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

BULLETIN 403 MAY 15, 1940.

1. APPELLATE DECISIONS - RAVITZ v. LITTLE FALLS.

MARTIN RAVITZ,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LITTLE FALLS,

Respondent

ON APPEAL
CONCLUSIONS

Henry Joseph, Esq., Attorney for the Appellant.
George T. Anderson, Jr., Esq., Attorney for the Respondent.
Vincent C. Duffy, Esq., Attorney for the Main Liquor Co., Inc., et al., Objectors.
Mitchell F. Donato, Esq., Attorney for the Little Falls Liquor Dealers Association, an Objector.

This is an appeal from respondent's refusal to issue a plenary retail distribution license for premises located on the Newark-Pompton Turnpike in the Singac section of Little Falls.

The municipality, with a population of approximately 5,000 persons and an area of about four and a half square miles, contains seventeen consumption premises and one distribution premises. Eleven consumption establishments are located in Singac, which has the smallest population of the three sections comprising the municipality. Four of these establishments are located in the immediate vicinity of the proposed premises, two directly across the street and the others within one block.

On February 26, 1940, the date when appellant's application was denied, respondent introduced an ordinance to limit plenary retail consumption licenses to seventeen and plenary retail distribution licenses to one, the number then (and still) outstanding. On March 11, 1940 this ordinance was adopted upon final reading.

Appellant contends that the ordinance should not be retroactively applied to his application since it was not actually adopted until two weeks after his application was denied. A similar contention was found to be without merit in the case of Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1, where it was held:

> "The spirit and not the letter of the law should dominate. Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether

> or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW *** True, the ordinance had not been adopted at the time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation at the time the application was denied."

To the same effect are Widlansky v. Highland Park, Bulletin 209, Item 7; Cocciolone v. West Deptford, Bulletin 247, Item 3; Galluccio and Sciarrabone v. Belmar, Bulletin 255, Item 8; Garrison v. Bridgeton, Bulletin 301, Item 3; Schuttenberg v. Keyport, Bulletin 327, tem 3; Forest Hill Boat Club v. Cinnaminson, Bulletin 372, Item 7.

Respondent's good faith in adopting the ordinance is not impugned. The chairman of the Township Committee testified that the limitation set forth in the ordinance was but a formal manifestation of the policy which had existed in the municipality for several years theretofore.

There is nothing in the evidence to show that the ordinance is unreasonable either as applied to the Township as a whole or in its application to appellant and the vicinity in question. It would appear that the eighteen liquor places are adequate to service the needs of the municipality and that the four taverns now in the vicinity are ample for the particular area.

Appellant's argument that women would find it more convenient to purchase liquor at a regular "package" store rather than at a tavern is unsupported by any proof that any of the women in the municipality have suffered any inconvenience for that reason. Furthermore, even if this argument were well taken, such inconvenience would not of itself constitute a public need requiring the issuance of an additional distribution license in defiance of the local quota.

Since this issue is dispositive of the entire appeal, it is unnecessary to consider the other grounds upon which respondent rested its denial of license to the appellant.

The action of respondent is affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 8, 1940.

2. DISCIPLINARY PROCEEDINGS - PERMITTING CONSUMPTION OF ALCOHOLIC BEVERAGES BY INTOXICATED PERSONS - 3 DAYS.

In the Matter of Disciplinary Proceedings against

JOSEPH KAY,
29 Sherman Avenue,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-317, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Maurice Schapira, Esq., Attorney for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

Charge was served upon the licensee alleging that, on May 18, 1939, he sold and delivered alcoholic beverages to, and permitted the consumption of alcoholic beverages by, persons actually or apparently intoxicated, contrary to Rule 1 of State Regulations No. 20.

The evidence of Investigators DiPietro and Carlin, of this Department, shows that, on the date in question, they saw two patrons who were in a very intoxicated condition consuming alcoholic beverages on the licensed premises. There is no evidence in the case to show a sale to the intoxicated patrons.

At the conclusion of the testimony, licensee retracted his plea of not guilty and pleaded non vult, because of the evidence showing that the licensee permitted the consumption of alcoholic beverages on the licensed premises by persons actually intoxicated.

