STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1209 February 27, 1958

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - JARV'S v. EAST RUTHERFORD.

2. APPELLATE DECISIONS -(SCHNEIDER ET AL v. PARSIPPANY-TROY
(HILLS AND DI LAVORE AND NUZZI.
(SCHNEIDER ET AL v. PARSIPPANY-TROY
(HILLS AND PACKARD-BAMBERGER CO., INC.

3. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEIGHBORHOOD STATE - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

4. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR FIFTEEN DAYS LESS FIVE FOR PLEA.

STATE OF NEW JERSEY
Department of Law and Public Safety
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1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1209 February 27, 1958

1. APPELLATE DECISIONS - JARV'S v. EAST RUTHERFORD.

JARV'S, INC., t/a Jarv's, Appellant,	)	ON APPEAL
v.	)	CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE BOROUGH OF EAST RUTHERFORD, Respondent.	)	

John W. Grady, Esq., Attorney for Appellant.
Raymond H. Flanagan, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on September 4, 1957 it denied appellant's application for transfer of plenary retail consumption license C-16 from 387 Paterson Avenue to 112-114 Park Avenue, East Rutherford.

"In its petition of appeal appellant alleges in effect that the refusal to grant the transfer was an abuse of discretion.

"Respondent in its answer contends that the transfer was denied for the following reasons:

(1) There are too many licensed premises in the vicinity of the premises to which the transfer is sought;

(2) The transfer would increase traffic problems;

(3) There is no public need for an additional tavern;

(4) Residents of the neighborhood strenuously opposed the transfer.

"It appears from maps and photographs introduced in evidence and from the testimony of the witnesses who appeared herein that the main business section of the Borough of East Rutherford is on Park Avenue running south from Paterson Avenue for about one block; that in said section on the west side of Park Avenue there are two taverns and one package goods store; that the proposed site of transfer is on the east side of Park Avenue at the corner of Paterson Avenue directly across the street from one of said taverns; that on the north side of Paterson Avenue one block east of Park Avenue there is a tavern; that on the same side

of Paterson Avenue one block west of Park Avenue there is another tavern and across the street therefrom is a package goods store.

"Loris F. Jarvis, Jr. testified that appellant has held license C-16 for seven years at 387 Paterson Avenue, a distance of about 1/2 mile from the proposed site; that on September 20, 1957 it was compelled to vacate its licensed premises; that it sought unsuccessfully to acquire other suitable quarters in the same vicinity; and that it has an opportunity to lease the proposed site which consists of a store (formerly a drug store) with living quarters above it and an adjoining store which appellant intends to operate as a restaurant.

"Two objectors, whose signatures together with those of 38 other residents of the neighborhood who petitioned the issuing authority against granting the transfer, testified that an additional tavern in the small business area would increase traffic hazards, create 'distracting noises and rackets', imperil the 'moral fiber' of the Borough, be harmful to the children of the neighborhood and that there are already too many licensed premises 'stuck right in the center of our town'.

"A police lieutenant testified respecting the existing traffic problems in the area and expressed the opinion that another tavern located therein would increase traffic hazards and 'curtail shopping in our town'.

"It has long been established that the number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority, (DiGioacchino v. Atlantic City, Bulletin 1030, Item 3) and that the burden of showing that such discretion was unreasonably exercised rests with appellant. Segal, et als. v. Clifton, et al., Bulletin 732, Item 5, and cases cited therein. Furthermore, the Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view on the subject. Rafalowski v. Trenton, Bulletin 155, item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et als. v. Maplewood et al., Bulletin 658, Item 4.

"Having carefully considered the record herein, I find no evidence that respondent acted in an arbitrary, capricious or unreasonable manner in reaching its determination and since there is no indication that it was improperly motivated in denying the transfer, I conclude that appellant has not sustained the burden of proof of establishing that such action was erroneous. I recommend therefore that an order be entered affirming respondent's action."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered all the facts and circumstances herein, I concur in the Hearer's findings and conclusions

and adopt his recommendation.

