase.

Sincerely yours,
Packman Brothers

February 19, 1940

Packman Brothers,
Atlantic City, N. J.

Gentlemen:

As the holder of a State Beverage Distributor's license, which is classified as a wholesale license, you may purchase beer from an out of State vendor who is not licensed to sell in New Jersey, provided that neither solicitation nor sale takes place in this State. See Re Wadsworth, Bulletin 351, Item 6.

Purchase within the State from an unlicensed solicitor is cause for the suspension or revocation of your license. See Re Bohlen, Bulletin 321, Item 8.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT BEVERAGES UPON UNLICENSED PREMISES - 15 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary)
Proceedings against)
JOSEPH OLINI,)
128 Bank Street,)
Newark, New Jersey,)
Holder of Plenary Retail Consump-)
tion License No. C-444 issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

CONCLUSIONS
AND ORDER

John A. Matthews, Esq., Attorney for the Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through his attorney, has entered a plea of non vult to a charge that on or about May 13, 1939 he possessed at 17 Pierson Place, Newark, New Jersey, in violation of R. S. 33:1-50, various illicit alcoholic beverages, being the same beverages that were forfeited in Re Seizure Hearing 5406, Bulletin 365, Item 15. Except for a few bottles, none of the containers bore any indicia of tax payment.

Alcoholic beverages bearing no indicia of tax payment are prima facie illicit. Whatever doubt there may have been of the unlawful origin of the beverages has been set at rest by Olini's failure to contest the forfeiture proceedings and his plea of non vult in the instant case. It is true that the alcoholic beverages were not found on the licensed premises but were instead found at the licensee's home. Nevertheless, the law prohibits the possession of illicit alcoholic beverages generally, and not only by licensees on licensed premises. Non-licensees who possess them are of course not subject to any disciplinary proceeding as is a licensee, but licensees, just because they are licensees, are subject to the additional punishment of revocation or suspension of the license, even though the possession occurs off the licensed premises. Cf. Re Inglese, Bulletin 307, Item 1.

There is no evidence that the licensee was engaged in the sale of the seized alcoholic beverages, nor is there any evidence to contradict his explanation that the wine was made by him between 1908 and 1933 exclusively for the domestic use of himself and his family.

The minimum suspension for possession of illicit alcoholic beverages has been established at thirty days. Re Jacobs, Bulletin 315, Item 8; Re Tumen, Bulletin 316, Item 8. However, by entering the plea of non vult in ample time prior to hearing, the licensee has saved the Department the time and expense incident to formal hearing. Consequently, the license will be suspended for only fifteen days.

Subsequent to the institution of these proceedings the above mentioned license has expired and has been renewed by the issuance of plenary retail consumption license C-434 (1939-40).

Accordingly, it is, on this 29th day of February, 1940,

ORDERED, that Plenary Retail Consumption License C-434, heretofore issued to Joseph Olini for premises 128 Bank Street by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, effective 3:00 A.M., March 4, 1940.

D. FREDERICK BURNETT,
Commissioner.

4. REVOCATION - EFFECT - LICENSEE MAY NOT SELL STOCK ON HAND OR RETURN MERCHANDISE FOR CREDIT EXCEPT PURSUANT TO SPECIAL DISPOSAL PERMIT - SO DURING TERM OF SUSPENSION.

February 29, 1940

Cohen & Abramson, Esqs.,
West New York, N. J.

Gentlemen:

Once a license has been revoked the privileges to handle alcoholic beverages, previously enjoyed by the licensee, cease and terminate.

A suspension is a temporary or partial revocation. Hence during the term of suspension the licensee may not do any of the things the sanction for which depends upon the license.

It follows that if a licensee, after a revocation or suspension, desires to make a sale of his stock on hand or to return merchandise for credit, he can only do so pursuant to a special disposal permit.

Whether or not such a Special Permit will be granted depends upon the facts. Application should be made in the form of a verified petition setting forth all pertinent facts. The petition should be accompanied by Ten Dollars in cash, money order or certified check payable to the order of D. Frederick Burnett, Commissioner, which sum will be credited toward the permit fee which will be determined upon receipt of the petition.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. ENFORCEMENT DIVISION ACTIVITY REPORT FOR FEBRUARY, 1940.