This is the first disciplinary proceeding brought against the licensee, although in June 1935 he was convicted in a Criminal Court and fined One Hundred Dollars ($100.00) on a charge of employing an unqualified bartender. I shall suspend the license for three days. If the evidence had shown that sales had been made to persons in an intoxicated condition, the suspension would have been for a longer period.

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 No. C-214 (1939-1940) to the same licensee for the same premises.

Accordingly, it is, on this 8th day of May, 1940,

ORDERED, that Plenary Retail Consumption License No. C-214 (1939-1940), heretofore issued to Joseph Kay by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective May 13, 1940, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - GAMBLING - PAY-OFF ON BAGATELLE AND RADIO MACHINE GUN - 3 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary Proceedings against ANNA MARKIEWICZ, 281 Bergen Street, Newark, New Jersey, Holder of Plenary Retail Consumption License C-320, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Harold J. Popper, Esq., Attorney for Defendant-Licensee.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charge of permitting gambling on the licensed premises in that pay-offs in cash were made on winning scores obtained on a bagatelle machine and wagers for drinks were made on scores obtained on a radio gun machine.

The usual penalty for this violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three (3) days instead of five (5) days.

Accordingly, it is, on this 8th day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-320, heretofore issued to Anna Markiewicz by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective May 13, 1940, at 3:00 A.M. Daylight Saving Time.

E. W. GARRETT,
Acting Commissioner.

4. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

May 10, 1940

Re: Case No. 325

In July 1936 applicant was arrested on a charge of conducting a lottery by mail. In January 1939 he pleaded guilty, received a suspended sentence, and was placed on probation for two (2) years.

Applicant testified that in 1936 he was employed as a bus driver; that shortly prior to his arrest, a plan to raise money for the Underprivileged Children's Protective Association had been explained to him by an officer of that association and that he had then agreed to carry out the plan without receiving any salary, with the understanding that he would eventually receive a salary if the operation of the plan warranted payment thereof. The plan seems to have been in the nature of a chain letter affair, involving sale of tickets at twenty-five cents each, which would entitle the holder to a chance on a prize. Applicant testified that he thought that the plan was entirely legal.

The probation officer has furnished a report substantially corroborating applicant's testimony and setting forth that it was a rather amateurish scheme, which had been in operation approximately six (6) weeks before the date of the arrest. He further advised that parts of the profits were, in fact, donated to the Milk Fund of the association above mentioned and to other charitable purposes.

It appears that applicant herein has no other criminal record.

Under all the circumstances of the case, I believe that the crime of which he was convicted did not involve moral turpitude and recommend, therefore, that he be advised that he is eligible to hold a license or to be employed on licensed premises.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - UNDISCLOSED INTEREST HELD BY PERSON LACKING FIVE YEARS' RESIDENCE - DISMISSED ON SURRENDER OF LICENSE.

In the Matter of Disciplinary Proceedings against TERESA MARCHISIO, Lotus Landing, West Shore Swartswood Lake, Stillwater Township, N. J. P.O. Newton, R. D. 2, Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Stillwater Township.	CONCLUSIONS AND ORDER

Charles T. Downing, Esq., Attorney for the Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that in license application filed with the Township Committee of Stillwater Township she misrepresented the interest of Joseph Gonella in license applied for and the business to be conducted thereunder.

The file discloses that Gonella's interest was partially set forth but not fully or adequately described. It appears that Joseph Gonella has been the owner of the realty and building which housed the licensed premises since 1920. Since that time he has resided at the premises approximately nine months of each year. During the intervals he returned to and resided in New York City until 1936, since which time he has been a permanent resident of Stillwater Township, Sussex County, New Jersey.

There appears ample foundation for honest belief on the part of both the licensee and Gonella that the latter in fact was a properly qualified resident of New Jersey for more than five (5) years last past. However, the licensee has frankly conceded, in the light of subsequent explanation, that Gonella technically has not been a resident of New Jersey continuously, within the purview of the Alcoholic Beverage Law, during the five years immediately preceding the filing of the license application.

The licensee has further conceded that the extent of Gonella's interest in the licensed business was not fully set forth in the application. The licensee has cooperated fully with the Department, has made frank disclosure of all facts, and on May 2nd, 1940 voluntarily surrendered to the Stillwater Township Committee license C-6, against which these proceedings were directed.

I am satisfied, in the light of all of the attendant circumstances, that it would be equitable and just to permit surrender of the license and no further punishment need be imposed.