Accordingly, it is, on this 22nd day of January 1958,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director

2. APPELLATE DECISIONS -(SCHNEIDER ET AL v. PARSIPPANY-TROY HILLS AND DI LAVORE AND NUZZI.
(SCHNEIDER ET AL v. PARSIPPANY-TROY HILLS AND PACKARD-BAMBERGER CO., INC.

C. ELMER SCHNEIDER, T/A ELMER'S TAVERN, AND BEVERAGE LICENSEES OF PARSIPPANY-TROY HILLS, NEW JERSEY, (AN UNINCORPORATED ASSOCIATION),

Appellants,

v.

TOWNSHIP COUNCIL OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS, AND SALVATORE DI LAVORE AND MICHAEL NUZZI, T/A DI LAVORE'S DELICATESSEN,

Respondents.

On Appeal

- -

CONCLUSIONS and ORDER

C. ELMER SCHNEIDER, T/A ELMER'S TAVERN, AND BEVERAGE LICENSEES OF PARSIPPANY-TROY HILLS, NEW JERSEY, (AN UNINCORPORATED ASSOCIATION),

Appellants,

v.

TOWNSHIP COUNCIL OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS, AND PACKARD-BAMBERGER CO., INC., T/A PACKARD WINE AND LIQUOR STORE,

Respondents.

- -

Robert H. Simandl, Esq., Attorney for Appellants.
Jeffers, Mountain and Franklin, Esqs., by Albert B. Jeffers, Jr., Esq., Attorneys for Respondent Township Council.
Young and Sears, Esqs., by Harry L. Sears, Esq., Attorneys for Respondents Salvatore DiLavore and Michael Nuzzi.
Long and Oram, Esqs., by George S. Oram, Esq., Attorneys for Respondent Packard-Bamberger Co., Inc.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores Association, an Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Both of the appeals herein involve a common question of fact and law and will be decided together.

"These are appeals from the action of respondent Township Council whereby its members, by a 3 to 1 vote, granted applications for two new plenary retail distribution licenses (commonly known as package store licenses), one to respondents DiLavore and Nuzzi for premises located on Parsippany Road corner of Fairfield Road and the other to Packard-Bamberger Co., Inc. for premises located in the Morris Hills Plaza Shopping Center, junction of Routes 46 and 202.

"The appellants attack the grant of such licenses on the ground that (1) such action was prohibited by R.S. 33:1-12.14 which limits issuance of new plenary retail distribution licenses to the ratio of one such license to each 3,000 of population of the community and (2) even if by a literal reading of the statute such action technically is not prohibited, it was arbitrary, capricious and unreasonable for the respondent Township Council to conclude that there was any need or necessity for the issuance of two additional package store licenses to supply normal facilities for the purchase of liquor by the actual population of the community.

I

"R.S. 33:1-12.14, so far as here pertinent, provides that no new plenary retail distribution license shall be issued in a municipality unless and until the combined total number of such licenses existing in such municipality is fewer than one for each 3,000 of its population as shown by the last then preceding Federal census.

"The population of 15,290 of the Township according to the last census in 1950 included 7,799 patients and resident staff of Greystone Park Hospital, an institution for mental patients located in the municipality. The appellants' contention is that these inmates and staff of such institution should be excluded from the enumeration of the population of the municipality for the purposes of the Alcoholic Beverage Law, and hence, the issuance of two distribution licenses in addition to the three already existing licenses of that type was prohibited.

"It is obvious that in essence the statute is a legislative standard of what it considers the maximum number of package stores adequate to supply the normal needs for the purchase of liquor by the inhabitants of a community. It is absurd to even consider that the legislature had in mind any need of inmates of hospitals or prisons for alcoholic beverages for beverage purposes when using the word 'population'.

"This view is confirmed by the statutory definition of 'population' and decisions thereunder. R. S. 1:1-2 defining population reads: 'Population; inhabitants. The word "population", when used in any statute, shall be taken to mean the population as shown by the latest federal census effective within the state and shall be construed as synonymous with "inhabitants".'

"In considering who is an inhabitant, it was said in State Sharp, Pros. v. Casper, Collector, 36 N.J.L. 367 at p. 368:

> 'The meaning of this word, as used in the act, does not differ materially, if at all, from its ordinary and proper signification.
>
> 'One who has an actual, but merely temporary residence in a place, is not, in any proper sense, an inhabitant of that place.
>
> 'An inhabitant of a township or ward is one who has his domicile there, his fixed habitation and home, from which he has no present intention of removing.'