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - 33
 Licensees - 0 Non-licensees - 33

SEIZURES: Stills - total number seized- - - - - 11
 Capacity 1 to 50 Gallons- - - - - 5
 Capacity 50 Gallons and over- - - - - 6

Motor Vehicles - total number seized- - - - 3
 Trucks - 0 Passenger Cars - - 3

Alcohol
 Beverage Alcohol - - - - - 53 Gallons

Mash - total number of gallons - - - - - 73,598

Alcoholic Beverages
 Beer, Ale, etc.- - - - - 8 Gallons
 Wine - - - - - 9 "
 Whiskies and other hard liquor - - - - -60 "

RETAIL INSPECTIONS:

Licensed premises inspected- - - - - 1530
 Illicit (bootleg) liquor - - - - - 18
 Gambling violations- - - - - 17
 Sign violations- - - - - 34
 Unqualified employees- - - - - 65
 Other mercantile business- - - - - 15
 Disposal permits necessary - - - - - 3
 "Front" violations - - - - - 3
 Improper beer markers- - - - - 3
 Other violations found - - - - - 28

 Total violations found - - - - - 186
 Total number of bottles gauged - - - - - 13,675

STATE LICENSEES:

Plant Control inspections completed- - - - - 75
 License Applications investigated- - - - - 14

COMPLAINTS:

Investigated and closed- - - - - 416
 Investigated, pending completion - - - - - 368

LABORATORY:

Analyses made- - - - - 114
 Alcohol and water and artificial
 coloring cases- - - - - 11
 Poison and denaturant cases- - - - - 0

Respectfully submitted,

E. W. Garrett,
Chief Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF UNQUALIFIED FEMALES - 10 DAYS.

In the Matter of Disciplinary Proceedings against)

KATHERINE MIZIGURSKY and PAULINE CZAJKOWSKI, 188 Pacific Street, Newark, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-419, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Katherine Mizigursky and Pauline Czajkowski, Pro Se.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensees alleging, in substance, that (1) on August 22, 1939 they employed Olga Mizigursky to sell and serve alcoholic beverages to patrons in their licensed premises where the principal business is the sale of alcoholic beverages, contrary to Section (a) of Newark Resolution 4889; and (2) on August 22, 1939 they knowingly employed and had connected with them in a business capacity Olga Mizigursky, a minor, who would fail to qualify as a licensee, contrary to R. S. 33:1-26 and Rule 1 of State Regulations No.11.

The licensees herein are mother and daughter. Olga Mizigursky, aged 17, is a daughter of Katherine Mizigursky and sister of Pauline Czajkowski.

The evidence shows that on August 22, 1939, Investigators Carlin and DiPietro entered the licensed premises and saw Olga Mizigursky, who was then acting as a waitress, serve beer at the tables after obtaining the beer at the bar. Olga admitted that she had served the drinks and admitted also that she had no permit from this Department authorizing her to be employed at the licensed premises although she had had a special permit for the previous fiscal year which, of course, did not allow her to handle, sell or serve alcoholic beverages.

Licensees have stated in their application filed for the present fiscal year that their principal business is "tavern".

The licensees are guilty as charged.

On behalf of the licensees, Pauline Czajkowski testified that for about a month prior to the violation, she had been unable to attend to the business because of her child's illness; that during the period of her absence, her mother had arranged to have Olga help in serving lunches; that Olga had been told she should never handle alcoholic beverages; and that no special permit had been obtained because "this was just for the month".

If these offenses were the first, I should deal with this matter more leniently. But I find from the record that a permit

was issued to Pauline Czajkowski on May 21, 1937 but that no renewal was taken out when it expired on June 30, 1937; that thereafter, on October 22, 1937, it was discovered, on a routine inspection, that Pauline, then still under age, was employed on the licensed premises; that instead of bringing the matter up on charges, she was permitted to take out a permit retroactively. It is apparent that the licensees knew that the minor should have obtained a special permit and that, even with such permit, she was not eligible to serve alcoholic beverages. I shall suspend the license for five days on each charge, making a total suspension of ten days.