Accordingly, it is, on this 10th day of May, 1940,

ORDERED, that these proceedings be and the same are hereby dismissed.

E. W. GARRETT,
Acting Commissioner

6. DISCIPLINARY PROCEEDINGS - SALES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED - PROOF INSUFFICIENT - DISMISSED.

In the Matter of Disciplinary Proceedings against HARRY KURTZ, 135 Mulberry Street, Newark, New Jersey, Holder of Plenary Retail Consumption License No. C-131, for the fiscal year 1937-1938, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Sidney Simandl, Esq., (William C. Egan, Esq. on brief), Attorney for the Licensee.

Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

Charges served upon the licensee allege, in substance, that on May 26 and June 4, 1938 he permitted or suffered consumption of alcoholic beverages on his licensed premises by persons actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20.

After carefully considering the record, I am in doubt as to whether the persons served were "actually or apparently intoxicated" within the meaning of the rule. I shall give the licensee the benefit of the doubt and dismiss the charges.

Accordingly, it is, on this 10th day of May, 1940,

ORDERED that the charges herein be dismissed.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - INDECENT PERFORMANCE - NOISE AND NUISANCE - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against HARRY KURTZ, 135 Mulberry Street, Newark, N. J., Holder of Plenary Retail Consumption License C-291, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, County of Essex.	CONCLUSIONS AND ORDER

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Herman W. Kurtz, Esq., Attorney for the Licensee.

The licensee was charged with (1) permitting lewd and immoral activities on the licensed premises; (2) permitting unnecessary noises upon the licensed premises; (3) permitting the licensed place of business to be conducted in such manner as to become a nuisance, all in violation of State Regulations 20, Rule 5.

1. Testimony of investigators of this Department establishes that in the early morning of July 16, 1939 as they entered the premises they observed a colored woman patron dancing to the music of a record machine, meanwhile clutching a wrapper or smock about her to emphasize her figure, the dance consisting of suggestive motions of the body. In the course of the dance she collided with a colored man and an argument ensued during which foul and obscene epithets were hurled, peace being finally restored by the bodily ejection of the man by the day bartender. Shortly afterward the colored woman asked whether anyone would give her a quarter, whereupon one of the investigators complied with her request. She placed it on the edge of a table and then, raising her smock above her hips and disclosing to the patrons her unclothed body, she attempted by motions of her hips and legs to pick up the quarter from the table but failed after several attempts. Although the performance was easily visible by the bartender then on duty, neither he nor the day bartender made any attempt to interrupt it but permitted it to continue.

2 & 3. Testimony in support of the charge of permitting unnecessary noises and permitting the licensed place of business to be conducted as a nuisance was produced by neighbors. The tenant of the apartment over the licensed premises testified that loud music from a phonograph record machine often continued until the 5:00 A.M. closing hour. Another neighbor testified that on one occasion a man and woman left the premises and engaged in sexual intercourse in a nearby automobile; that intoxicated persons customarily leave the premises and urinate and vomit on the sidewalk of neighboring properties; that women come from the premises and solicit men on the street for sexual intercourse; that patrons leaving the tavern late at night shout and use vile language. A third neighbor testified that from the sidewalk loud singing and vulgarity can be heard, coming from the licensed

premises. Indicating the nature of the business that is conducted and the class of patrons to which the licensee caters, one investigator testified that he had scarcely one drink because "The place is filthy. When we went in we asked for bottled beer so we would not have to use glasses."

The licensee's defense to the first charge is the categorical denial of the bartender on duty that night that the lewd performance occurred, supported by an equally categorical denial that the day bartender was present on the occasion in question. The testimony as to the noise and the manner of the conduct of the licensed business was not met except by attempts to show bias of the neighboring residents.

I find the licensee guilty as charged. The license will be suspended for thirty days.

Accordingly, it is, on this 10th day of May, 1940,

ORDERED, that Plenary Retail Consumption License C-291, heretofore issued to Harry Kurtz for premises 135 Mulberry Street, be and the same is hereby suspended for thirty days, commencing at 3:00 A.M. (D.S.T.) on Wednesday, the 15th day of May, 1940.