"A subsequent confinement in a mental institution does not effect a change in the inmates' residence. District of Columbia v. Stackhouse, 239 F. 2nd. 62 (U.S. Court of Appeals, District of Columbia Circuit 1956):

> 'Where defendant, who was committed to a hospital as an insane person, had her residence in the District of Columbia during her childhood, her subsequent confinement in numerous mental institutions did not effect a change in her residence nor did the fact that she lived in college towns as a student, during which time she returned home for summer vacations, result in the loss of her District of Columbia residence.'

"McCampbell v. McCampbell, 13 F. Supp. 847 (District Court W. D. Kentucky 1936):

> 'After a person has been duly adjudged a lunatic by a court of competent jurisdiction, it is presumed that he is incapable of intelligent action and has no power by his own will or act to change his state or national domicile from the place thereof at the time or after he becomes incompetent, because he lacks the mental capacity to exercise either choice or intent - twin elements generally regarded as essential to a change of domicile.'

"The same rule applies to an inmate of a prison. U.S. v. Stabler, 169 F. 2nd. 995 at p. 998. (Circuit Court of Appeals, 3rd Circuit 1948):

> 'It is clear that one does not acquire a domicile while imprisoned....The same reasons which have made courts refuse to find a man domiciled in prison substantiate the conclusion reached in the Gronich case that a man does not acquire a residence there either.'

"In the absence of evidence to the contrary, it is a permissible judicial inference that all, or a large portion of the patients and staff in Greystone Park Hospital do not have their residence or domicile in the municipality. Indeed, Mayor Walter estimates that at the last election 200 to 250 of the persons in the hospital voted representing 50 per cent or 60 per cent of those registered from that location. Hence, under general law, nearly all of the persons in the hospital were not part of the population of such municipality at the time of the 1950 Federal census.

"However, the Bureau of Census, in its letter in evidence, sets forth:

> 'It has been the traditional census practice to enumerate persons in institutions in which the inmates remain for long periods of time as inhabitants of the area in which the institution is located. Therefore, the population of the Greystone Park Hospital (7,799 including patients and resident staff) was included in the total population as reported for Parsippany-Troy Hills township.'

II

"Even if the literal construction of the word 'population' as used in R.S. 33:1-12.14 compels acceptance of the Census Bureau's rule of convenience method of enumerating the population of a community, contrary to the definition of population or inhabitants under general law, nevertheless, the fact that the issuance of a license is not prohibited by State Law or local ordinance does not mean that such license must therefore be issued as of course. Jump v. Township of Logan, Bulletin 1179, Item 2.

"The State Limitation Law merely fixes a maximum and, in a given municipality, far fewer licenses than would be permitted by the law may be ample to serve that municipality's public need. Re Racquets Club of Short Hills, Bulletin 976, Item 5.

"It is well established that liquor licenses should be granted only when warranted by public convenience and necessity. In any sound, fair and acceptable administration of the issuance of alcoholic beverage licenses, need is the hub of the wheel. Dorio v. East Amwell and Colligan, Bulletin 965, Item 3.

"The determination to grant or deny an application for a liquor license rests in the first instance in the sound discretion of the municipal issuing authority. Szalobryt v. Washington Township, Bulletin 875, Item 1. Before reversing the action of the issuing authority, the record must convincingly demonstrate that an abuse of discretion exists, and in reaching such decision,

the Director may not substitute his personal views for those of the individual members of the issuing authority. Stiegler, et als. v. Montville, et al., Bulletin 863, Item 1.

"In determining from a realistic standpoint the number of liquor establishments which are adequate to serve public convenience and necessity in the instant case, only the needs of the actual inhabitants are to be considered. They are the population to be served, and not the illusory 'population' of the hospital.

"Excluding the persons in the hospital, there were 7,491 inhabitants in the Township according to the 1950 Federal census, and it is estimated that there were 10,826 of such inhabitants in 1955. According to the aforesaid legislative standard, three package store licenses, and ten tavern licenses, wherever located in the municipality, are considered adequate. Actually, there are 25 tavern licenses, three package store licenses and five warm beer licenses presently issued in the municipality.