Accordingly, it is, on this 29th day of February, 1940,

ORDERED, that plenary retail consumption license C-419, heretofore issued to Katherine Mizigursky and Pauline Czajkowski by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing March 4, 1940, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS AND EMPLOYMENT OF MINOR AS BARTENDER.

March 1, 1940

Clarkson A. Cranmer,
Franklin Township (Somerset Co.) Attorney,
Somerville, N. J.

My dear Mr. Cranmer:

I have before me staff report and your letters of February 23rd re disciplinary proceedings conducted by the Franklin Township Committee against

- | | |
|----------------------|---------------------|
| 1. John Carr | 2. Agostino Miele |
| T/a Bill & Jim's | T/a Franklin Tavern |
| Lincoln Highway near | Elizabeth Avenue |
| Kingston | |

I note that both were charged with sale of alcoholic beverages before the permissible hour on Sunday, and that Miele was in addition charged with employing his minor son as a bartender, and that on confession of guilt the license of Carr was suspended for ten days and that of Miele for thirty days.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the respective penalties imposed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. PRIZES - ATTENDANCE PRIZES - CONDITIONS UNDER WHICH SUCH PRIZES MAY BE AWARDED ON LICENSED PREMISES - HEREIN OF THE TURN VEREIN AND ITS "POT OF SILVER".

Dear Sir:

Our Society was, and is, organized for the purpose of furthering Gymnastics and Athletics, but, for some reason or other, our members are becoming lackadaisical in their attendance and, in order to create new interest and a greater attendance, it was proposed, at our last meeting, to offer a "Pot of Silver" to see if we could not get more of our members to come out.

This "Pot of Silver" will start with the sum of \$2.00 and, in the event the member whose name is selected is not in attendance, will be increased by \$1.00 each week until such time as the member who is selected is present, when it will again revert to the original sum.

Our reason for writing to you is the fact that this selection will be made in our Club Room, for which we hold a Club Beverage License, and we wondered if it would, in any way, be contrary to the laws or rulings of the Commission.

Only our own members, and then only those in good standing, would be eligible to participate. This, to our minds, would be beneficial to us in two ways, it would create a greater interest, and at the same time would be an inducement to members to keep their dues paid in full.

Yours truly,
Riverside Turngemeinde &
Athletic Association.

March 4, 1940

Riverside Turngemeinde & Athletic Association,
Riverside, N. J.

Gentlemen:

I have before me your plan to pep up attendance. I suppose it is hard nowadays to get folks interested in turning and tumbling. They get so much in business, it's hardly a sport.

There is nothing intrinsically wrong with the club itself giving an attendance prize to its own members even though it is awarded by lot. They pay nothing for the chance; there is no commercial exploitation; no profit to the house; nothing but a reward, akin to those given by the Service clubs, for being present whether girth and calories are reduced or not. This is far from a lottery.

The plan is not beneath the dignity or contrary to the decency of licensed premises. So far from being a stimulus to the consumption of liquor, it has no connection.

If this is all there is to it, you may do it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - TRANSFER OF LICENSE TO NEW PREMISES WITHIN 1000 FEET OF THE PREMISES COVERED BY THE LICENSE AT THE TIME OF THE ADOPTION OF THE ORDINANCE, APPROVED.

March 2, 1940

George Dimond, Secretary,
Law Department,
Paterson, N. J.

My dear Mr. Dimond:

I have yours of February 27th and proposed amendment to Section 3 of the ordinance pertaining to plenary retail distribution licenses, adopted by the Board on June 19, 1939 and approved by the Mayor on July 5, 1939.