E. W. GARRETT,
Acting Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on March 7, 1940, of a Hudson Coupe and forty-one 5-gallon cans of alcohol found therein, on White Horse Pike, in the Borough of Chesilhurst, County of Camden and State of New Jersey.	Case 5706 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On March 7, 1940, New Jersey State Troopers arrested Ralph A. Ream for transporting forty-one 5-gallon cans of illicit alcohol in a Hudson coupe on the White Horse Pike in the Borough of Chesilhurst. The cans of alcohol bore no Federal tax stamps or other indication that the alcohol was tax paid, and the motor vehicle was not licensed to transport alcoholic beverages.

Thereafter, the seizure was turned over to this Department.

At a hearing duly held to determine whether the motor vehicle and the alcohol should be confiscated, no one appeared to contest the proceedings.

The alcohol is presumably "bootleg" because, although fit for beverage purposes, it bore no tax stamps. P.L. 1939, c. 177. Under the Statute, illicit alcohol and the vehicle used in its transportation are subject to confiscation. R.S.33:1-66(c). It is determined that the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the seized property (set forth in Schedule "A" annexed hereto) be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

E. W. GARRETT,
Acting Commissioner.

Dated: May 11, 1940.

SCHEDULE "A"

41 - 5-gallon cans of alcoholic beverages
1 - Hudson coupe, Serial No. 752078, Engine No. 26735, 1939 Pennsylvania Registration No. 2 ZM 94.

9. APPELLATE DECISIONS - GRACE v. EGG HARBOR.

NELLIE M. GRACE,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR, NELLIE M. GRACE, INC., a New Jersey corporation, RAYMOND BRADWAY and GEORGE A. BROWNMILLER,)
Respondents)
- - - - - - - - - - - - - - - - - - -

Morgan E. Thomas, Esq., Attorney for Appellant.
C. B. Dixon, Esq., Attorney for Respondent, Township Committee of the Township of Egg Harbor.
Augustus S. Goetz, Esq., Attorney for Respondents, Nellie M. Grace, Inc., Raymond Bradway and George A. Brownmiller.

Appellant appeals from the action of the Township Committee in transferring to Nellie M. Grace, Inc. plenary retail consumption license C-9, which had been issued to appellant for the present fiscal year.

On October 7, 1939, Nellie M. Grace, Raymond Bradway and George A. Brownmiller entered into a written agreement to form a corporation to be known as Nellie M. Grace, Inc., wherein and whereby Raymond Bradway and George A. Brownmiller agreed to invest such reasonable funds, not to exceed One Thousand Dollars ($1000.00), as are necessary to operate the present licensed premises of Nellie M. Grace, and appellant agreed to lease her property to the corporation for a five-year period. The agreement also contains the following provisions:

"Nellie Grace agrees to transfer to the corporation her liquor license."

There is dispute between the parties as to whether Bradway and Brownmiller carried out the terms of the agreement but it is admitted that the corporation was formed.

Shortly after the agreement was signed, an application was filed to transfer said license to Nellie M. Grace, Inc., but the Township Clerk testified that said application did not bear the consent, in writing, of appellant herein to such transfer. While the Clerk testified that a copy of the agreement dated October 7, 1939 was shown to the members of the Township Committee before they transferred the license on October 21, 1939, that evidence is not sufficient to show that there was a compliance with the provisions of R. S. 33:1-26, which provides that the "application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to such transfer." Since the statutory requirement was not complied with in this case, I find that the Township Committee had no jurisdiction to act upon the application.

It is unnecessary to consider the question as to whether appellant's letter to the Township Clerk, dated November 10,1939, constituted a withdrawal of her consent since I find that her consent had never been given as required by statute. Hence, the case is distinguished from Mancini v. West New York, Bulletin 253, Item 10, and cases therein cited.

Respondents also contend that in November 1939 the Sheriff of Atlantic County sold appellant's premises to a third party, but that evidence appears to be immaterial because, at least on the date of hearing, appellant continued in possession of the property. Of course, if she loses the right of possession, she cannot thereafter continue to operate under her license.

It appears from the testimony that after the attempted transfer on October 21,1939, appellant refused to surrender her license certificate so that the transfer might be endorsed thereon; that the license certificate has never been endorsed to the corporation; and that appellant has continued to operate her business at the licensed premises in her own name since October 21, 1939. This she had the right to do under the ruling made in Re Volcker, Bulletin 140, Item 9.

Whatever rights the parties may have under the agreement of October 7, 1939 should be settled in a court of competent jurisdiction.