"The municipality has an area of approximately 25 square miles divided into 10 widely separated voting districts, and is primarily residential, with various small business centers. Only three of these districts have a package store license. Originally it was a summer camp area but presently it is, in part, converted to year-around residence. An estimated 100 new houses have been erected. It is estimated that about 35 per cent or 40 per cent of the population reside in the Lake Parsippany area, where the DiLavore license is proposed to be located. This would be roughly 4,000 persons. There is a package store and five taverns located there. The legislative maximum of one tavern for each 1,000 persons and one package store for each 3,000 persons has been reached. The statute merely crystalizes what appears to be common sense.

"The problem of whether or not to issue new package store licenses on the basis of the 1950 Federal census was considered by the Township Council at a hearing held on July 20, 1954 on an application by Salvatore DiLavore for a plenary retail distribution license for the same premises involved in his present application.

"Council members present were Messrs. Clayton, Frayler, West, Walter and Mayor Manning. At such hearing reference was made to the recommendation of the County Grand Jury that no new liquor license be issued until they were reduced to what the population ratio law provides. A petition signed by approximately 300 objectors was presented. There was a question whether the grant of such license would be in accordance with the provisions of its distance ordinance.

"Mr. Clayton stated that so far as he was concerned, the people confined in the mental institution should not be included in the population and offered a motion that the application be denied. Mr. Walter said that the Council should make a finding of fact as to distance and whether or not the general area is sufficiently served by the existing licenses. Mayor Manning said he was not ready to make a decision; that while

there are too many total licenses in the Township, there is a question as to the individual harm of a package store. However, he was troubled by a lack of information as to actual distance between the proposed new license and other licensed premises.

"Mr. Clayton made a motion that the application be denied on the grounds that the evidence presented indicated that the distance between this and other licensed premises is considerably less than 2,500 feet required by the Township ordinance and that it would be contrary to the policy of the Council to base the issuance of new liquor licenses upon the unfortunate residences of Greystone Park Hospital.

"Messrs. Clayton, Frayler and West voted in favor of the motion. Mr. Walter and Mayor Manning voted 'No' specifically because they were not in accord with the language of the motion.

"On August 3, 1954 there was a meeting of the Council at which Messrs. Clayton, Frayler, West and Mayor Manning were present, to consider an application from Frank DePaolo for a package store license. Various objectors were heard. The applicant stated that he had a warm beer license but the new license would be more suitable. In the course of his representations to the Council, he said there were too many tavern licenses.

"Mr. Frayler stated that he cannot begin to fathom 'why we should have another retail license and he sees no reason or public necessity for granting this license'; that 'there is a license now for every 162 people and that any more would bring us to the level of Mulberry Street in Newark or Hoboken'; that he is not convinced of any public convenience and necessity to be served and he is not taking into consideration the objections of the tavern owners. Mr. West voiced similar sentiments. Mr. Clayton stated that while Greystone Park is a part of the Township and 'the people there are people', they are not the consuming public; that he believed the outstanding licenses are adequate; that it is not a case of public necessity or convenience to be served and that it would not be in the best interest to the welfare of the Township to grant the license.

"Messrs. Clayton, Frayler, West and Mayor Manning voted to deny the application on the grounds (1) it is not established that the public benefit or convenience would be served and (2) it would not be in the interest of the public welfare.

"On June 28, 1957 a meeting was held by the Township Council at which Messrs. Frayler, Hermey, West and Mayor Walter were present to consider the two applications here involved and an application by another person for package store licenses. Action thereon was deferred until July 16, 1957.