I note that you have remedied the defect mentioned in my letter of September 28, 1939, and that the section now authorizes transfers of plenary retail distribution licenses to premises within one thousand feet of premises for which another plenary retail distribution license is outstanding, only if the new premises is within one thousand feet of the place where the license being transferred was located at the time of the adoption of the ordinance. I think that is a very fair solution and shall therefore tentatively approve it, pending appeal, so that we may see how it works in actual practice.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. SIXTH CLASS COUNTIES - THE LICENSE FEES ESTABLISHED BY THE COUNTY JUDGES ARE CONTINUED PURSUANT TO CHAPTER 1, P.L. 1939 - IN THE ABSENCE OF A LOCAL ORDINANCE ESTABLISHING FEES, MUNICIPALITIES IN CAPE MAY AND OCEAN COUNTIES MAY ISSUE AND TRANSFER LICENSES FOR THE CURRENT YEAR ON THE BASIS OF THE COUNTY FEES.

March 2, 1940

Charles B. Ferguson, Esq.,
Point Pleasant, N. J.

My dear Mr. Ferguson:

My records do not disclose that any ordinance pertaining to alcoholic beverages has been adopted by the Mayor and Council of the Borough of Point Pleasant.

I have ruled in Re Tanner, Bulletin 379, Item 6, that pursuant to Chapter 1, P.L. 1940, the respective municipal governing bodies in Cape May and Ocean Counties will perform their normal licensing functions under the Alcoholic Beverage Law, except as otherwise expressly provided by Chapter 1, P.L. 1940.

Ruling in Re Heil, Bulletin 385, Item 8, follows the principles of the Tanner ruling. The City of Wildwood adopted an ordinance fixing the annual fees for plenary retail consumption, plenary retail distribution and club licenses. Pursuant to Notice of January 12, 1940 (Bulletin 376, Item 6), the ordinance was made

effective immediately and the fees fixed by County regulation were thereby superseded. The authority thereupon vested in the Board of Commissioners of the City of Wildwood to exercise the licensing function and to entertain and act upon the application for transfer then contemplated, pursuant to the ordinance adopted by the Board of Commissioners.

But it does not follow from the Heil ruling that Cape May and Ocean County municipalities must adopt local ordinances before they may consider applications for the issuance or transfer of licenses for the current year.

Chapter 1, P.L. 1940, in Section 3, provides, among other things, that all rules as were attempted to have been promulgated by the respective Judges of the Courts of Common Pleas of Cape May and Ocean Counties shall remain in full force and effect until June 30, 1940, except as changed or as otherwise superseded by the Commissioner. The clear intention is that in order to give municipalities time to get their bearings and enact their own regulations, all orders of the Judges aforesaid, in effect upon the adoption of the Chapter, shall continue until June 30th or until duly adopted municipal regulations shall become effective, whichever shall first occur, subject only to necessary alteration by the Commissioner, and that all such orders while they remain in effect shall govern the administration of the Alcoholic Beverage Law in the respective municipalities. Among the rules promulgated by the County Judges are the provisions for annual license fees. These annual license fees are presently the annual fees for the Borough of Point Pleasant, for the Council of the Borough of Point Pleasant has not yet provided for license fees and consequently, in Point Pleasant the County fees are not yet superseded.

The County fee in Ocean County for plenary retail consumption licenses is \$500.00 per annum. The Council may presently entertain and act upon an application for the transfer of a license from person to person, notwithstanding that it has not yet fixed fees of its own, and the fee for such transfer will be ten per cent of the yearly County fee. The procedure is set out in Regulations No. 3 (Pamphlet Rules, page 39) as revised in ruling in Re Heil, supra.

On June 30, 1940, the County regulations will expire. All issuances and transfers of licenses undertaken by the Council on or after July 1, 1940, or for the fiscal period commencing July 1, 1940, must be pursuant to appropriate ordinance duly adopted by the Council.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. RETAIL LICENSES - LICENSE ISSUED AND TRANSFERRED WITHOUT THE PREMISES HAVING BEEN COMPLETED OR PASSED UPON AND FOUND SUITABLE BY THE MUNICIPALITY - REMEDY EFFECTED BY RECALL OF LICENSE AND ISSUANCE SUBJECT TO SPECIAL CONDITION.

March 2, 1940

Miss Mary T. Murphy,
Acting Borough Clerk,
Rumson, N. J.