Because respondent Township Committee had no jurisdiction to consider an application for transfer which did not bear the consent in writing of the licensee to such transfer, its action in transferring the license to Nellie M. Grace, Inc. is, therefore, reversed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 11, 1940.

10. DISCIPLINARY PROCEEDINGS - WHOLESALER - SALE TO CONSUMER - SUSPENSION ONE DAY ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against FEDERAL WINE & LIQUOR COMPANY, 315 Clendenny Ave., Jersey City, N. J., Holer of Plenary Winery License V-25 and Plenary Export Wholesale License EW-7, issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Nathan L. Jacobs, Esq., Attorney for Defendant-Licensee.

The licensee has pleaded guilty to the following charge:

> "On or about December 19, 1939, you sold, transported and distributed alcoholic beverages in the State of New Jersey not pursuant to and within the terms of your Plenary Winery and Plenary Export Wholesale Licenses in that you sold and delivered alcoholic beverages to a consumer in violation of R. S. 33:1-2."

Re Wilkinson Gaddis Company et als., Bulletin 184, Item 5 involved an analogous situation. Three plenary wholesale licensees were charged with having sold and delivered alcoholic beverages to a non-licensee in violation of the terms of their licenses. The only distinction is that the sales in those cases were not made to consumers but were sales delivered to retail licensed premises carelessly billed in the name of a non-licensee. It there appeared that one Henry Pross, a retailer, had sold his business without benefit of legal transfer to Karol Skrzysczak. The latter name had been placed on the window and Skrzysczak was conducting the business under Pross' license. The wholesalers thought they were dealing with a licensee. Actually, they were not. In suspending the licenses for three days, it was stated:

> "There was apparently no deliberate intent consciously to violate the law.....That, however, does not excuse the sale and billing of alcoholic beverages in the name of a man who does not in fact hold a license. That, to say the very least, amounts to gross and inexcusable carelessness on the part of the wholesalers. It is not sufficient to say that it was the unfortunate mistake of an employee. Retail licensees are held responsible for the acts of their employees irrespective of their own personal innocence. Wholesalers are equally responsible."

In the present case, the sale and delivery was made not to retail licensed premises but directly to a consumer. It may be true that this licensee did not intend to violate the law; that, as its counsel argues, it merely had granted a "misguided but understandable 'personal favor' or act of human friendship"; and that this was not a habitual practice but an isolated instance. The fact remains, however, that while actual intent to violate the law was absent, the sale was made. That sale was in violation of the Alcoholic Beverage Law.

The penalty will therefore be the usual three days, less two for the guilty plea.

Accordingly, it is, on this 11th day of May, 1940,

ORDERED, that Plenary Winery License V-25 and Plenary Export Wholesale License EW-7, heretofore issued to Federal Wine & Liquor Company by the State Commissioner of Alcoholic Beverage Control, be and they are hereby suspended for a period of one (1) day, effective May 16, 1940 at 7:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

11. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938)	CONCLUSIONS AND ORDER
Case No. 92	

In 1931 petitioner pleaded guilty to a charge of breaking and entering and was placed on probation for three years.

At the hearing petitioner produced, in his behalf, three character witnesses - a Clerk of the County Board of Elections, a Deputy Collector of Internal Revenue, and a tavern keeper - who have known him for eight, six and four years respectively. All three witnesses testified that they reside in petitioner's immediate neighborhood, and that, from the time that they have known him, his reputation in the community has been good.

Petitioner's fingerprint record discloses that he has neither been arrested nor convicted of any crime since 1931. The Police Department in the municipality wherein he resides has certified that there are no pending complaints or investigations against him.

It is concluded that petitioner has led a law-abiding life for the last past nine years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Normally, petitioner's disqualification would be lifted effective immediately but, in his application for Solicitor's Permit filed with this Department, he denied under oath that he had been convicted of any crime. For this false swearing his disqualification will not be lifted for another ten days.