"On July 16, 1957 at a meeting of the Council at which Councilmen Frayler, Hermey, West and Mayor Walter were present, applications for four other plenary retail distribution licenses as well as those carried over, were considered. Councilman West said that he carefully reviewed all of the applications and failed to see where health, welfare or morale of the Township

would be improved by the issuance of any license. Mr. Frayler presented a motion that the license be issued to DiLavore and Nuzzi. To Mr. West's objection that the existing licenses are sufficient to take care of the needs of the thirsty in the Township, Councilman Frayler replied that public necessity and convenience and the rapid expansion of the Township and the fact that a package goods store cannot be placed in the same category as a consumption license should be considered. Mayor Walter also expressed the opinion that there is a substantial difference between a package license and a tavern license. He said, 'We have too many taverns now but they serve an entirely different purpose even recognizing the fact that a tavern licensee has the power to sell package goods.' Councilman West asked the Mayor if he was convinced of the necessity and need of any further licenses at this time. Thereupon, the Mayor referred to a petition signed by over 400 persons in favor of the license and said that he is familiar with the area around the proposed premises and it is a developed area and within a radius of 1/2 mile there are already a substantial number of potential users and the only existing package store in the area is Dru's Market.

"The Mayor and Councilmen Frayler and Hermey voted to grant the license and Councilman West voted to deny the same.

"When considering the application of Packard-Bamberger Co., Councilman West repeated his previous objection to the grant of any new package store license. Mayor Walter agreed that under the state limitations, 'We have an excess of taverns but because they existed prior to this act, nothing can be done' and he did not feel there was a substantial similarity, and bringing the number of package stores up to five would bring it up to maximum. This license was granted by a similar vote. The five remaining applications were denied by unanimous vote.

"At the appeal hearing the Mayor and Councilman West repeated the substance of their reasons which led them to vote as they did. Salvatore DiLavore testified that he operated a delicatessen, bakery and soda fountain. Five licensees in the municipality testified that existing licenses were more than adequate to supply the liquor needs of the community. Four licensees in the nearby communities testified that they delivered alcoholic beverages to their customers in the municipality.

"The Packard-Bamberger license was evidently granted on the basis that it was to be located as part of a large shopping center on a main travelled highway which would be likely to attract many transients as well as those residents who might shop there and therefore it would be an economical advantage to the community.

"The economical advantage resulting in financial benefits to the community as a whole is not a factor; the only consideration is whether a package store there is essential to fully supply the liquor needs of the inhabitants of the municipality.

"Shopping centers or supermarkets as such, do not have any advantage over other establishments which seek to obtain a liquor license. Grand Union Company v. West Orange, Bulletin 1155, Item 3.

"There are nine tavern licenses and one package store license located on Route 46. The local planning board, in its report states: 'The types of commercial uses along U.S.Highway 46 are oriented almost entirely to highway rather than local clientele ****.'

"It seems clear from the over-all picture presented that there is an over-abundance of taverns in the municipality where package goods can be purchased and that from that viewpoint there was no need for establishment of an additional two package stores. Five taverns and a package store seemingly are sufficient in the Lake Parsippany area. It does not appear rational to place two package stores in one area and none in six other districts, assuming that over-all there was need for another package store license. The Packard-Bamberger license is not intended to provide for the convenience of the inhabitants of the community.

"In view of the previous attitude of the Township Council concerning the persons in Greystone Park Hospital, and the excessive number of tavern licenses, it appears clear that the Council resolved to terminate the scramble for package store licenses resulting from the 1950 Federal census by bringing them up to the maximum of five, evaluating need therefor solely on the basis that there was a difference between the facilities for the sale of package goods by a tavern and that by a package store. This is not a valid ground for the issuance of a package store license not otherwise needed. A pertinent quotation from Franklin Stores Co. v. Belleville, Bulletin 102, Item 2, cited in Hyman v. Howell, Bulletin 1039, Item 3, is: 'Appellant claims, however, that consumption places do not cater to the package trade and that women desiring to make such purchases would prefer to enter stores dealing only with package goods. Quite true. But they already have in the municipality three such stores. With present-day telephone and transportation facilities such stores can properly service large areas.'

"In Tp. Committee of Lakewood Tp. v. Brandt, 38 N. J. Super. 462, it was said: 'For one thing...as may be said to be suggested by the concept of public necessity...consideration should be given to the question whether there is any deficiency or lack in present facilities.'

"I recommend that the action of the respondent Township Council in issuing the two licenses be reversed. Phillipsburg v. Burnett, 125 N.J.L. 157; Bumball v. Burnett, 115 N.J.L. 254."