My dear Miss Murphy:

It is reported to me that on November 9th a resolution was adopted by the Mayor and Council authorizing the issuance of a plenary retail consumption license to Joseph G. McCue, for premises at the n/e corner of Avenue of Two Rivers and Ridge Road; that the premises were not then ready for use, substantial alterations being contemplated, which alterations will not be completed until on or about the first of March; that the license certificate was actually delivered to Mr. McCue some time during the week of January 22nd; that on February 8th the license was transferred from Joseph G. McCue to Piping Rock, a corporation, for the same premises.

I understand that no business has been conducted pursuant to the license and that no business will be conducted until after March 1st when the alterations to the building are completed.

When an application for a license is filed, the issuing authority must do two things. It must pass on the person and it must also pass on the premises, for unless the person is qualified and the premises are suitable the license should not be granted.

The most that may be done where application is made for a building in process of alteration or not yet constructed, is to grant the application subject to the express condition that the premises as described in the plans and specifications prepared and submitted by the applicant and found acceptable by the issuing authority, shall first be completed. See Re Harris, Bulletin 183, Item 11 and Re Salter, Bulletin 184, Item 8. Thus, the applicant will know exactly what is to be done and the Clerk or other municipal official designated to pass upon it will be aware of exactly what is to be accomplished.

There is no such condition in the resolution granting Mr. McCue's license. Under the law, the only way that a condition may be properly imposed upon the issuance of a license is in the resolution authorizing the license. See R. S. 33:1-32. The license then does not become effective until the special condition has been complied with.

In the absence of a proper condition duly imposed by the Council and approved by the Commissioner, it is not for the Clerk to pass upon the suitability of premises and decide when and if a license may actually be issued, for in so doing the Clerk exercises the discretionary licensing function vested by law exclusively in the Council and which the Council has no power to delegate. See Ricker v. West New York, Bulletin 229, Item 1; Re Friberger, Bulletin 113, Item 11; Re Guttenberg, Bulletin 66, Item 8.

The premises to be licensed in the instant case have not been passed upon and found suitable by the Council. The license, although issued, has not been exercised. While normally a condition contemplating alteration of the premises would have to be imposed at the time the issuance of the license was authorized, I sense no objection to imposing it properly in this case now. Mr. McCue contemplated extensive alterations at the time his application was considered and evidently still plans to go through with them. Apparently the mistake occurred because the Council did not know how to go about it or what to do. The remedy, therefore, is for the Council to obtain from Mr. McCue an adequate description of the changes he proposes to make, to pass upon the adequacy and suitability of the premises as so changed, and, if acceptable, to then amend the resolution of November 9, 1939 to impose a proper condition, viz., by striking out "for the fee of \$205.10" and in place thereof inserting "subject, however, to completion of alterations as described in Mr. McCue's statement of March --, 1940, which alterations are hereby found acceptable and which statement is hereby made a part hereof,".

The condition will become effective when adopted by the Council and approved by me in accordance with R. S. 33:1-32.

The license will become effective upon compliance with the condition, whereupon you may prorate the license fee from such effective date and return to Mr. McCue the excess he has paid.

Technically, the Council had no power to transfer this license to the corporation on February 8th before the license actually became effective. The reason is that if a license may be issued subject to completion of premises and transferred before the condition is complied with, the opportunity is afforded to traffic in licenses contrary to R. S. 33:1-26 and without paying the municipality any fee, for until the premises are completed and the condition is complied with the fee can not be assessed. The value, in municipalities where there is a quota on the number of licenses, would be substantial. It does not appear that this is the purpose in the instant case and, therefore, if the Council will proceed as above indicated and Mr. McCue will proceed with the alteration of his premises, I shall not request proceedings to set the transfer aside but shall allow it to stand, for I see nothing to be gained by requiring the parties and the Council merely to go through the motions again.

Please recall the license certificate until all this has been accomplished and kindly certify to me the further action taken in the matter.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. MUNICIPAL REGULATIONS - LIMITATION OF LICENSES - LIMITATIONS MAY NOT BE IN THE AGGREGATE FOR ALL CLASSES, OR HAVE THE EFFECT OF PROHIBITING TRANSFERS FROM PLACE TO PLACE, OR MAKE EXCEPTIONS FOR PREVIOUSLY LICENSED PREMISES WHERE THE NUMBER OUTSTANDING EXCEEDS THE QUOTA - LIMITATIONS WITH RESPECT TO SPECIFIC SECTIONS OF THE MUNICIPALITY PERMISSIBLE - HEREIN OF BARRING RENEWALS WHERE THERE HAS BEEN A SUSPENSION.