Accordingly, it is, on this 13th day of May, 1940,

ORDERED, that the petitioner's statutory disqualification, because of the conviction referred to herein, be and the same is hereby removed effective May 23, 1940, in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

12. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on March 18, 1940, of a Chrysler Sedan and twenty-seven 5-gallon cans of alcohol found therein at Somerville Circle, Routes 28 and 29, in the Township of Bridgewater, County of Somerset and State of New Jersey.	Case 5719 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On March 18, 1940, New Jersey State Troopers arrested Joseph Martino and Anthony Orlando for transporting twenty-seven 5-gallon cans of illicit alcohol in a Chrysler Sedan at Somerville Circle, Routes 28 and 29, in Bridgewater Township. The cans of alcohol bore no Federal tax stamps or other indication that the alcohol was tax paid, and the motor vehicle was not licensed to transport alcoholic beverages.

Thereafter, the seizure was turned over to this Department.

At a hearing duly held to determine whether the motor vehicle and the alcohol should be confiscated, no one appeared to contest the proceedings.

The alcohol is presumably "bootleg" because, although fit for beverage purposes, it bore no tax stamps. P.L. 1939, c. 177. Under the Statute, illicit alcohol and the vehicle used in its transportation are subject to confiscation. R. S. 33:1-66(c). It is determined that the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the seized property (set forth in Schedule "A" annexed hereto) be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

E. W. GARRETT,
Acting Commissioner.

Dated: May 13, 1940.

SCHEDULE "A"

27 - 5-gallon cans of alcoholic beverages
1 - Chrysler Sedan, Engine No. 50747, Serial No. 6954195, 1940 N. Y. Registration No. 3Y-2281

13. APPELLATE DECISIONS - METZGAR v. RARITAN.

PRESTON METZGAR,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE)
TOWN OF RARITAN and ANTHONY)
SACINO,)
Respondents.)

Frederick A. Pope, Esq., Attorney for Appellant.
Frank A. Palmieri, Esq., Attorney for Respondent, Anthony Sacino.

This appeal is from the action of the Board of Commissioners of the Town of Raritan in granting a transfer of Anthony Sacino's plenary retail consumption license from 38 Canal Street to a building to be erected almost half a mile away at 76 First Avenue in the Town.

Such transfer is to become finally effective when the proposed building is constructed in accordance with the plans and specifications filed with Sacino's application.

The building, when thus erected, will stand seven feet in a business and light industrial and twenty-three feet in a residential area as fixed by local zoning ordinance of November 2, 1937. Since that ordinance permits such building to be put to the purposes of either zone, the licensing of the building for retail sale of liquor does not contravene the ordinance.

However, appellant (who lives and owns premises across from Sacino's new site) contends that the vicinity is nevertheless actually residential in character, and hence that it is not a proper site for a tavern.

Were the general vicinity strictly residential in character, appellant's contention would be well taken. Welstead v. Matawan, Bulletin 133, Item 2; Borkowski v. Clifton, Bulletin 139, Item 5; Mulligan v. Lyndhurst, Bulletin 146, Item 6; O'Rourke v. Fort Lee, Bulletin 189, Item 14; Wenzel v. Maywood, Bulletin 310, Item 3.

However, it appears that the vicinity is actually mixed residential, business and industrial, with the Central Railroad running some 200 feet from the proposed building.

In a vicinity of such mixed character, it is within the sound discretion of the local issuing authority to determine whether a liquor place should be permitted. Burak v. Irvington, Bulletin 130, Item 2; McDonald v. Paterson, Bulletin 155, Item 10; Ciliberti v. Camden, Bulletin 379, Item 13.

There is nothing in the evidence to show that the Raritan Board here abused such discretion. The fact that the Town's general business area is on the other side of the railroad tracks does not require that the Town's liquor licenses be concentrated there and prohibited in other proper sections.

Appellant further contends that there is insufficient parking space in the street at the proposed tavern for automobilists who might stop there, and hence that such tavern will create an undue traffic hazard. However, this contention is without merit since appellant's premises contain ample room for an intended parking space. Falgion v. Morris, Bulletin 243, Item 11; Conway v. Haddon, Bulletin 251, Item 3; Granda v. Rockaway, Bulletin 282, Item 7.

Nor is there merit to the claim that it is perilous to the tavern patrons to permit the tavern to be located near the railroad crossing at First Avenue where a watchman is maintained between 5:30 A.M. and 9:30 P.M. There is nothing to indicate that Sacino will violate the State regulation prohibiting sales of liquor to persons who are drunk.

The action of respondent is, therefore, affirmed.

E. W. Garrett

Acting Commissioner.

Dated: May 14, 1940.