Written exceptions to the Hearer's Report and written argument thereon were filed with me by the attorneys for each of the three respondents, and a joint written answering argument was submitted by the attorneys for the appellants and the objector. The substance of the exceptions is that the Hearer has misconstrued the meaning of R.S. 33:1-12.14 (the State Numerical Limitation Law) and that there has been a lack of showing of abuse of discretion by the local issuing authority in its determination that there was a public need and necessity for the issuance of the two licenses in question.

I am in accord with the view of the respondents that the State Numerical Limitation Law does not prohibit the issuance of

the two new licenses. R.S. 1:1-2, which, it is asserted, applies to the Limitation Law, specifically prefaces its definitions of words and phrases (including "population") with the proviso, "Unless it be otherwise expressly provided or there is something in the subject or context repugnant to such construction...." Thus, since the method for ascertaining population is expressly included in the Limitation Law, there is no necessity to refer to R.S. 1:1-2.

In addition, the defining statute has no applicability where the context of the act evinces a different legislative intent. See Priestman v. Miller Built Homes, Inc., 128 N.J.L. 88 (Sup. Ct. 1942). A reading of the Limitation Law indicates that the Legislature intended to provide a definite, clearly ascertainable method of determining population, wherein certainty was to be a more important consideration than accuracy. To adopt appellants' construction would result in the burdensome and illogical task of permitting population to be proven, like any other fact, by independent evidence outside the official Federal census. But, see In Re Sewer Assessment for Passaic, 54 N.J.L. 156 (Sup. Ct. 1891) wherein it was held that, even where the statute fails to express how population will be determined, the method to be used is by reference to an official census, and not by outside evidence, and that "'population' in the act bears the meaning of enumeration of inhabitants, and refers to such enumeration as the law provides to be made (referring to official census)." A fortiori, where the Legislature provides the last preceding Federal census as the means of measurement of population, surely there is no basis for permitting proof to be received piercing the official census record by introducing evidence disclosing either the method employed by the Census Bureau or the accuracy thereof.

Aside from these considerations, I am constrained to arrive at the same conclusion should I assume that the definition of "population" in R.S. 1:1-2 is applicable to the State Numerical Limitation Law. The term "inhabitants" has many meanings; its construction is generally governed by the connection in which it is used; by itself it has no definite meaning. 31 Corpus Juris 1194. While it is true that the cases generally hold it to be synonomous with "domocile" (see In Re Loch Arbour, 25 N.J. 258 (1957) and cases cited therein), it is because these cases have been concerned with voting rights, tax obligations, citizenship and other relations of the individual with the State or community.

But the term may have a corporate or collective import, rather than an individual significance, in relation to the State or community. In this sense, when used collectively, it may mean the residents of a political unit, its dwellers and householders who are not merely "passing through;" it is not necessarily restricted to those who have fixed intentions to make it their home or domocile. See 31 Corpus Juris 1196. I believe it is used in this sense in R.S. 1:1-2, since it applies to an official census, which by its very nature speaks collectively, not individually. Moreover, to hold otherwise would create an irreconcilable conflict in the statute itself because of the practice of the Census Bureau to count persons as residents of a defined area, although they are not domociled in that area in the legal sense.

Accordingly, I find that, for the purpose of determining whether the licenses in question are issued in violation of the State Numerical Limitation Law, the patients and staff of Greystone Park Hospital may not be excluded from the official enumeration of the population of the respondent municipality as certified by the last preceding Federal census. However, I also make the concomitant finding that, for the purpose of determining the public need and necessity for the issuance of a license in a municipality, the patients and non-resident staff of a mental institution may not be considered as part of the potential consuming public.

Although the numerical limitation established by the Legislature does not bar the issuance of these licenses under the exceptional circumstances of this case, its standard as to the number of licensed premises which are adequate to serve the consuming public is entitled to great weight on the question of public need and necessity. When this fact is considered, together with the evidence in the record that there is in the municipality at least fourteen tavern licenses in excess of the legislative standard (or at least six in excess of the legislative limitation), plus five warm beer retail licenses, it may be seen that the needs of the public are being amply supplied.