March 2, 1940

Robert H. Schenck, Esq.,
Attorney, Jefferson Township,
Morristown, N. J.

My dear Mr. Schenck:

I have yours of February 20th and proposed ordinance limiting the number of licenses in the northern portion of Jefferson Township.

My thoughts are as follows:

(1) The ordinance (Sections 1 and 2) contemplates the limitation of all classes of licenses in the aggregate. Limitations of licenses must be established with respect to each particular license class. See Re Somerville, Bulletin 110, Item 6; Re Hightstown, Bulletin 117, Item 5; Re Sahl, Bulletin 198, Item 11. The respective classes of licenses serve entirely different purposes. Unless there is a separate quota for each class, there is no way that the limitation can be properly administered.

(2) The Township Committee has the power to limit the number of licenses. It is conferred by R. S. 33:1-40. It is not expressly provided, however, whether the limitation shall be for the entire municipality, or whether it may be for specific sections of the municipality, or whether the power may be exercised as regards particular sections or the entire municipality as the governing body wishes. There is no question but that limitations may be established for the municipality as a whole. I think, by the same token, that as a general proposition it is not objectionable to limit the number with respect to specific sections where such sections are adequately described and are not arbitrary but are based on public convenience and necessity and the nature of the municipality taken as a whole. Election districts, as such, are not proper municipal subdivisions for the purpose of limiting licenses, unless the election district happens to coincide with a proper geographical subdivision, in which event it is, of course, not objectionable merely because it is an election district. The early rulings on this are collected in Re Miller, Bulletin 233, Item 5. Later cases involving the same principle are Rosenvinge v. Metuchen, Bulletin 249, Item 6; Skeba v. Millstone, Bulletin 274, Item 1 and Mason v. Egg Harbor, Bulletin 279, Item 1. Municipal ordinances limiting the number of licenses, according to R. S. 33:1-40, do not need the Commissioner's approval in the first instance in order to be effective. They are, instead, as provided in R. S. 33:1-41, reviewable on appeal. I therefore express no present opinion as to whether or not the district described in the ordinance is proper but reserve final decision both on the limitation and geographic distribution until the ordinance comes before me officially on appeal.

(3) The ordinance (Section 1) also provides that until the number is reduced to three, there shall not be issued in this section of the Township any licenses except such of the thirteen presently outstanding as may be renewed from time to time for licensees operating at the same respective locations. Now there

is nothing wrong with that. In fact, an application is not an application for a renewal unless, among other things, it is for a license of the same class and type as the expiring license, covers the same licensed premises, and is on behalf of the holder of the expiring license. See Chapter 281, P.L. 1939, which is reprinted in Bulletin 341, Item 10. But I take it from the preamble that this was apparently intended to accomplish more than appears in Section 1. The preamble declares that it is desired that the number of licenses shall be reduced to three and until so reduced that there shall be no change of location of any presently licensed business. If that were repeated in the operative part of the ordinance, it would purport to prohibit all transfers from place to place. But it is not in the operative part and hence does not attempt to lay down any such rule. It is well that it does not, for such a regulation would be invalid. The Township Committee does not have the power arbitrarily to forbid transfers from place to place. The rulings are collected and the reasons are restated in Re Rothermel, Bulletin 293, Item 4.

(4) The ordinance further provides (in Section 2) that so long as the number outstanding exceeds three, the surrender, suspension, revocation or non-renewal of any license shall thereafter prevent the issuance of any further license for such premises. Now if licenses are to be cut down, that in principle is a very fine way to go about it for it eliminates those who have violated the law and thereby shown themselves to be unworthy. But it is very harsh. With the revocation I wholly agree, but to rule someone out, regardless of the merits, for any suspension is very severe indeed. A revocation under the statute automatically disqualifies the person from holding a license for two years. Suspensions are imposed, however, for many violations which are relatively unimportant. It is inherently in the discretion of the Township Committee whether or not any application shall be granted and I therefore think that rather than adopt this rigid rule, the better course would be to omit any reference to suspension and handle each case of that kind on the merits.