I have read the entire record herein, including the transcript of the hearing, the exhibits introduced and the written briefs of counsel, and have come to the conclusion that, for the reasons set forth in Part II of the Hearer's Report, the Township Council exceeded its permissible area of discretion in issuing these licenses. In coming to this conclusion I am not unmindful of the fact that the Township Council in its deliberations considered the Greystone Park Hospital question and, notwithstanding, determined that there was a public need and necessity with regard to the remaining members of the public. It may well be that its members honestly felt that the economic well-being of the Township and the furtherance of convenience to some of its members would be better served by the additional establishments, but I cannot find reasonable basis for the issuance of these licenses in response to any real over-all public need or necessity in a municipality already surfeited with license premises selling package goods as well as alcoholic beverages by the drink.

In view of these findings, I will adopt the Hearer's ultimate recommendation that the action of the respondent Township Council be reversed, but shall not adopt his recommended construction of the State Numerical Limitation Law in Part I of his Report.

Accordingly, it is, on this 27th day of January, 1958,

ORDERED that, for the reasons stated herein, the action of the respondent Township Council in issuing the two licenses in question is hereby reversed and that, effective immediately, the two licenses are hereby cancelled and declared to be of no force and effect.

WILLIAM HOWE DAVIS,
Director.

3. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF TAXPAID ALCOHOLIC BEVERAGES INTENDED FOR UNLAWFUL IMPORTATION INTO NEIGHBORING STATE - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on September 17, 1957 of a quantity of whiskey and a Studebaker sedan on U. S. Highway No. 130 in the Township of Cranbury, County of Middlesex and State of New Jersey	))))	CASE NO. 9573 ON HEARING CONCLUSIONS AND ORDER

Noel Cain, Pro Se.
George E. Tooks, Pro Se.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This matter came on for hearing pursuant to R. S. 33:1-66, to determine whether a quantity of taxpaid alcoholic beverages and a Studebaker sedan, described in a schedule attached hereto, seized on September 17, 1957 on U. S. Highway No. 130, Cranbury, New Jersey, constitute unlawful property and should be forfeited.

"George E. Tooks appeared at such hearing and sought return of the alcoholic beverages, and Noel Cain, in whose name the car is registered, appeared and sought return of the motor vehicle.

"Reports of ABC agents and other documents in the file, presented in evidence with the consent of the two claimants, disclose the following facts:

"A New Jersey State Trooper halted the Studebaker sedan on the above date and at the above location during his routine patrol of traffic on the highway. He ascertained that the motor vehicle was being operated by George E. Tooks, a resident of New York City, and that there were 240 pint bottles, and 98 half-pint bottles of various brands of taxpaid whiskey in the car. Since Tooks did not have any license or permit from the Division of Alcoholic Beverage Control authorizing such transportation, the trooper took into custody the whiskey and motor vehicle pending determination of the source and destination of such beverages. The motor vehicle and whiskey were thereafter turned over to ABC agents,

"It appears that Tooks did not have a bill for the whiskey in his possession when he was apprehended, but he has since obtained a duplicate bill, which he presented in evidence. This bill, dated September 16, 1957, is on the billhead of a local retail liquor dealer located in Washington, D. C., naming Tooks as purchaser and setting forth his New York address, and listing 12 cases of whiskey at a total cost of $640.56. Tooks

claims that he purchased part of the whiskey for his own use, and part for delivery to friends (presumably New York residents).

"Assuming therefore that all of the whiskey was being transported through this state for ultimate delivery in New York, such transportation is governed by Rule 2 of State Regulations No. 18 which requires the transporter to have a New Jersey transportation license and insignia on the vehicle, or a special permit issued by the Division, or a waybill or other document containing pertinent information, and further, requires the transporter to establish that the alcoholic beverages may be lawfully delivered to their destination. Seizure Case No. 9461, Bulletin 1185, Item 4.

"Under the law of the State of New York a person may apparently bring alcoholic beverages into that state, provided, among other things, that they are intended for personal consumption only, and not for resale. Seizure Case No. 9461, supra. Whether such is the fact in the present instance is the primary question.

"George Tooks gives the following details of his background and how it came about that he purchased and transported the whiskey:

"He claims to have been a general contractor for the past ten years, supporting his family, consisting of his wife and four children. He estimates his earning in 1956 to be approximately $3400.00, which just about covers his needs. His earnings in 1957 were less because he was out of work since July due to an injury. His wife earns about $40.00 a week as a domestic. He has no bank account. His normal purchases of liquor are two or three pints at a time.

"Sometime in June 1957 he and another carpenter worked for a farmer in County Square, Virginia renovating a barn and poultry house for a fixed price of $1300.00. He was 'working in the south and some of my friends that had spoken to me asked if I could possibly bring them some whiskey back when I come and after I completed the job I had some money and I stopped off in Washington and picked up the whiskey.' Another version he gives is that he finished the work and came to New York in July, without having received payment for his work. He went to Virginia a couple of days before he was picked up (September 17th) 'that should be around the 14th of September'. He there collected payment for his work, close to $600.00 in cash. These friends told him to bring back liquor, they would see he would be reimbursed. They told him that ever since they found out that he was going back. There were a couple of friends who wanted a couple of cases each. They told him they wanted Calvert - Fleischmann brands.

"In a third version, appearing in his sworn statement in the file George Tooks says he left New York on Monday afternoon, September 16th to purchase whiskey in Washington, stayed there overnight, and makes no mention of any trip to Virginia to collect any money.

"Pressed for the names of his friends, he claimed that he did not want to involve anyone else. Pressed to name how many

there were, he said three or four. He could not say why he purchased only pints and half-pints of whiskey, rather than four-fifth quarts. He expected to receive payment for the whiskey from his friends at the current New York price which is more than the price in Washington.

"His conflicting recital of his activities forcibly demonstrates that he purchased the alcoholic beverages for intended resale, and hence was engaged in an illegitimate enterprise.

"It appears from the testimony of Tooks and Cain that Tooks had exclusive possession of the Studebaker sedan for at least four months, under an arrangement whereby he paid Cain $100.00, because Cain could not afford to 'keep it up'. Cain testified 'I don't even care about the car but he (Tooks) said I should come to clear him; that the car wasn't stolen.' It is thus evident that Cain, the registered owner, has no real interest in the motor vehicle.

"I recommend that the Studebaker sedan and whiskey be forfeited."

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended Conclusions in the Hearer's Report and I adopt them as my Conclusions herein.

Accordingly, it is DETERMINED AND ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and shall be sold at public sale for the use of the State in accordance with State Regulation No. 29 or retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Dated: January 6, 1958

WILLIAM HOWE DAVIS
Director

SCHEDULE "A"

240 - pint bottles of whiskey
96 - one-half pint bottles of whiskey
1 - Studebaker sedan, Serial No. 8247606, New York Registration 708985.

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR FIFTEEN DAYS LESS FIVE FOR PLEA.

In the Matter of Disciplinary Proceedings against

Lou's Tavern, Inc.
t/a Lou's Tavern
292 Barrow Street
Jersey City 2, N. J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-29, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Defendant-Licensee, by Louis J. Goldstein, President.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold during prohibited hours for off-premises consumption alcoholic beverages in their original containers, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that shortly after 1:00 p.m. on Sunday, November 24, 1957, ABC agents entered defendant's licensed premises wherein Louis Goldstein, president of the corporate-licensee herein, was tending bar. During their stay the agents observed Goldstein make a number of sales of alcoholic beverages for off-premises consumption. At 2:35 p.m. one of the agents purchased six cans of beer from Goldstein and left the premises with the merchandise. Returning thereto immediately, both agents identified themselves to Goldstein and informed him of the violations. Goldstein admitted the sale for off-premises consumption to the agents but refused to give a written statement.

Defendant has no prior adjudicated record. I shall suspend its license for a period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Antoniou, Bulletin 1162, Item 8.

Accordingly, it is, on this 22nd day of January, 1958,

ORDERED that Plenary Retail Consumption License C-29, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Lou's Tavern, Inc., t/a Lou's Tavern, for premises 292 Barrow Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., February 3, 1958, and terminating at 2:00 a.m., February 13, 1958.

William Howe Davis
Director.