(5) It finally provides (also in Section 2) that notwithstanding that more than three licenses may be outstanding, it shall be permissible to relicense premises where the license has been surrendered, suspended, revoked, or not renewed, on application either of the owner (if he has not theretofore been the licensee) or of a new tenant, provided the application is made within sixty days. Now if that goes in, there seems to me no point whatsoever in having a limitation at all for with such an exception the number of licenses will never be reduced. There will always be someone to take it up. For all practical purposes, there will be no limitation. If, therefore, it is an effective ordinance that the Township Committee wants, I recommend that this provision be omitted.

(6) I take it that when you say (as in Section 3) that upon the reduction of the number of licenses to three, the location of premises will then be determined as best fits public needs and convenience, you do not mean that licenses of long standing will be revoked or renewals denied merely because it might be preferable for them to be in some other location. I question whether you really need Section 3 at all.

In these respects, the ordinance as it now stands is not in proper form. If you will revise it in accordance with the foregoing and resubmit it, I shall be glad to review it again and offer such further constructive comments and suggestions as appear necessary.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS - PEDITTO v. PALMYRA.

PLACIDO PEDITTO,	:	
	:	
Appellant,	:	
	:	ON APPEAL
vs.	:	
	:	CONCLUSIONS
MAYOR AND BOROUGH COUNCIL of	:	
the BOROUGH OF PALMYRA,	:	
	:	
Respondent.	:	

James R. Giuliano, Esq., Attorney for Appellant.
Albert McCay, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from refusal to renew appellant's plenary retail consumption license for his tavern, The Bridge Grill, at Broad and Market Streets, Palmyra.

Respondent justifies the refusal because of alleged misconduct of the tavern during the last licensing year.

Before reviewing the merits of this contention, it is necessary first to consider appellant's motion to dismiss respondent's answer (and hence, in effect, to quash its case) on the ground that respondent failed, despite appellant's demand, to furnish him with a bill of particulars.

This motion is denied since (1) there is nothing in the Alcoholic Beverage Law or the rules or regulations purporting, either expressly or by inference, to authorize a party on appeal to demand, as here, without order from the Commissioner, particulars of an adversary, and (2) even assuming that appellant was entitled to demand and receive the particulars, he nevertheless suffered no substantial prejudice by respondent's failure to furnish them since, at the hearing on appeal, respondent's case was, by direction of the Hearer, presented first, with leave to appellant to request an adjournment, if necessary, in order to produce evidence to rebut that case, thus giving appellant the benefit of hearing respondent's full case before presenting his own and opportunity adequately to prepare it.

As to the merits: Appellant's tavern, established since Repeal, is located at a street-corner in a vicinity both business and residential in character. There are "three or four business houses" on appellant's block; a railroad station across the street a foundry and a factory just beyond the tracks; and, at appellant's corner, a fairly important bus-stop since a fare zone ends there.

On its residential side the neighborhood (which includes a "colored settlement" to which appellant apparently caters) has been characterized by the Mayor as the "under-privileged" or "backwoods" section of the town. A survey committee appointed by him, and representing various local agencies, reports (so he states) that this neighborhood is accountable for all but one of the serious crimes in the general area and has a preponderant number of

juvenile delinquents and of indigents and syphilitics, and recommends that "something be done with the licensed premises."

As to the alleged misconduct of the tavern, there is much testimony that warrants no serious consideration. The substantial evidence in support of the charge appears in the testimony of five residents who live within 400 feet of the tavern.

One of these residents testified that many persons will not use the bus-stop at the tavern's corner because of the allegedly "drunken" crowd there, which sometimes numbers twenty to twenty-five persons; that on one occasion he and his wife, in order to pass by the crowd, were forced into the street; that, in two instances, when he escorted a lady to the bus-stop at the corner, he was embarrassed by patrons of the tavern, once by the loud indecent language being used by several men as they were emerging from the tavern and once when a man approached the lady whom the witness was escorting as though to embrace her and then entered the tavern. He further testified that indecent language emanates from the tavern; that he has seen persons leaving the tavern "far from sober" judging by their boisterous "hollering;" that the tavern becomes noisy after 11 P.M.; that after 1 A.M., when it closes, the departing patrons, especially at week-ends, troop down the street "and make all kinds of noises;" that on one occasion in April 1939 these patrons kept up a racket for an hour and a half, could be heard two blocks away and kept the whole neighborhood up; that this condition existed for six or eight months theretofore and progressively became worse.

Another of these residents confirmed the testimony as to a habitual crowd of "hangers-around" in front of the tavern and described them as being mostly patrons of the tavern. He also confirmed the testimony as to noise and indecent language, stating that such language comes not only from the tavern but also from the crowd in front of it. He further testified that he has seen persons leaving the premises and "staggering all over the street;" that on seven or eight occasions he has seen persons "shooting crap" on a porch at the rear of the tavern; and that for over a year he observed persons, sometimes as many as ten, go into the rear entrance of the tavern on Sunday mornings and later emerge, some with packages, although Sunday sales are, by local regulation, forbidden in Palmyra.

Two others, in sum, likewise corroborated the testimony as to the crowd that gathers in front of the tavern and the indecent language, one testifying that such language can be heard at his home twenty-five yards away, the other stating that he generally seeks to avoid appellant's corner altogether by cutting through a back lot.

The fifth resident testified that Joseph Peditto, appellant's son who helps at the tavern, told the witness, when he complained about minors, "We don't serve minors at the bar. I send them around the back."

The Mayor, who voted against renewal of appellant's license for the current licensing year when the Council was tied at 3-3 (thus swinging the vote to 4-3 against such renewal), and a councilman who also voted against the renewal, testified, in sum, that the tavern has a bad reputation; that question has arisen in previous years about renewing appellant's license; and that appellant has been warned on several occasions "to conduct the place properly." The councilman further stated that he had voted for renewal of appellant's license in previous years in order to give appellant opportunity "to clean house." The Mayor (who can vote

CA

only, as here, in case of a tie among the councilmen) never had occasion to vote on an application by appellant since 1935, when he was an ordinary councilman.

The president of the Council, who voted for renewal for the current licensing year, testified that he is now opposed to such renewal, explaining, inter alia, that "from what I have heard since the vote was taken in Council, ... I am impressed with the fact that the reputation of that place is not exactly what I used to believe it to be."

On the other hand, so far as appears, no formal objection was ever made heretofore against the issuance of appellant's original license or any renewal thereof, nor has any formal disciplinary action at any time been taken against appellant. The police chief, a police captain, a nearby resident who has worked for appellant cleaning up the tavern on Sundays, another nearby resident who is a patron at the tavern, a third nearby resident who conducts a plenary retail distribution or "package" liquor store in the neighborhood, and appellant and Joseph and Christopher, his sons, all testified, in effect, that the tavern has been conducted properly. The local manager of the Public Service Coordinated Transport testified that he has never received any complaint that bus-patrons were "being bothered" at appellant's corner.

However, despite such testimony in appellant's behalf, there is no denial that a crowd habitually congregates in front of the tavern (although there is effort on appellant's part to show that the frequenters of the corner come from sources other than the tavern). The police captain admitted that on occasions he has chased the crowd from appellant's corner because of their noise, and, while claiming that the tavern itself is no noisier than the others in Palmyra, also admitted that, nevertheless, the tavern at times is "pretty noisy." The police chief, when pressed indicated that the patrons of the tavern are a "pretty tough crowd", although claiming that "most all young fellows are."

In view of the recited testimony, and that question arose in previous years as to renewal of appellant's license (but apparently not so seriously as this year), and that appellant has several times been warned and, by past renewals, given opportunity "to clean house", I cannot say that respondent was unreasonable or abused its discretion in refusing to renew appellant's license for the current licensing year.

The action of respondent is, therefore, affirmed.



Commissioner.

Dated: March 3, 1940.